

# Texas Historical Statutes Project

WEST'S TEXAS STATUTES 1974  
VOLUME 1

Business and Commerce Code  
Education Code  
Family Code  
Penal Code  
Penal Auxiliary Laws  
Code of Criminal Procedure  
Water Code



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# West's Texas Statutes and Codes

Volume 1

CONSTITUTION

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BUSINESS AND COMMERCE

---

EDUCATION — FAMILY — PENAL

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CODE OF CRIMINAL PROCEDURE

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WATER

PROPERTY OF

100032

TEXAS

HOUSE OF REPRESENTATIVES

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## PREFACE

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These volumes of West's Texas Statutes and Codes include, in compact and convenient form, the text of all the general and permanent laws of the State of Texas enacted through the Regular Session and First Called Session of the 63rd Legislature, and the Texas Constitution, as amended through November 6, 1973.

The laws in West's Texas Statutes and Codes are under the same classification as Vernon's Annotated Texas Statutes and Vernon's Texas Codes Annotated. Therefore, the user of this edition may go from any article or section herein to the same article or section in the annotated editions, where the complete constructions of the laws by the state and federal courts, historical data relative to the origin and development of the law, and other helpful research aids, are conveniently available.

### Scope of Volumes

Volume 1 contains the Constitution of the State of Texas; the Business and Commerce Code; the Education Code; the Family Code; the Penal Code; Penal Auxiliary Laws (Liquor Control Act; Game, Fish and Oysters); the Code of Criminal Procedure; and the Water Code. The Business and Commerce, Education, Family, Penal and Water Codes are units of the Texas Legislative Council's on-going statutory revision program, authorized by Civil Statutes, Art. 5429b-1.

Volume 2 contains the Business Corporation Act; Title 32, Corporations, of the Civil Statutes; the Election Code; the Insurance Code; Title 78, Insurance, of the Civil Statutes; the Probate Code; and Title 122, Taxation, and Title 122A, Taxation-General, of the Civil Statutes.

Volumes 3 to 5 contain the balance of the text of the Civil Statutes.

### Tables

Disposition Tables are provided following each Code and throughout the Civil Statutes, providing a means of tracing repealed subject matter to parallel provisions.

Special laws pertaining to education and water, which were neither repealed by, nor incorporated into, the Education and Water Codes, are tabulated following the respective Codes.

Additionally, Disposition Table 2 of the Penal Code shows the new official citations or classifications of unrepealed articles of the Texas Penal Code of 1925.

## **PREFACE**

### **Indexes**

A separate detailed descriptive word Index follows the Constitution, each Code and the Penal Auxiliary Laws to facilitate the search for specific provisions found therein. Laws in the Civil Statutes may be located by means of the Topical Index at the end of Volume 5.

**THE PUBLISHER**

November, 1974

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# WEST'S TEXAS STATUTES AND CODES

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## CITE THIS BOOK

Thus:

West's Texas Const. art. —, § —  
West's Texas Business and Commerce Code, § —  
West's Texas Education Code, § —  
West's Texas Family Code, § —  
West's Texas Penal Code, § —  
West's Texas Penal Auxiliary Laws, Art. —  
West's Texas Code of Criminal Procedure, Art. —  
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†



**CONSTITUTION  
OF THE  
STATE OF TEXAS 1876**

Adopted February 15, 1876

As amended to November 6, 1973

Article

- Preamble.
- I. Bill of Rights.
- II. The Powers of Government.
- III. Legislative Department.
- IV. Executive Department.
- V. Judicial Department.
- VI. Suffrage.
- VII. Education.
- VIII. Taxation and Revenue.
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- XIII. Spanish and Mexican Land Titles.
- XIV. Public Lands and Land Office.
- XV. Impeachment.
- XVI. General Provisions.
- XVII. Mode of Amending the Constitution of This State.

**PREAMBLE**

Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution.

**ARTICLE I**

**BILL OF RIGHTS**

Section

- 1. Freedom and Sovereignty of State.
- 2. Inherent Political Power; Republican Form of Government.
- 3. Equal Rights.
- 3a. Equality Under the Law.
- 4. Religious Tests.
- 5. Witnesses not Disqualified by Religious Beliefs; Oaths and Affirmations.
- 6. Freedom of Worship.
- 7. Appropriations for Sectarian Purposes.
- 8. Freedom of Speech and Press; Libel.
- 9. Searches and Seizures.
- 10. Rights of Accused in Criminal Prosecutions.
- 11. Bail.
- 11-a. Multiple Convictions; Denial of Bail.
- 12. Habeas Corpus.
- 13. Excessive Bail or Fines; Cruel and Unusual Punishment; Remedy by Due Course of Law.
- 14. Double Jeopardy.

Section

- 15. Right of Trial by Jury.
- 15-a. Commitment of Persons of Unsound Mind.
- 16. Bills of Attainder; Ex Post Facto or Retroactive Laws; Impairing Obligation of Contracts.
- 17. Taking, Damaging or Destroying Property for Public Use; Special Privileges and Immunities; Control of Privileges and Franchises.
- 18. Imprisonment for Debt.
- 19. Deprivation of Life, Liberty, Etc.; Due Course of Law.
- 20. Outlawry or Transportation for Offence.
- 21. Corruption of Blood; Forfeiture of Estate; Descent in Case of Suicide.
- 22. Treason.
- 23. Right to Keep and Bear Arms.
- 24. Military Subordinate to Civil Authority.
- 25. Quartering Soldiers in Houses.
- 26. Perpetuities and Monopolies; Primogeniture or Entailments.
- 27. Right of Assembly; Petition for Redress of Grievances.
- 28. Suspension of Laws.
- 29. Provisions of Bill of Rights excepted from Powers of Government; to Forever Remain Inviolable.

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

**§ 1. Freedom and Sovereignty of State**

Sec. 1. Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

[Adopted Feb. 15, 1876.]

**§ 2. Inherent Political Power; Republican Form of Government**

Sec. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

[Adopted Feb. 15, 1876.]

**§ 3. Equal Rights**

Sec. 3. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

[Adopted Feb. 15, 1876.]

### § 3a. Equality Under the Law

Sec. 3a. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative. [Adopted Nov. 7, 1972.]

### § 4. Religious Tests

Sec. 4. No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

[Adopted Feb. 15, 1876.]

### § 5. Witnesses not Disqualified by Religious Beliefs; Oaths and Affirmations

Sec. 5. No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

[Adopted Feb. 15, 1876.]

### § 6. Freedom of Worship

Sec. 6. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

[Adopted Feb. 15, 1876.]

### § 7. Appropriations for Sectarian Purposes

Sec. 7. No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

[Adopted Feb. 15, 1876.]

### § 8. Freedom of Speech and Press; Libel

Sec. 8. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

[Adopted Feb. 15, 1876.]

### § 9. Searches and Seizures

Sec. 9. The people shall be secure in their persons, houses, papers and possessions, from all unrea-

sonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

[Adopted Feb. 15, 1876.]

### § 10. Rights of Accused in Criminal Prosecutions

Sec. 10. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is in violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

[Adopted Nov. 5, 1918.]

### § 11. Bail

Sec. 11. All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

[Adopted Feb. 15, 1876.]

### § 11-a. Multiple Convictions; Denial of Bail

Sec. 11-a. Any person accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor may, after a hearing, and upon evidence substantially showing the guilt of the accused, be denied bail pending trial, by any judge of a court of record or magistrate in this State; provided, however, that if the accused is not accorded a trial upon the accusation within sixty (60) days from the time of his incarceration upon such charge, the order denying bail shall be automatically set aside, unless a continuance is obtained upon the motion or request of the accused; provided, further, that the right of appeal to the Court of Criminal Appeals of this State is expressly accorded the accused for a review of any judgment or order made hereunder.

[Adopted Nov. 6, 1956.]

### § 12. Habeas Corpus

Sec. 12. The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

[Adopted Feb. 15, 1876.]

**§ 13. Excessive Bail or Fines; Cruel and Unusual Punishment; Remedy by Due Course of Law.**

Sec. 13. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

[Adopted Feb. 15, 1876.]

**§ 14. Double Jeopardy**

Sec. 14. No person, for the same offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

[Adopted Feb. 15, 1876.]

**§ 15. Right of Trial by Jury**

Sec. 15. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

[Adopted Feb. 15, 1876. Amended Aug. 24, 1935.]

**§ 15-a. Commitment of Persons of Unsound Mind**

Sec. 15-a. No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury.

[Adopted Nov. 6, 1956.]

**§ 16. Bills of Attainder; Ex Post Facto or Retroactive Laws; Impairing Obligation of Contracts**

Sec. 16. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

[Adopted Feb. 15, 1876.]

**§ 17. Taking, Damaging or Destroying Property for Public Use; Special Privileges and Immunities; Control of Privileges and Franchises**

Sec. 17. No person's property shall be taken, damaged or destroyed for or applied to public use

without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

[Adopted Feb. 15, 1876.]

**§ 18. Imprisonment for Debt**

Sec. 18. No person shall ever be imprisoned for debt.

[Adopted Feb. 15, 1876.]

**§ 19. Deprivation of Life, Liberty, Etc.; Due Course of Law**

Sec. 19. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

[Adopted Feb. 15, 1876.]

**§ 20. Outlawry or Transportation for Offence**

Sec. 20. No citizen shall be outlawed, nor shall any person be transported out of the State for any offence committed within the same.

[Adopted Feb. 15, 1876.]

**§ 21. Corruption of Blood; Forfeiture of Estate; Descent in Case of Suicide**

Sec. 21. No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

[Adopted Feb. 15, 1876.]

**§ 22. Treason**

Sec. 22. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

[Adopted Feb. 15, 1876.]

**§ 23. Right to Keep and Bear Arms**

Sec. 23. Every citizen shall have the right to keep and bear arms in the lawful defence of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

[Adopted Feb. 15, 1876.]

**§ 24. Military Subordinate to Civil Authority**

Sec. 24. The military shall at all times be subordinate to the civil authority.

[Adopted Feb. 15, 1876.]

**§ 25. Quartering Soldiers in Houses**

Sec. 25. No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

[Adopted Feb. 15, 1876.]

**§ 26. Perpetuities and Monopolies; Primogeniture or Entailments**

Sec. 26. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

[Adopted Feb. 15, 1876.]

**§ 27. Right of Assembly; Petition for Redress of Grievances**

Sec. 27. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

[Adopted Feb. 15, 1876.]

**§ 28. Suspension of Laws**

Sec. 28. No power of suspending laws in this State shall be exercised except by the Legislature.

[Adopted Feb. 15, 1876.]

**§ 29. Provisions of Bill of Rights excepted from Powers of Government; to Forever Remain Inviolable**

Sec. 29. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolable, and all laws contrary thereto, or to the following provisions, shall be void.

[Adopted Feb. 15, 1876.]

**ARTICLE II**

**THE POWERS OF GOVERNMENT**

Section

1. Division of Powers; Three Separate Departments; Exercise of Power Properly Attached to Other Departments.

**§ 1. Division of Powers; Three Separate Departments; Exercise of Power Properly Attached to Other Departments**

Sec. 1. The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

[Adopted Feb. 15, 1876.]

**ARTICLE III**

**LEGISLATIVE DEPARTMENT**

Section

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2. Membership of Senate and House of Representatives.
3. Election and term of office of Senators.
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5. Meetings; Order of Business.
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### § 1. Senate and House of Representatives

Sec. 1. The Legislative power of this State shall be vested in a Senate and House of Representatives, which together shall be styled "The Legislature of the State of Texas."

[Adopted Feb. 15, 1876.]

### § 2. Membership of Senate and House of Representatives

Sec. 2. The Senate shall consist of thirty-one members, and shall never be increased above this number. The House of Representatives shall consist of ninety-three members until the first apportionment after the adoption of this Constitution, when or at any apportionment thereafter, the number of Representatives may be increased by the Legislature, upon the ratio of not more than one Representative for every fifteen thousand inhabitants; provided, the number of Representatives shall never exceed one hundred and fifty.

[Adopted Feb. 15, 1876.]

### § 3. Election and term of office of Senators

Sec. 3. The Senators shall be chosen by the qualified electors for the term of four years; but a new Senate shall be chosen after every apportionment, and the Senators elected after each apportionment shall be divided by lot into two classes. The seats of the Senators of the first class shall be vacated at the

expiration of the first two years, and those of the second class at the expiration of four years, so that one half of the Senators shall be chosen biennially thereafter. Senators shall take office following their election, on the day set by law for the convening of the Regular Session of the Legislature, and shall serve thereafter for the full term of years to which elected and until their successors shall have been elected and qualified.

[Adopted Feb. 15, 1876. Amended Nov. 8, 1966.]

### § 4. Election and term of members of House of Representatives

Sec. 4. The Members of the House of Representatives shall be chosen by the qualified electors for the term of two years. Representatives shall take office following their election, on the day set by law for the convening of the Regular Session of the Legislature, and shall serve thereafter for the full term of years to which elected and until their successors shall have been elected and qualified.

[Adopted Feb. 15, 1876. Amended Nov. 8, 1966.]

### § 5. Meetings; Order of Business

Sec. 5. The Legislature shall meet every two years at such time as may be provided by law and at other times when convened by the Governor. When convened in regular session, the first thirty days thereof shall be devoted to the introduction of bills and resolutions, acting upon emergency appropriations, passing upon the confirmation of the recess appointees of the Governor and such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided that during the succeeding thirty days of the regular session of the Legislature the various committees of each House shall hold hearings to consider all bills and resolutions and other matters then pending; and such emergency matters as may be submitted by the Governor; provided further that during the following sixty days the Legislature shall act upon such bills and resolutions as may be then pending and upon such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided, however, either House may otherwise determine its order of business by an affirmative vote of four-fifths of its membership.

[Adopted Feb. 15, 1876. Amended Nov. 4, 1930.]

### § 6. Qualifications of Senator

Sec. 6. No person shall be a Senator, unless he be a citizen of the United States, and, at the time of his election a qualified elector of this State, and shall have been a resident of this State five years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-six years.

[Adopted Feb. 15, 1876.]

### § 7. Qualifications of Representatives

Sec. 7. No person shall be a Representative, unless he be a citizen of the United States, and, at the time of his election, a qualified elector of this State, and shall have been a resident of this State two years next preceding his election, the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-one years.

[Adopted Feb. 15, 1876.]

### § 8. Each House Judge of Qualifications and Election; Contests

Sec. 8. Each House shall be the judge of the qualifications and election of its own members; but contested elections shall be determined in such manner as shall be provided by law.

[Adopted Feb. 15, 1876.]

### § 9. President Pro Tempore of Senate; Speaker of House of Representatives

Sec. 9. The Senate shall, at the beginning and close of each session, and at such other times as may be necessary, elect one of its members President pro tempore, who shall perform the duties of the Lieutenant Governor in any case of absence or disability of that officer, and whenever the said office of Lieutenant Governor shall be vacant. The House of Representatives shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a Speaker from its own members; and each House shall choose its other officers.

[Adopted Feb. 15, 1876.]

### § 10. Quorum; Adjournments from Day to Day; Compelling Attendance

Sec. 10. Two-thirds of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each House may provide.

[Adopted Feb. 15, 1876.]

### § 11. Rules of Procedure; Expulsion of Member

Sec. 11. Each House may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same offence.

[Adopted Feb. 15, 1876.]

### § 12. Journals of Proceedings; Entering Yeas and Nays

Sec. 12. Each House shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either House on any question shall, at the desire of any three members present, be entered on the journals.

[Adopted Feb. 15, 1876.]

### § 13. Vacancies; Writs of Election

Sec. 13. When vacancies occur in either House, the Governor, or the person exercising the power of the Governor, shall issue writs of election to fill such vacancies; and should the Governor fail to issue a writ of election to fill any such vacancy within twenty days after it occurs, the returning officer of the district in which such vacancy may have happened, shall be authorized to order an election for that purpose.

[Adopted Feb. 15, 1876.]

### § 14. Privileged from Arrest

Sec. 14. Senators and Representatives shall, except in cases of treason, felony, or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the Legislature is convened.

[Adopted Feb. 15, 1876.]

### § 15. Disrespectful or Disorderly Conduct; Obstruction of Proceedings

Sec. 15. Each House may punish, by imprisonment, during its sessions, any person not a member, for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings; provided, such imprisonment shall not, at any one time, exceed forty-eight hours.

[Adopted Feb. 15, 1876.]

### § 16. Open Sessions

Sec. 16. The sessions of each House shall be open, except the Senate when in Executive session.

[Adopted Feb. 15, 1876.]

### § 17. Adjournments

Sec. 17. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that where the Legislature may be sitting.

[Adopted Feb. 15, 1876.]

### § 18. Ineligibility for other Offices; Interest in Contracts

Sec. 18. No Senator or Representative shall, during the term for which he was elected, be eligible to (1) any civil office of profit under this State which shall have been created, or the emoluments of which may have been increased, during such term, or (2) any office or place, the appointment to which may be made, in whole or in part, by either branch of the Legislature; provided, however, the fact that the term of office of Senators and Representatives does not end precisely on the last day of December but extends a few days into January of the succeeding year shall be considered as de minimis, and the ineligibility herein created shall terminate on the last day in December of the last full calendar year of the term for which he was elected. No member of either House shall vote for any other member for any office whatever, which may be filled by a vote of the Legislature, except in such cases as are in this Constitution provided, nor shall any member of the Legislature be interested, either directly or indirectly, in any contract with the State, or any county thereof, authorized by any law passed during the term for which he was elected.

[Adopted Feb. 15, 1876. Amended Nov. 5, 1968.]

### § 19. Ineligibility of Persons holding other Offices

Sec. 19. No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature.

[Adopted Feb. 15, 1876.]

### § 20. Collectors of Taxes; Persons entrusted with Public Money; Ineligibility

Sec. 20. No person who at any time may have been a collector of taxes, or who may have been otherwise entrusted with public money, shall be eligible to the Legislature, or to any office of profit or trust under the State government, until he shall have obtained a discharge for the amount of such collections, or for all public moneys with which he may have been entrusted.

[Adopted Feb. 15, 1876.]

### § 21. Words spoken in Debate

Sec. 21. No member shall be questioned in any other place for words spoken in debate in either House.

[Adopted Feb. 15, 1876.]

### § 22. Disclosure of Private Interest in Measure or Bill; Not to Vote

Sec. 22. A member who has a personal or private interest in any measure or bill, proposed, or pending before the Legislature, shall disclose the fact to the House, of which he is a member, and shall not vote thereon.

[Adopted Feb. 15, 1876.]

### § 23. Removal from District or County from which Elected

Sec. 23. If any Senator or Representative remove his residence from the district or county for which he was elected, his office shall thereby become vacant, and the vacancy shall be filled as provided in section 13 of this article.

[Adopted Feb. 15, 1876.]

### § 24. Compensation and Expenses of members of Legislature; Duration of Sessions

Sec. 24. Members of the Legislature shall receive from the Public Treasury an annual salary of not exceeding Four Thousand, Eight Hundred Dollars (\$4,800) per year and a per diem of not exceeding Twelve Dollars (\$12) per day for the first one hundred and twenty (120) days only of each Regular Session and for thirty (30) days of each Special Session of the Legislature. No Regular Session shall be of longer duration than one hundred and forty (140) days.

In addition to the per diem the Members of each House shall be entitled to mileage in going to and returning from the seat of government, which mileage shall not exceed Two Dollars and Fifty Cents (\$2.50) for every twenty-five (25) miles, the distance to be computed by the nearest and most direct route of travel, from a table of distances prepared by the Comptroller to each county seat now or hereafter to be established; no Member to be entitled to mileage for any extra Session that may be called within one (1) day after the adjournment of the Regular or Called Session.

[Adopted Feb. 15, 1876. Amended Nov. 4, 1930; Nov. 2, 1954; Nov. 8, 1960.]

### § 25. Senatorial Districts

Sec. 25. The State shall be divided into Senatorial Districts of contiguous territory according to the number of qualified electors, as nearly as may be, and each district shall be entitled to elect one Senator; and no single county shall be entitled to more than one Senator.

[Adopted Feb. 15, 1876.]

### § 26. Apportionment of members of House of Representatives

Sec. 26. The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the

number of members of which the House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties.

[Adopted Feb. 15, 1876.]

### § 26 - a. Counties with More than Seven Representatives

Sec. 26-a. Provided however, that no county shall be entitled to or have under any apportionment more than seven (7) Representatives unless the population of such county shall exceed seven hundred thousand (700,000) people as ascertained by the most recent United States Census, in which event such county shall be entitled to one additional Representative for each one hundred thousand (100,000) population in excess of seven hundred thousand (700,000) population as shown by the latest United States Census; nor shall any district be created which would permit any county to have more than seven (7) Representatives except under the conditions set forth above.

[Adopted Nov. 3, 1936.]

### § 27. Elections

Sec. 27. Elections for Senators and Representatives shall be general throughout the State, and shall be regulated by law.

[Adopted Feb. 15, 1876.]

### § 28. Time for Apportionment; Apportionment by Legislative Redistricting Board

Sec. 28. The Legislature shall, at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts, agreeable to the provisions of Sections 25, 26, and 26-a of this Article. In the event the Legislature shall at any such first regular session following the publication of a United States decennial census, fail to make such apportionment, same shall be done by the Legislative Redistricting Board of Texas, which is hereby created, and shall be composed of five (5) members, as follows: The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office, a majority of whom shall constitute a quorum. Said Board shall assemble in the City of Austin within ninety (90) days after the final adjournment of such regular session. The Board shall, within sixty (60) days after assembling, apportion the state into senatorial and representative districts, or into senatorial or representative districts, as the failure of action of such Legislature may make necessary. Such apportionment shall be in writing and signed by three (3) or more of the members of the Board duly acknowledged as the act and deed of such Board, and, when so executed and filed with the Secretary of State, shall have

force and effect of law. Such apportionment shall become effective at the next succeeding statewide general election. The Supreme Court of Texas shall have jurisdiction to compel such Commission to perform its duties in accordance with the provisions of this section by writ of mandamus or other extraordinary writs conformable to the usages of law. The Legislature shall provide necessary funds for clerical and technical aid and for other expenses incidental to the work of the Board, and the Lieutenant Governor and the Speaker of the House of Representatives shall be entitled to receive per diem and travel expense during the Board's session in the same manner and amount as they would receive while attending a special session of the Legislature. This amendment shall become effective January 1, 1951. [Adopted Feb. 15, 1876. Amended Nov. 2, 1948.]

### PROCEEDINGS

#### § 29. Enacting Clause of Laws

Sec. 29. The enacting clause of all laws shall be: "Be it enacted by the Legislature of the State of Texas."

[Adopted Feb. 15, 1876.]

#### § 30. Laws Passed by Bill; Amendments Changing Purpose

Sec. 30. No law shall be passed, except by bill, and no bill shall be so amended in its passage through either House, as to change its original purpose.

[Adopted Feb. 15, 1876.]

#### § 31. Origination in either House; Amendment

Sec. 31. Bills may originate in either House, and, when passed by such House, may be amended, altered or rejected by the other.

[Adopted Feb. 15, 1876.]

#### § 32. Reading on Three Several Days; Suspension of Rule

Sec. 32. No bill shall have the force of a law, until it has been read on three several days in each House, and free discussion allowed thereon; but in cases of imperative public necessity (which necessity shall be stated in a preamble or in the body of the bill) four-fifths of the House, in which the bill may be pending, may suspend this rule, the yeas and nays being taken on the question of suspension, and entered upon the journals.

[Adopted Feb. 15, 1876.]

#### § 33. Revenue Bills

Sec. 33. All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

[Adopted Feb. 15, 1876.]

#### § 34. Defeated Bills and Resolutions

Sec. 34. After a bill has been considered and defeated by either House of the Legislature, no bill containing the same substance, shall be passed into a law during the same session. After a resolution has been acted on and defeated, no resolution containing the same substance, shall be considered at the same session.

[Adopted Feb. 15, 1876.]

#### § 35. Subjects and Titles of Bills

Sec. 35. No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed. [Adopted Feb. 15, 1876.]

#### § 36. Revival or Amendment by Reference; Re-enactment and Publication at Length

Sec. 36. No law shall be revived or amended by reference to its title; but in such case the act revived, or the section or sections amended, shall be re-enacted and published at length.

[Adopted Feb. 15, 1876.]

#### § 37. Reference to Committee and Report

Sec. 37. No bill shall be considered, unless it has been first referred to a committee and reported thereon, and no bill shall be passed which has not been presented and referred to and reported from a committee at least three days before the final adjournment of the Legislature.

[Adopted Feb. 15, 1876.]

#### § 38. Signing Bills and Joint Resolutions; Entry on Journals

Sec. 38. The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read before signing; and the fact of signing shall be entered on the journals.

[Adopted Feb. 15, 1876.]

#### § 39. Time of taking Effect of Laws; Emergencies; Entry on Journal

Sec. 39. No law passed by the Legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency, which emergency must be expressed in a preamble or in the body of the act, the Legislature shall, by a vote of two-thirds of all the members elected to each House, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journals.

[Adopted Feb. 15, 1876.]

#### § 40. Special Sessions; Subjects of Legislation; Duration

Sec. 40. When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days.

[Adopted Feb. 15, 1876.]

#### § 41. Elections by Senate and House of Representatives

Sec. 41. In all elections by the Senate and House of Representatives, jointly or separately, the vote shall be given viva voce, except in the election of their officers.

[Adopted Feb. 15, 1876.]

## REQUIREMENTS AND LIMITATIONS

## § 42. Repealed. Aug. 5, 1969

## § 43. Revision of Laws

Sec. 43. The first session of the Legislature under this Constitution shall provide for revising, digesting and publishing the laws, civil and criminal; and a like revision, digest and publication may be made every ten years thereafter; provided, that in the adoption of and giving effect to any such digest or revision, the Legislature shall not be limited by sections 35 and 36 of this Article.

[Adopted Feb. 15, 1876.]

## § 44. Compensation of Public Officers, Servants, Agents and Contractors; Extra Compensation; Unauthorized Claims; Unauthorized Employment

Sec. 44. The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law.

[Adopted Feb. 15, 1876.]

## § 45. Change of Venue in Civil and Criminal Cases

Sec. 45. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law; and the Legislature shall pass laws for that purpose.

[Adopted Feb. 15, 1876.]

## § 46. Repealed. Aug. 5, 1969

## § 47. Lotteries and Gift Enterprises

Sec. 47. The Legislature shall pass laws prohibiting the establishment of lotteries and gift enterprises in this State, as well as the sale of tickets in lotteries; gift enterprises or other evasions involving the lottery principle, established or existing in other States.

[Adopted Feb. 15, 1876.]

## § 48. Taxes; Restrictions on Levy; Permissible Purposes

Sec. 48. The Legislature shall not have the right to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes:

The payment of all interest upon the bonded debt of the State;

The erection and repairs of public buildings;

The benefit of the sinking fund, which shall not be more than two per centum of the public debt; and for the payment of the present floating debt of the State, including matured bonds for the payment of which the sinking fund is inadequate;

The support of public schools, in which shall be included colleges and universities established by the State; and the maintenance and support of the Agricultural and Mechanical College of Texas;

The payment of the cost of assessing and collecting the revenue; and the payment of all officers, agents and employees of the State Government, and all incidental expenses connected therewith;

The support of the Blind Asylum, the Deaf and Dumb Asylum and the Insane Asylum, the State Cemetery and the public grounds of the State;

The enforcement of quarantine regulations on the coast of Texas;

The protection of the frontier.

[Adopted Feb. 15, 1876.]

## § 48 - a. Fund for Retirement, Disability and Death Benefits for Employees of Public Schools, Colleges and Universities

Sec. 48-a. In addition to the powers given the Legislature under Section 48, Article III, it shall have the right to levy taxes to establish a fund to provide retirement, disability and death benefits for persons employed in the public schools, colleges and universities supported wholly or partly by the state; provided that the amount contributed by the state to such fund each year shall be equal to the aggregate amount required by law to be paid into the fund by such employees, and shall not exceed at any time six per centum (6%) of the compensation paid each such person by the state and/or school districts; and provided that no person shall be eligible for retirement who has not rendered ten (10) years of creditable service in such employment, and in no case shall any person retire before either attaining the age fifty-five (55) or completing thirty (30) years of creditable service, but shall be entitled to refund of moneys paid into the fund.

Moneys coming into such fund shall be managed and invested as provided in Section 48b of Section III of the Constitution of Texas; provided a sufficient sum shall be kept on hand to meet payments as they become due each year under such retirement plan, as may be provided by law; and provided that the recipients of such retirement fund shall not be eligible for any other state pension retirement funds or direct aid from the State of Texas, unless such other state pension or retirement fund, contributed by the state, is released to the State of Texas as a condition to receiving such other pension aid; providing, however, that this Section shall not amend, alter, or repeal Section 63 of Article 16 of the Constitution of Texas as adopted November, 1954, or any enabling legislation passed pursuant thereto. [Adopted Nov. 3, 1936. Amended Nov. 6, 1956; Nov. 5, 1968.]

## § 48 - b. Teacher Retirement System of Texas

Sec. 48-b. There is hereby created as an agency of the State of Texas the Teacher Retirement System of Texas, the rights of membership in which, the retirement privileges and benefits thereunder, and the management and operations of which shall be governed by the provisions herein contained and by present or hereafter enacted Acts of the Legislature not inconsistent herewith. The general administration and responsibility for the proper operation of said system are hereby vested in a State Board of

Trustees, to be known as the State Board of Trustees of the Teacher Retirement System of Texas, which Board shall be constituted and shall serve as may now or hereafter be provided by the Legislature. Said Board shall exercise such powers as are herein provided together with such other powers and duties not inconsistent herewith as may be prescribed by the Legislature. All moneys from whatever source coming into the Fund to provide retirement, disability, and death benefits for persons employed in the public schools, colleges, and universities supported wholly or partly by the state and all other securities, moneys, and assets of the Teacher Retirement System of Texas shall be administered by said Board and said Board shall be the trustees thereof. The Treasurer of the State of Texas shall be custodian of said moneys and securities. Said Board is hereby authorized and empowered to acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any securities, evidences of debt, and other investments in which said securities, moneys, and assets have been or may hereafter be invested by said Board. Said Board is hereby authorized and empowered to invest and reinvest any of said moneys, securities, and assets, as well as the proceeds of any of such investments, in bonds, notes, or other evidences of indebtedness issued, or assumed or guaranteed in whole or in part, by the United States or any agency of the United States, or by the State of Texas, or by any county, city, school district, municipal corporation, or other political subdivision of the State of Texas, both general and special obligations; or in home office facilities to be used in administering the Teacher Retirement System including land, equipment, and office building; or in such corporation bonds, notes, other evidences or indebtedness, and corporation stocks, including common and preferred stocks, of any corporation created or existing under the laws of the United States or of any of the states of the United States, as said Board may deem to be proper investments; provided that in making each and all of such investments said Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as probable safety of their capital; and further provided, that a sufficient sum shall be kept on hand to meet payments as they become due each year under such retirement plan, as may now or hereafter be provided by law. Unless investments authorized herein are hereafter further restricted by an Act of the Legislature, no more than one per cent (1%) of the book value of the total assets of the Teacher Retirement System shall be invested in the stock of any one (1) corporation, nor shall more than five per cent (5%) of the voting stock of any one (1) corporation be owned; and provided further, that stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid cash dividends for ten (10) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors; and provided further, that so long as less than \$500,000-

000 of said Fund is invested in the government and municipal securities enumerated above, not more than thirty-three and one-third per cent (33⅓%) of the Fund shall be invested at any given time in common stocks. This Amendment shall be self-enacting and shall become effective immediately upon its adoption without any enabling legislation. This Section shall not alter, amend or repeal the first paragraph of Section 48a of Article III of the Constitution of Texas as amended November 6, 1956, or any legislation passed pursuant thereto. This Section shall not alter, amend or repeal the second paragraph of Section 48a of Article III of the Constitution of Texas as amended November 6, 1956, or any legislation passed pursuant thereto, except insofar as the provisions of the second paragraph of Section 48a and any legislation passed pursuant thereto, may limit or restrict the provisions hereof and only to the extent of such limitation or restriction.

[Adopted Nov. 2, 1965.]

#### § 48 - d. Rural Fire Prevention Districts

Sec. 48-d. The Legislature shall have the power to provide for the establishment and creation of rural fire prevention districts and to authorize a tax on the ad valorem property situated in said districts not to exceed Three (3¢) Cents on the One Hundred (\$100.00) Dollars valuation for the support thereof; provided that no tax shall be levied in support of said districts until approved by vote of the people residing therein.

[Adopted Nov. 6, 1949.]

#### § 49. State Debts

Sec. 49. No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debt; and the debt created to supply deficiencies in the revenue, shall never exceed in the aggregate at any one time two hundred thousand dollars.

[Adopted Feb. 15, 1876].

#### § 49 - a. Financial Statement and Estimate by Comptroller of Public Accounts; Limitation of Appropriations; Bonds

Sec. 49-a. It shall be the duty of the Comptroller of Public Accounts in advance of each Regular Session of the Legislature to prepare and submit to the Governor and to the Legislature upon its convening a statement under oath showing fully the financial condition of the State Treasury at the close of the last fiscal period and an estimate of the probable receipts and disbursements for the then current fiscal year. There shall also be contained in said statement an itemized estimate of the anticipated revenue based on the laws then in effect that will be received by and for the State from all sources showing the fund accounts to be credited during the succeeding biennium and said statement shall contain such other information as may be required by law. Supplemental statements shall be submitted at any Special Session of the Legislature and at such other times as may be necessary to show probable changes.

From and after January 1, 1945, save in the case of emergency and imperative public necessity and with a four-fifths vote of the total membership of each House, no appropriation in excess of the cash

and anticipated revenue of the funds from which such appropriation is to be made shall be valid. From and after January 1, 1945, no bill containing an appropriation shall be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts endorses his certificate thereon showing that the amount appropriated is within the amount estimated to be available in the affected funds. When the Comptroller finds an appropriation bill exceeds the estimated revenue he shall endorse such finding thereon and return to the House in which same originated. Such information shall be immediately made known to both the House of Representatives and the Senate and the necessary steps shall be taken to bring such appropriation to within the revenue, either by providing additional revenue or reducing the appropriation.

For the purpose of financing the outstanding obligations of the General Revenue Fund of the State and placing its current accounts on a cash basis the Legislature of the State of Texas is hereby authorized to provide for the issuance, sale, and retirement of serial bonds, equal in principal to the total outstanding, valid, and approved obligations owing by said fund on September 1, 1943, provided such bonds shall not draw interest in excess of two (2) per cent per annum and shall mature within twenty (20) years from date.

[Adopted Nov. 3, 1942.]

#### § 49 - b. Veterans' Land Program

Sec. 49-b. By virtue of prior Amendments to this Constitution, there has been created a governmental agency of the State of Texas performing governmental duties which has been designated the Veterans' Land Board. Said Board shall continue to function for the purposes specified in all of the prior Constitutional Amendments except as modified herein. Said Board shall be composed of the Commissioner of the General Land Office and two (2) citizens of the State of Texas, one (1) of whom shall be well versed in veterans' affairs and one (1) of whom shall be well versed in finances. One (1) such citizen member shall, with the advice and consent of the Senate, be appointed biennially by the Governor to serve for a term of four (4) years; but the members serving on said Board on the date of adoption hereof shall complete the terms to which they were appointed. In the event of the resignation or death of any such citizen member, the Governor shall appoint a replacement to serve for the unexpired portion of the term to which the deceased or resigning member had been appointed. The compensation for said citizen members shall be as is now or may hereafter be fixed by the Legislature; and each shall make bond in such amount as is now or may hereafter be prescribed by the Legislature.

The Commissioner of the General Land Office shall act as Chairman of said Board and shall be the administrator of the Veterans' Land Program under such terms and restrictions as are now or may hereafter be provided by law. In the absence or illness of said Commissioner, the Chief Clerk of the General Land Office shall be the Acting Chairman of said Board with the same duties and powers that said Commissioner would have if present.

The Veterans' Land Board may provide for, issue and sell not be exceed Five Hundred Million Dollars

(\$500,000,000) in bonds or obligations of the State of Texas for the purpose of creating a fund to be known as the Veterans' Land Fund, Four Hundred Million Dollars (\$400,000,000) of which have heretofore been issued and sold. Such bonds or obligations shall be sold for not less than par value and accrued interest; shall be issued in such forms, denominations, and upon such terms as are now or may hereafter be provided by law; shall be issued and sold at such times, at such places, and in such installments as may be determined by said Board; and shall bear a rate or rates of interest as may be fixed by said Board but the weighted average annual interest rate, as that phrase is commonly and ordinarily used and understood in the municipal bond market, of all the bonds issued and sold in any installment of any bonds may not exceed the rate specified in Section 65 of this Article. All bonds or obligations issued and sold hereunder shall, after execution by the Board, approval by the Attorney General of Texas, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchaser or purchasers, be incontestable and shall constitute general obligations of the State of Texas under the Constitution of Texas; and all bonds heretofore issued and sold by said Board are hereby in all respects validated and declared to be general obligations of the State of Texas. In order to prevent default in the payment of principal or interest on any such bonds, the Legislature shall appropriate a sufficient amount to pay the same.

In the sale of any such bonds or obligations, a preferential right of purchase shall be given to the administrators of the various Teacher Retirement Funds, the Permanent University Funds, and the Permanent School Funds.

Said Veterans' Land Fund shall consist of any lands heretofore or hereafter purchased by said Board, until the sale price therefor, together with any interest and penalties due, have been received by said Board (although nothing herein shall be construed to prevent said Board from accepting full payment for a portion of any tract), and of the moneys attributable to any bonds heretofore or hereafter issued and sold by said Board which moneys so attributable shall include but shall not be limited to the proceeds from the issuance and sale of such bonds; the moneys received from the sale or resale of any lands, or rights therein, purchased with such proceeds; the moneys received from the sale or resale of any lands, or rights therein, purchased with other moneys attributable to such bonds; the interest and penalties received from the sale or resale of such lands, or rights therein; the bonuses, income, rents, royalties, and any other pecuniary benefit received by said Board from any such lands; sums received by way of indemnity or forfeiture for the failure of any bidder for the purchase of any such bonds to comply with his bid and accept and pay for such bonds or for the failure of any bidder for the purchase of any lands comprising a part of said Fund to comply with his bid and accept and pay for any such lands; and interest received from investments of any such moneys. The principal and interest on the bonds heretofore and hereafter issued by said Board shall be paid out of the moneys of said Fund in conformance with the Constitutional provisions authorizing such bonds; but the moneys of said Fund which are not immediately committed to the

payment of principal and interest on such bonds, the purchase of lands as herein provided, or the payment of expenses as herein provided may be invested in bonds or obligations of the United States until such funds are needed for such purposes.

All moneys comprising a part of said Fund and not expended for the purposes herein provided shall be a part of said Fund until there are sufficient moneys therein to retire fully all of the bonds heretofore or hereafter issued and sold by said Board, at which time all such moneys remaining in said Fund, except such portion thereof as may be necessary to retire all such bonds which portion shall be set aside and retained in said Fund for the purpose of retiring all such bonds, shall be deposited to the credit of the General Revenue Fund to be appropriated to such purposes as may be prescribed by law. All moneys becoming a part of said Fund thereafter shall likewise be deposited to the credit of the General Revenue Fund.

When a Division of said Fund (each Division consisting of the moneys attributable to the bonds issued and sold pursuant to a single Constitutional authorization and the lands purchased therewith) contains sufficient moneys to retire all of the bonds secured by such Division, the moneys thereof, except such portion as may be needed to retire all of the bonds secured by such Division which portion shall be set aside and remain a part of such Division for the purpose of retiring all such bonds, may be used for the purpose of paying the principal and the interest thereon, together with the expenses herein authorized, of any other bonds heretofore or hereafter issued and sold by said Board. Such use shall be a matter for the discretion and direction of said Board; but there may be no such use of any such moneys contrary to the rights of any holder of any of the bonds issued and sold by said Board or violative of any contract to which said Board is a party.

The Veterans' Land Fund shall be used by said Board for the purpose of purchasing lands situated in the State of Texas owned by the United States or any governmental agency thereof, owned by the Texas Prison System or any other governmental agency of the State of Texas, or owned by any person, firm, or corporation. All lands thus purchased shall be acquired at the lowest price obtainable, to be paid for in cash, and shall be a part of said Fund. Such lands heretofore or hereafter purchased and comprising a part of said Fund are hereby declared to be held for a governmental purpose, although the individual purchasers thereof shall be subject to taxation to the same extent and in the same manner as are purchasers of lands dedicated to the Permanent Free Public School Fund.

The lands of the Veterans' Land Fund shall be sold by said Board in such quantities, on such terms, at such prices, at such rates of interest and under such rules and regulations as are now or may hereafter be provided by law to veterans who served not less than ninety (90) continuous days, unless sooner discharged by reason of a service-connected disability, on active duty in the Army, Navy, Air Force, Coast Guard or Marine Corps of the United States after September 16, 1940 and who, upon the date of filing his or her application to purchase any such land is a citizen of the United States, is a bona fide resident of the State of Texas, and has not been dishonorably discharged from any branch of the

Armed Forces above-named and who at the time of his or her enlistment, induction, commissioning, or drafting was a bona fide resident of the State of Texas, or who has resided in Texas at least five (5) years prior to the date of filing his or her application, and provided that in the event of the death of an eligible Texas Veteran after the veteran has filed with the Board an application and contract of sale to purchase through the Board the tract selected by him or her and before the purchase has been completed, then the surviving spouse may complete the transaction. The foregoing notwithstanding, any lands in the Veterans' Land Fund which have been first offered for sale to veterans and which have not been sold may be sold or resold to such purchasers, in such quantities, and on such terms, and at such prices and rates of interest, and under such rules and regulations as are now or may hereafter be provided by law.

Said Veterans' Land Fund, to the extent of the moneys attributable to any bonds hereafter issued and sold by said Board may be used by said Board, as is now or may hereafter be provided by law, for the purpose of paying the expenses of surveying, monumenting, road construction, legal fees, recordation fees, advertising and other like costs necessary or incidental to the purchase and sale, or resale, of any lands purchased with any of the moneys attributable to such additional bonds, such expenses to be added to the price of such lands when sold, or resold, by said Board; for the purpose of paying the expenses of issuing, selling, and delivering any such additional bonds; and for the purpose of meeting the expenses of paying the interest or principal due or to become due on any such additional bonds.

All of the moneys attributable to any series of bonds hereafter issued and sold by said Board (a "series of bonds" being all of the bonds issued and sold in a single transaction as a single installment of bonds) may be used for the purchase of lands as herein provided, to be sold as herein provided, for a period ending eight (8) years after the date of sale of such series of bonds; provided, however, that so much of such moneys as may be necessary to pay interest on bonds hereafter issued and sold shall be set aside for that purpose in accordance with the resolution adopted by said Board authorizing the issuance and sale of such series of bonds. After such eight (8) year period, all of such moneys shall be set aside for the retirement of any bonds hereafter issued and sold and to pay interest thereon, together with any expenses as provided herein, in accordance with the resolution or resolutions authorizing the issuance and sale of such additional bonds, until there are sufficient moneys to retire all of the bonds hereafter issued and sold, at which time all such moneys then remaining a part of said Veterans' Land Fund and thereafter becoming a part of said Fund shall be governed as elsewhere provided herein.

This Amendment being intended only to establish a basic framework and not to be a comprehensive treatment of the Veterans' Land Program, there is hereby reposed in the Legislature full power to implement and effectuate the design and objects of this Amendment, including the power to delegate such duties, responsibilities, functions, and authority to the Veterans' Land Board as it believes necessary.

Should the Legislature enact any enabling laws in anticipation of this Amendment, no such law shall be void by reason of its anticipatory nature.

This Amendment shall become effective upon its adoption.

[Adopted Nov. 13, 1951. Amended Nov. 6, 1956, Eff. Jan. 1, 1957; Nov. 8, 1960; Nov. 6, 1962; Nov. 11, 1967; Nov. 6, 1973.]

**§ 49 - c. Texas Water Development Board; Bond Issue; Texas Water Development Fund**

Sec. 49-c. There is hereby created as an agency of the State of Texas the Texas Water Development Board to exercise such powers as necessary under this provision together with such other duties and restrictions as may be prescribed by law. The qualifications, compensation, and number of members of said Board shall be determined by law. They shall be appointed by the Governor with the advice and consent of the Senate in the manner and for such terms as may be prescribed by law.

The Texas Water Development Board shall have the authority to provide for, issue and sell general obligation bonds of the State of Texas in an amount not to exceed One Hundred Million Dollars (\$100,000,000). The Legislature of Texas, upon two-thirds ( $\frac{2}{3}$ ) vote of the elected Members of each House, may authorize the Board to issue additional bonds in an amount not exceeding One Hundred Million Dollars (\$100,000,000). The bonds authorized herein or permitted to be authorized by the Legislature shall be called "Texas Water Development Bonds," shall be executed in such form, denominations and upon such terms as may be prescribed by law, provided, however, that the bonds shall not bear more than four per cent (4%) interest per annum; they may be issued in such installments as the Board finds feasible and practical in accomplishing the purpose set forth herein.

All moneys received from the sale of State bonds shall be deposited in a fund hereby created in the State Treasury to be known as the Texas Water Development Fund to be administered (without further appropriation) by the Texas Water Development Board in such manner as prescribed by law.

Such fund shall be used only for the purpose of aiding or making funds available upon such terms and conditions as the Legislature may prescribe, to the various political subdivisions or bodies politic and corporate of the State of Texas including river authorities, conservation and reclamation districts and districts created or organized or authorized to be created or organized under Article XVI, Section 59 or Article III, Section 52, of this Constitution, interstate compact commissions to which the State of Texas is a party and municipal corporations, in the conservation and development of the water resources of this State, including the control, storing and preservation of its storm and flood waters and the waters of its rivers and streams, for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs and other water storage projects, including any system necessary for the transportation of water from storage to points of treatment and/or distribution, including facilities for transporting water therefrom to wholesale purchasers, or for any one or more of such purposes or methods.

Any or all financial assistance as provided herein shall be repaid with interest upon such terms, conditions and manner of repayment as may be provided by law.

While any of the bonds authorized by this provision or while any of the bonds that may be authorized by the Legislature under this provision, or any interest on any of such bonds, is outstanding and unpaid, there is hereby appropriated out of the first moneys coming into the Treasury in each fiscal year, not otherwise appropriated by this Constitution, an amount which is sufficient to pay the principal and interest on such bonds that mature or become due during such fiscal year, less the amount in the sinking fund at the close of the prior fiscal year.

The Legislature may provide for the investment of moneys available in the Texas Water Development Fund, and the interest and sinking funds established for the payment of bonds issued by the Texas Water Development Board. Income from such investment shall be used for the purposes prescribed by the Legislature. The Legislature may also make appropriations from the General Revenue Fund for paying administrative expenses of the Board.

From the moneys received by the Texas Water Development Board as repayment of principal for financial assistance or as interest thereon, there shall be deposited in the interest and sinking fund for the bonds authorized by this Section sufficient moneys to pay the interest and principal to become due during the ensuing year and sufficient to establish and maintain a reserve in said fund equal to the average annual principal and interest requirements on all outstanding bonds issued under this Section. If any year prior to December 31, 1982 moneys are received in excess of the foregoing requirements then such excess shall be deposited to the Texas Water Development Fund, and may be used for administrative expenses of the Board and for the same purposes and upon the same terms and conditions prescribed for the proceeds derived from the sale of such State bonds. No grant of financial assistance shall be made under the provisions of this Section after December 31, 1982, and all moneys thereafter received as repayment of principal for financial assistance or as interest thereon shall be deposited in the interest and sinking fund for the State bonds; except that such amount as may be required to meet the administrative expenses of the Board may be annually set aside; and provided, that after all State bonds have been fully paid with interest, or after there are on deposit in the interest and sinking fund sufficient moneys to pay all future maturities of principal and interest, additional moneys so received shall be deposited to the General Revenue Fund.

All bonds issued hereunder shall after approval by the Attorney General, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchasers, be incontestable and shall constitute general obligations of the State of Texas under the Constitution of Texas.

Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such acts shall not be void by reason of their anticipatory nature.

[Adopted Nov. 5, 1957.]

**§ 49 - d. Acquisition and Development of Water Storage Facilities; Filtration, Treatment and Transportation of Water; Enlargement of Reservoirs**

Sec. 49-d. It is hereby declared to be the policy of the State of Texas to encourage the optimum development of the limited number of feasible sites available for the construction or enlargement of dams and reservoirs for conservation of the public waters of the state, which waters are held in trust for the use and benefit of the public. The proceeds from the sale of the additional bonds authorized hereunder deposited in the Texas Water Development Fund and the proceeds of bonds previously authorized by Article III, Section 49-c of this Constitution, may be used by the Texas Water Development Board, under such provisions as the Legislature may prescribe by General Law, including the requirement of a permit for storage or beneficial use, for the additional purposes of acquiring and developing storage facilities, and any system or works necessary for the filtration, treatment and transportation of water from storage to points of treatment, filtration and/or distribution, including facilities for transporting water therefrom to wholesale purchasers, or for any one or more of such purposes or methods; provided, however, the Texas Water Development Fund or any other state fund provided for water development, transmission, transfer or filtration shall not be used to finance any project which contemplates or results in the removal from the basin of origin of any surface water necessary to supply the reasonably foreseeable future water requirements for the next ensuing fifty-year period within the river basin of origin, except on a temporary, interim basis.

Under such provisions as the Legislature may prescribe by General Law the Texas Water Development Fund may be used for the conservation and development of water for useful purposes by construction or reconstruction or enlargement of reservoirs constructed or to be constructed or enlarged within the State of Texas or on any stream constituting a boundary of the State of Texas, together with any system or works necessary for the filtration, treatment and/or transportation of water, by any one or more of the following governmental agencies: by the United States of America or any agency, department or instrumentality thereof; by the State of Texas or any agency, department or instrumentality thereof; by political subdivisions or bodies politic and corporate of the state; by interstate compact commissions to which the State of Texas is a party; and by municipal corporations. The Legislature shall provide terms and conditions under which the Texas Water Development Board may sell, transfer or lease, in whole or in part, any reservoir and associated system or works which the Texas Water Development Board has financed in whole or in part.

Under such provisions as the Legislature may prescribe by General Law, the Texas Water Development Board may also execute long-term contracts with the United States or any of its agencies for the acquisition and development of storage facilities in reservoirs constructed or to be constructed by the Federal Government. Such contracts when executed shall constitute general obligations of the State of Texas in the same manner and with the

same effect as state bonds issued under the authority of the preceding Section 49-c of this Constitution, and the provisions in said Section 49-c with respect to payment of principal and interest on state bonds issued shall likewise apply with respect to payment of principal and interest required to be paid by such contracts. If storage facilities are acquired for a term of years, such contracts shall contain provisions for renewal that will protect the state's investment.

The aggregate of the bonds authorized hereunder shall not exceed \$200,000,000 and shall be in addition to the aggregate of the bonds previously authorized by said Section 49-c of Article III of this Constitution. The Legislature upon two-thirds (2/3) vote of the elected members of each House, may authorize the Board to issue all or any portion of such \$200,000,000 in additional bonds herein authorized.

The Legislature shall provide terms and conditions for the Texas Water Development Board to sell, transfer or lease, in whole or in part, any acquired storage facilities or the right to use such storage facilities together with any associated system or works necessary for the filtration, treatment or transportation of water at a price not less than the direct cost of the Board in acquiring same; and the Legislature may provide terms and conditions for the Board to sell any unappropriated public waters of the state that might be stored in such facilities. As a prerequisite to the purchase of such storage or water, the applicant therefor shall have secured a valid permit from the Texas Water Commission or its successor authorizing the acquisition of such storage facilities or the water impounded therein. The money received from any sale, transfer or lease of storage facilities or associated system or works shall be used to pay principal and interest on state bonds issued or contractual obligations incurred by the Texas Water Development Board, provided that when moneys are sufficient to pay the full amount of indebtedness then outstanding and the full amount of interest to accrue thereon, any further sums received from the sale, transfer or lease of such storage facilities or associated system or works may be used for the acquisition of additional storage facilities or associated system or works or for providing financial assistance as authorized by said Section 49-c. Money received from the sale of water, which shall include standby service, may be used for the operation and maintenance of acquired facilities, and for the payment of principal and interest on debt incurred.

Should the Legislature enact enabling laws in anticipation of the adoption of this Amendment, such Acts shall not be void by reason of their anticipatory character.

[Adopted Nov. 6, 1962. Amended Nov. 8, 1966.]

**§ 49 - d - 1. Texas Water Development Bonds; Additional Issue**

Sec. 49-d-1. (a) The Texas Water Development Board shall upon direction of the Texas Water Quality Board, or any successor agency designated by the Legislature, issue additional Texas Water Development Bonds up to an additional aggregate principal amount of One Hundred Million Dollars (\$100,000,000) to provide grants, loans, or any combination of grants and loans for water quality enhancement purposes as established by the Legislature. The Texas Water Quality Board or any successor agency

designated by the Legislature may make such grants and loans to political subdivisions or bodies politic and corporate of the State of Texas, including municipal corporations, river authorities, conservation and reclamation districts, and districts created or organized or authorized to be created or organized under Article XVI, Section 59, or Article III, Section 52, of this Constitution, state agencies, and interstate agencies and compact commissions to which the State of Texas is a party, and upon such terms and conditions as the Legislature may authorize by general law. The bonds shall be issued for such terms, in such denominations, form and installments, and upon such conditions as the Legislature may authorize.

(b) The proceeds from the sale of such bonds shall be deposited in the Texas Water Development Fund to be invested and administered as prescribed by law.

(c) The bonds authorized in this Section 49-d-1 and all bonds authorized by Sections 49-c and 49-d of Article III shall bear interest at not more than 6% per annum and mature as the Texas Water Development Board shall prescribe, subject to the limitations as may be imposed by the Legislature.

(d) The Texas Water Development Fund shall be used for the purposes heretofore permitted by, and subject to the limitations in Sections 49-c, 49-d and 49-d-1; provided, however, that the financial assistance may be made pursuant to the provisions of Sections 49-c, 49-d and 49-d-1 subject only to the availability of funds and without regard to the provisions in Section 49-c that such financial assistance shall terminate after December 31, 1982.

(e) Texas Water Development Bonds are secured by the general credit of the State and shall after approval by the Attorney General, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchasers, be incontestable and shall constitute general obligations of the State of Texas under the Constitution of Texas.

(f) Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be void by reason of their anticipatory character.

[Adopted May 18, 1971.]

#### § 49 - e. Texas Park Development Fund

Sec. 49-e. The Parks and Wildlife Department, or its successor vested with the powers, duties, and authority which deals with the operation, maintenance, and improvement of State Parks, shall have the authority to provide for, issue and sell general obligation bonds of the State of Texas in an amount not to exceed Seventy-Five Million Dollars (\$75,000,000). The bonds authorized herein shall be called "Texas Park Development Bonds," shall be executed in such form, denominations, and upon such terms as may be prescribed by law, provided, however, that the bonds shall bear a rate or rates of interest as may be fixed by the Parks and Wildlife Department or its successor, but the weighted average annual interest rate, as that phrase is commonly and ordinarily used and understood in the municipal bond market, of all the bonds issued and sold in any installment of any bonds, shall not exceed four and one-half percent (4½%) interest per annum; they may be issued in such installments as said Parks and

Wildlife Department, or its said successor, finds feasible and practical in accomplishing the purpose set forth herein.

All moneys received from the sale of said bonds shall be deposited in a fund hereby created with the State Treasurer to be known as the Texas Park Development Fund to be administered (without further appropriation) by the said Parks and Wildlife Department, or its said successor, in such manner as prescribed by law.

Such fund shall be used by said Parks and Wildlife Department, or its said successor, under such provisions as the Legislature may prescribe by general law, for the purposes of acquiring lands from the United States, or any governmental agency thereof, from any governmental agency of the State of Texas, or from any person, firm, or corporation, for State Park Sites and for developing said sites as State Parks.

While any of the bonds authorized by this provision, or any interest on any such bonds, is outstanding and unpaid, there is hereby appropriated out of the first moneys coming into the Treasury in each fiscal year, not otherwise appropriated by this Constitution, an amount which is sufficient to pay the principal and interest on such bonds that mature or become due during such fiscal year, less the amount in the interest and sinking fund at the close of the prior fiscal year, which includes any receipts derived during the prior fiscal year by said Parks and Wildlife Department, or its said successor, from admission charges to State Parks, as the Legislature may prescribe by general law.

The Legislature may provide for the investment of moneys available in the Texas Park Development Fund and the interest and sinking fund established for the payment of bonds issued by said Parks and Wildlife Department, or its said successor. Income from such investment shall be used for the purposes prescribed by the Legislature.

From the moneys received by said Parks and Wildlife Department, or its said successor, from the sale of the bonds issued hereunder, there shall be deposited in the interest and sinking fund for the bonds authorized by this section sufficient moneys to pay the interest to become due during the State fiscal year in which the bonds were issued. After all bonds have been fully paid with interest, or after there are on deposit in the interest and sinking fund sufficient moneys to pay all future maturities of principal and interest, additional moneys received from admission charges to State Parks shall be deposited to the State Parks Fund, or any successor fund which may be established by the Legislature as a depository for Park revenue earned by said Parks and Wildlife Department, or its said successor.

All bonds issued hereunder shall after approval by the Attorney General, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchasers, be incontestable and shall constitute general obligations of the State of Texas under the Constitution of Texas.

Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be void by reason of their anticipatory nature.

[Adopted Nov. 11, 1967.]

**§ 50. Loan or Pledge of Credit of State**

Sec. 50. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.

[Adopted Feb. 15, 1876.]

**§ 50-a. State Medical Education Board; State Medical Education Fund; Purpose**

Sec. 50-a. The Legislature shall create a State Medical Education Board to be composed of not more than six (6) members whose qualifications, duties and terms of office shall be prescribed by law. The Legislature shall also establish a State Medical Education Fund and make adequate appropriations therefor to be used by the State Medical Education Board to provide grants, loans or scholarships to students desiring to study medicine and agreeing to practice in the rural areas of this State, upon such terms and conditions as shall be prescribed by law. The term "rural areas" as used in this Section shall be defined by law.

[Adopted Nov. 4, 1952.]

**§ 50-b. Student Loans**

Sec. 50-b. (a) The Legislature may provide that the Coordinating Board, Texas College and University System, or its successor or successors, shall have the authority to provide for, issue and sell general obligation bonds of the State of Texas in an amount not to exceed Eighty-five Million Dollars (\$85,000,000). The bonds authorized herein shall be called "Texas College Student Loan Bonds", shall be executed in such form, denominations and upon such terms as may be prescribed by law, provided, however, that the bonds shall not bear more than four per cent (4%) interest per annum; they may be issued in such installments as the Board finds feasible and practical in accomplishing the purposes of this Section.

(b) All moneys received from the sale of such bonds shall be deposited in a fund hereby created in the State Treasury to be known as the Texas Opportunity Plan Fund to be administered by the Coordinating Board, Texas College and University System, or its successor or successors to make loans to students who have been admitted to attend any institution of higher education within the State of Texas, public or private, including Junior Colleges, which are recognized or accredited under terms and conditions prescribed by the Legislature, and to pay interest and principal on such bonds and provide a sinking fund therefor under such conditions as the Legislature may prescribe.

(c) While any of the bonds, or interest on said bonds authorized by this Section is outstanding and unpaid, there is hereby appropriated out of the first moneys coming into the Treasury in each fiscal year, not otherwise appropriated by this Constitution, an amount sufficient to pay the principal and interest on such bonds that mature or become due during such fiscal year, less the amount in the sinking fund at the close of the prior fiscal year.

(d) The Legislature may provide for the investment of moneys available in the Texas Opportunity Plan Fund, and the interest and sinking funds established for the payment of bonds issued by the Coordinating Board, Texas College and University System, or its successor or successors. Income from such investment shall be used for the purposes prescribed by the Legislature.

(e) All bonds issued hereunder shall, after approval by the Attorney General, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchasers, be incontestable and shall constitute general obligations of the State of Texas under this Constitution.

(f) Should the Legislature enact enabling laws in anticipation of the adoption of this Amendment, such acts shall not be void because of their anticipatory nature.

[Adopted Nov. 2, 1965.]

**§ 50-b-1. Additional Student Loans**

Sec. 50-b-1. (a) The Legislature may provide that the Coordinating Board, Texas College and University System, or its successor or successors, shall have authority to provide for, issue and sell general obligation bonds of the State of Texas in an amount not to exceed Two Hundred Million Dollars (\$200,000,000) in addition to those heretofore authorized to be issued pursuant to Section 50b of the Constitution. The bonds authorized herein shall be executed in such form, upon such terms and be in such denomination as may be prescribed by law and shall bear interest, and be issued in such installments as shall be prescribed by the Board provided that the maximum net effective interest rate to be borne by such bonds may be fixed by law.

(b) The moneys received from the sale of such bonds shall be deposited to the credit of the Texas Opportunity Plan Fund created by Section 50b of the Constitution and shall otherwise be handled as provided in Section 50b of the Constitution and the laws enacted pursuant thereto.

(c) The said bonds shall be general obligations of the state and shall be payable in the same manner and from the same sources as bonds heretofore authorized pursuant to Section 50b.

(d) All bonds issued hereunder shall, after approval by the Attorney General, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchasers, be incontestable and shall constitute general obligations of the State of Texas under this Constitution.

(e) Should the Legislature enact enabling laws in anticipation of the adoption of this Amendment such acts shall not be void because of their anticipatory nature.

[Adopted Aug. 5, 1969.]

**§ 51. Grants of Public Money Prohibited; Exceptions**

Sec. 51. The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; provided, however, the Legislature may grant aid to indigent and disabled Confederate soldiers and sailors under such regulations and limitations as may be deemed by the Legislature as expe-

dent, and to their widows in indigent circumstances under such regulations and limitations as may be deemed by the Legislature as expedient; provided that the provisions of this Section shall not be construed so as to prevent the grant of aid in cases of public calamity.

[Adopted Feb. 15, 1876. Amended Nov. 6, 1894; Nov. 1, 1898; Nov. 8, 1904; Nov. 8, 1910; Nov. 5, 1912; Nov. 4, 1924; Nov. 6, 1928; Nov. 5, 1968.]

**§ 51 - a. Assistance Grants and Medical Care for Needy Aged, Disabled and Blind Persons, and Needy Dependent Children; Federal Funds; Supplemental Appropriations**

Sec. 51-a. The Legislature shall have the power, by General Laws, to provide, subject to limitations herein contained, and such other limitations, restrictions and regulations as may by the Legislature be deemed expedient, for assistance grants to and/or medical care for, and for rehabilitation and any other services included in the federal laws as they now read or as they may hereafter be amended, providing matching funds to help such families and individuals attain or retain capability for independence or self-care, and for the payment of assistance grants to and/or medical care for, and for rehabilitation and other services to or on behalf of:

(1) Needy aged persons who are citizens of the United States or noncitizens who shall have resided within the boundaries of the United States for at least twenty-five (25) years;

(2) Needy individuals who are totally and permanently disabled by reason of a mental or physical handicap or a combination of physical and mental handicaps;

(3) Needy blind persons;

(4) Needy dependent children and the caretakers of such children.

The Legislature may prescribe such other eligibility requirements for participation in these programs as it deems appropriate.

The Legislature shall have authority to enact appropriate legislation which will enable the State of Texas to cooperate with the Government of the United States in providing assistance to and/or medical care on behalf of needy persons, in providing rehabilitation and any other services included in the federal laws making matching funds available to help such families and individuals attain or retain capability for independence or self-care, to accept and expend funds from the Government of the United States for such purposes in accordance with the laws of the United States as they now are or as they may hereafter be amended, and to make appropriations out of state funds for such purposes; provided that the maximum amount paid out of state funds to or on behalf of any needy person shall not exceed the amount that is matchable out of federal funds; provided that the total amount of such assistance payments only out of state funds on behalf of such individuals shall not exceed the amount of Eighty Million Dollars (\$80,000,000) during any fiscal year.

Supplementing legislative appropriations for assistance payments authorized by this Section, the following sums are allocated out of the Omnibus Tax Clearance Fund and are appropriated to the State Department of Public Welfare for the period begin-

ning September 1, 1969 and ending August 31, 1971: Three Million, Six Hundred Thousand Dollars (\$3,600,000) for Old Age Assistance, Two Million, Five Hundred Thousand Dollars (\$2,500,000) for Aid to the Permanently and Totally Disabled, and Twenty-Three Million, Nine Hundred Thousand Dollars (\$23,900,000) for Aid to Families with Dependent Children. Such allocations and appropriations shall be made available on the basis of equal monthly installments and otherwise shall be subject to the provisions of currently existing laws making allocations and appropriations for these purposes.

Provided further, that if the limitations and restrictions herein contained are found to be in conflict with the provisions of appropriate federal statutes, as they now are or as they may be amended to the extent that federal matching money is not available to the state for these purposes, then and in that event the Legislature is specifically authorized and empowered to prescribe such limitations and restrictions and enact such laws as may be necessary in order that such federal matching money will be available for assistance and/or medical care for or on behalf of needy persons.

Nothing in this Section shall be construed to amend, modify or repeal Section 31 of Article XVI of this Constitution; provided further, however, that such medical care, services or assistance shall also include the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers of vision of the human eye, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer nor to prescribe any drug or physical treatment whatsoever, unless such optometrist is a regularly licensed physician or surgeon under the laws of this state.

[Adopted Aug. 25, 1945. Amended Nov. 2, 1954; Nov. 5, 1957; Nov. 6, 1962; Nov. 9, 1963; Nov. 2, 1965; Aug. 5, 1969.]

**§ 51 - b. State Building Commission; State Building Fund**

Sec. 51-b. (a) The State Building Commission is hereby created. Its membership shall consist of the Governor, the Attorney General and the Chairman of the Board of Control. The Legislature may provide by law for some other State official to be a member of this Commission in lieu of the Chairman of the Board of Control, and in the event said State official has not already been confirmed by the Senate as such State official he shall be so confirmed as a member of the State Building Commission in the same manner that other State officials are confirmed.

(b) The State Building Fund is hereby created. On or before the first day of January following the adoption of this amendment, and each year thereafter, the Comptroller of Public Accounts shall certify to the State Treasurer the amount of money necessary to pay Confederate pensions for the ensuing calendar year as provided by the constitution and laws of this State. Thereupon each year the State Treasurer shall transfer forthwith from the Confederate Pension Fund to the State Building Fund all money except that needed to pay the Confederate pensions as certified by the Comptroller. This provi-

sion is self-enacting. The State Building Fund shall be expended by the Commission upon appropriation by the Legislature for the uses and purposes set forth in subdivision (c) hereof.

(c) Under such terms and conditions as are now or may be hereafter provided by law, the Commission may acquire necessary real and personal property, salvage and dispose of property unsuitable for State purposes, modernize, remodel, build and equip buildings for State purposes, and negotiate and make contracts necessary to carry out and effectuate the purposes herein mentioned.

The first major structure erected from the State Building Fund shall be known and designated as a memorial to the Texans who served in the Armed Forces of the Confederate States of America, and shall be devoted to the use and occupancy of the Supreme Court and such other courts and State agencies as may be provided by law. The second major structure erected from the State Building Fund shall be a State office building and shall be used by whatever State agencies as may be provided by law.

Under such terms and conditions as are now or may hereafter be provided by law, the State Building Commission may expend not exceeding five (5%) percent of the moneys available to it in any one year, for the purpose of erecting memorials to the Texans who served in the Armed Forces of the Confederate States of America. Said memorials may be upon battlefields or other suitable places within or without the boundaries of this State. The authorization for expenditures for memorials herein mentioned shall cease as of December 31, 1965.

Under such terms and conditions as are now or may hereafter be permitted by law, the State Building Commission may expend not exceeding Thirty Thousand (\$30,000.00) Dollars in the aggregate for the purpose of erecting memorials to the Texans who served in the Armed Forces of the Republic in the Texas War for Independence. Said memorials may be erected upon battlefields, in cemeteries, or other suitable places within or without the boundaries of this State. The authorization for expenditures for memorials herein mentioned shall cease as of December 31, 1965.

(d) The State ad valorem tax on property of Two (2¢) Cents on the One Hundred (\$100.00) Dollars valuation now levied under Section 51 of Article III of the Constitution as amended by Section 17, of Article VII (adopted in 1947) is hereby specifically levied for the purposes of continuing the payment of Confederate pensions as provided under Article III, Section 51, and for the establishment and continued maintenance of the State Building Fund hereby created.

(e) Should the 53rd Legislature enact a law or laws in anticipation of the adoption of this amendment, such shall not be invalid by reason of their anticipatory character.

[Adopted Nov. 2, 1954.]

**§ 51 - b - 1. Assistance for Totally and Permanently Disabled Individuals**

*Amendment proposed by S.J.R. No. 21, Acts 1963, 58th Leg., p. 1804, adopted by the voters at election held on Nov. 9, 1963, amended and merged this section and section 51-a into one*

*section designated section 51-a. See, section 51-a, ante.*

**§ 51 - c. Aid or Compensation to Persons Improperly Fined or Imprisoned**

Sec. 51-c. The Legislature may grant aid and compensation to any person who has heretofore paid a fine or served a sentence in prison, or who may hereafter pay a fine or serve a sentence in prison, under the laws of this State for an offense for which he or she is not guilty, under such regulations and limitations as the Legislature may deem expedient. [Adopted Nov. 6, 1956.]

**§ 51 - d. Payment of Assistance to Survivors of Law Enforcement Officers**

Sec. 51-d. The Legislature shall have the power, by general law, to provide for the payment of assistance by the State of Texas to the surviving spouse and minor children of officers, employees, and agents, including members of organized volunteer fire departments and members of organized police reserve or auxiliary units with authority to make an arrest, of the state or of any city, county, district, or other political subdivision who, because of the hazardous nature of their duties, suffer death in the course of the performance of those official duties. Should the Legislature enact any enabling laws in anticipation of this amendment, no such law shall be void by reason of its anticipatory nature. [Adopted Nov. 8, 1966. Amended Aug. 5, 1969.]

**§ 51 - e. Municipal Retirement Systems and Disability Pensions**

Sec. 51-e. Each incorporated city and town in this State shall have the power and authority to provide a system of retirement and disability pensions for its appointive officers and employees who have become disabled as a direct and proximate result of the performance of their duties, or have passed their sixty-fifth birthday, or have been employed by such city or town for more than twenty-five (25) years and have passed their sixtieth birthday, when and if, but only when and if, such system has been approved at an election by the qualified voters of such city or town entitled to vote on the question of issuance of tax supported bonds; provided that no city or town shall contribute more than the equivalent of seven and one half (7½) per centum of salaries and wages of the officers and employees entitled to participate in its pension system, and that said officers and employees shall contribute a like amount; and this Amendment shall not reduce the authority nor duty of any city or town otherwise existing.

[Adopted Nov. 7, 1944.]

**§ 51 - f. State-wide Retirement and Disability System for Municipal Officers and Employees**

Sec. 51-f. The Legislature of this State shall have the authority to provide for a system of retirement and disability pensions for appointive officers and employees of cities and towns to operate State-wide or by districts under such a plan and program as the Legislature shall direct and shall provide that participation therein by cities and towns shall be voluntary; provided that the Legislature shall never

make an appropriation to pay any of the cost of any system authorized by this Section.

[Adopted Nov. 7, 1944.]

**§ 51 - g. Social Security Coverage of Proprietary Employees of Political Subdivisions**

Sec. 51-g. The Legislature shall have the power to pass such laws as may be necessary to enable the State to enter into agreements with the Federal Government to obtain for proprietary employees of its political subdivisions coverage under the old-age and survivors insurance provisions of Title II of the Federal Social Security Act as amended.<sup>1</sup> The Legislature shall have the power to make appropriations and authorize all obligations necessary to the establishment of such Social Security coverage program.

[Adopted Nov. 2, 1954.]

<sup>1</sup> 42 U.S.C.A. § 401 et seq.

**§ 52. Counties, Cities, Towns or other Political Corporations or Subdivisions; Lending Credit; Grants**

Sec. 52. (a) Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.

(b) Under Legislative provision, any county, any political subdivision of a county, any number of adjoining counties, or any political subdivision of the State, or any defined district now or hereafter to be described and defined within the State of Texas, and which may or may not include, towns, villages or municipal corporations, upon a vote of two-thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition to all other debts, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the Legislature may authorize, and in such manner as it may authorize the same, for the following purposes to wit:

(1) The improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof, or irrigation thereof, or in aid of such purposes.

(2) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purposes of irrigation, drainage or navigation, or in aid thereof.

(3) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof.

(c) Notwithstanding the provisions of Subsection (b) of this Section, bonds may be issued by any county in an amount not to exceed one-fourth of the assessed valuation of the real property in the county, for the construction, maintenance, and operation of macadamized, graveled, or paved roads and turn-

pikes, or in aid thereof, upon a vote of a majority of the resident property taxpayers voting thereon who are qualified electors of the county, and without the necessity of further or amendatory legislation. The county may levy and collect taxes to pay the interest on the bonds as it becomes due and to provide a sinking fund for redemption of the bonds.

[Adopted Feb. 15, 1876. Amended Nov. 8, 1904, proclamation Dec. 29, 1904; Nov. 3, 1970.]

**§ 52 - a. Blank**

**§ 52 - b. Loan of State's Credit or Grant of Public Money for Toll Road Purposes**

Sec. 52-b. The Legislature shall have no power or authority to in any manner lend the credit of the State or grant any public money to, or assume any indebtedness, present or future, bonded or otherwise, of any individual, person, firm, partnership, association, corporation, public corporation, public agency, or political subdivision of the State, or anyone else, which is now or hereafter authorized to construct, maintain or operate toll roads and turnpikes within this State.

[Adopted Nov. 2, 1954.]

**§ 52 - c. Blank**

**§ 52 - d. County or Road District Tax for Road Purposes**

Sec. 52-d. Upon the vote of a majority of the resident qualified electors owning rendered taxable property therein so authorizing, a county or road district may collect an annual tax for a period not exceeding five (5) years to create a fund for constructing lasting and permanent roads and bridges or both. No contract involving the expenditure of any of such fund shall be valid unless, when it is made, money shall be on hand in such fund.

At such election, the Commissioners' Court shall submit for adoption a road plan and designate the amount of special tax to be levied; the number of years said tax is to be levied; the location, description, and character of the roads and bridges; and the estimated cost thereof. The funds raised by such taxes shall not be used for purposes other than those specified in the plan submitted to the voters. Elections may be held from time to time to extend or discontinue said plan or to increase or diminish said tax. The Legislature shall enact laws prescribing the procedure hereunder.

The provisions of this section shall apply only to Harris County and road districts therein.

[Adopted Aug. 23, 1937.]

**§ 52 - e. Payment of Medical Expenses of Law Enforcement Officials**

Sec. 52-e. Each county in the State of Texas is hereby authorized to pay all medical expenses, all doctor bills and all hospital bills for Sheriffs, Deputy Sheriffs, Constables, Deputy Constables or other county or precinct law enforcement officials who are injured in the course of their official duties; providing that while said Sheriff, Deputy Sheriff, Constable, Deputy Constable or other county or precinct law enforcement official is hospitalized or incapacitated that the county shall continue to pay his maximum salary; providing, however, that said payment of salary shall cease on the expiration of the

term of office to which such official was elected or appointed. Provided, however, that no provision contained herein shall be construed to amend, modify, repeal or nullify Article 16, Section 31, of the Constitution of the State of Texas.

[Adopted Nov. 11, 1967.]

*Dallas County bond issues for roads and turnpikes, see § 52e, post.*

**§ 52 - e. Dallas County Bond Issues for Roads and Turnpikes**

Sec. 52-e. Bonds to be issued by Dallas County under Section 52 of Article III of this Constitution for the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, may, without the necessity of further or amendatory legislation, be issued upon a vote of a majority of the resident property taxpayers voting thereon who are qualified electors of said county, and bonds heretofore or hereafter issued under Subsections (a) and (b) of said Section 52 shall not be included in determining the debt limit prescribed in said Section.

[Adopted Nov. 5, 1968.]

*Payment of medical expenses of law enforcement officers, see § 52e, ante.*

**§ 53. County or Municipal Authorities; Extra Compensation; Unauthorized Claims**

Sec. 53. The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract, made without authority of law.

[Adopted Feb. 15, 1876.]

**§ 54. Liens on Railroad; Release, Alienation or Change**

Sec. 54. The Legislature shall have no power to release or alienate any lien held by the State upon any railroad, or in any wise change the tenor or meaning, or pass any act explanatory thereof; but the same shall be enforced in accordance with the original terms upon which it was acquired.

[Adopted Feb. 15, 1876.]

**§ 55. Release or Extinguishment of Indebtedness to State, County, Subdivision or Municipal Corporation**

Sec. 55. The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein, except delinquent taxes which have been due for a period of at least ten years.

[Adopted Feb. 15, 1876. Amended Nov. 8, 1932.]

**§ 56. Local and Special Laws**

Sec. 56. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:

- The creation, extension or impairing of liens;
- Regulating the affairs of counties, cities, towns, wards or school districts;
- Changing the names of persons or places;
- Changing the venue in civil or criminal cases;
- Authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys;
- Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State;
- Vacating roads, town plats, streets or alleys;
- Relating to cemeteries, grave-yards or public grounds not of the State;
- Authorizing the adoption or legitimation of children;
- Locating or changing county seats;
- Incorporating cities, towns or villages, or changing their charters;
- For the opening and conducting of elections, or fixing or changing the places of voting;
- Granting divorces;
- Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;
- Changing the law of descent or succession;
- Regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;
- Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;
- Regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;
- Fixing the rate of interest;
- Affecting the estates of minors, or persons under disability;
- Remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;
- Exempting property from taxation;
- Regulating labor, trade, mining and manufacturing;
- Declaring any named person of age;
- Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability;
- Giving effect to informal or invalid wills or deeds;
- Summoning or empanelling grand or petit juries;
- For limitation of civil or criminal actions;
- For incorporating railroads or other works of internal improvements;
- And in all other cases where a general law can be made applicable, no local or special law shall be

enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities. [Adopted Feb. 15, 1876.]

**§ 57. Notice of Intention to Apply for Local or Special Laws**

Sec. 57. No local or special law shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the Legislature of such bill and in the manner to be provided by law. The evidence of such notice having been published, shall be exhibited in the Legislature, before such act shall be passed.

[Adopted Feb. 15, 1876.]

**§ 58. Seat of Government**

Sec. 58. The Legislature shall hold its sessions at the City of Austin, which is hereby declared to be the seat of government.

[Adopted Feb. 15, 1876.]

**§ 59. Workmen's Compensation Insurance for State Employees**

Sec. 59. The Legislature shall have power to pass such laws as may be necessary to provide for Workmen's Compensation Insurance for such State employees, as in its judgment is necessary or required; and to provide for the payment of all costs, charges, and premiums on such policies of insurance; providing the State shall never be required to purchase insurance for any employee.

[Adopted Nov. 3, 1936.]

**§ 60. Workmen's Compensation Insurance for Employees of Counties and other Political Subdivisions**

Sec. 60. The Legislature shall have the power to pass such laws as may be necessary to enable all counties and other political subdivisions of this State to provide Workmen's Compensation Insurance, including the right to provide its own insurance risk, for all employees of the county or political subdivision as in its judgment is necessary or required; and the Legislature shall provide suitable laws for the administration of such insurance in the counties or political subdivisions of this State and for the payment of the costs, charges and premiums on such policies of insurance and the benefits to be paid thereunder.

[Adopted Nov. 2, 1948. Amended Nov. 6, 1962.]

**§ 61. Workmen's Compensation Insurance for Municipal Employees**

Sec. 61. The Legislature shall have the power to enact laws to enable cities, towns, and villages of this State to provide Workmen's Compensation Insurance, including the right to provide their own insurance risk for all employees; and the Legislature shall provide suitable laws for the administration of such insurance in the said municipalities and for payment of the costs, charges, and premiums on policies of insurance and the benefits to be paid thereunder.

[Adopted Nov. 4, 1952.]

*Minimum salaries, see § 61, post.*

**§ 61. Minimum Salaries**

Sec. 61. The Legislature shall not fix the salary of the Governor, Attorney General, Comptroller of Public Accounts, the Treasurer, Commissioner of the General Land Office or Secretary of State at a sum less than that fixed for such officials in the Constitution on January 1, 1953.

[Adopted Nov. 2, 1954.]

*Workmen's compensation insurance for municipal employees, see § 61, ante.*

**§ 62. Continuity of State and Local Governmental Operations**

Sec. 62. The Legislature, in order to insure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty to provide for prompt and temporary succession to the powers and duties of public offices, except members of the Legislature, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices. Provided, however, that Article I of the Constitution of Texas, known as the "Bill of Rights" shall not be in any manner, affected, amended, impaired, suspended, repealed or suspended hereby.

[Adopted Nov. 6, 1962.]

**§ 63. Consolidation of Governmental Functions of Political Subdivisions in Counties of 1,200,000 or More**

Sec. 63. (1) The Legislature may by statute provide for the consolidation of some functions of government of any one or more political subdivisions comprising or located within any county in this State having one million, two hundred thousand (1,200,000) or more inhabitants. Any such statute shall require an election to be held within the political subdivisions affected thereby with approval by a majority of the voters in each of these political subdivisions, under such terms and conditions as the Legislature may require.

(2) The county government, or any political subdivision(s) comprising or located therein, may contract one with another for the performance of governmental functions required or authorized by this Constitution or the Laws of this State, under such terms and conditions as the Legislature may prescribe. The term "governmental functions," as it relates to counties, includes all duties, activities and operations of state-wide importance in which the county acts for the State, as well as of local importance, whether required or authorized by this Constitution or the Laws of this State.

[Adopted Nov. 8, 1966.]

**§ 64. Consolidation of Governmental Offices and Functions in Counties and Political Subdivisions**

Sec. 64. (a) The Legislature may by special statute provide for consolidation of governmental offices and functions of government of any one or more political subdivisions comprising or located within

any county. Any such statute shall require an election to be held within the political subdivisions affected thereby with approval by a majority of the voters in each of these subdivisions, under such terms and conditions as the Legislature may require.

(b) The county government, or any political subdivision(s) comprising or located therein, may contract one with another for the performance of governmental functions required or authorized by this Constitution or the Laws of this State, under such terms and conditions as the Legislature may prescribe. No person acting under a contract made pursuant to this Subsection (b) shall be deemed to hold more than one office of honor, trust or profit or more than one civil office of emolument. The term "governmental functions," as it relates to counties, includes all duties, activities and operations of statewide importance in which the county acts for the State, as well as of local importance, whether required or authorized by this Constitution or the Laws of this State.

[Adopted Nov. 5, 1968. Amended Nov. 3, 1970.]

**§ 65. Public Bonds; Interest Rate; Conflicting Rates Repealed**

Sec. 65. Wherever the Constitution authorizes an agency, instrumentality, or subdivision of the State to issue bonds and specifies the maximum rate of interest which may be paid on such bonds issued pursuant to such constitutional authority, such bonds may bear interest at rates not to exceed a weighted average annual interest rate of 6%. All Constitutional provisions specifically setting rates in conflict with this provision are hereby repealed. [This amendment shall become effective upon its adoption].

[Adopted Nov. 7, 1972.]

**ARTICLE IV**

**EXECUTIVE DEPARTMENT**

Section

1. Officers constituting the Executive Department.
2. Election of officers of Executive Department.
3. Returns of Election; Declaration of Election; Tie Votes; Contests.
- 3-a. Death, Disability or Failure to Qualify of Person receiving Highest Vote.
4. Installation of Governor; Term; Eligibility.
5. Compensation of Governor.
6. Holding other Offices; Practice of Profession; Other Salary Reward or Compensation.
7. Commander in Chief of Military Forces; Calling Forth Militia.
8. Convening Legislature on Extraordinary Occasions.
9. Governor's Message and Recommendations; Accounting for Public Money; Estimates of Money Required.
10. Execution of Laws; Conduct of Business with other States and United States.
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**§ 1. Officers constituting the Executive Department**

Sec. 1. The Executive Department of the State shall consist of a Governor, who shall be the Chief Executive Officer of the State, a Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, and Attorney General.

[Adopted Feb. 15, 1876.]

**§ 2. Election of officers of Executive Department**

Sec. 2. All the above officers of the Executive Department (except Secretary of State) shall be elected by the qualified voters of the State at the time and places of election for members of the Legislature.

[Adopted Feb. 15, 1876.]

**§ 3. Returns of Election; Declaration of Election; Tie Votes; Contests**

Sec. 3. The returns of every election for said executive officers, until otherwise provided by law, shall be made out, sealed up, and transmitted by the returning officers prescribed by law, to the seat of Government, directed to the Secretary of State, who shall deliver the same to the Speaker of the House of Representatives, as soon as the Speaker shall be chosen, and the said Speaker shall, during the first week of the session of the Legislature, open and publish them in the presence of both Houses of the Legislature. The person, voted for at said election, having the highest number of votes for each of said offices respectively, and being constitutionally eligible, shall be declared by the Speaker, under sanction of the Legislature, to be elected to said office. But, if two or more persons shall have the highest and an equal number of votes for either of said offices, one of them shall be immediately chosen to such office by joint vote of both Houses of the Legislature. Contested elections for either of said offices, shall be determined by both Houses of the Legislature in joint session.

[Adopted Feb. 15, 1876.]

**§ 3-a. Death, Disability or Failure to Qualify of Person receiving Highest Vote**

Sec. 3-a. If, at the time the Legislature shall canvass the election returns for the offices of Governor and Lieutenant Governor, the person receiving the highest number of votes for the office of Governor, as declared by the Speaker, has died, then the person having the highest number of votes for the office of Lieutenant Governor shall act as Governor until after the next general election. It is further provided that in the event the person with the highest number of votes for the office of Governor, as declared by the Speaker, shall become disabled, or fail to qualify, then the Lieutenant Governor shall

act as Governor until a person has qualified for the office of Governor, or until after the next general election. Any succession to the Governorship not otherwise provided for in this Constitution, may be provided for by law; provided, however, that any person succeeding to the office of Governor shall be qualified as otherwise provided in this Constitution, and shall, during the entire term to which he may succeed, be under all the restrictions and inhibitions imposed in this Constitution on the Governor.

[Adopted Nov. 2, 1948.]

#### § 4. Installation of Governor; Term; Eligibility

Sec. 4. The Governor elected at the general election in 1974, and thereafter, shall be installed on the first Tuesday after the organization of the Legislature, or as soon thereafter as practicable, and shall hold his office for the term of four years, or until his successor shall be duly installed. He shall be at least thirty years of age, a citizen of the United States, and shall have resided in this State at least five years immediately preceding his election.

[Adopted Feb. 15, 1876. Amended Nov. 7, 1972.]

#### § 5. Compensation of Governor

Sec. 5. The Governor shall, at stated times, receive as compensation for his services an annual salary in an amount to be fixed by the Legislature, and shall have the use and occupation of the Governor's Mansion, fixtures and furniture.

[Adopted Feb. 15, 1876. Amended Nov. 3, 1936; Nov. 2, 1954.]

#### § 6. Holding other Offices; Practice of Profession; Other Salary Reward or Compensation

Sec. 6. During the time he holds the office of Governor, he shall not hold any other office: civil, military or corporate; nor shall he practice any profession, and receive compensation, reward, fee, or the promise thereof for the same; nor receive any salary, reward or compensation or the promise thereof from any person or corporation, for any service rendered or performed during the time he is Governor, or to be thereafter rendered or performed.

[Adopted Feb. 15, 1876.]

#### § 7. Commander in Chief of Military Forces; Calling Forth Militia

Sec. 7. He shall be Commander-in-Chief of the military forces of the State, except when they are called into actual service of the United States. He shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, repel invasions, and protect the frontier from hostile incursions by Indians or other predatory bands.

[Adopted Feb. 15, 1876.]

#### § 8. Convening Legislature on Extraordinary Occasions

Sec. 8. The Governor may, on extraordinary occasions, convene the Legislature at the seat of Government, or at a different place, in case that should be in possession of the public enemy or in case of the prevalence of disease thereat. His proclamation therefor shall state specifically the purpose for which the Legislature is convened.

[Adopted Feb. 15, 1876.]

#### § 9. Governor's Message and Recommendations; Accounting for Public Money; Estimates of Money Required

Sec. 9. The Governor shall, at the commencement of each session of the Legislature, and at the close of his term of office, give to the Legislature information, by message, of the condition of the State; and he shall recommend to the Legislature such measures as he may deem expedient. He shall account to the Legislature for all public moneys received and paid out by him, from any funds subject to his order, with vouchers; and shall accompany his message with a statement of the same. And at the commencement of each regular session, he shall present estimates of the amount of money required to be raised by taxation for all purposes.

[Adopted Feb. 15, 1876.]

#### § 10. Execution of Laws; Conduct of Business with other States and United States

Sec. 10. He shall cause the laws to be faithfully executed and shall conduct, in person, or in such manner as shall be prescribed by law, all intercourse and business of the State with other States and with the United States.

[Adopted Feb. 15, 1876.]

#### § 11. Reprieves, Commutations and Pardons; Remission of Fines and Forfeitures

Sec. 11. There is hereby created a Board of Pardons and Paroles, to be composed of three members, who shall have been resident citizens of the State of Texas for a period of not less than two years immediately preceding such appointment, each of whom shall hold office for a term of six years; provided that of the members of the first board appointed, one shall serve for two years, one for four years and one for six years from the first day of February, 1937, and they shall cast lots for their respective terms. One member of said Board shall be appointed by the Governor, one member by the Chief Justice of the Supreme Court of the State of Texas, and one member by the presiding Justice of the Court of Criminal Appeals; the appointments of all members of said Board shall be made with the advice and consent of two-thirds of the Senate present. Each vacancy shall be filled by the respective appointing power that theretofore made the appointment to such position and the appointive powers shall have the authority to make recess appointments until the convening of the Senate.

In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishment and pardons; and under such rules as the Legislature may prescribe, and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed thirty (30) days; and he shall have power to revoke paroles and conditional pardons. With the advice and consent of the Legislature, he may grant reprieves, commutations of punishment and pardons in cases of treason.

The Legislature shall have power to regulate procedure before the Board of Pardons and Paroles and shall require it to keep record of its actions and the

reasons therefor, and shall have authority to enact parole laws.

[Adopted Feb. 15, 1876. Amended Nov. 3, 1936.]

#### § 11 - A. Suspension of Sentence and Probation

Sec. 11-A. The Courts of the State of Texas having original jurisdiction of criminal actions shall have the power, after conviction, to suspend the imposition or execution of sentence and to place the defendant upon probation and to reimpose such sentence, under such conditions as the Legislature may prescribe.

[Adopted Aug. 24, 1935.]

#### § 12. Vacancies in State or District Offices

Sec. 12. All vacancies in State or district offices, except members of the Legislature, shall be filled unless otherwise provided by law, by appointment of the Governor, which appointment, if made during its session, shall be with the advice and consent of two-thirds of the Senate present. If made during the recess of the Senate, the said appointee, or some other person to fill such vacancy, shall be nominated to the Senate during the first ten days of its session. If rejected, said office shall immediately become vacant, and the Governor shall, without delay, make further nominations, until a confirmation takes place. But should there be no confirmation during the session of the Senate, the Governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the Senate; but may appoint some other person to fill the vacancy until the next session of the Senate or until the regular election to said office, should it sooner occur. Appointments to vacancies in offices elective by the people shall only continue until the first general election thereafter.

[Adopted Feb. 15, 1876.]

#### § 13. Residence of Governor

Sec. 13. During the session of the Legislature the Governor shall reside where its sessions are held, and at all other times at the seat of Government, except when by act of the Legislature, he may be required or authorized to reside elsewhere.

[Adopted Feb. 15, 1876.]

#### § 14. Approval or Disapproval of Bills; Return and Reconsideration; Failure to Return; Disapproval of Items of Appropriation

Sec. 14. Every bill which shall have passed both Houses of the Legislature shall be presented to the Governor for his approval. If he approve he shall sign it; but if he disapprove it, he shall return it, with his objections, to the House in which it originated, which House shall enter the objections at large upon its journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members present agree to pass the bill, it shall be sent, with the objections, to the other House, by which likewise it shall be reconsidered; and, if approved by two-thirds of the members of that House, it shall become a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the Governor with his objections within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he

had signed it, unless the Legislature, by its adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of State and give notice thereof by public proclamation within twenty days after such adjournment. If any bill presented to the Governor contains several items of appropriation he may object to one or more of such items, and approve the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and no item so objected to shall take effect. If the Legislature be in session, he shall transmit to the House in which the bill originated a copy of such statement and the items objected to shall be separately considered. If, on reconsideration, one or more of such items be approved by two-thirds of the members present of each House, the same shall be part of the law, notwithstanding the objections of the Governor. If any such bill, containing several items of appropriation, not having been presented to the Governor ten days (Sundays excepted) prior to adjournment, be in the hands of the Governor at the time of adjournment, he shall have twenty days from such adjournment within which to file objections to any items thereof and make proclamation of the same, and such item or items shall not take effect.

[Adopted Feb. 15, 1876.]

#### § 15. Approval or Disapproval of Orders, Resolutions or Votes

Sec. 15. Every order, resolution or vote to which the concurrence of both Houses of the Legislature may be necessary, except on questions of adjournment, shall be presented to the Governor, and, before it shall take effect, shall be approved by him; or, being disapproved, shall be repassed by both Houses, and all the rules, provisions and limitations shall apply thereto as prescribed in the last preceding section in the case of a bill.

[Adopted Feb. 15, 1876.]

#### § 16. Lieutenant Governor

Sec. 16. There shall also be a Lieutenant Governor, who shall be chosen at every election for Governor by the same electors, in the same manner, continue in office for the same time, and possess the same qualifications. The electors shall distinguish for whom they vote as Governor and for whom as Lieutenant Governor. The Lieutenant Governor, shall by virtue of his office, be President of the Senate, and shall have, when in Committee of the Whole, a right to debate and vote on all questions; and when the Senate is equally divided to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the Governor to serve, or of his impeachment or absence from the State, the Lieutenant Governor shall exercise the powers and authority appertaining to the office of Governor until another be chosen at the periodical election, and be duly qualified; or until the Governor impeached, absent or disabled, shall be acquitted, return, or his disability be removed.

[Adopted Feb. 15, 1876.]

#### § 17. Death, Resignation, Refusal to Serve, Removal, Inability to Serve, Impeachment or Absence; Compensation

Sec. 17. If, during the vacancy in the office of Governor, the Lieutenant Governor should die, re-

sign, refuse to serve, or be removed from office, or be unable to serve; or if he shall be impeached or absent from the State, the President of the Senate, for the time being, shall, in like manner, administer the Government until he shall be superseded by a Governor or Lieutenant Governor. The Lieutenant Governor shall, while he acts as President of the Senate, receive for his services the same compensation and mileage which shall be allowed to the members of the Senate, and no more; and during the time he administers the Government, as Governor, he shall receive in like manner the same compensation which the Governor would have received had he been employed in the duties of his office, and no more. The President, for the time being, of the Senate, shall, during the time he administers the Government, receive in like manner the same compensation, which the Governor would have received had he been employed in the duties of his office. [Adopted Feb. 15, 1876.]

#### § 18. Restrictions and Inhibitions

Sec. 18. The Lieutenant Governor or President of the Senate succeeding to the office of Governor, shall, during the entire term to which he may succeed, be under all the restrictions and inhibitions imposed in this Constitution on the Governor. [Adopted Feb. 15, 1876.]

#### § 19. Seal of State

Sec. 19. There shall be a Seal of the State which shall be kept by the Secretary of State, and used by him officially under the direction of the Governor. The Seal of the State shall be a star of five points encircled by olive and live oak branches, and the words: "The State of Texas." [Adopted Feb. 15, 1876.]

#### § 20. Commissions

Sec. 20. All commissions shall be in the name and by the authority of the State of Texas, sealed with the State Seal, signed by the Governor and attested by the Secretary of State. [Adopted Feb. 15, 1876.]

#### § 21. Secretary of State

Sec. 21. There shall be a Secretary of State, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall continue in office during the term of service of the Governor. He shall authenticate the publication of the laws, and keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before the Legislature, or either House thereof, and shall perform such other duties as may be required of him by law. He shall receive for his services an annual salary in an amount to be fixed by the Legislature. [Adopted Feb. 15, 1876. Amended Nov. 3, 1936; Nov. 2, 1954.]

#### § 22. Attorney General

Sec. 22. The Attorney General elected at the general election in 1974, and thereafter, shall hold office for four years and until his successor is duly qualified. He shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially

inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law. He shall reside at the seat of government during his continuance in office. He shall receive for his services an annual salary in an amount to be fixed by the Legislature.

[Adopted Feb. 15, 1876. Amended Nov. 7, 1972.]

#### § 23. Comptroller of Public Accounts; Treasurer; Commissioner of General Land Office; Elected Statutory State Officers; Term; Salary, Fees, Costs and Perquisites

Sec. 23. The Comptroller of Public Accounts, the Treasurer, the Commissioner of the General Land Office, and any statutory State officer who is elected by the electorate of Texas at large, unless a term of office is otherwise specifically provided in this Constitution, shall each hold office for the term of four years and until his successor is qualified. The four-year term applies to these officers who are elected at the general election in 1974 or thereafter. Each shall receive an annual salary in an amount to be fixed by the Legislature; reside at the Capital of the State during his continuance in office, and perform such duties as are or may be required by law. They and the Secretary of State shall not receive to their own use any fees, costs or perquisites of office. All fees that may be payable by law for any service performed by any officer specified in this section or in his office, shall be paid, when received, into the State Treasury.

[Adopted Feb. 15, 1876. Amended Nov. 7, 1972.]

#### § 24. Accounts and Reports; Information To, and Inspection By, Governor; Perjury

Sec. 24. An account shall be kept by the officers of the Executive Department, and by all officers and managers of State institutions, of all moneys and choses in action received and disbursed or otherwise disposed of by them, severally, from all sources, and for every service performed; and a semi-annual report thereof shall be made to the Governor under oath. The Governor may, at any time, require information in writing from any and all of said officers or managers, upon any subject relating to the duties, condition, management and expenses of their respective offices and institutions, which information shall be required by the Governor under oath, and the Governor may also inspect their books, accounts, vouchers and public funds; and any officer or manager who, at any time, shall wilfully make a false report or give false information, shall be guilty of perjury, and so adjudged, and punished accordingly, and removed from office.

[Adopted Feb. 15, 1876.]

#### § 25. Custodians of Public Funds; Breaches of Trust and Duty

Sec. 25. The Legislature shall pass efficient laws facilitating the investigation of breaches of trust

and duty by all custodians of public funds and providing for their suspension from office on reasonable cause shown, and for the appointment of temporary incumbents of their offices during such suspension.

[Adopted Feb. 15, 1876.]

§ 26. Notaries Public

Sec. 26. (a) The Secretary of State shall appoint a convenient number of Notaries Public for each county who shall perform such duties as now are or may be prescribed by law. The qualifications of Notaries Public shall be prescribed by law.

(b) Nothing herein shall affect the terms of office of Notaries Public who have qualified for the present term prior to the taking effect of this amendment.

(c) Should the Legislature enact an enabling law hereto in anticipation of the adoption of this amendment, such law shall not be invalid by reason of its anticipatory character.

[Adopted Feb. 15, 1876. Amended Nov. 5, 1940.]

ARTICLE V

JUDICIAL DEPARTMENT

Section

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19. Justices of the Peace; Jurisdiction; Appeals; Ex Officio Notaries Public; Times and Places of holding Court.
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30. Judges of Courts of County-wide Jurisdiction; Criminal District Attorneys.

§ 1. Judicial Power; Courts in which Vested

Sec. 1. The judicial power of this State shall be vested in one Supreme Court, in Courts of Civil Appeals, in a Court of Criminal Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

The Criminal District Court of Galveston and Harris Counties shall continue with the district jurisdiction and organization now existing by law until otherwise provided by law.

The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891.]

§ 1 - a. Retirement, Censure, Removal and Compensation of Justices and Judges; State Judicial Qualifications Commission; Procedure

Sec. 1-a. (1) Subject to the further provisions of this Section, the Legislature shall provide for the retirement and compensation of Justices and Judges of the Appellate Courts and District and Criminal District Courts on account of length of service, age and disability, and for their reassignment to active duty where and when needed. The office of every such Justice and Judge shall become vacant when the incumbent reaches the age of seventy-five (75) years or such earlier age, not less than seventy (70) years, as the Legislature may prescribe; but, in the case of an incumbent whose term of office includes the effective date of this Amendment, this provision shall not prevent him from serving the remainder of said term nor be applicable to him before his period or periods of judicial service shall have reached a total of ten (10) years.

(2) There is hereby created the State Judicial Qualifications Commission, to consist of nine (9) members, to wit: (i) two (2) Justices of Courts of Civil Appeals; (ii) two (2) District Judges; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iiii) three (3) citizens, at least thirty (30) years of age, not licensed to practice law nor holding any salaried public office or employment; provided that no person shall be or remain a member of the Commission, who does not maintain physical residence within this State, or who resides in, or holds a judgeship within or for, the same Supreme Judicial District as another member of the Commission, or who shall have ceased to retain the qualifications above specified for his respective class of membership. Commissioners of classes (i) and (ii) above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class (iii) by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme Court with advice and consent of the Senate, and those of class (iiii) by appointment of the Governor with advice and consent of the Senate.

(3) The regular term of office of Commissioners shall be six (6) years; but the initial members of

each of classes (i), (ii) and (iii) shall respectively be chosen for terms of four (4) and six (6) years, and the initial members of class (iii) for respective terms of two (2), four (4) and six (6) years. Interim vacancies shall be filled in the same manner as vacancies due to expiration of a full term, but only for the unexpired portion of the term in question. Commissioners may succeed themselves in office only if having served less than three (3) consecutive years.

(4) Commissioners shall receive no compensation for their services as such. The Legislature shall provide for the payment of the necessary expense for the operation of the Commission.

(5) The Commission may hold its meetings, hearings and other proceedings at such times and places as it shall determine but shall meet at Austin at least once each year. It shall annually select one of its members as Chairman. A quorum shall consist of five (5) members. Proceedings shall be by majority vote of those present, except that recommendations for retirement, censure, or removal of any person holding an office named in Paragraph A of Subsection (6) of this Section shall be by affirmative vote of at least five (5) members.

(6) A. Any Justice or Judge of the Appellate Courts and District and Criminal District Courts, any County Judge, and any Judge of a County Court at Law, a Court of Domestic Relations, a Juvenile Court, a Probate Court, or a Corporation or Municipal Court, and any Justice of the Peace, and any Judge or presiding officer of any special court created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent conduct, which is clearly inconsistent with the proper performance of his said duties or casts public discredit upon the judiciary or administration of justice; or any person holding such office may be censured, in lieu of removal from office, under procedures provided for by the Legislature.

B. Any person holding an office named in Paragraph A of this subsection who is eligible for retirement benefits under the laws of this state providing for judicial retirement may be involuntarily retired, and any person holding an office named in that paragraph who is not eligible for retirement benefits under such laws may be removed from office, for disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature.

(7) The Commission shall keep itself informed as fully as may be of circumstances relating to the misconduct or disability of particular persons holding an office named in Paragraph A of Subsection (6) of this Section, receive complaints or reports, formal or informal, from any source in this behalf and make such preliminary investigations as it may determine. Its orders for the attendance or testimony of witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings in the District Court.

(8) After such investigation as it deems necessary, the Commission may in its discretion issue a private reprimand, or if the Commission determines that the situation merits such action, it may order a hearing to be held before it concerning the removal, or retirement of a person holding an office named in

Paragraph A of Subsection (6) of this Section, or it may in its discretion request the Supreme Court to appoint an active or retired District Judge or Justice of a Court of Civil Appeals as a Master to hear and take evidence in any such matter, and to report thereon to the Commission. If, after hearing, or after considering the record and report of a Master, the Commission finds good cause therefor, it shall issue an order of public censure or it shall recommend to the Supreme Court the removal, or retirement, as the case may be, of the person in question holding an office named in Paragraph A of Subsection (6) of this Section and shall thereupon file with the Clerk of the Supreme Court the entire record before the Commission.

(9) The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may, for good cause shown, permit the introduction of additional evidence and shall order public censure, retirement or removal, as it finds just and proper, or wholly reject the recommendation. Upon an order for involuntary retirement for disability or an order for removal, the office in question shall become vacant. The rights of an incumbent so retired to retirement benefits shall be the same as if his retirement had been voluntary.

(10) All papers filed with and proceedings before the Commission or a Master shall be confidential, and the filing of papers with, and the giving of testimony before, the Commission, Master or the Supreme Court shall be privileged; provided that upon being filed in the Supreme Court the record loses its confidential character.

(11) The Supreme Court shall by rule provide for the procedure before the Commission, Masters and the Supreme Court. Such rule shall afford to any person holding an office named in Paragraph A of Subsection (6) of this Section, against whom a proceeding is instituted to cause his retirement or removal, due process of law for the procedure before the Commission, Masters and the Supreme Court in the same manner that any person whose property rights are in jeopardy in an adjudicatory proceeding is entitled to due process of law, regardless of whether or not the interest of the person holding an office named in Paragraph A of Subsection (6) of this Section in remaining in active status is considered to be a right or a privilege. Due process shall include the right to notice, counsel, hearing, confrontation of his accusers, and all such other incidents of due process as are ordinarily available in proceedings whether or not misfeasance is charged, upon proof of which a penalty may be imposed.

(12) No person holding an office named in Paragraph A of Subsection (6) of this Section shall sit as a member of the Commission or Supreme Court in any proceeding involving his own retirement or removal.

(13) This Section 1-a is alternative to and cumulative of, the methods of removal of persons holding an office named in Paragraph A of Subsection (6) of this Section provided elsewhere in this Constitution. [Adopted Nov. 2, 1948. Amended Nov. 2, 1965; Nov. 3, 1970.]

## § 2. Supreme Court; Justices; Sections; Eligibility; Election; Vacancies

Sec. 2. The Supreme Court shall consist of a Chief Justice and eight Associate Justices, any five

of whom shall constitute a quorum, and the concurrence of five shall be necessary to a decision of a case; provided, that when the business of the court may require, the court may sit in sections as designated by the court to hear argument of causes and to consider applications for writs of error or other preliminary matters. No person shall be eligible to the office of Chief Justice or Associate Justice of the Supreme Court unless he be, at the time of his election, a citizen of the United States and of this state, and unless he shall have attained the age of thirty-five years, and shall have been a practicing lawyer, or a lawyer and judge of a court of record together at least ten years. Said Justices shall be elected (three of them each two years) by the qualified voters of the state at a general election; shall hold their offices six years, or until their successors are elected and qualified; and shall each receive such compensation as shall be provided by law. In case of a vacancy in the office of any Justice of the Supreme Court, the Governor shall fill the vacancy until the next general election for state officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state. The Justices of the Supreme Court who may be in office at the time this amendment takes effect shall continue in office until the expiration of their term of office under the present Constitution, and until their successors are elected and qualified. The Judges of the Commission of Appeals who may be in office at the time this amendment takes effect shall become Associate Justices of the Supreme Court and each shall continue in office as such Associate Justice of the Supreme Court until January 1st next preceding the expiration of the term to which he has been appointed and until his successor shall be elected and qualified. [Adopted Feb. 15, 1876. Amended Aug. 11, 1891; Aug. 25, 1945.]

### § 3. Jurisdiction of Supreme Court; Writs; Sessions; Clerk

Sec. 3. The Supreme Court shall have appellate jurisdiction only except as herein specified, which shall be co-extensive with the limits of the State. Its appellate jurisdiction shall extend to questions of law arising in cases of which the Courts of Civil Appeals have appellate jurisdiction under such restrictions and regulations as the Legislature may prescribe. Until otherwise provided by law the appellate jurisdiction of the Supreme Court shall extend to questions of law arising in the cases in the Courts of Civil Appeals in which the Judges of any Court of Civil Appeals may disagree, or where the several Courts of Civil Appeals may hold differently on the same question of law or where a statute of the State is held void. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

The Supreme Court shall appoint a clerk, who shall give bond in such manner as is now or may hereafter, be required by law, and he may hold his office for four years and shall be subject to removal by said court for good cause entered of record on the minutes of said court who shall receive such compensation as the Legislature may provide.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891; Nov. 4, 1930.]

### § 3 - a. Sessions of Court

Sec. 3-a. The Supreme Court may sit at any time during the year at the seat of government for the transaction of business and each term thereof shall begin and end with each calendar year.

[Adopted Nov. 4, 1930.]

### § 3 - b. Appeal from Order granting or denying Injunction

Sec. 3-b. The Legislature shall have the power to provide by law, for an appeal direct to the Supreme Court of this State from an order of any trial court granting or denying an interlocutory or permanent injunction on the grounds of the constitutionality or unconstitutionality of any statute of this State, or on the validity or invalidity of any administrative order issued by any state agency under any statute of this State.

[Adopted Nov. 5, 1940.]

### § 4. Court of Criminal Appeals; Judges

Sec. 4. The Court of Criminal Appeals shall consist of five Judges, one of whom shall be Presiding Judge, a majority of whom shall constitute a quorum, and the concurrence of three Judges shall be necessary to a decision of said court. Said Judges shall have the same qualifications and receive the same salaries as the Associate Justices of the Supreme Court. They shall be elected by the qualified voters of the state at a general election and shall hold their offices for a term of six years. In case of a vacancy in the office of a Judge of the Court of Criminal Appeals, the Governor shall, with the advice and consent of the Senate, fill said vacancy by appointment until the next succeeding general election.

The Judges of the Court of Criminal Appeals who may be in office at the time when this Amendment takes effect shall become Judges of the Court of Criminal Appeals and continue in office until the expiration of the term of office for which each has been elected or appointed under the present Constitution and laws of this state, and until his successor shall have been elected and qualified.

The two members of the Commission of Appeals in aid of the Court of Criminal Appeals who may be in office at the time when this Amendment takes effect shall become Judges of the Court of Criminal Appeals and shall hold their offices, one for a term of two years and the other for a term of four years, beginning the first day of January following the adoption of this Amendment and until their successors are elected and qualified. Said Judges shall by agreement or otherwise designate the incumbent for each of the terms mentioned.

The Governor shall designate one of the five Judges as Presiding Judge and at the expiration of his term and each six years thereafter a Presiding Judge shall be elected.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891; Nov. 8, 1966.]

**§ 5. Jurisdiction of Court of Criminal Appeals; Terms of Court; Clerk**

Sec. 5. The Court of Criminal Appeals shall have appellate jurisdiction coextensive with the limits of the state in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law.

The Court of Criminal Appeals and the Judges thereof shall have the power to issue the writ of habeas corpus, and under such regulations as may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction. The Court of Criminal Appeals shall have power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction.

The Court of Criminal Appeals may sit for the transaction of business at any time from the first Monday in October to the last Saturday in September in each year, at the State Capitol. The Court of Criminal Appeals shall appoint a clerk of the court who shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for a term of four years unless sooner removed by the court for good cause entered of record on the minutes of said court.

The Clerk of the Court of Criminal Appeals who may be in office at the time when this Amendment takes effect shall continue in office for the term of his appointment.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891; Nov. 8, 1966.]

**§ 6. Courts of Civil Appeals; Transfer of Causes; Terms of Judges**

Sec. 6. The Legislature shall as soon as practicable after the adoption of this amendment divide the State into not less than two nor more than three Supreme judicial districts and thereafter into such additional districts as the increase of population and business may require, and shall establish a Court of Civil Appeals in each of said districts, which shall consist of a Chief Justice and two Associate Justices, who shall have the qualifications as herein prescribed for Justices of the Supreme Court. Said Court of Civil Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all civil cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error.

Each of said Courts of Civil Appeals shall hold its sessions at a place in its district to be designated by the Legislature, and at such time as may be prescribed by law. Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a [a] term of six years and shall receive for their services the sum of three thousand five hundred dollars per annum, until otherwise pro-

vided by law. Said courts shall have such other jurisdiction, original and appellate as may be prescribed by law. Each Court of Civil Appeals shall appoint a clerk in the same manner as the clerk of the Supreme Court which clerk shall receive such compensation as may be fixed by law.

Until the organization of the Courts of Civil Appeals and Criminal Appeals, as herein provided for, the jurisdiction, power and organization and location of the Supreme Court, the Court of Appeals and the Commission of Appeals shall continue as they were before the adoption of this amendment.

All civil cases which may be pending in the Court of Appeals shall as soon as practicable after the organization of the Courts of Civil Appeals be certified to, and the records thereof transmitted to the proper Courts of Civil Appeals to be decided by said courts. At the first session of the Supreme Court the Court of Criminal Appeals and such of [of] the Courts of Civil Appeals which may be hereafter created under this article after the first election of the Judges of such courts under this amendment. The terms of office of the Judges of each court shall be divided into three classes and the Justices thereof shall draw for the different classes. Those who shall draw class No. 1 shall hold their offices two years, those drawing class No. 2 shall hold their offices for four years and those who may draw class No. 3 shall hold their offices for six years, from the date of their election and until their successors are elected and qualified, and thereafter each of the said Judges shall hold his office for six years, as provided in this Constitution.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891.]

**§ 7. Judicial Districts; District Judges; Terms or Sessions; Absence, Disability or Disqualification of Judge**

Sec. 7. The State shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased or diminished by law. For each district there shall be elected by the qualified voters thereof, at a General Election, a Judge, who shall be a citizen of the United States and of this State, who shall be licensed to practice law in this State and shall have been a practicing lawyer or a Judge of a Court in this State, or both combined, for four (4) years next preceding his election, who shall have resided in the district in which he was elected for two (2) years next preceding his election, who shall reside in his district during his term of office, who shall hold his office for the period of four (4) years, and shall receive for his services an annual salary to be fixed by the Legislature. The Court shall conduct its proceedings at the county seat of the county in which the case is pending, except as otherwise provided by law. He shall hold the regular terms of his Court at the County Seat of each County in his district at least twice in each year in such manner as may be prescribed by law. The Legislature shall have power by General or Special Laws to make such provisions concerning the terms or sessions of each Court as it may deem necessary.

The Legislature shall also provide for the holding of District Court when the Judge thereof is absent, or is from any cause disabled or disqualified from presiding.

The District Judges who may be in office when this Amendment takes effect shall hold their offices until their respective terms shall expire under their present election or appointment.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891; Nov. 6, 1949.]

### § 8. Jurisdiction of District Court

Sec. 8. The District Court shall have original jurisdiction in all criminal cases of the grade of felony; in all suits in behalf of the State to recover penalties, forfeitures and escheats; of all cases of divorce; of all misdemeanors involving official misconduct; of all suits to recover damages for slander or defamation of character; of all suits for trial of title to land and for the enforcement of liens thereon; of all suits for the trial of the right of property levied upon by virtue of any writ of execution, sequestration or attachment when the property levied on shall be equal to or exceed in value five hundred dollars; of all suits, complaints or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to five hundred dollars exclusive of interest; of contested elections, and said court and the judges thereof, shall have power to issue writs of habeas corpus, mandamus, injunction and certiorari, and all writs necessary to enforce their jurisdiction.

The District Court shall have appellate jurisdiction and general control in probate matters, over the County Court established in each county, for appointing guardians, granting letters testamentary and of administration, probating wills, for settling the accounts of executors, administrators and guardians, and for the transaction of all business appertaining to estates; and original jurisdiction and general control over executors, administrators, guardians and minors under such regulations as may be prescribed by law. The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners Court, with such exceptions and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever for which a remedy or jurisdiction is not provided by law or this Constitution, and such other jurisdiction, original and appellate, as may be provided by law.

The district court, concurrently with the county court, shall have the general jurisdiction of a probate court. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons and to apprentice minors, as provided by law. In any proceeding involving the general jurisdiction of a probate court, including such specified proceedings, the district court shall also have all other jurisdiction conferred upon the district court by law. The legislature, however, shall have the power, by local or general law, Section 16 of Article V of this Constitution notwithstanding, to increase, diminish or eliminate the jurisdiction of either the district court or the county court in probate matters, and in cases of any such change of jurisdiction, the legislature shall also conform the jurisdiction of the

other courts to such change. The legislature shall have power to adopt rules governing the filing, distribution and transfer of all such cases and proceedings as between district courts, county courts, and other courts having jurisdiction thereof, and may provide that all appeals in such matters shall be to the courts of (civil) appeals.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891; Nov. 6, 1973.]

### § 9. Clerk of District Court

Sec. 9. There shall be a Clerk for the District Court of each county, who shall be elected by the qualified voters for State and county officers, and who shall hold his office for four years, subject to removal by information, or by indictment of a grand jury, and conviction of a petit jury. In case of vacancy, the Judge of the District Court shall have the power to appoint a Clerk, who shall hold until the office can be filled by election.

[Adopted Feb. 15, 1876. Amended Nov. 2, 1954.]

### § 10. Trial by Jury

Sec. 10. In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature.

[Adopted Feb. 15, 1876.]

### § 11. Disqualification of Judges; Exchange of Districts; Holding Court for other Judges

Sec. 11. No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when he shall have been counsel in the case. When the Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals, or any member of either, shall be thus disqualified to hear and determine any case or cases in said court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes. When a judge of the District Court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law.

And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law. This disqualification of judges of inferior tribunals shall be remedied and vacancies in their offices filled as may be prescribed by law.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891.]

### § 12. Judges to be Conservators of the Peace; Style of Writs and Process; Prosecutions in Name of State; Conclusion

Sec. 12. All judges of courts of this State, by virtue of their office,<sup>1</sup> be conservators of the peace

throughout the State. The style of all writs and process shall be, "The State of Texas." All prosecutions shall be carried on in the name and by authority of the State of Texas, and shall conclude: "Against the peace and dignity of the State."

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891.]

<sup>1</sup> The resolution proposing this section, Acts 22nd Leg., 1891, p. 197, read as above. It is apparent that the word "shall" should be read into the first sentence making it read: "All judges of courts of this state, by virtue of their office, shall be conservators of the peace throughout the state."

### § 13. Number of Grand and Petit Jurors; Number Concurring

Sec. 13. Grand and petit juries in the District Courts shall be composed of twelve men; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases, and in trials of criminal cases below the grade of felony in the District Courts, nine members of the jury, concurring, may render a verdict, but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. When, pending the trial of any case, one or more jurors not exceeding three, may die, or be disabled from sitting, the remainder of the jury shall have the power to render the verdict; provided, that the Legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

[Adopted Feb. 15, 1876.]

### § 14. Judicial Districts and Time of Holding Court fixed by Ordinance

Sec. 14. The Judicial Districts in this State and the time of holding the Courts therein are fixed by ordinance forming part of this Constitution, until otherwise provided by law.

[Adopted Feb. 15, 1876.]

### § 15. County Court; County Judge

Sec. 15. There shall be established in each county in this State a County Court, which shall be a court of record; and there shall be elected in each county, by the qualified voters, a County Judge, who shall be well informed in the law of the State; shall be a conservator of the peace, and shall hold his office for four years, and until his successor shall be elected and qualified. He shall receive as compensation for his services such fees and perquisites as may be prescribed by law.

[Adopted Feb. 15, 1876. Amended Nov. 2, 1954.]

### § 16. County Courts; Jurisdiction; Appeals to Court of Civil Appeals and Court of Criminal Appeals; Disqualification of Judge

Sec. 16. The County Court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the Justices Court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed \$200, and they shall have exclusive jurisdiction in all civil cases when the matter in controversy shall exceed in value \$200, and not exceed \$500, exclusive of interest, and concurrent jurisdiction with the District Court when the matter in controversy shall exceed \$500, and not exceed \$1,000, exclusive of interest, but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases civil and criminal of

which Justices Courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed \$20, exclusive of cost, under such regulations as may be prescribed by law. In all appeals from Justices Courts there shall be a trial de novo in the County Court, and appeals may be prosecuted from the final judgment rendered in such cases by the County Court, as well as all cases civil and criminal of which the County Court has exclusive or concurrent or original jurisdiction of civil appeals in civil cases to the Court of Civil Appeals and in such criminal cases to the Court of Criminal Appeals, with such exceptions and under such regulations as may be prescribed by law.

The County Court shall have the general jurisdiction of a Probate Court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons and to apprentice minors, as provided by law; and the County Court, or judge thereof, shall have power to issue writs of injunctions, mandamus and all writs necessary to the enforcement of the jurisdiction of said Court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the County Court, or any other Court or tribunal inferior to said Court. The County Court shall not have criminal jurisdiction in any county where there is a Criminal District Court, unless expressly conferred by law, and in such counties appeals from Justices Courts and other inferior courts and tribunals in criminal cases shall be to the Criminal District Court, under such regulations as may be prescribed by law; and in all such cases an appeal shall lie from such District Court to the Court of Criminal Appeals. When the judge of the County Court is disqualified in any case pending in the County Court the parties interested may, by consent, appoint a proper person to try said case, or upon their failing to do so a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891.]

### § 17. Terms of County Court; Prosecutions; Juries

Sec. 17. The County Court shall hold a term for civil business at least once in every two months, and shall dispose of probate business, either in term time or vacation as may be provided by law, and said court shall hold a term for criminal business once in every month as may be provided by law. Prosecutions may be commenced in said court by information filed by the county attorney, or by affidavit, as may be provided by law. Grand juries empaneled in the District Courts shall enquire into misdemeanors, and all indictments therefor returned into the District Courts shall forthwith be certified to the County Courts or other inferior courts, having jurisdiction to try them for trial; and if such indictment be quashed in the County, or other inferior court, the person charged, shall not be discharged if there is probable cause of guilt, but may be held by such

court or magistrate to answer an information or affidavit. A jury in the County Court shall consist of six men; but no jury shall be empaneled to try a civil case unless demanded by one of the parties, who shall pay such jury fee therefor, in advance, as may be prescribed by law, unless he makes affidavit that he is unable to pay the same.

[Adopted Feb. 15, 1876.]

**§ 18. Division of Counties into Precincts; Election of Constable and Justice of the Peace; County Commissioners and County Commissioners Court**

Sec. 18. Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. Divisions shall be made by the Commissioners Court provided for by this Constitution. In each such precinct there shall be elected one Justice of the Peace and one Constable, each of whom shall hold his office for four years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two Justices of the Peace. Each county shall in like manner be divided into four commissioners precincts in each of which there shall be elected by the qualified voters thereof one County Commissioner, who shall hold his office for four years and until his successor shall be elected and qualified. The County Commissioners so chosen, with the County Judge as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed.

[Adopted Feb. 15, 1876. Amended Nov. 2, 1954.]

**§ 19. Justices of the Peace; Jurisdiction; Appeals; Ex Officio Notaries Public; Times and Places of holding Court**

Sec. 19. Justices of the peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than for two hundred dollars, and in civil matters of all cases where the amount in controversy is two hundred dollars or less, exclusive of interest, of which exclusive original jurisdiction is not given to the District or County Courts; and such other jurisdiction, criminal and civil, as may be provided by law, under such regulations as may be prescribed by law; and appeals to the County Courts shall be allowed in all cases decided in Justices' Courts where the judgment is for more than twenty dollars exclusive of costs; and in all criminal cases under such regulations as may be prescribed by law. And the justices of the peace shall be ex officio notaries public. And they shall hold their courts at such times and places as may be provided by law.

[Adopted Feb. 15, 1876.]

**§ 20. County Clerk**

Sec. 20. There shall be elected for each county, by the qualified voters, a County Clerk, who shall hold his office for four years, who shall be clerk of the County and Commissioners Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a

vacancy in whose office shall be filled by the Commissioners Court, until the next general election; provided, that in counties having a population of less than 8,000 persons there may be an election of a single Clerk, who shall perform the duties of District and County Clerks.

[Adopted Feb. 15, 1876. Amended Nov. 2, 1954.]

**§ 21. County Attorneys; District Attorneys**

Sec. 21. A County Attorney, for counties in which there is not a resident Criminal District Attorney, shall be elected by the qualified voters of each county, who shall be commissioned by the Governor, and hold his office for the term of four years. In case of vacancy the Commissioners Court of the county shall have the power to appoint a County Attorney until the next general election. The County Attorneys shall represent the State in all cases in the District and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a District Attorney, the respective duties of District Attorneys and County Attorneys shall in such counties be regulated by the Legislature. The Legislature may provide for the election of District Attorneys in such districts, as may be deemed necessary, and make provision for the compensation of District Attorneys and County Attorneys. District Attorneys shall hold office for a term of four years, and until their successors have qualified.

[Adopted Feb. 15, 1876. Amended Nov. 2, 1954.]

**§ 22. Changing Jurisdiction of County Courts**

Sec. 22. The Legislature shall have power, by local or general law, to increase, diminish or change the civil and criminal jurisdiction of County Courts; and in cases of any such change of jurisdiction, the Legislature shall also conform the jurisdiction of the other courts to such change.

[Adopted Feb. 15, 1876.]

**§ 23. Sheriffs**

Sec. 23. There shall be elected by the qualified voters of each county a Sheriff, who shall hold his office for the term of four years, whose duties and perquisites, and fees of office, shall be prescribed by the Legislature, and vacancies in whose office shall be filled by the Commissioners Court until the next general election.

[Adopted Feb. 15, 1876. Amended Nov. 2, 1954.]

**§ 24. Removal of County Officers**

Sec. 24. County Judges, county attorneys, clerks of the District and County Courts, justices of the peace, constables, and other county officers, may be removed by the Judges of the District Courts for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing and the finding of its truth by a jury.

[Adopted Feb. 15, 1876.]

**§ 25. Rules of Court**

Sec. 25. The Supreme Court shall have power to make and establish rules of procedure not inconsistent with the laws of the State for the government of said court and the other courts of this State to expedite the dispatch of business therein.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891.]

### § 26. Criminal Cases; No Appeal by State

Sec. 26. The State shall have no right of appeal in criminal cases.

[Adopted Feb. 15, 1876.]

### § 27. Transfer of Cases Pending at Adoption of Constitution

Sec. 27. The Legislature shall, at its first session, provide for the transfer of all business, civil and criminal, pending in District Courts, over which jurisdiction is given by this Constitution to the County Courts, or other inferior courts, to such County or inferior courts, and for the trial or disposition of all such causes by such County or other inferior courts.

[Adopted Feb. 15, 1876.]

### § 28. Vacancies in Judicial Offices

Sec. 28. Vacancies In Offices Of Judges Of Superior Courts To Be Filled By The Governor.

Vacancies in the office of judges of the Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals and the District Courts shall be filled by the Governor until the next succeeding General Election; and vacancies in the office of County Judge and Justices of the Peace shall be filled by the Commissioners Court until the next succeeding General Election.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891; Nov. 4, 1958.]

### § 29. County Court; Terms of Court; Probate Business; Commencement of Prosecutions; Jury

Sec. 29. The County Court shall hold at least four terms for both civil and criminal business annually, as may be provided by the Legislature, or by the Commissioners' Court of the county under authority of law, and such other terms each year as may be fixed by the Commissioners' Court; provided, the Commissioners' Court of any county having fixed the times and number of terms of the County Court, shall not change the same again until the expiration of one year. Said court shall dispose of probate business either in term time or vacation, under such regulation as may be prescribed by law. Prosecutions may be commenced in said courts in such manner as is or may be provided by law, and a jury therein shall consist of six men. Until otherwise provided, the terms of the County Court shall be held on the first Mondays in February, May, August and November, and may remain in session three weeks.

[Adopted Aug. 14, 1883, proclamation Sept. 25, 1883.]

### § 30. Judges of Courts of County-wide Jurisdiction; Criminal District Attorneys

Sec. 30. The Judges of all Courts of county-wide jurisdiction heretofore or hereafter created by the Legislature of this State, and all Criminal District Attorneys now or hereafter authorized by the laws of this State, shall be elected for a term of four years, and shall serve until their successors have qualified.

[Adopted Nov. 2, 1954.]

## ARTICLE VI SUFFRAGE

### Section

1. Classes of Persons not allowed to Vote.
2. Qualified Elector; Registration; Absentee Voting.
- 2-a. Voting for Presidential and Vice Presidential Electors and Statewide Offices; Qualified Persons except for Residence Requirements.
3. Municipal Elections; Qualifications of Voters.
- 3-a. Bond Issues; Loans of Credit; Expenditures; Assumption of Debts; Qualifications of Voters.
4. Elections by Ballot; Numbering, Fraud and Purity of Elections; Registration of Voters.
5. Privilege of Voters from Arrest.

### § 1. Classes of Persons not allowed to Vote

Sec. 1. The following classes of persons shall not be allowed to vote in this State, to wit:

First: Persons under twenty-one (21) years of age.

Second: Idiots and lunatics.

Third: All paupers supported by any county.

Fourth: All persons convicted of any felony, subject to such exceptions as the Legislature may make.

[Adopted Feb. 15, 1876. Amended Nov. 8, 1932; Nov. 2, 1954.]

Acts 1973, 63rd Leg., p. 1722, ch. 626, §§ 1, 2 [Civil Statutes, art. 5923b, §§ 1, 2] provided that a person who is at least 18 years of age has all the rights, privileges, and obligations of a person who is 21 years of age.

### § 2. Qualified Elector; Registration; Absentee Voting

Sec. 2. Every person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one (21) years and who shall be a citizen of the United States and who shall have resided in this State one (1) year next preceding an election and the last six (6) months within the district or county in which such person offers to vote, shall be deemed a qualified elector; provided, however, that before offering to vote at an election a voter shall have registered annually, but such requirement for registration shall not be considered a qualification of an elector within the meaning of the term "qualified elector" as used in any other Article of this Constitution in respect to any matter except qualification and eligibility to vote at an election. Any legislation enacted in anticipation of the adoption of this Amendment shall not be invalid because of its anticipatory nature. The Legislature may authorize absentee voting. And this provision of the Constitution shall be self-enacting without the necessity of further legislation.

[Adopted Feb. 15, 1876. Amended Nov. 3, 1896, proclamation Dec. 18, 1896; Nov. 4, 1902, proclamation Dec. 26, 1902; July 23, 1921; Nov. 2, 1954; Nov. 8, 1966, eff. Feb. 1, 1968.]

### § 2 - a. Voting for Presidential and Vice Presidential Electors and Statewide Offices; Qualified Persons except for Residence Requirements

Sec. 2-a. (a) Notwithstanding any other provision of this Constitution, the Legislature may enact laws and provide a method of registration, including the time of such registration, permitting any person who is qualified to vote in this State except for the residence requirements within a county or district, as set forth in Section 2 of this Article, to vote for

(1) electors for President and Vice President of the United States and (2) all offices, questions or propositions to be voted on by all electors throughout this State.

(b) Notwithstanding any other provision of this Constitution, the Legislature may enact laws and provide for a method of registration, including the time for such registration, permitting any person (1) who is qualified to vote in this State except for the residence requirements of Section 2 of this Article, and (2) who shall have resided anywhere within this State at least thirty (30) days next preceding a General Election in a presidential election year, and (3) who shall have been a qualified elector in another state immediately prior to his removal to this State or would have been eligible to vote in such other state had he remained there until such election, to vote for electors for President and Vice President of the United States in that election.

(c) Notwithstanding any other provision of this Constitution, the Legislature may enact laws and provide for a method of registration, including the time for such registration, permitting absentee voting for electors for President and Vice President of the United States in this State by former residents of this State (1) who have removed to another state, and (2) who meet all qualifications, except residence requirements, for voting for electors for President and Vice President in this State at the time of the election, but the privileges of suffrage so granted shall be only for such period of time as would permit a former resident of this State to meet the residence requirements for voting in his new state of residence, and in no case for more than twenty-four (24) months.

[Adopted Nov. 8, 1966.]

**§ 3. Municipal Elections; Qualifications of Voters**

Sec. 3. All qualified electors of the State, as herein described, who shall have resided for six months immediately preceding an election, within the limits of any city or corporate town, shall have the right to vote for Mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred, shall be levied upon the persons debarred from voting in relation thereto.

[Adopted Feb. 15, 1876.]

**§ 3 - a. Bond Issues; Loans of Credit; Expenditures; Assumption of Debts; Qualifications of Voters**

Sec. 3-a. When an election is held by any county, or any number of counties, or any political subdivision of the State, or any political sub-division of a county, or any defined district now or hereafter to be described and defined within the State and which may or may not include towns, villages or municipal corporations, or any city, town or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the State, county, political sub-division, district, city, town or village where such election is held, and who have duly rendered the same for taxation, shall be

qualified to vote and all electors shall vote in the election precinct of their residence.

[Adopted Nov. 8, 1932.]

**§ 4. Elections by Ballot; Numbering, Fraud and Purity of Elections; Registration of Voters**

Sec. 4. In all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box; and the Legislature shall provide by law for the registration of all voters.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891; Nov. 8, 1966, eff. Nov. 3, 1967.]

**§ 5. Privilege of Voters from Arrest**

Sec. 5. Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

[Adopted Feb. 15, 1876.]

**ARTICLE VII**

**EDUCATION**

**THE PUBLIC FREE SCHOOLS**

Section

1. Support and Maintenance of System of Public Free Schools.
2. Perpetual School Fund.
3. Taxes for Benefit of Schools; School Districts.
- 3-a. Repealed.
- 3-b. Independent School Districts and Junior College Districts; Taxes and Bonds; Changes in Boundaries.
4. Sale of Lands; Investment of Proceeds.
5. Permanent School Fund; Available School Fund; Use of Funds; Distribution of Available School Fund.
6. County School Lands; Proceeds of Sales; Investment; Available School Fund.
- 6-a. County Agricultural or Grazing School Land subject to Tax.
- 6-b. County Permanent School Fund; Reduction and its Distribution.
7. Repealed.
8. State Board of Education.

**ASYLUMS**

9. Lands for Benefit of Asylums; Permanent Fund; Sale and Investment of Proceeds.

**UNIVERSITY**

10. Establishment of University; Agricultural and Mechanical Department.
11. Permanent University Fund; Investment; Alternate Sections of Railroad Grant.
- 11-a. Investment of Permanent University Fund.
12. Sale of Lands.
13. Agricultural and Mechanical College.
14. College or Branch University for Colored Youths; Taxes and Appropriations.
15. Grant of Additional Lands to University.
16. Terms of Office.
16. County Taxation of University Lands.
17. State Ad Valorem Tax for Pensions and for Permanent Improvements at Institutions of Higher Learning.
18. Texas A & M University System; University of Texas System; Bonds or Notes Payable from income of Permanent University Fund.

## THE PUBLIC FREE SCHOOLS

### § 1. Support and Maintenance of System of Public Free Schools

Sec. 1. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

[Adopted Feb. 15, 1876.]

### § 2. Perpetual School Fund

Sec. 2. All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads or other corporations of any nature whatsoever; one half of the public domain of the State; and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a perpetual public school fund.

[Adopted Feb. 15, 1876.]

### § 3. Taxes for Benefit of Schools; School Districts

Sec. 3. One-fourth of the revenue derived from the State occupation taxes and poll tax of one dollar on every inhabitant of the State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed thirty-five cents on the one hundred (\$100.00) dollars valuation, as with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year, and it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free text books for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient the deficit may be met by appropriation from the general funds of the State and the Legislature may also provide for the formation of school district by general laws; and all such school districts may embrace parts of two or more counties, and the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public school or schools of such districts, whether such districts are composed of territory wholly within a county or in parts of two or more counties, and the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and for the erection and equipment of school buildings therein; provided that a majority of the qualified property taxpaying voters of the district voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year one (\$1.00) dollar on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independ-

ent school districts, nor to independent or common school districts created by general or special law. [Adopted Feb. 15, 1876. Amended Aug. 14, 1883, proclamation Sept. 25, 1883; Nov. 3, 1908, proclamation Feb. 2, 1909; Aug. 3, 1909, proclamation Sept. 24, 1909; Nov. 5, 1918; Nov. 2, 1920; Nov. 2, 1926, proclamation Jan. 20, 1927.]

§ 3 - a. Repealed. Aug. 5, 1969

### § 3 - b. Independent School Districts and Junior College Districts; Taxes and Bonds; Changes in Boundaries

Sec. 3-b. No tax for the maintenance of public free schools voted in any independent school district and no tax for the maintenance of a junior college voted by a junior college district, nor any bonds voted in any such district, but unissued, shall be abrogated, cancelled or invalidated by change of any kind in the boundaries thereof. After any change in boundaries, the governing body of any such district, without the necessity of an additional election, shall have the power to assess, levy and collect ad valorem taxes on all taxable property within the boundaries of the district as changed, for the purposes of the maintenance of public free schools or the maintenance of a junior college, as the case may be, and the payment of principal of and interest on all bonded indebtedness outstanding against, or attributable, adjusted or allocated to, such district or any territory therein, in the amount, at the rate, or not to exceed the rate, and in the manner authorized in the district prior to the change in its boundaries, and further in accordance with the laws under which all such bonds, respectively, were voted; and such governing body also shall have the power, without the necessity of an additional election, to sell and deliver any unissued bonds voted in the district prior to any such change in boundaries, and to assess, levy and collect ad valorem taxes on all taxable property in the district as changed, for the payment of principal of and interest on such bonds in the manner permitted by the laws under which such bonds were voted. In those instances where the boundaries of any such independent school district are changed by the annexation of, or consolidation with, one or more whole school districts, the taxes to be levied for the purposes hereinabove authorized may be in the amount or at not to exceed the rate theretofore voted in the district having at the time of such change the greatest scholastic population according to the latest scholastic census and only the unissued bonds of such district voted prior to such change, may be subsequently sold and delivered and any voted, but unissued, bonds of other school districts involved in such annexation or consolidation shall not thereafter be issued.

[Adopted Nov. 6, 1962. Amended Nov. 8, 1966.]

### § 4. Sale of Lands; Investment of Proceeds

Sec. 4. The lands herein set apart to the Public Free School fund, shall be sold under such regulations, at such times, and on such terms as may be prescribed by law; and the Legislature shall not have power to grant any relief to purchasers thereof. The Comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the Board of Education herein provided for, in the bonds of the United States, the State of Texas, or counties in said State, or in such other

securities, and under such restrictions as may be prescribed by law; and the State shall be responsible for all investments.

[Adopted Feb. 15, 1876. Amended Aug. 14, 1883, proclamation Sept. 25, 1883.]

**§ 5. Permanent School Fund; Available School Fund; Use of Funds; Distribution of Available School Fund**

Sec. 5. The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund, and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund. The available school fund shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same, or any part thereof ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891; Nov. 3, 1964.]

**§ 6. County School Lands; Proceeds of Sales; Investment; Available School Fund**

Sec. 6. All lands heretofore, or hereafter granted to the several counties of this State for educational purposes, are of right the property of said counties respectively, to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners' Court of the county. Actual settlers residing on said lands, shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal shall be available fund.

[Adopted Feb. 15, 1876. Amended Aug. 14, 1883, proclamation Sept. 25, 1883.]

**§ 6-a. County Agricultural or Grazing School Land subject to Tax**

Sec. 6-a. All agricultural or grazing school land mentioned in Section 6 of this article owned by any county shall be subject to taxation except for State purposes to the same extent as lands privately owned.

[Adopted Nov. 2, 1926, proclamation Jan. 20, 1927.]

**§ 6-b. County Permanent School Fund; Reduction and its Distribution**

Sec. 6-b. Notwithstanding the provisions of Section 6, Article VII, Constitution of the State of Texas, any county, acting through the commissioners court, may reduce the county permanent school fund of that county and may distribute the amount of the reduction to the independent and common school districts of the county on a per scholastic basis to be used solely for the purpose of reducing bonded indebtedness of those districts or for making permanent improvements. The commissioners court shall, however, retain a sufficient amount of the corpus of the county permanent school fund to pay ad valorem taxes on school lands or royalty interests owned at the time of the distribution. Nothing in this Section affects financial aid to any school district by the state.

[Adopted Nov. 7, 1972.]

**§ 7. Repealed. Aug. 5, 1969**

**§ 8. State Board of Education**

Sec. 8. The Legislature shall provide by law for a State Board of Education, whose members shall be appointed or elected in such manner and by such authority and shall serve for such terms as the Legislature shall prescribe not to exceed six years. The said board shall perform such duties as may be prescribed by law.

[Adopted Feb. 15, 1876. Amended Nov. 6, 1928.]

ASYLUMS

**§ 9. Lands for Benefit of Asylums; Permanent Fund; Sale and Investment of Proceeds**

Sec. 9. All lands heretofore granted for the benefit of the Lunatic, Blind, Deaf and Dumb, and Orphan Asylums, together with such donations as may have been or may hereafter be made to either of them, respectively, as indicated in the several grants, are hereby set apart to provide a permanent fund for the support, maintenance and improvement of said Asylums. And the Legislature may provide for the sale of the lands and the investment of the proceeds in manner as provided for the sale and investment of school lands in section 4 of this Article.

[Adopted Feb. 15, 1876.]

UNIVERSITY

**§ 10. Establishment of University; Agricultural and Mechanical Department**

Sec. 10. The Legislature shall as soon as practicable establish, organize and provide for the maintenance, support and direction of a University of the first class, to be located by a vote of the people of this State, and styled, "The University of Texas", for the promotion of literature, and the arts and sciences, including an Agricultural, and Mechanical department.

[Adopted Feb. 15, 1876.]

**§ 11. Permanent University Fund; Investment; Alternate Sections of Railroad Grant**

Sec. 11. In order to enable the Legislature to perform the duties set forth in the foregoing Sec-

tion, it is hereby declared all lands and other property heretofore set apart and appropriated for the establishment and maintenance of the University of Texas, together with all the proceeds of sales of the same, heretofore made or hereafter to be made, and all grants, donations and appropriations that may hereafter be made by the State of Texas, or from any other source, except donations limited to specific purposes, shall constitute and become a Permanent University Fund. And the same as realized and received into the Treasury of the State (together with such sums belonging to the Fund, as may now be in the Treasury), shall be invested in bonds of the United States, the State of Texas, or counties of said State, or in School Bonds of municipalities, or in bonds of any city of this State, or in bonds issued under and by virtue of the Federal Farm Loan Act approved by the President of the United States, July 17, 1916, and amendments thereto;<sup>1</sup> and the interest accruing thereon shall be subject to appropriation by the Legislature to accomplish the purpose declared in the foregoing Section; provided, that the one-tenth of the alternate Section of the lands granted to railroads, reserved by the State, which were set apart and appropriated to the establishment of the University of Texas, by an Act of the Legislature of February 11, 1858, entitled, "An Act to establish the University of Texas," shall not be included in, or constitute a part of, the Permanent University Fund.

[Adopted Feb. 15, 1876. Amended Nov. 4, 1930; Nov. 8, 1932.]

<sup>1</sup> 12 U.S.C.A. § 641 et seq.

#### § 11 - a. Investment of Permanent University Fund

Sec. 11-a. In addition to the bonds enumerated in Section 11 of Article VII of the Constitution of the State of Texas, the Board of Regents of The University of Texas may invest the Permanent University Fund in securities, bonds or other obligations issued, insured, or guaranteed in any manner by the United States Government, or any of its agencies, and in such bonds, debentures, or obligations, and preferred and common stocks issued by corporations, associations, or other institutions as the Board of Regents of The University of Texas System may deem to be proper investments for said funds; provided, however, that not more than one per cent (1%) of said fund shall be invested in the securities of any one (1) corporation, nor shall more than five per cent (5%) of the voting stock of any one (1) corporation be owned; provided, further, that stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for five (5) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors.

In making each and all of such investments said Board of Regents shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.

The interest, dividends and other income accruing from the investments of the Permanent University Fund, except the portion thereof which is appropriated by the operation of Section 18 of Article VII for the payment of principal and interest on bonds or notes issued thereunder, shall be subject to appropriation by the Legislature to accomplish the purposes declared in Section 10 of Article VII of this Constitution.

This amendment shall be self-enacting, and shall become effective upon its adoption, provided, however, that the Legislature shall provide by law for full disclosure of all details concerning the investments in corporate stocks and bonds and other investments authorized herein.

[Adopted Nov. 6, 1956. Amended Nov. 5, 1968.]

#### § 12. Sale of Lands

Sec. 12. The land herein set apart to the University fund shall be sold under such regulations, at such times, and on such terms as may be provided by law; and the Legislature shall provide for the prompt collection, at maturity, of all debts due on account of University lands, heretofore sold, or that may hereafter be sold, and shall in neither event have the power to grant relief to the purchasers.

[Adopted Feb. 15, 1876.]

#### § 13. Agricultural and Mechanical College

Sec. 13. The Agricultural and Mechanical College of Texas, established by an Act of the Legislature passed April 17th, 1871, located in the county of Brazos, is hereby made, and constituted a Branch of the University of Texas, for instruction in Agriculture, the Mechanic Arts, and the Natural Sciences connected therewith. And the Legislature shall at its next session, make an appropriation, not to exceed forty thousand dollars, for the construction and completion of the buildings and improvements, and for providing the furniture necessary to put said College in immediate and successful operation.

[Adopted Feb. 15, 1876.]

#### § 14. College or Branch University for Colored Youths; Taxes and Appropriations

Sec. 14. The Legislature shall also when deemed practicable, establish and provide for the maintenance of a College or Branch University for the instruction of the colored youths of the State, to be located by a vote of the people: Provided, that no tax shall be levied, and no money appropriated, out of the general revenue, either for this purpose or for the establishment, and erection of the buildings of the University of Texas.

[Adopted Feb. 15, 1876.]

#### § 15. Grant of Additional Lands to University

Sec. 15. In addition to the lands heretofore granted to the University of Texas, there is hereby set apart, and appropriated, for the endowment maintenance, and support of said University and its branches, one million acres of the unappropriated public domain of the State, to be designated, and surveyed as may be provided by law; and said lands shall be sold under the same regulations, and the proceeds invested in the same manner, as is provided for the sale and investment of the permanent University fund; and the Legislature shall not have

power to grant any relief to the purchasers of said lands.

[Adopted Feb. 15, 1876.]

#### § 16. Terms of Office

Sec. 16. The Legislature shall fix by law the terms of all offices of the public school system and of the State institutions of higher education, inclusive, and the terms of members of the respective boards, not to exceed six years.

[Adopted Nov. 6, 1928.]

*County taxation of University lands, see § 16, post.*

#### § 16. County Taxation of University Lands

Sec. 16. All land mentioned in Sections 11, 12 and 15 of Article VII, of the Constitution of the State of Texas, now belonging to the University of Texas shall be subject to the taxation for county purposes to the same extent as lands privately owned; provided they shall be rendered for taxation upon values fixed by the State Tax Board; and providing that the State shall remit annually to each of the counties in which said lands are located an amount equal to the tax imposed upon said land for county purposes.

[Adopted Nov. 4, 1930.]

*Terms of office, see § 16, ante.*

#### § 17. State Ad Valorem Tax for Pensions and for Permanent Improvements at Institutions of Higher Learning

Sec. 17. In lieu of the state ad valorem tax on property of Seven Cents (7¢) on the One Hundred Dollars (\$100.00) valuation heretofore permitted to be levied by Section 51 of Article III, as amended, there is hereby levied, in addition to all other taxes permitted by the Constitution of Texas, a state ad valorem tax on property of Two Cents (2¢) on the One Hundred Dollars (\$100.00) valuation for the purpose of creating a special fund for the continuing payment of Confederate pensions as provided under Section 51, Article III, and for the establishment and continued maintenance of the State Building Fund as provided in Section 51b, Article III, of the Constitution.

Also, there is hereby levied, in addition to all other taxes permitted by the Constitution of Texas, a state ad valorem tax on property of Ten Cents (10¢) on the One Hundred Dollars (\$100.00) valuation for the purpose of creating a special fund for the purpose of acquiring, constructing and initially equipping buildings or other permanent improvements at the designated institutions of higher learning provided that none of the proceeds of this tax shall be used for auxiliary enterprises; and the governing board of each such institution of higher learning is fully authorized to pledge all or any part of said funds allotted to such institution as hereinafter provided, to secure bonds or notes issued for the purpose of acquiring, constructing and initially equipping such buildings or other permanent improvements at said respective institutions. Such bonds or notes shall be issued in such amounts as may be determined by the governing boards of said respective institutions, shall bear interest not to exceed four per cent (4%) per annum and shall mature serially or otherwise in not more than ten (10) years; provided further, that

the state tax on property as heretofore permitted to be levied by Section 9 of Article VIII, as amended, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed Thirty Cents (30¢) on the One Hundred Dollars (\$100.00) valuation. All bonds shall be examined and approved by the Attorney General of the State of Texas, and when so approved shall be incontestable; and all approved bonds shall be registered in the office of the Comptroller of Public Accounts of the State of Texas. Said bonds shall be sold only through competitive bids and shall never be sold for less than their par value and accrued interest.

The following state institutions then in existence shall be eligible to receive funds raised from said Ten Cent (10¢) tax levy for the twelve-year period beginning January 1, 1966, and for the succeeding ten-year period:

Arlington State College at Arlington<sup>1</sup>  
 Texas Technological College at Lubbock  
 North Texas State University at Denton  
 Lamar State College of Technology at Beaumont  
 Texas College of Arts and Industries at Kingsville  
 Texas Woman's University at Denton  
 Texas Southern University at Houston  
 Midwestern University at Wichita Falls  
 University of Houston at Houston  
 Pan American College at Edinburg  
 East Texas State College at Commerce  
 Sam Houston State Teachers College at Huntsville  
 Southwest Texas State College at San Marcos  
 West Texas State University at Canyon  
 Stephen F. Austin State College at Nacogdoches  
 Sul Ross State College at Alpine  
 Angelo State College at San Angelo.

Eighty-five per cent (85%) of such funds shall be allocated by the Comptroller of Public Accounts of the State of Texas on June 1, 1966, and fifteen per cent (15%) of such funds shall be allocated by said Comptroller on June 1, 1972, based on the following determinations:

(1) Ninety per cent (90%) of the funds allocated on June 1, 1966, shall be allocated to state institutions based on projected enrollment increases published by the Coordinating Board, Texas College and University System for fall 1966 to fall 1978.

(2) Ten per cent (10%) of the funds allocated on June 1, 1966 shall be allocated to certain of the eligible state institutions based on the number of additional square feet needed in educational and general facilities by such eligible state institution to meet the average square feet per full time equivalent student of all state senior institutions (currently numbering twenty-two).

(3) All of the funds allocated on June 1, 1972, shall be allocated to certain of the eligible state institutions based on determinations used in the June 1, 1966, allocations except that the alloca-

tion of fifty per cent (50%) of the funds allocated on June 1, 1972, shall be based on projected enrollment increases for fall 1972 to fall 1978, and fifty per cent (50%) of such funds allocated on June 1, 1972, shall be based on the need for additional square feet of educational and general facilities.

Not later than June first of the beginning year of each succeeding ten-year period the Comptroller of Public Accounts of the State of Texas shall reallocate eighty-five per cent (85%) of the funds to be derived from said Ten Cent (10¢) ad valorem tax for said ten-year period and not later than June first of the sixth year of each succeeding ten-year period said Comptroller shall reallocate fifteen per cent (15%) of such funds to the eligible state institutions then in existence based on determinations for the said ten-year period that are similar to the determinations used in allocating funds during the twelve-year period beginning January 1, 1966, except that enrollment projections for succeeding ten-year periods will be from the fall semester of the first year to the fall semester of the tenth year. All such designated institutions of higher learning shall not thereafter receive any general revenue funds for the acquiring or constructing of buildings or other permanent improvements for which said Ten Cent (10¢) ad valorem tax is herein provided, except in case of fire, flood, storm, or earthquake occurring at any such institution, in which case an appropriation in an amount sufficient to replace the uninsured loss so incurred may be made by the Legislature out of any General Revenue Funds. The State Comptroller of Public Accounts shall draw all necessary and proper warrants upon the State Treasury in order to carry out the purpose of this Amendment, and the State Treasurer shall pay warrants so issued out of the special fund hereby created for said purpose. This Amendment shall be self-enacting. It shall become operative or effective upon its adoption so as to supersede and repeal the former provisions of this Section; provided further, that nothing herein shall be construed as impairing the obligation incurred by any outstanding notes or bonds heretofore issued by any state institution of higher learning under this Section prior to the adoption of this Amendment but such notes or bonds shall be paid, both as to principal and interest, from the fund as allocated to any such institution.

[Adopted Aug. 23, 1947. Amended Nov. 16, 1956; Nov. 2, 1965.]

<sup>1</sup> Name changed to "The University of Texas at Arlington." See Education Code, § 68.02.

**§ 18. Texas A & M University System; University of Texas System; Bonds or Notes Payable from income of Permanent University Fund**

Sec. 18. For the purpose of constructing, equipping, or acquiring buildings or other permanent improvements for the Texas A & M University System, including Texas A & M University, Prairie View Agricultural and Mechanical College of Texas at Prairie View, Tarleton State College at Stephenville, Texas Agricultural Experiment Stations, Texas Agricultural Extension Service, Texas Engineering Experiment Station at College Station, Texas Engineering Extension Service at College Station, and the Texas Forest Service, the Board of Directors is hereby authorized to issue negotiable bonds or notes

not to exceed a total amount of one-third ( $\frac{1}{3}$ ) of twenty per cent (20%) of the value of the Permanent University Fund exclusive of real estate at the time of any issuance thereof; provided, however, no building or other permanent improvement shall be acquired or constructed hereunder for use by any part of the Texas A & M University System, except at and for the use of the general academic institutions of said System, namely, Texas A & M University, Tarleton State College, and Prairie View A & M College, without the prior approval of the Legislature or of such agency as may be authorized by the Legislature to grant such approval; and for the purpose of constructing, equipping, or acquiring buildings or other permanent improvements for The University of Texas System, including The Main University of Texas at Austin,<sup>1</sup> The University of Texas Medical Branch at Galveston, The University of Texas Southwestern Medical School at Dallas, The University of Texas Dental Branch at Houston, Texas Western College of The University of Texas at El Paso, The University of Texas M. D. Anderson Hospital and Tumor Institute at Houston, The University of Texas Postgraduate School of Medicine, The University of Texas School of Public Health,<sup>2</sup> McDonald Observatory at Mount Locke,<sup>3</sup> and the Marine Science Institute at Port Aransas,<sup>4</sup> the Board of Regents of The University of Texas is hereby authorized to issue negotiable bonds and notes not to exceed a total amount of two-thirds ( $\frac{2}{3}$ ) of twenty per cent (20%) of the value of the Permanent University Fund exclusive of real estate at the time of any issuance thereof; provided, however, no building or other permanent improvement shall be acquired or constructed hereunder for use by any institution of The University of Texas System, except at and for the use of the general academic institutions of said System, namely, The Main University and Texas Western College,<sup>5</sup> without the prior approval of the Legislature or of such agency as may be authorized by the Legislature to grant such approval. Any bonds or notes issued hereunder shall be payable solely out of the income from the Permanent University Fund. Bonds or notes so issued shall mature serially or otherwise not more than thirty (30) years from their respective dates.

The Texas A & M University System and all of the institutions constituting such System as hereinabove enumerated, and The University of Texas System, and all of the institutions constituting such System as hereinabove enumerated, shall not receive any General Revenue funds for the acquiring or constructing of buildings or other permanent improvements, except in case of fire, flood, storm, or earthquake occurring at any such institution, in which case an appropriation in an amount sufficient to replace the uninsured loss so incurred may be made by the Legislature out of General Revenue funds.

Said Boards are severally authorized to pledge the whole or any part of the respective interests of Texas A & M University and of The University of Texas in the income from the Permanent University Fund, as such interests are now apportioned by Chapter 42 of the Acts of the Regular Session of the 42nd Legislature of the State of Texas<sup>6</sup> for the purpose of securing the payment of the principal and interest of such bonds or notes. The Permanent University Fund may be invested in such bonds or notes.

All bonds or notes issued pursuant hereto shall be approved by the Attorney General of Texas and when so approved shall be incontestable. This Amendment shall be self-enacting; provided, however, that nothing herein shall be construed as impairing any obligation heretofore created by the issuance of any outstanding notes or bonds under this Section by the respective Boards prior to the adoption of this Amendment but any such outstanding notes or bonds shall be paid in full, both principal and interest, in accordance with the terms of such contracts.

[Adopted Aug. 23, 1947. Amended Nov. 6, 1956; Nov. 8, 1966.]

<sup>1</sup> Name changed to "The University of Texas at Austin." See Education Code, § 67.02.

<sup>2</sup> Name changed to "The University of Texas School of Public Health at Houston." See Education Code, § 73.201.

<sup>3</sup> Name changed to "The University of Texas McDonald Observatory at Mount Locke." See Education Code, § 67.51.

<sup>4</sup> Name changed to "The University of Texas Marine Science Institutes at Port Aransas." See Education Code, § 67.51.

<sup>5</sup> Name changed to "The University of Texas at El Paso." See Education Code, § 69.02.

<sup>6</sup> Civil Statutes, art. 2592 (Repealed). See, now, Education Code, § 66.03.

ARTICLE VIII

TAXATION AND REVENUE

Section

1. Equality and Uniformity; Tax in Proportion to Value; Poll Tax; Occupation Taxes; Income Tax; Exemption of Household Furniture.
- 1-a. No State Ad Valorem Tax Levy; County Levy for Roads and Flood Control; Tax Donations.
- 1-b. Residence Homestead Exemption.
- 1-c. Effectiveness of Resolution.
- 1-d. Assessment of Lands designated for Agricultural Use.
- 1-e. Abolition of Ad Valorem Property Taxes.
2. Occupation Taxes; Equality and Uniformity; Exemptions from Taxation.
3. General Laws; Public Purposes.
4. Surrender or Suspension of Taxing Power.
5. Railroad Property; Liability to Municipal Taxation.
6. Withdrawal of Money from Treasury; Duration of Appropriation.
7. Borrowing, Withholding or Diverting Special Funds.
- 7-a. Revenues from Motor Vehicle Registration Fees and Taxes on Motor Fuels and Lubricants; Purposes for which Used.
8. Railroad Companies; Assessment and Collection of Taxes.
9. Maximum State Tax; County, City and Town Levies; County Funds; Local Road Laws.
10. Release from Payment of Taxes.
11. Place of Assessment; Value of Property not rendered by Owner.
12. Repealed.
13. Sales of Lands and other Property for Taxes; Redemption.
14. Assessor and Collector of Taxes.
15. Lien of Assessment; Seizure and Sale of Property.
16. Sheriff to be Assessor and Collector of Taxes; Counties having 10,000 or more Inhabitants.
- 16-a. Assessor-Collector of Taxes; Counties having less than 10,000 Inhabitants.
17. Specification of Subjects not limitation of Legislature's Power.
18. Equalization of Valuations; Classification of Lands.
19. Farm Products and Family Supplies; Exemption.
20. Fair Cash Market Value not to be Exceeded; Discounts for Advance Payment.

§ 1. Equality and Uniformity; Tax in Proportion to Value; Poll Tax; Occupation Taxes; Income Tax; Exemption of Household Furniture

Sec. 1. Taxation shall be equal and uniform. All property in this State, whether owned by natural

persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The Legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; provided, that two hundred and fifty dollars worth of household and kitchen furniture, belonging to each family in this State shall be exempt from taxation, and provided further that the occupation tax levied by any county, city or town for any year on persons or corporations pursuing any profession or business, shall not exceed one half of the tax levied by the State for the same period on such profession or business.

[Adopted Feb. 15, 1876.]

§ 1-a. No State Ad Valorem Tax Levy; County Levy for Roads and Flood Control; Tax Donations

Sec. 1-a. From and after January 1, 1951, no State ad valorem tax shall be levied upon any property within this State for general revenue purposes. From and after January 1, 1951, the several counties of the State are authorized to levy ad valorem taxes upon all property within their respective boundaries for county purposes, except the first Three Thousand Dollars (\$3,000) value of residential homesteads of married or unmarried adults, male or female, including those living alone, not to exceed thirty cents (30¢) on each One Hundred Dollars (\$100) valuation, in addition to all other ad valorem taxes authorized by the Constitution of this State, provided the revenue derived therefrom shall be used for construction and maintenance of Farm to Market Roads or for Flood Control, except as herein otherwise provided.

Provided that in those counties or political subdivisions or areas of the State from which tax donations have heretofore been granted, the State Automatic Tax Board shall continue to levy the full amount of the State ad valorem tax for the duration of such donation, or until all legal obligations heretofore authorized by the law granting such donation or donations shall have been fully discharged, whichever shall first occur; provided that if such donation to any such county or political subdivision is for less than the full amount of State ad valorem taxes so levied, the portion of such taxes remaining over and above such donation shall be retained by said county or subdivision.

[Adopted Nov. 8, 1932. Amended Aug. 26, 1933; Nov. 2, 1948; Nov. 6, 1973.]

§ 1-b. Residence Homestead Exemption

Sec. 1-b. (a) Three Thousand Dollars (\$3,000) of the assessed taxable value of all residence homesteads of married or unmarried adults, male or female, including those living alone, shall be exempt from all taxation for all State purposes.

(b) From and after January 1, 1973, the governing body of any county, city, town, school district, or other political subdivision of the State may exempt by its own action not less than Three Thousand Dollars (\$3,000) of the assessed value of residence

homesteads of married or unmarried persons sixty-five (65) years of age or older, including those living alone, from all ad valorem taxes thereafter levied by the political subdivision. As an alternative, upon receipt of a petition signed by twenty percent (20%) of the voters who voted in the last preceding election held by the political subdivision, the governing body of the subdivision shall call an election to determine by majority vote whether an amount not less than Three Thousand Dollars (\$3,000) as provided in the petition, of the assessed value of residence homesteads of persons sixty-five (65) years of age or over shall be exempt from ad valorem taxes thereafter levied by the political subdivision. Where any ad valorem tax has theretofore been pledged for the payment of any debt, the taxing officers of the political subdivision shall have authority to continue to levy and collect the tax against the homestead property at the same rate as the tax so pledged until the debt is discharged, if the cessation of the levy would impair the obligation of the contract by which the debt was created.

[Adopted Nov. 2, 1948. Amended Nov. 7, 1972; Nov. 6, 1973.]

#### § 1 - c. Effectiveness of Resolution

Sec. 1-c. Provided, however, the terms of this Resolution<sup>1</sup> shall not be effective unless House Joint Resolution No. 24<sup>2</sup> is adopted by the people and in no event shall this Resolution go into effect until January 1, 1951.

[Adopted Nov. 2, 1948.]

<sup>1</sup> House Joint Resolution No. 35 of, 1947, proposing addition of this section and section 1-b to this article.

<sup>2</sup> Proposing amendment of section 1-a of this article, which was adopted Nov. 2, 1948.

#### § 1 - d. Assessment of Lands designated for Agricultural Use

Sec. 1-d. (a) All land owned by natural persons which is designated for agricultural use in accordance with the provisions of this Section shall be assessed for all tax purposes on the consideration of only those factors relative to such agricultural use. "Agricultural use" means the raising of livestock or growing of crops, fruit, flowers, and other products of the soil under natural conditions as a business venture for profit, which business is the primary occupation and source of income of the owner.

(b) For each assessment year the owner wishes to qualify his land under provisions of this Section as designated for agricultural use he shall file with the local tax assessor a sworn statement in writing describing the use to which the land is devoted.

(c) Upon receipt of the sworn statement in writing the local tax assessor shall determine whether or not such land qualifies for the designation as to agricultural use as defined herein and in the event it so qualifies he shall designate such land as being for agricultural use and assess the land accordingly.

(d) Such local tax assessor may inspect the land and require such evidence of use and source of income as may be necessary or useful in determining whether or not the agricultural use provision of this article applies.

(e) No land may qualify for the designation provided for in this Act unless for at least three (3) successive years immediately preceding the assessment date the land has been devoted exclusively for

agricultural use, or unless the land has been continuously developed for agriculture during such time.

(f) Each year during which the land is designated for agricultural use, the local tax assessor shall note on his records the valuation which would have been made had the land not qualified for such designation under this Section. If designated land is subsequently diverted to a purpose other than that of agricultural use, or is sold, the land shall be subject to an additional tax. The additional tax shall equal the difference between taxes paid or payable, hereunder, and the amount of tax payable for the preceding three years had the land been otherwise assessed. Until paid, there shall be a lien for additional taxes and interest on land assessed under the provisions of this Section.

(g) The valuation and assessment of any minerals or subsurface rights to minerals shall not come within the provisions of this Section.

[Adopted Nov. 8, 1966.]

#### § 1 - e. Abolition of Ad Valorem Property Taxes

Sec. 1-e. 1. From and after December 31, 1978, no State ad valorem taxes shall be levied upon any property within this State for State purposes except the tax levied by Article VII, Section 17, for certain institutions of higher learning.

2. The State ad valorem tax authorized by Article VII, Section 3, of this Constitution shall be imposed at the following rates on each One Hundred Dollars (\$100.00) valuation for the years 1968 through 1974: On January 1, 1968, Thirty-five Cents (35¢); on January 1, 1969, Thirty Cents (30¢); on January 1, 1970, Twenty-five Cents (25¢); on January 1, 1971, Twenty Cents (20¢); on January 1, 1972, Fifteen Cents (15¢); on January 1, 1973, Ten Cents (10¢); on January 1, 1974, Five Cents (5¢); and thereafter no such tax for school purposes shall be levied and collected. An amount sufficient to provide free text books for the use of children attending the public free schools of this State shall be set aside from any revenues deposited in the Available School Fund, provided, however, that should such funds be insufficient, the deficit may be met by appropriation from the general funds of the State.

3. The State ad valorem tax of Two Cents (2¢) on the One Hundred Dollars valuation levied by Article VII, Section 17, of this Constitution shall not be levied after December 31, 1976. At any time prior to December 31, 1976, the Legislature may establish a trust fund solely for the benefit of the widows of Confederate veterans and such Texas Rangers and their widows as are eligible for retirement or disability pensions under the provisions of Article XVI, Section 66, of this Constitution, and after such fund is established the ad valorem tax levied by Article VII, Section 17, shall not thereafter be levied.

4. Unless otherwise provided by the Legislature, after December 31, 1976 all delinquent State ad valorem taxes together with penalties and interest thereon, less lawful costs of collection, shall be used to secure bonds issued for permanent improvements at institutions of higher learning, as authorized by Article VII, Section 17, of this Constitution.

5. The fees paid by the State for both assessing and collecting State ad valorem taxes shall not exceed two per cent (2%) of the State taxes collected. This subsection shall be self-executing.

[Adopted Nov. 5, 1968.]

## § 2. Occupation Taxes; Equality and Uniformity; Exemptions from Taxation

Sec. 2. (a) All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship, also any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society, and which yields no revenue whatever to such church or religious society; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property mentioned in this Section shall be null and void.

(b) The Legislature may, by general law, exempt property owned by a disabled veteran or by the surviving spouse and surviving minor children of a disabled veteran. A disabled veteran is a veteran of the armed services of the United States who is classified as disabled by the Veterans' Administration or by a successor to that agency; or the military service in which he served. A veteran who is certified as having a disability of less than 10 percent is not entitled to an exemption. A veteran having a disability rating of not less than 10 percent nor more than 30 percent may be granted an exemption from taxation for property valued at up to \$1,500. A veteran having a disability rating of more than 30 percent but not more than 50 percent may be granted an exemption from taxation for property valued at up to \$2,000. A veteran having a disability rating of more than 50 percent but not more than 70 percent may be granted an exemption from taxation for property valued at up to \$2,500. A veteran who has a disability rating of more than 70 percent, or a veteran who has a disability rating of not less than 10 percent and has attained the age of 65, or a disabled veteran whose disability consists of the loss or loss of use of one or more limbs, total blindness in one or both eyes, or paraplegia, may be granted an exemption from taxation for property valued at up to \$3,000. The spouse and children of any member of the United States Armed Forces who loses his life while on active duty will be granted an exemption from taxation for property valued at up to \$2,500. A deceased disabled veteran's surviving spouse and

children may be granted an exemption which in the aggregate is equal to the exemption to which the decedent was entitled at the time he died.

[Adopted Feb. 15, 1876. Amended Nov. 6, 1906, proclamation Jan. 7, 1907; Nov. 6, 1928; Nov. 7, 1972.]

## § 3. General Laws; Public Purposes

Sec. 3. Taxes shall be levied and collected by general laws and for public purposes only.

[Adopted Feb. 15, 1876.]

## § 4. Surrender or Suspension of Taxing Power

Sec. 4. The power to tax corporations and corporate property shall not be surrendered or suspended by act of the Legislature, by any contract or grant to which the State shall be a party.

[Adopted Feb. 15, 1876.]

## § 5. Railroad Property; Liability to Municipal Taxation

Sec. 5. All property of railroad companies, of whatever description, lying or being within the limits of any city or incorporated town within this State, shall bear its proportionate share of municipal taxation, and if any such property shall not have been heretofore rendered, the authorities of the city or town within which it lies, shall have power to require its rendition, and collect the usual municipal tax thereon, as on other property lying within said municipality.

[Adopted Feb. 15, 1876.]

## § 6. Withdrawal of Money from Treasury; Duration of Appropriation

Sec. 6. No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the first Legislature to assemble under this Constitution, which may make the necessary appropriations to carry on the government until the assembling of the sixteenth Legislature.

[Adopted Feb. 15, 1876.]

## § 7. Borrowing, Withholding or Diverting Special Funds

Sec. 7. The Legislature shall not have power to borrow, or in any manner divert from its purpose, any special fund that may, or ought to, come into the Treasury; and shall make it penal for any person or persons to borrow, withhold or in any manner to divert from its purpose any special fund, or any part thereof.

[Adopted Feb. 15, 1876.]

## § 7-a. Revenues from Motor Vehicle Registration Fees and Taxes on Motor Fuels and Lubricants; Purposes for which Used

Sec. 7-a. Subject to legislative appropriation, allocation and direction, all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees, and all taxes, except gross production and ad valorem taxes, on motor fuels and lubricants used to propel motor vehicles over public roadways, shall be used for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration

of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads; and for the payment of the principal and interest on county and road district bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, for payment out of the County and Road District Highway Fund under existing law; provided, however, that one-fourth ( $\frac{1}{4}$ ) of such net revenue from the motor fuel tax shall be allocated to the Available School Fund; and, provided, however, that the net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each County and the percentage allowed to be retained by each County under the laws in effect on January 1, 1945. Nothing contained herein shall be construed as authorizing the pledging of the State's credit for any purpose.

[Adopted Nov. 5, 1946.]

**§ 8. Railroad Companies; Assessment and Collection of Taxes**

Sec. 8. All property of railroad companies shall be assessed, and the taxes collected in the several counties in which said property is situated, including so much of the roadbed and fixtures as shall be in each county. The rolling stock may be assessed in gross in the county where the principal office of the company is located, and the county tax paid upon it, shall be apportioned by the Comptroller, in proportion to the distance such road may run through any such county, among the several counties through which the road passes, as a part of their tax assets.

[Adopted Feb. 15, 1876.]

**§ 9. Maximum State Tax; County, City and Town Levies; County Funds; Local Road Laws**

Sec. 9. The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed Thirty-five Cents (35¢) on the One Hundred Dollars (\$100) valuation; and no county, city or town shall levy a tax rate in excess of Eighty Cents (80¢) on the One Hundred Dollars (\$100) valuation in any one (1) year for general fund, permanent improvement fund, road and bridge fund and jury fund purposes; provided further that at the time the Commissioners Court meets to levy the annual tax rate for each county it shall levy whatever tax rate may be needed for the four (4) constitutional purposes; namely, general fund, permanent improvement fund, road and bridge fund and jury fund so long as the Court does not impair any outstanding bonds or other obligations and so long as the total of the foregoing tax levies does not exceed Eighty Cents (80¢) on the One Hundred Dollars (\$100) valuation in any one (1) year. Once the Court has levied the annual tax rate, the same shall remain in force and effect during that taxable year; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided, that a majority of the qualified property taxpaying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed Fifteen Cents (15¢) on the One Hundred Dollars (\$100) valuation of the property subject to taxation in such county. Any county may

put all tax money collected by the county into one general fund, without regard to the purpose or source of each tax. And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws. This Section shall not be construed as a limitation of powers delegated to counties, cities or towns by any other Section or Sections of this Constitution.

[Adopted Feb. 15, 1876. Amended Aug. 14, 1883, proclamation Sept. 25, 1883; Nov. 4, 1890, proclamation Dec. 19, 1890; Nov. 6, 1906, proclamation Jan. 7, 1907; Nov. 7, 1944; Nov. 6, 1956; Nov. 11, 1967.]

**§ 10. Release from Payment of Taxes**

Sec. 10. The Legislature shall have no power to release the inhabitants of, or property in, any county, city or town from the payment of taxes levied for State or county purposes, unless in case of great public calamity in any such county, city or town, when such release may be made by a vote of two-thirds of each House of the Legislature.

[Adopted Feb. 15, 1876.]

**§ 11. Place of Assessment; Value of Property not rendered by Owner**

Sec. 11. All property, whether owned by persons or corporations shall be assessed for taxation, and the taxes paid in the county where situated, but the Legislature may, by a two-thirds vote, authorize the payment of taxes of non-residents of counties to be made at the office of the Comptroller of Public Accounts. And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer.

[Adopted Feb. 15, 1876.]

**§ 12. Repealed. Aug. 5, 1969**

**§ 13. Sales of Lands and other Property for Taxes; Redemption**

Sec. 13. Provision shall be made by the first Legislature for the speedy sale, without the necessity of a suit in Court, of a sufficient portion of all lands and other property for the taxes due thereon, and every year thereafter for the sale in like manner of all lands and other property upon which the taxes have not been paid; and the deed of conveyance to the purchaser for all lands and other property thus sold shall be held to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud; provided, that the former owner shall within two years from date of the filing for record of the Purchaser's Deed have the right to redeem the land on the following basis:

(1) Within the first year of the redemption period upon the payment of the amount of money paid for the land, including One (\$1.00) Dollar Tax Deed Recording Fee and all taxes, penalties, interest and costs paid plus not exceeding twenty-five (25%) percent of the aggregate total;

(2) Within the last year of the redemption period upon the payment of the amount of money paid for the land, including One (\$1.00) Dollar Tax Deed Recording Fee and all taxes, penalties, interest and costs paid plus not exceeding fifty (50%) percent of the aggregate total.

[Adopted Feb. 15, 1876. Amended Nov. 8, 1932.]

**§ 14. Assessor and Collector of Taxes**

Sec. 14. Except as provided in Section 16 of this Article, there shall be elected by the qualified voters of each county, an Assessor and Collector of Taxes, who shall hold his office for four years and until his successor is elected and qualified; and such Assessor and Collector of Taxes shall perform all the duties with respect to assessing property for the purpose of taxation and of collecting taxes, as may be prescribed by the Legislature.

[Adopted Feb. 15, 1876. Amended Nov. 8, 1932; Nov. 2, 1954.]

**§ 15. Lien of Assessment; Seizure and Sale of Property**

Sec. 15. The annual assessment made upon landed property shall be a special lien thereon; and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide.

[Adopted Feb. 15, 1876.]

**§ 16. Sheriff to be Assessor and Collector of Taxes; Counties having 10,000 or more Inhabitants**

Sec. 16. The Sheriff of each county, in addition to his other duties, shall be the Assessor and Collector of Taxes therefor; but, in counties having 10,000 or more inhabitants, to be determined by the last preceding census of the United States, an Assessor and Collector of Taxes shall be elected as provided in Section 14 of this Article, and shall hold office for four years and until his successor shall be elected and qualified.

[Adopted Feb. 15, 1876. Amended Nov. 8, 1932; Nov. 2, 1954.]

**§ 16-a. Assessor-Collector of Taxes; Counties having less than 10,000 Inhabitants**

Sec. 16-a. In any county having a population of less than ten thousand (10,000) inhabitants, as determined by the last preceding census of the United States, the Commissioners Court may submit to the qualified property taxpaying voters of such county at an election the question of adding an Assessor-Collector of Taxes to the list of authorized county officials. If a majority of such voters voting in such election shall approve of adding an Assessor-Collector of Taxes to such list, then such official shall be elected at the next General Election for such Constitutional term of office as is provided for other Tax Assessor-Collectors in this State.

[Adopted Nov. 2, 1954.]

**§ 17. Specification of Subjects not limitation of Legislature's Power**

Sec. 17. The specification of the objects and subjects of taxation shall not deprive the Legislature of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed in this Constitution.

[Adopted Feb. 15, 1876.]

**§ 18. Equalization of Valuations; Classification of Lands**

Sec. 18. The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, (the County Commissioners' Court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties.

[Adopted Feb. 15, 1876.]

**§ 19. Farm Products and Family Supplies; Exemption**

Sec. 19. Farm products in the hands of the producer, and family supplies for home and farm use, are exempt from all taxation until otherwise directed by a two-thirds vote of all the members elect to both Houses of the Legislature.

[Adopted Sept. 2, 1879, proclamation Oct. 14, 1879.]

**§ 20. Fair Cash Market Value not to be Exceeded; Discounts for Advance Payment**

Sec. 20. No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair cash market value nor shall any Board of Equalization of any governmental or political subdivision or taxing district within this State fix the value of any property for tax purposes at more than its fair cash market value; provided that in order to encourage the prompt payment of taxes, the Legislature shall have the power to provide that the taxpayer shall be allowed by the State and all governmental and political subdivisions and taxing districts of the State a three per cent (3%) discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State if such taxes are paid ninety (90) days before the date when they would otherwise become delinquent; and the taxpayer shall be allowed a two per cent (2%) discount on said taxes if paid sixty (60) days before said taxes would become delinquent; and the taxpayer shall be allowed a one per cent (1%) discount if said taxes are paid thirty (30) days before they would otherwise become delinquent. This amendment shall be effective January 1, 1939. The Legislature shall pass necessary laws for the proper administration of this Section.

[Adopted Aug. 23, 1937.]

**ARTICLE IX**

**COUNTIES**

Section

1. Creation of Counties.

1-A. Counties bordering on Gulf of Mexico or Tidewater Limits Thereof; Regulation of Motor Vehicles on Beaches.

**COUNTY SEATS**

2. Removal of County Seats.

**HOME RULE CHARTERS**

3. Repealed.

**HOSPITAL DISTRICTS**

4. County-wide Hospital Districts.

5. City of Amarillo; Wichita County; Jefferson County; Creation of Hospital Districts.

6. Lamar County Hospital District; Abolition; Transfer of Assets.
7. Hidalgo County; Hospital District; Creation; Tax Rate.
8. County Commissioners Precinct No. 4 of Comanche County; Hospital District; Creation; Tax Rate.
9. Hospital Districts; Creation, Operation, Powers, Duties and Dissolution.
10. Blank.
11. Hospital Districts; Ochiltree, Castro, Hansford and Hopkins Counties; Creation; Taxes.
12. Airport Authorities.
13. Participation of Municipalities and other Political Subdivisions in establishment of Mental Health, Mental Retardation or Public Health Services.

### § 1. Creation of Counties

Sec. 1. The Legislature shall have power to create counties for the convenience of the people subject to the following provisions:

First. In the territory of the State exterior to all counties now existing, no new counties shall be created with a less area than nine hundred square miles, in a square form, unless prevented by pre-existing boundary lines. Should the State lines render this impracticable in border counties, the area may be less. The territory referred to may, at any time, in whole or in part, be divided into counties in advance of population and attached, for judicial and land surveying purposes, to the most convenient organized county or counties.

Second. Within the territory of any county or counties now existing, no new county shall be created with a less area than seven hundred square miles, nor shall any such county now existing be reduced to a less area than seven hundred square miles. No new counties shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may in whole or in part be taken. Counties of a less area than nine hundred, but of seven hundred or more square miles, within counties now existing, may be created by a two-thirds vote of each House of the Legislature, taken by yeas and nays and entered on the journals. Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote. When any part of a county is stricken off and attached to, or created into another county, the part stricken off shall be holden for and obliged to pay its proportion of all the liabilities then existing, of the county from which it was taken, in such manner as may be prescribed by law.

Third. No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change shall have been submitted, in such manner as may be provided by law, to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each.

[Adopted Feb. 15, 1876.]

### § 1-A. Counties bordering on Gulf of Mexico or Tidewater Limits Thereof; Regulation of Motor Vehicles on Beaches

Sec. 1-A. The Legislature may authorize the governing body of any county bordering on the Gulf of Mexico or the tidewater limits thereof to regulate

and restrict the speed, parking and travel of motor vehicles on beaches available to the public by virtue of public right and the littering of such beaches.

Nothing in this amendment shall increase the rights of any riparian or littoral landowner with regard to beaches available to the public by virtue of public right or submerged lands.

The Legislature may enact any laws not inconsistent with this Section which it may deem necessary to permit said counties to implement, enforce and administer the provisions contained herein.

Should the Legislature enact legislation in anticipation of the adoption of this amendment, such legislation shall not be invalid by reason of its anticipatory character.

[Adopted Nov. 6, 1962.]

### COUNTY SEATS

#### § 2. Removal of County Seats

Sec. 2. The Legislature shall pass laws regulating the manner of removing county seats, but no county seat situated within five miles of the geographical centre of the county shall be removed, except by a vote of two-thirds of all the electors voting on the subject. A majority of such electors, however, voting at such election, may remove a county seat from a point more than five miles from the geographical centre of the county to a point within five miles of such centre, in either case the centre to be determined by a certificate from the Commissioner of the General Land Office.

[Adopted Feb. 15, 1876.]

### HOME RULE CHARTERS

#### § 3. Repealed. Aug. 5, 1969

### HOSPITAL DISTRICTS

#### § 4. County-wide Hospital Districts

Sec. 4. The Legislature may by law authorize the creation of county-wide Hospital Districts in counties having a population in excess of 190,000 and in Galveston County, with power to issue bonds for the purchase, acquisition, construction, maintenance and operation of any county owned hospital, or where the hospital system is jointly operated by a county and city within the county, and to provide for the transfer to the county-wide Hospital District of the title to any land, buildings or equipment, jointly or separately owned, and for the assumption by the district of any outstanding bonded indebtedness theretofore issued by any county or city for the establishment of hospitals or hospital facilities; to levy a tax not to exceed seventy-five (\$.75) cents on the One Hundred (\$100.00) Dollars valuation of all taxable property within such district, provided, however, that such district shall be approved at an election held for that purpose, and that only qualified, property taxpaying voters in such county shall vote therein; provided further, that such Hospital District shall assume full responsibility for providing medical and hospital care to needy inhabitants of the county, and thereafter such county and cities therein shall not levy any other tax for hospital purposes; and provided further that should such Hospital District construct, maintain and support a hospital or

hospital system, that the same shall never become a charge against the State of Texas, nor shall any direct appropriation ever be made by the Legislature for the construction, maintenance or improvement of the said hospital or hospitals. Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be invalid because of their anticipatory character.

[Adopted Nov. 2, 1954.]

**§ 5. City of Amarillo; Wichita County; Jefferson County; Creation of Hospital Districts**

Sec. 5. (a) The Legislature may by law authorize the creation of two hospital districts, one to be coextensive with and have the same boundaries as the incorporated City of Amarillo, as such boundaries now exist or as they may hereafter be lawfully extended, and the other to be coextensive with Wichita County.

If such district or districts are created, they may be authorized to levy a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation of taxable property within the district; provided, however, no tax may be levied until approved by a majority vote of the participating resident qualified property taxpaying voters who have duly rendered their property for taxation. The maximum rate of tax may be changed at subsequent elections so long as obligations are not impaired, and not to exceed the maximum limit of Seventy-five Cents (75¢) per One Hundred Dollars (\$100.00) valuation, and no election shall be required by subsequent changes in the boundaries of the City of Amarillo.

If such tax is authorized, no political subdivision or municipality within or having the same boundaries as the district may levy a tax for medical or hospital care for needy individuals, nor shall they maintain or erect hospital facilities, but the district shall by resolution assume all such responsibilities and shall assume all of the liabilities and obligations (including bonds and warrants) of such subdivisions or municipalities or both. The maximum tax rate submitted shall be sufficient to discharge such obligations, liabilities, and responsibilities, and to maintain and operate the hospital system, and the Legislature may authorize the district to issue tax bonds for the purpose of the purchase, construction, acquisition, repair or renovation of improvements and initially equipping the same, and such bonds shall be payable from said Seventy-five Cents (75¢) tax. The Legislature shall provide for transfer of title to properties to the district.

(b) The Legislature may by law permit the County of Potter (in which the City of Amarillo is partially located) to render financial aid to that district by paying a part of the expenses of operating and maintaining the system and paying a part of the debts of the district (whether assumed or created by the district) and may authorize the levy of a tax not to exceed Ten Cents (10¢) per One Hundred Dollars (\$100.00) valuation (in addition to other taxes permitted by this Constitution) upon all property within the county but without the City of Amarillo at the time such levy is made for such purposes. If such tax is authorized, the district shall by resolution assume the responsibilities, obligations, and liabilities of the county in the manner and to the extent hereinabove provided for political subdivisions hav-

ing boundaries coextensive with the district, and the county shall not thereafter levy taxes (other than herein provided) for hospital purposes nor for providing hospital care for needy individuals of the county.

(c) The Legislature may by law authorize the creation of a hospital district within Jefferson County, the boundaries of which shall include only the area comprising the Jefferson County Drainage District No. 7 and the Port Arthur Independent School District, as such boundaries existed on the first day of January, 1957, with the power to issue bonds for the sole purpose of purchasing a site for, and the construction and initial equipping of, a hospital system, and with the power to levy a tax of not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation of property therein for the purpose of paying the principal and interest on such bonds.

The creation of such hospital district shall not be final until approved at an election by a majority of the resident property taxpaying voters voting at said election who have duly rendered their property for taxation upon the tax rolls of either said Drainage or said School District, nor shall such bonds be issued or such tax be levied until so approved by such voters.

The district shall not have the power to levy any tax for maintenance or operation of the hospital or facilities, but shall contract with other political subdivisions of the state or private individuals, associations, or corporations for such purposes.

If the district hereinabove authorized is finally created, no other hospital district may be created embracing any part of the territory within its boundaries, but the Legislature by law may authorize the creation of a hospital district incorporating therein the remainder of Jefferson County, having the powers and duties and with the limitations presently provided by Article IX, Section 4, of the Constitution of Texas, except that such district shall be confirmed at an election wherein the resident qualified property taxpaying voters who have duly rendered their property within such proposed district for taxation on the county rolls, shall be authorized to vote. A majority of those participating in the election voting in favor of the district shall be necessary for its confirmation and for bonds to be issued.

(d) Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be invalid because of their anticipatory character.

[Adopted Nov. 4, 1958.]

**§ 6. Lamar County Hospital District; Abolition; Transfer of Assets**

Sec. 6. On the effective date of this Amendment, the Lamar County Hospital District is abolished. The Commissioners Court of Lamar County may provide for the transfer or for the disposition of the assets of the Lamar County Hospital District.

[Adopted Nov. 8, 1960. Amended Nov. 7, 1972.]

**§ 7. Hidalgo County; Hospital District; Creation; Tax Rate**

Sec. 7. The Legislature may by law authorize the creation of a Hospital District co-extensive with Hidalgo County, having the powers and duties and

with the limitations presently provided in Article IX, Section 5(a), of the Constitution of Texas, as it applies to Hidalgo County, except that the maximum rate of tax that the said Hidalgo County Hospital District may be authorized to levy shall be ten cents (10¢) per One Hundred Dollars (\$100) valuation of taxable property within the District subject to district taxation.

[Adopted Nov. 8, 1960.]

**§ 8. County Commissioners Precinct No. 4 of Comanche County; Hospital District; Creation; Tax Rate**

Sec. 8. (a) The Legislature may by law authorize the creation of a Hospital District to be co-extensive with the limits of County Commissioners Precinct No. 4 of Comanche County, Texas.

If such District is created, it may be authorized to levy a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollar (\$100) valuation of taxable property within the District; provided, however, no tax may be levied until approved by a majority vote of the participating resident qualified property tax-paying voters who have duly rendered their property for taxation. The maximum rate of tax may be changed at subsequent elections so long as obligations are not impaired, and not to exceed the maximum limit of seventy-five cents (75¢) per One Hundred Dollar (\$100) valuation, and no election shall be required by subsequent changes in the boundaries of the Commissioners Precinct No. 4 of Comanche County.

If such tax is authorized, no political subdivision or municipality within or having the same boundaries as the District may levy a tax for medical or hospital care for needy individuals, nor shall they maintain or erect hospital facilities, but the District shall by resolution assume all such responsibilities and shall assume all of the liabilities and obligations (including bonds and warrants) of such subdivisions or municipalities or both. The maximum tax rate submitted shall be sufficient to discharge such obligations, liabilities, and responsibilities, and to maintain and operate the hospital system, and the Legislature may authorize the District to issue tax bonds for the purpose of the purchase, construction, acquisition, repair or renovation of improvements and initially equipping the same, and such bonds shall be payable from said seventy-five cent (75¢) tax. The Legislature shall provide for transfer of title to properties to the District.

(b) The Legislature may by law permit the County of Comanche to render financial aid to that District by paying a part of the expenses of operating and maintaining the system and paying a part of the debts of the District (whether assumed or created by the District) and may authorize the levy of a tax not to exceed ten cents (10¢) per One Hundred Dollar (\$100) valuation (in addition to other taxes permitted by this Constitution) upon all property within the County but without the County Commissioners Precinct No. 4 of Comanche County at the time such levy is made for such purposes. If such tax is authorized, the District shall by resolution assume the responsibilities, obligations, and liabilities of the County in the manner and to the extent hereinabove provided for political subdivisions having boundaries co-extensive with the District, and the County shall not thereafter levy taxes (other

than herein provided) for hospital purposes nor for providing hospital care for needy individuals of the County.

(c) Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be invalid because of their anticipatory character.

[Adopted Nov. 8, 1960.]

**§ 9. Hospital Districts; Creation, Operation, Powers, Duties and Dissolution**

Sec. 9. The Legislature may by law provide for the creation, establishment, maintenance and operation of hospital districts composed of one or more counties or all or any part of one or more counties with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes; providing for the transfer to the hospital district of the title to any land, buildings, improvements and equipment located wholly within the district which may be jointly or separately owned by any city, town or county, providing that any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants and assume the outstanding indebtedness incurred by cities, towns and counties for hospital purposes prior to the creation of the district, if same are located wholly within its boundaries, and a pro rata portion of such indebtedness based upon the then last approved tax assessment rolls of the included cities, towns and counties if less than all the territory thereof is included within the district boundaries; providing that after its creation no other municipality or political subdivision shall have the power to levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care within the boundaries of the district; providing for the levy of annual taxes at a rate not to exceed seventy-five cents (75¢) on the One Hundred Dollar valuation of all taxable property within such district for the purpose of meeting the requirements of the district's bonds, the indebtedness assumed by it and its maintenance and operating expenses, providing that such district shall not be created or such tax authorized unless approved by a majority of the qualified property taxpaying electors thereof voting at an election called for the purpose; and providing further that the support and maintenance of the district's hospital system shall never become a charge against or obligation of the State of Texas nor shall any direct appropriation be made by the Legislature for the construction, maintenance or improvement of any of the facilities of such district.

Provided, however, that no district shall be created except by act of the Legislature and then only after thirty (30) days' public notice to the district affected, and in no event may the Legislature provide for a district to be created without the affirmative vote of a majority of the taxpaying voters in the district concerned.

The Legislature may also provide for the dissolution of hospital districts provided that a process is afforded by statute for:

- (1) determining the desire of a majority of the qualified voters within the district to dissolve it;
- (2) disposing of or transferring the assets, if any, of the district; and

(3) satisfying the debts and bond obligations, if any, of the district, in such manner as to protect the interests of the citizens within the district, including their collective property rights in the assets and property of the district, provided, however, that any grant from federal funds, however dispensed, shall be considered an obligation to be repaid in satisfaction and provided that no election to dissolve shall be held more often than once each year. In such connection, the statute shall provide against disposal or transfer of the assets of the district except for due compensation unless such assets are transferred to another governmental agency, such as a county, embracing such district and using such transferred assets in such a way as to benefit citizens formerly within the district.

[Adopted Nov. 6, 1962. Amended Nov. 8, 1966.]

§ 10. Blank.

§ 11. Hospital Districts; Ochiltree, Castro, Hansford and Hopkins Counties; Creation; Taxes

Sec. 11. The Legislature may by law authorize the creation of hospital districts in Ochiltree, Castro, Hansford and Hopkins Counties, each district to be coextensive with the limits of such county.

If any such district is created, it may be authorized to levy a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollar (\$100) valuation of taxable property within the district; provided, however, no tax may be levied until approved by a majority vote of the participating resident qualified property-taxpaying voters who have duly rendered their property for taxation. The maximum rate of tax may be changed at subsequent elections so long as obligations are not impaired, and not to exceed the maximum limit of Seventy-five Cents (75¢) per One Hundred Dollar (\$100) valuation.

If such tax is authorized, no political subdivision or municipality within or having the same boundaries as the district may levy a tax for medical or hospital care for needy individuals, nor shall they maintain or erect hospital facilities, but the district shall by resolution assume all such responsibilities and shall assume all of the liabilities and obligations (including bonds and warrants) of such subdivisions or municipalities or both. The maximum tax rate submitted shall be sufficient to discharge obligations, liabilities, and responsibilities, and to maintain and operate the hospital system, and the Legislature may authorize the district to issue tax bonds for the purpose of the purchase, construction, acquisition, repair or renovation of improvements and initially equipping the same, and such bonds shall be payable from said Seventy-five Cent<sup>1</sup> (75¢) tax. The Legislature shall provide for transfer of title to properties to the district.

Should the Legislature enact enabling laws in anticipation of the adoption of the amendment, such Acts shall not be invalid because of their anticipatory character.

[Adopted Nov. 6, 1962.]

<sup>1</sup> So in enrolled bill.

§ 12. Airport Authorities

Sec. 12. The Legislature may by law provide for the creation, establishment, maintenance and opera-

tion of Airport Authorities composed of one or more counties, with power to issue general obligation bonds, revenue bonds, either or both of them, for the purchase, acquisition by the exercise of the power of eminent domain or otherwise, construction, reconstruction, repair or renovation of any airport or airports, landing fields and runways, airport buildings, hangars, facilities, equipment, fixtures, and any and all property, real or personal, necessary to operate, equip and maintain an airport; shall provide for the option by the governing body of the city or cities whose airport facilities are served by certificated airlines and whose facility or some interest therein, is proposed to be or has been acquired by the Authority, to either appoint or elect a Board of Directors of said Authority; if the Directors are appointed such appointment shall be made by the County Commissioners Court after consultation with and consent of the governing body or bodies of such city or cities, and if the Board of Directors is elected they shall be elected by the qualified taxpaying voters of the county which chooses to elect the Directors to represent that county, such Directors shall serve without compensation for a term fixed by the Legislature not to exceed six (6) years, and shall be selected on the basis of the proportionate population of each county based upon the last preceding Federal Census, and shall be a resident or residents of such county; provide that no county shall have less than one (1) member on the Board of Directors; provide for the holding of an election in each county proposing the creation of an Authority to be called by the Commissioners Court or Commissioners Courts, as the case may be, upon petition of five per cent (5%) of the qualified taxpaying voters within the county or counties, said elections to be held on the same day if more than one county is included, provided that no more than one (1) such election may be called in a county until after the expiration of one (1) year; in the event such an election has failed, and thereafter only upon a petition of ten per cent (10%) of the qualified taxpaying voters being presented to the Commissioners Court or Commissioners Courts of the county or counties in which such an election has failed, and in the event that two or more counties vote on the proposition of the creation of an Authority therein, the proposition shall not be deemed to carry unless the majority of the qualified taxpaying voters in each county voting thereon vote in favor thereof; provided, however, that an Airport Authority may be created and be composed of the county or counties that vote in favor of its creation if separate propositions are submitted to the voters of each county so that they may vote for a two or more county Authority or a single county Authority; provide for the appointment by the Board of Directors of an Assessor and Collector of Taxes in the Authority, whether constituted of one or more counties, whose duty it shall be to assess all taxable property, both real and personal, and collect the taxes thereon, based upon the tax rolls approved by the Board of Directors, the tax to be levied not to exceed seventy-five cents (75¢) per One Hundred Dollar (\$100) assessed valuation of the property, provided, however, that the property of state regulated common carriers required by law to pay a tax upon intangible assets shall not be subject to taxation by the Authority, said taxable property shall be assessed on a valuation not to exceed the market value and shall be equal and uniform

throughout the Authority as is otherwise provided by the Constitution; the Legislature shall authorize the purchase or acquisition by the Authority of any existing airport facility publicly owned and financed and served by certificated airlines, in fee or of any interest therein, or to enter into any lease agreement therefor, upon such terms and conditions as may be mutually agreeable to the Authority and the owner of such facilities, or authorize the acquisition of same through the exercise of the power of eminent domain, and in the event of such acquisition, if there are any general obligation bonds that the owner of the publicly owned airport facility has outstanding, the same shall be fully assumed by the Authority and sufficient taxes levied by the Authority to discharge said outstanding indebtedness; and likewise any city or owner that has outstanding revenue bonds where the revenues of the airport have been pledged or said bonds constitute a lien against the airport facilities, the Authority shall assume and discharge all the obligations of the city under the ordinances and bond indentures under which said revenue bonds have been issued and sold. Any city which owns airport facilities not serving certificated airlines which are not purchased or acquired or taken over as herein provided by such Authority, shall have the power to operate the same under the existing laws or as the same may hereafter be amended. Any such Authority when created may be granted the power and authority to promulgate, adopt and enforce appropriate zoning regulations to protect the airport from hazards and obstructions which would interfere with the use of the airport and its facilities for landing and take-off; an additional county or counties may be added to an existing Authority if a petition of five per cent (5%) of the qualified taxpaying voters is filed with and an election is called by the Commissioners Court of the county or counties seeking admission to an Authority and the vote is favorable, then admission may be granted to such county or counties by the Board of Directors of the then existing Authority upon such terms and conditions as they may agree upon and evidenced by a resolution approved by two-thirds ( $\frac{2}{3}$ rds) of the then existing Board of Directors, provided, however, the county or counties that may be so added to the then existing Authority shall be given representation on the Board of Directors by adding additional directors in proportion to their population according to the last preceding Federal census.

[Adopted Nov. 8, 1966.]

**§ 13. Participation of Municipalities and other Political Subdivisions in establishment of Mental Health, Mental Retardation or Public Health Services**

Sec. 13. Notwithstanding any other section of this article, the Legislature in providing for the creation, establishment, maintenance and operation of a hospital district, shall not be required to provide that such district shall assume full responsibility for the establishment, maintenance, support, or operation of mental health services or mental retardation services including the operation of any community mental health centers, community mental retardation centers or community mental health and mental retardation centers which may exist or be thereafter established within the boundaries of such district, nor shall the Legislature be required to provide that

such district shall assume full responsibility of public health department units and clinics and related public health activities or services, and the Legislature shall not be required to restrict the power of any municipality or political subdivision to levy taxes or issue bonds or other obligations or to expend public moneys for the establishment, maintenance, support, or operation of mental health services, mental retardation services, public health units or clinics or related public health activities or services or the operation of such community mental health or mental retardation centers within the boundaries of the hospital districts; and unless a statute creating a hospital district shall expressly prohibit participation by any entity other than the hospital district in the establishment, maintenance, or support of mental health services, mental retardation services, public health units or clinics or related public health activities within or partly within the boundaries of any hospital district, any municipality or any other political subdivision or state-supported entity within the hospital district may participate in the establishment, maintenance, and support of mental health services, mental retardation services, public health units and clinics and related public health activities and may levy taxes, issue bonds or other obligations, and expend public moneys for such purposes as provided by law.

[Adopted Nov. 11, 1967.]

**ARTICLE X**

**RAILROADS**

Section

1. Repealed.
2. Public Highways; Common Carriers; Regulation of Tariffs, Correction of Abuses and Prevention of Discrimination and Extortion; Means and Agencies.
3. Office in State; Annual Meetings of Directors; Annual Report.
4. Personal Property, What Is; Execution and Sale of Property.
5. Consolidation, Lease or Purchase; Control of Parallel or Competing Line.
6. Consolidation with Foreign Company.
7. Street Railroads; Consent of Local Authorities.
8. Acceptance of Provisions of Constitution by Existing Companies.
9. County Seats; Passing Through and Maintaining Depot.

**§ 1. Repealed. Aug. 5, 1969**

**§ 2. Public Highways; Common Carriers; Regulation of Tariffs, Correction of Abuses and Prevention of Discrimination and Extortion; Means and Agencies**

Sec. 2. Railroads heretofore constructed or which may hereafter be constructed in this state are hereby declared public highways, and railroad companies, common carriers. The Legislature shall pass laws to regulate railroad, freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and enforce the same by adequate penalties; and to the further accomplishment of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable.

[Adopted Feb. 15, 1876. Amended Nov. 4, 1890, proclamation Dec. 19, 1890.]

**§ 3. Office in State; Annual Meetings of Directors; Annual Report**

Sec. 3. Every railroad or other corporation, organized or doing business in this State under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made and where shall be kept for inspection by the stockholders of such corporations, books, in which shall be recorded the amount of capital stock subscribed, the names of the owners of the stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of the transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad company shall hold one meeting annually in this State, public notice of which shall be given thirty days previously, and the President or Superintendent shall report annually, under oath, to the Comptroller or Governor, their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. The Legislature shall pass laws enforcing by suitable penalties the provisions of this Section.  
[Adopted Feb. 15, 1876.]

**§ 4. Personal Property, What Is; Execution and Sale of Property**

Sec. 4. The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals; and the Legislature shall pass no laws exempting any such property from execution and sale.  
[Adopted Feb. 15, 1876.]

**§ 5. Consolidation, Lease or Purchase; Control of Parallel or Competing Line**

Sec. 5. No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation, with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.  
[Adopted Feb. 15, 1876.]

**§ 6. Consolidation with Foreign Company**

Sec. 6. No railroad company organized under the laws of this State, shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other State or of the United States.  
[Adopted Feb. 15, 1876.]

**§ 7. Street Railroads; Consent of Local Authorities**

Sec. 7. No law shall be passed by the Legislature granting the right to construct and operate a street railroad within any city, town, or village or upon any public highway, without first acquiring the consent of the local authorities having control of the street

or highway proposed to be occupied by such street railroad.

[Adopted Feb. 15, 1876.]

**§ 8. Acceptance of Provisions of Constitution by Existing Companies**

Sec. 8. No railroad corporation in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.  
[Adopted Feb. 15, 1876.]

**§ 9. County Seats; Passing Through and Maintaining Depot**

Sec. 9. No railroad hereafter constructed in this State shall pass within a distance of three miles of any county seat, without passing through the same, and establishing and maintaining a depot therein unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.  
[Adopted Feb. 15, 1876.]

**ARTICLE XI**

**MUNICIPAL CORPORATIONS**

Section

1. Counties as Legal Subdivisions.
2. Jails, Court-houses, Bridges and Roads.
3. Subscriptions to Corporate Capital; Donations; Loan of Credit.
4. Cities and Towns with Population of 5,000 or Less; Chartered by General Law; Taxes; Fines, Forfeitures and Penalties.
5. Cities of 5000 or more Population; Adoption or Amendment of Charters; Taxes; Debt Restrictions.
6. Taxes to Pay Interest and Create Sinking Fund to satisfy Indebtedness.
7. Counties and Cities on Gulf of Mexico; Tax for Sea Walls, Breakwaters and Sanitation; Bonds; Condemnation of Right of Way.
8. Donation of Portion of Public Domain to Aid in Construction of Sea Walls or Breakwaters.
9. Property Exempt from Forced Sale and from Taxation.
10. Repealed.
11. Term of Office exceeding two years in Home Rule and General Law Cities; Vacancies.

**§ 1. Counties as Legal Subdivisions**

Sec. 1. The several counties of this State are hereby recognized as legal subdivisions of the State.  
[Adopted Feb. 15, 1876.]

**§ 2. Jails, Court-houses, Bridges and Roads**

Sec. 2. The construction of jails, court-houses and bridges and the establishment of county poor houses and farms, and the laying out, construction and repairing of county roads shall be provided for by general laws.  
[Adopted Feb. 15, 1876.]

**§ 3. Subscriptions to Corporate Capital; Donations; Loan of Credit**

Sec. 3. No county, city, or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or

in anywise loan its credit; but this shall not be construed to in any way affect any obligation heretofore undertaken pursuant to law.

[Adopted Feb. 15, 1876.]

**§ 4. Cities and Towns with Population of 5,000 or Less; Chartered by General Law; Taxes; Fines, Forfeitures and Penalties**

Sec. 4. Cities and towns having a population of five thousand or less may be chartered alone by general law. They may levy, assess and collect such taxes as may be authorized by law, but no tax for any purpose shall ever be lawful for any one year which shall exceed one and one-half per cent of the taxable property of such city; and all taxes shall be collectible only in current money, and all licenses and occupation taxes levied, and all fines, forfeitures and penalties accruing to said cities and towns shall be collectible only in current money.

[Adopted Feb. 15, 1876. Amended Aug. 3, 1909, proclamation Sept. 24, 1909; Nov. 2, 1920.]

**§ 5. Cities of 5000 or more Population; Adoption or Amendment of Charters; Taxes; Debt Restrictions**

Sec. 5. Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State; said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent. of the taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent. thereon; and provided further, that no city charter shall be altered, amended or repealed oftener than every two years.

[Adopted Feb. 15, 1876. Amended Aug. 3, 1909, proclamation Sept. 24, 1909; Nov. 5, 1912, proclamation Dec. 30, 1912.]

**§ 6. Taxes to Pay Interest and Create Sinking Fund to satisfy Indebtedness**

Sec. 6. Counties, cities and towns are authorized in such mode as may now or may hereafter be provided by law, to levy, assess and collect the taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected separately from that levied, assessed and collected for current expenses of municipal government, and shall when levied specify in the act of levying the purpose therefor, and such taxes may be paid in the coupons, bonds or other indebtedness for the payment of which such tax may have been levied.

[Adopted Feb. 15, 1876.]

**§ 7. Counties and Cities on Gulf of Mexico; Tax for Sea Walls, Breakwaters and Sanitation; Bonds; Condemnation of Right of Way**

Sec. 7. All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized upon a vote of the majority of the resident property taxpayers voting thereon at an election called for such purpose to levy and collect such tax for construction of sea walls, breakwaters, or sanitary purposes, as may now or may hereafter be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund; and the condemnation of the right of way for the erection of such works shall be fully provided for.

[Adopted Feb. 15, 1876. Amended Nov. 6, 1973.]

**§ 8. Donation of Portion of Public Domain to Aid in Construction of Sea Walls or Breakwaters**

Sec. 8. The counties and cities on the Gulf Coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities, the Legislature is especially authorized to aid by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of sea walls, or breakwaters, such aid to be proportioned to the extent and value of the works constructed, or to be constructed, in any locality.

[Adopted Feb. 15, 1876.]

**§ 9. Property Exempt from Forced Sale and from Taxation**

Sec. 9. The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used, or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the public shall be exempt from forced sale and from taxation, provided, nothing herein shall prevent the enforcement of the vendors lien, the mechanics or builders lien, or other liens now existing.

[Adopted Feb. 15, 1876.]

**§ 10. Repealed. Aug. 5, 1969**

**§ 11. Term of Office exceeding two years in Home Rule and General Law Cities; Vacancies**

Sec. 11. A Home Rule City may provide by charter or charter amendment, and a city, town or village operating under the general laws may provide by majority vote of the qualified voters voting at an election called for that purpose, for a longer term of office than two (2) years for its officers, either elective or appointive, or both, but not to exceed four (4) years; provided, however, that tenure under Civil Service shall not be affected hereby.

Provided, however, if any of such officers, elective or appointive, shall announce their candidacy, or shall in fact become a candidate, in any general, special or primary election, for any office of profit or

trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled.

A municipality so providing a term exceeding two (2) years but not exceeding four (4) years for any of its non-civil service officers must elect all of the members of its governing body by majority vote of the qualified voters in such municipality, and any vacancy or vacancies occurring on such governing body shall not be filled by appointment but must be filled by majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty (120) days after such vacancy or vacancies occur.

[Adopted Nov. 4, 1958.]

**ARTICLE XII**

**PRIVATE CORPORATIONS**

Section

1. Creation by General Laws.
2. General Laws to be Enacted; Protection of Public and Stockholders.
- 3 to 5. Repealed.
6. Consideration for Stock or Bonds; Fictitious Increase.
7. Repealed.

**§ 1. Creation by General Laws**

Sec. 1. No private corporation shall be created except by general laws.

[Adopted Feb. 15, 1876.]

**§ 2. General Laws to be Enacted; Protection of Public and Stockholders**

Sec. 2. General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

[Adopted Feb. 15, 1876.]

**§§ 3 to 5. Repealed. Aug. 5, 1969**

**§ 6. Consideration for Stock or Bonds; Fictitious Increase**

Sec. 6. No corporation shall issue stock or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void.

[Adopted Feb. 15, 1876.]

**§ 7. Repealed. Aug. 5, 1969**

**ARTICLE XIII**

**SPANISH AND MEXICAN LAND TITLES**

**§§ 1 to 7. Repealed. Aug. 5, 1969**

**ARTICLE XIV**

**PUBLIC LANDS AND LAND OFFICE**

Section

1. General Land Office.
- 2 to 8. Repealed.

**§ 1. General Land Office**

Sec. 1. There shall be one General Land Office in the State, which shall be at the seat of government, where all land titles which have emanated or may hereafter emanate from the State shall be registered, except those titles the registration of which may be prohibited by this Constitution. It shall be the duty of the Legislature at the earliest practicable time to make the Land Office self sustaining, and from time to time the Legislature may establish such subordinate offices as may be deemed necessary.

[Adopted Feb. 15, 1876.]

**§§ 2 to 8. Repealed. Aug. 5, 1969**

**ARTICLE XV**

**IMPEACHMENT**

Section

1. Power of Impeachment.
2. Trial of Impeachment of Certain Officers by Senate.
3. Oath or Affirmation of Senators; Concurrence of Two-thirds Required.
4. Judgment; Indictment, Trial and Punishment.
5. Suspension pending Impeachment; Provisional Appointments.
6. Judges of District Court; Removal by Supreme Court.
7. Removal of Officers when Mode not provided in Constitution.

ADDRESS

8. Removal of Judges by Governor on Address of Two-thirds of Each House of Legislature.

**§ 1. Power of Impeachment**

Sec. 1. The power of impeachment shall be vested in the House of Representatives.

[Adopted Feb. 15, 1876.]

**§ 2. Trial of Impeachment of Certain Officers by Senate**

Sec. 2. Impeachment of the Governor, Lieutenant Governor, Attorney General, Treasurer, Commissioner of the General Land Office, Comptroller and the Judges of the Supreme Court, Court of Appeals and District Court shall be tried by the Senate.

[Adopted Feb. 15, 1876.]

**§ 3. Oath or Affirmation of Senators; Concurrence of Two-thirds Required**

Sec. 3. When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the Senators present.

[Adopted Feb. 15, 1876.]

**§ 4. Judgment; Indictment, Trial and Punishment**

Sec. 4. Judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor, trust or profit under this State. A party convicted on impeachment shall also be subject to indictment, trial and punishment according to law.

[Adopted Feb. 15, 1876.]

**§ 5. Suspension pending Impeachment; Provisional Appointments**

Sec. 5. All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office, during the pendency of such impeachment. The Governor may make a provisional appointment to fill the vacancy occasioned by the suspension of an officer until the decision on the impeachment.

[Adopted Feb. 15, 1876.]

**§ 6. Judges of District Court; Removal by Supreme Court**

Sec. 6. Any judge of the District Courts of the State who is incompetent to discharge the duties of his office, or who shall be guilty of partiality, or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge; or who shall fail to execute in a reasonable measure the business in his courts, may be removed by the Supreme Court. The Supreme Court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing upon the oaths taken before some judge of a court of record of not less than ten lawyers, practicing in the courts held by such judge, and licensed to practice in the Supreme Court; said presentation to be founded either upon the knowledge of the persons making it or upon the written oaths as to the facts of creditable witnesses. The Supreme Court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and be tried as soon as practicable.

[Adopted Feb. 15, 1876.]

**§ 7. Removal of Officers when Mode not provided in Constitution**

Sec. 7. The Legislature shall provide by law for the trial and removal from office of all officers of this State, the modes for which have not been provided in this Constitution.

[Adopted Feb. 15, 1876.]

**ADDRESS**

**§ 8. Removal of Judges by Governor on Address of Two-thirds of Each House of Legislature**

Sec. 8. The Judges of the Supreme Court, Court of Appeals and District Courts, shall be removed by the Governor on the address of two-thirds of each House of the Legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause which shall not be sufficient ground for impeachment; provided, however, that the cause or causes for which such removal shall be required, shall be stated at length in such address and entered on the journals of each House; and provided further, that the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense before any vote for such address shall pass, and in all such cases, the vote shall be taken by yeas and nays and entered on the journals of each House respectively.

[Adopted Feb. 15, 1876.]

**ARTICLE XVI  
GENERAL PROVISIONS**

Section

1. Official Oath.
2. Exclusions from Office, Jury Service and Right of Service; Protection of Right of Service.
- 3, 4. Repealed.
5. Disqualification to Office by giving or offering Bribe.
6. Appropriations for Private Purposes; State Participation in Programs Financed with Private or Federal Funds for Rehabilitation of Blind, Crippled, Physically or Mentally Handicapped Persons.
7. Repealed.
8. County Poor House and Farm.
9. Forfeiture of Residence by Absence on Public Business.
10. Deductions from Salary for Neglect of Duty.
11. Usury; Rate of Interest in Absence of Legislation.
12. Members of Congress; Officers of United States or Foreign Power; Ineligibility to Hold Office.
13. Arbitration.
14. Civil Officers; Residence; Location of Offices.
15. Separate and Community Property of Husband and Wife.
16. Corporations with Banking and Discounting Privileges.
17. Officers to Serve until Successors Qualified.
18. Existing Rights of Property and of Action; Rights or Actions Not Revived.
19. Qualifications of Jurors.
20. Alcoholic Beverages; Mixed Beverage Law; Regulation; Local Option.
21. Public Printing and Binding; Repairs and Furnishings; Contracts.
22. Fence Laws.
23. Regulation of Live Stock; Protection of Stock Raisers; Inspections; Brands.
24. Roads and Bridges.
25. Drawbacks and Rebatement to Carriers, Shippers, Merchants, Etc.
26. Homicide; Liability in Damages.
27. Vacancies filled for Unexpired Term.
28. Wages not Subject to Garnishment.
29. Repealed.
30. Duration of Offices; Railroad Commission.
- 30-a. Members of Boards; Terms of Office.
- 30-b. Civil Service Offices; Duration.
31. Practitioners of Medicine.
32. Repealed.
33. Salary or Compensation Payments to Persons Holding more than one Office.
- 34 to 36. Repealed.
37. Liens of Mechanics, Artisans and Material Men.
38. Repealed.
39. Appropriations for Historical Memorials.
40. Holding more than one Office; Exceptions; Right to Vote.
41. Bribery and Acceptance of Bribes.
42. Repealed.
43. Exemptions from Public Duty or Service.
44. County Treasurer and County Surveyor.
- 45, 46. Repealed.
47. Conscientious Scruples as to Bearing Arms.
48. Existing Laws to continue in Force.
49. Protection of Personal Property from Forced Sale.
50. Homestead; Protection from Forced Sale; Mortgages, Trust Deeds and Liens.
51. Amount and Value of Homestead; Uses.
52. Descent and Distribution of Homestead; Restrictions on Partition.
53. Process and Writs not Executed or Returned at Adoption of Constitution.
- 54, 55. Repealed.
56. Appropriations for Development and Dissemination of Information concerning Texas Resources.
- 57, 58. Repealed.
59. Conservation and Development of Natural Resources; Conservation and Reclamation Districts.
60. Repealed.
61. Compensation of District, County and Precinct Officers; Salary or Fee Basis; Disposition of Fees.

- 62. State and County Retirement, Disability and Death Compensation Funds.
- 63. Teachers and Employees Retirement Systems, Service Credit.
- 64. Terms of Office, Certain Offices.
- 65. Transition from two year to four year Terms of Office.
- 66. Texas Rangers; Retirement and Disability Pension System for Rangers ineligible for Membership in Employees Retirement System.

**§ 1. Official Oath**

Sec. 1. Members of the Legislature, and all other elected officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

"I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected. So help me God."

The Secretary of State, and all other appointed officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

"I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof. So help me God."

[Adopted Feb. 15, 1876. Amended Nov. 8, 1938; Nov. 6, 1956.]

**§ 2. Exclusions from Office, Jury Service and Right of Service; Protection of Right of Service**

Sec. 2. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who may have been or shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence therein from power, bribery, tumult or other improper practice.

[Adopted Feb. 15, 1876.]

**§§ 3, 4. Repealed. Aug. 5, 1969**

**§ 5. Disqualification to Office by giving or offering Bribe**

Sec. 5. Every person shall be disqualified from holding any office of profit, or trust, in this State, who shall have been convicted of having given or offered a bribe to procure his election or appointment.

[Adopted Feb. 15, 1876.]

**§ 6. Appropriations for Private Purposes; State Participation in Programs Financed with Private or Federal Funds for Rehabilitation of Blind, Crippled, Physically or Mentally Handicapped Persons**

Sec. 6. (a) No appropriation for private or individual purposes shall be made, unless authorized by this Constitution. A regular statement, under oath, and an account of the receipts and expenditures of all public money shall be published annually, in such manner as shall be prescribed by law.

(b) State agencies charged with the responsibility of providing services to those who are blind, crippled, or otherwise physically or mentally handicapped may accept money from private or federal sources, designated by the private or federal source as money to be used in and establishing and equipping facilities for assisting those who are blind, crippled, or otherwise physically or mentally handicapped in becoming gainfully employed, in rehabilitating and restoring the handicapped, and in providing other services determined by the state agency to be essential for the better care and treatment of the handicapped. Money accepted under this subsection is state money. State agencies may spend money accepted under this subsection, and no other money, for specific programs and projects to be conducted by local level or other private, nonsectarian associations, groups, and nonprofit organizations, in establishing and equipping facilities for assisting those who are blind, crippled, or otherwise physically or mentally handicapped in becoming gainfully employed, in rehabilitating and restoring the handicapped, and in providing other services determined by the state agency to be essential for the better care or treatment of the handicapped.

The state agencies may deposit money accepted under this subsection either in the state treasury or in other secure depositories. The money may not be expended for any purpose other than the purpose for which it was given. Notwithstanding any other provision of this Constitution, the state agencies may expend money accepted under this subsection without the necessity of an appropriation, unless the Legislature, by law, requires that the money be expended only on appropriation. The Legislature may prohibit state agencies from accepting money under this subsection or may regulate the amount of money accepted, the way the acceptance and expenditure of the money is administered, and the purposes for which the state agencies may expend the money. Money accepted under this subsection for a purpose prohibited by the Legislature shall be returned to the entity that gave the money.

This subsection does not prohibit state agencies authorized to render services to the handicapped from contracting with privately-owned or local facilities for necessary and essential services, subject to such conditions, standards, and procedures as may be prescribed by law.

[Adopted Feb. 15, 1876. Amended Nov. 8, 1966.]

**§ 7. Repealed. Aug. 5, 1969**

**§ 8. County Poor House and Farm**

Sec. 8. Each county in the State may provide, in such manner as may be prescribed by law, a Manual Labor Poor House and Farm, for taking care of,

managing, employing and supplying the wants of its indigent and poor inhabitants.

[Adopted Feb. 15, 1876.]

**§ 9. Forfeiture of Residence by Absence on Public Business**

Sec. 9. Absence on business of the State, or of the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under the exceptions contained in this Constitution.

[Adopted Feb. 15, 1876.]

**§ 10. Deductions from Salary for Neglect of Duty**

Sec. 10. The Legislature shall provide for deductions from the salaries of public officers who may neglect the performance of any duty that may be assigned them by law.

[Adopted Feb. 15, 1876.]

**§ 11. Usury; Rate of Interest in Absence of Legislation**

Sec. 11. The Legislature shall have authority to classify loans and lenders, license and regulate lenders, define interest and fix maximum rates of interest; provided, however, in the absence of legislation fixing maximum rates of interest all contracts for a greater rate of interest than ten per centum (10%) per annum shall be deemed usurious; provided, further, that in contracts where no rate of interest is agreed upon, the rate shall not exceed six per centum (6%) per annum. Should any regulatory agency, acting under the provisions of this Section, cancel or refuse to grant any permit under any law passed by the Legislature; then such applicant or holder shall have the right of appeal to the courts and granted a trial de novo as that term is used in appealing from the justice of peace court to the county court.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891; Nov. 8, 1960.]

**§ 12. Members of Congress; Officers of United States or Foreign Power; Ineligibility to Hold Office**

Sec. 12. No member of Congress, nor person holding or exercising any office of profit or trust, under the United States, or either of them, or under any foreign power, shall be eligible as a member of the Legislature, or hold or exercise any office of profit or trust under this State.

[Adopted Feb. 15, 1876.]

**§ 13. Arbitration**

Sec. 13. It shall be the duty of the Legislature to pass such laws as may be necessary and proper to decide differences by arbitration, when the parties shall elect that method of trial.

[Adopted Feb. 15, 1876.]

**§ 14. Civil Officers; Residence; Location of Offices**

Sec. 14. All civil officers shall reside within the State; and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held.

[Adopted Feb. 15, 1876.]

**§ 15. Separate and Community Property of Husband and Wife**

Sec. 15. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of the wife; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as that held in common with her husband; provided that husband and wife, without prejudice to pre-existing creditors, may from time to time by written instrument as if the wife were a feme sole partition between themselves in severalty or into equal undivided interests all or any part of their existing community property, or exchange between themselves the community interest of one spouse in any property for the community interest of the other spouse in other community property, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property of such spouse.

This Amendment is self-operative, but laws may be passed prescribing requirements as to the form and manner of execution of such instruments, and providing for their recordation, and for such other reasonable requirements not inconsistent herewith as the Legislature may from time to time consider proper with relation to the subject of this Amendment. Should the Legislature pass an Act dealing with the subject of this Amendment and prescribing requirements as to the form and manner of the execution of such instruments and providing for their recordation and other reasonable requirements not inconsistent herewith and anticipatory hereto, such Act shall not be invalid by reason of its anticipatory character and shall take effect just as though this Constitutional Amendment was in effect when the Act was passed.

[Adopted Feb. 15, 1876. Amended Nov. 2, 1948.]

**§ 16. Corporations with Banking and Discounting Privileges**

Sec. 16. The Legislature shall by general laws, authorize the incorporation of corporate bodies with banking and discounting privileges, and shall provide for a system of State supervision, regulation and control of such bodies which will adequately protect and secure the depositors and creditors thereof.

No such corporate body shall be chartered until all of the authorized capital stock has been subscribed and paid for in full in cash. Such body corporate shall not be authorized to engage in business at more than one place which shall be designated in its charter.

No foreign corporation, other than the national banks of the United States, shall be permitted to exercise banking or discounting privileges in this State.

[Adopted Feb. 15, 1876. Amended Nov. 8, 1904; Aug. 23, 1937.]

**§ 17. Officers to Serve until Successors Qualified**

Sec. 17. All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

[Adopted Feb. 15, 1876.]

**§ 18. Existing Rights of Property and of Action; Rights or Actions Not Revived**

Sec. 18. The rights of property and of action, which have been acquired under the Constitution and laws of the Republic and State, shall not be divested; nor shall any rights or actions which have been divested, barred or declared null and void by the Constitution of the Republic and State, be re-invested, renewed, or re-instated by this Constitution; but the same shall remain precisely in the situation which they were before the adoption of this Constitution, unless otherwise herein provided; and provided further, that no cause of action heretofore barred shall be revived.

[Adopted Feb. 15, 1876.]

**§ 19. Qualifications of Jurors**

Sec. 19. The Legislature shall prescribe by law the qualifications of grand and petit jurors; provided that neither the right nor the duty to serve on grand and petit juries shall be denied or abridged by reason of sex. Whenever in the Constitution the term "men" is used in reference to grand or petit juries, such term shall include persons of the female as well as the male sex.

[Adopted Feb. 15, 1876. Amended Nov. 2, 1954.]

**§ 20. Alcoholic Beverages; Mixed Beverage Law; Regulation; Local Option**

Sec. 20. (a) The Legislature shall have the power to enact a Mixed Beverage Law regulating the sale of mixed alcoholic beverages on a local option election basis. The Legislature shall also have the power to regulate the manufacture, sale, possession and transportation of intoxicating liquors, including the power to establish a State Monopoly on the sale of distilled liquors.

Should the Legislature enact any enabling laws in anticipation of this amendment, no such law shall be void by reason of its anticipatory nature.

(b) The Legislature shall enact a law or laws whereby the qualified voters of any county, justice's precinct or incorporated town or city, may, by a majority vote of those voting, determine from time to time whether the sale of intoxicating liquors for beverage purposes shall be prohibited or legalized within the prescribed limits; and such laws shall contain provisions for voting on the sale of intoxicating liquors of various types and various alcoholic content.

(c) In all counties, justice's precincts or incorporated towns or cities wherein the sale of intoxicating liquors had been prohibited by local option elections held under the laws of the State of Texas and in force at the time of the taking effect of Section 20, Article XVI of the Constitution of Texas, it shall continue to be unlawful to manufacture, sell, barter or exchange in any such county, justice's precinct or incorporated town or city, any spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication or any other intoxicants whatsoever, for beverage purposes, unless and until a majority of the qualified voters in such county or political subdivision thereof voting in an election held for such purpose shall determine such to be lawful; provided that this subsection shall not prohibit the sale of alcoholic beverages containing not more than 3.2 per cent alcohol by weight in cities, counties or political

subdivisions thereof in which the qualified voters have voted to legalize such sale under the provisions of Chapter 116, Acts of the Regular Session of the 43rd Legislature.

[Adopted Feb. 15, 1876. Amended Aug. 11, 1891, proclamation Sept. 22, 1891; May 24, 1919; Aug. 26, 1933; Aug. 24, 1935.]

**§ 21. Public Printing and Binding; Repairs and Furnishings; Contracts**

Sec. 21. All stationery, and printing, except proclamations and such printing as may be done at the Deaf and Dumb Asylum, paper, and fuel used in the Legislative and other departments of the government, except the Judicial Department, shall be furnished, and the printing and binding of the laws, journals, and department reports, and all other printing and binding and the repairing and furnishing the halls and rooms used for the meetings of the Legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price, and under such regulations, as shall be prescribed by law. No member or officer of any department of the government shall be in any way interested in such contracts; and all such contracts shall be subject to the approval of the Governor, Secretary of State and Comptroller.

[Adopted Feb. 15, 1876.]

**§ 22. Fence Laws**

Sec. 22. The Legislature shall have the power to pass such fence laws, applicable to any sub-division of the State, or counties, as may be needed to meet the wants of the people.

[Adopted Feb. 15, 1876.]

**§ 23. Regulation of Live Stock; Protection of Stock Raisers; Inspections; Brands**

Sec. 23. The Legislature may pass laws for the regulation of live stock and the protection of stock raisers in the stock raising portion of the State, and exempt from the operation of such laws other portions, sections, or counties; and shall have power to pass general and special laws for the inspection of cattle, stock and hides and for the regulation of brands; provided, that any local law thus passed shall be submitted to the freeholders of the section to be affected thereby, and approved by them, before it shall go into effect.

[Adopted Feb. 15, 1876.]

**§ 24. Roads and Bridges**

Sec. 24. The Legislature shall make provision for laying out and working public roads, for the building of bridges, and for utilizing fines, forfeitures, and convict labor to all these purposes.

[Adopted Feb. 15, 1876.]

**§ 25. Drawbacks and Rebatement to Carriers, Shippers, Merchants, Etc.**

Sec. 25. That all drawbacks and rebatement of insurance, freight, transportation, carriage, wharfage, storage, compressing, baling, repairing, or for any other kind of labor or service of, or to any cotton, grain, or any other produce or article of commerce in this State, paid or allowed or contracted for, to any common carrier, shipper, merchant, commission merchant, factor, agent, or middleman of any kind, not the true and absolute owner there-

of, are forever prohibited, and it shall be the duty of the Legislature to pass effective laws punishing all persons in this State who pay, receive or contract for, or respecting the same.

[Adopted Feb. 15, 1876.]

#### § 26. Homicide; Liability in Damages

Sec. 26. Every person, corporation, or company, that may commit a homicide, through wilful act, or omission, or gross neglect, shall be responsible, in exemplary damages, to the surviving husband, widow, heirs of his or her body, or such of them as there may be, without regard to any criminal proceeding that may or may not be had in relation to the homicide.

[Adopted Feb. 15, 1876.]

#### § 27. Vacancies filled for Unexpired Term

Sec. 27. In all elections to fill vacancies of office in this State, it shall be to fill the unexpired term only.

[Adopted Feb. 15, 1876.]

#### § 28. Wages not Subject to Garnishment

Sec. 28. No current wages for personal service shall ever be subject to garnishment.

[Adopted Feb. 15, 1876.]

#### § 29. Repealed. Aug. 5, 1969

#### § 30. Duration of Offices; Railroad Commission

Sec. 30. The duration of all offices not fixed by this Constitution shall never exceed two years; provided, that when a Railroad Commission is created by law it shall be composed of three Commissioners who shall be elected by the people at a general election for State officers, and their terms of office shall be six years; provided, Railroad Commissioners first elected after this amendment goes into effect shall hold office as follows: One shall serve two years, and one four years, and one six years; their terms to be decided by lot immediately after they shall have qualified. And one Railroad Commissioner shall be elected every two years thereafter. In case of vacancy in said office the Governor of the State shall fill said vacancy by appointment until the next general election.

[Adopted Feb. 15, 1876. Amended Nov. 6, 1894, proclamation Dec. 21, 1894.]

#### § 30 - a. Members of Boards; Terms of Office

Sec. 30-a. The Legislature may provide by law that the members of the Board of Regents of the State University and boards of trustees or managers of the educational, eleemosynary, and penal institutions of the State, and such boards as have been, or may hereafter be established by law, may hold their respective offices for the term of six (6) years, one-third of the members of such boards to be elected or appointed every two (2) years in such manner as the Legislature may determine; vacancies in such offices to be filled as may be provided by law, and the Legislature shall enact suitable laws to give effect to this section.

[Adopted Nov. 5, 1912, proclamation, Dec. 30, 1912.]

#### § 30 - b. Civil Service Offices; Duration

Sec. 30-b. Wherever by virtue of Statute or charter provisions appointive offices of any municipality are placed under the terms and provisions of Civil Service and rules are set up governing appointment to and removal from such offices, the provisions of Article 16, Section 30, of the Texas Constitution limiting the duration of all offices not fixed by the Constitution to two (2) years shall not apply, but the duration of such offices shall be governed by the provisions of the Civil Service law or charter provisions applicable thereto.

[Adopted Nov. 5, 1940.]

#### § 31. Practitioners of Medicine

Sec. 31. The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for mal-practice, but no preference shall ever be given by law to any schools of medicine.

[Adopted Feb. 15, 1876.]

#### § 32. Repealed. Aug. 5, 1969

#### § 33. Salary or Compensation Payments to Persons Holding more than one Office

Sec. 33. The accounting officers in this State shall neither draw nor pay a warrant or check on funds of the State of Texas, whether in the treasury or otherwise, to any person for salary or compensation who holds at the same time more than one civil office of emolument, in violation of Section 40.

[Adopted Feb. 15, 1876. Amended Nov. 2, 1926; proclamation Jan. 20, 1927; Nov. 8, 1932; Nov. 7, 1972.]

#### §§ 34 to 36. Repealed. Aug. 5, 1969

#### § 37. Liens of Mechanics, Artisans and Material Men

Sec. 37. Mechanics, artisans and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.

[Adopted Feb. 15, 1876.]

#### § 38. Repealed. Aug. 5, 1969

#### § 39. Appropriations for Historical Memorials

Sec. 39. The Legislature may, from time to time, make appropriations for preserving and perpetuating memorials of the history of Texas, by means of monuments, statues, paintings and documents of historical value.

[Adopted Feb. 15, 1876.]

#### § 40. Holding more than one Office; Exceptions; Right to Vote

Sec. 40. No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the

United States, and retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and the officers and directors of soil and water conservation districts, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States, or retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and officers of the State soil and water conservation districts, from holding at the same time any other office or position of honor, trust or profit, under this State or the United States, or from voting at any election, general, special or primary in this State when otherwise qualified. State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts; provided, however, that such State employees or other individuals shall receive no salary for serving as members of such governing bodies. It is further provided that a nonelective State officer may hold other nonelective offices under the State or the United States, if the other office is of benefit to the State of Texas or is required by the State or Federal law, and there is no conflict with the original office for which he receives salary or compensation. No member of the Legislature of this State may hold any other office or position of profit under this State, or the United States, except as a notary public if qualified by law.

[Adopted Feb. 15, 1876. Amended Nov. 2, 1926, proclamation Jan. 20, 1927; Nov. 8, 1932; Nov. 7, 1972.]

**§ 41. Bribery and Acceptance of Bribes**

Sec. 41. Any person who shall, directly or indirectly, offer, give, or promise, any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the Legislature to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law. And any member of the Legislature or executive or judicial officer who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself, or for another, from any company, corporation or person, any money, appointment, employment, testimonial, reward, thing of value or employment, or of personal advantage or promise thereof, for his vote or official influence, or for withholding the same, or with any understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit, demand and receive any such money or other advantage matter or thing aforesaid for another, as the consideration of his vote or official influence, in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery, within the

meaning of the Constitution, and shall incur the disabilities provided for said offenses, with a forfeiture of the office they may hold, and such other additional punishment as is or shall be provided by law.

[Adopted Feb. 15, 1876.]

**§ 42. Repealed. Aug. 5, 1969**

**§ 43. Exemptions from Public Duty or Service**

Sec. 43. No man, or set of men, shall ever be exempted, relieved or discharged, from the performance of any public duty or service imposed by general law, by any special law. Exemptions from the performance of such public duty or service shall only be made by general law.

[Adopted Feb. 15, 1876.]

**§ 44. County Treasurer and County Surveyor**

Sec. 44. The Legislature shall prescribe the duties and provide for the election by the qualified voters of each county in this State, of a County Treasurer and a County Surveyor, who shall have an office at the county seat, and hold their office for four years, and until their successors are qualified; and shall have such compensation as may be provided by law.

[Adopted Feb. 15, 1876. Amended Nov. 2, 1954.]

**§§ 45, 46. Repealed. Aug. 5, 1969**

**§ 47. Conscientious Scruples as to Bearing Arms**

Sec. 47. Any person who conscientiously scruples to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

[Adopted Feb. 15, 1876.]

**§ 48. Existing Laws to continue in Force**

Sec. 48. All laws and parts of laws now in force in the State of Texas, which are not repugnant to the Constitution of the United States, or to this Constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation or shall be amended or repealed by the Legislature.

[Adopted Feb. 15, 1876.]

**§ 49. Protection of Personal Property from Forced Sale**

Sec. 49. The Legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.

[Adopted Feb. 15, 1876.]

**§ 50. Homestead; Protection from Forced Sale; Mortgages, Trust Deeds and Liens**

Sec. 50. The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

nor may the owner or claimant of the property claimed as homestead, if married, sell or abandon the homestead without the consent of the other spouse, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void. This amendment shall become effective upon its adoption.

[Adopted Feb. 15, 1876. Amended Nov. 6, 1973.]

**§ 51. Amount and Value of Homestead; Uses**

Sec. 51. The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot, or lots, not to exceed in value Ten Thousand Dollars, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the homestead claimant, whether a single adult person, or the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired. This amendment shall become effective upon its adoption.

[Adopted Feb. 15, 1876. Amended Nov. 3, 1970; Nov. 6, 1973.]

**§ 52. Descent and Distribution of Homestead; Restrictions on Partition**

Sec. 52. On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

[Adopted Feb. 15, 1876.]

**§ 53. Process and Writs not Executed or Returned at Adoption of Constitution**

Sec. 53. That no inconvenience may arise from the adoption of this Constitution, it is declared that all process and writs of all kinds which have been or may be issued and not returned or executed when this Constitution is adopted, shall remain valid, and shall not be, in any way, affected by the adoption of this Constitution.

[Adopted Feb. 15, 1876.]

**§§ 54, 55. Repealed. Aug. 5, 1969**

**§ 56. Appropriations for Development and Dissemination of Information concerning Texas Resources**

Sec. 56. The Legislature of the State of Texas shall have the power to appropriate money and

establish the procedure necessary to expend such money for the purpose of developing information about the historical, natural, agricultural, industrial, educational, marketing, recreational and living resources of Texas, and for the purpose of informing persons and corporations of other states through advertising in periodicals having national circulation, and the dissemination of factual information about the advantages and economic resources offered by the State of Texas; providing, however, that neither the name nor the picture of any living state official shall ever be used in any of said advertising, and providing that the Legislature may require that any sum of money appropriated hereunder shall be matched by an equal sum paid into the State Treasury from private sources before any of said money may be expended.

[Adopted Feb. 15, 1876. Amended Nov. 4, 1958.]

**§§ 57, 58. Repealed. Aug. 5, 1969**

**§ 59. Conservation and Development of Natural Resources; Conservation and Reclamation Districts**

Sec. 59. (a) The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

(b) There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

(c) The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as may [may] be prescribed by law and shall also, authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; provided the Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall

first be submitted to the qualified property tax-paying voters of such district and the proposition adopted.

(d) No law creating a conservation and reclamation district shall be passed unless notice of the intention to introduce such a bill setting forth the general substance of the contemplated law shall have been published at least thirty (30) days and not more than ninety (90) days prior to the introduction thereof in a newspaper or newspapers having general circulation in the county or counties in which said district or any part thereof is or will be located and by delivering a copy of such notice and such bill to the Governor who shall submit such notice and bill to the Texas Water Commission, or its successor, which shall file its recommendation as to such bill with the Governor, Lieutenant Governor and Speaker of the House of Representatives within thirty (30) days from date notice was received by the Texas Water Commission. Such notice and copy of bill shall also be given of the introduction of any bill amending a law creating or governing a particular conservation and reclamation district if such bill (1) adds additional land to the district, (2) alters the taxing authority of the district, (3) alters the authority of the district with respect to the issuance of bonds, or (4) alters the qualifications or terms of office of the members of the governing body of the district.

(e) No law creating a conservation and reclamation district shall be passed unless, at the time notice of the intention to introduce a bill is published as provided in Subsection (d) of this section, a copy of the proposed bill is delivered to the commissioners court of each county in which said district or any part thereof is or will be located and to the governing body of each incorporated city or town in whose jurisdiction said district or any part thereof is or will be located. Each such commissioners court and governing body may file its written consent or opposition to the creation of the proposed district with the governor, lieutenant governor, and speaker of the house of representatives. Each special law creating a conservation and reclamation district shall comply with the provisions of the general laws then in effect relating to consent by political subdivisions to the creation of conservation and reclamation districts and to the inclusion of land within the district. [Adopted Aug. 21, 1917, proclamation Oct. 2, 1917. Amended Nov. 3, 1964; Nov. 6, 1973.]

§ 60. Repealed. Aug. 5, 1969

§ 61. Compensation of District, County and Precinct Officers; Salary or Fee Basis; Disposition of Fees

Sec. 61. All district officers in the State of Texas and all county officers in counties having a population of twenty thousand (20,000) or more, according to the then last preceding Federal Census, shall be compensated on a salary basis. In all counties in this State, the Commissioners Courts shall be authorized to determine whether precinct officers shall be compensated on a fee basis or on a salary basis, with the exception that it shall be mandatory upon the Commissioners Courts, to compensate all justices of the peace, constables, deputy constables and precinct law enforcement officers on a salary basis beginning January 1, 1973; and in counties having a population

of less than twenty thousand (20,000), according to the then last preceding Federal Census, the Commissioners Courts shall also have the authority to determine whether county officers shall be compensated on a fee basis or on a salary basis, with the exception that it shall be mandatory upon the Commissioners Courts to compensate all sheriffs, deputy sheriffs, county law enforcement officers including sheriffs who also perform the duties of assessor and collector of taxes, and their deputies, on a salary basis beginning January 1, 1949.

All fees earned by district, county and precinct officers shall be paid into the county treasury where earned for the account of the proper fund, provided that fees incurred by the State, county and any municipality, or in case where a pauper's oath is filed shall be paid into the county treasury when collected and provided that where any officer is compensated wholly on a fee basis such fees may be retained by such officer or paid into the treasury of the county as the Commissioners Court may direct. All Notaries Public, county surveyors and public weighers shall continue to be compensated on a fee basis.

[Adopted Aug. 24, 1935. Amended Nov. 2, 1948; Nov. 7, 1972.]

§ 62. State and County Retirement, Disability and Death Compensation Funds

Sec. 62. (a) The Legislature shall have the authority to levy taxes to provide a State Retirement, Disability and Death Compensation Fund for the officers and employees of the state, and may make such reasonable inclusions, exclusions, or classifications of officers and employees of this state as it deems advisable. The Legislature may also include officers and employees of judicial districts of the state who are or have been compensated in whole or in part directly or indirectly by the state, and may make such other reasonable inclusions, exclusions, or classification of officers and employees of judicial districts of this state as it deems advisable. Persons participating in a retirement system created pursuant to Section 1-a of Article V of this Constitution shall not be eligible to participate in the Fund authorized in this subsection; and persons participating in a retirement system created pursuant to Section 48-a of Article III of this Constitution shall not be eligible to participate in the Fund authorized in this subsection except as permitted by Section 63 of Article XVI of this Constitution. Provided, however, any officer or employee of a county as provided for in Article XVI, Section 62, Subsection (b) of this Constitution, shall not be eligible to participate in the Fund authorized in this subsection, except as otherwise provided herein. The amount contributed by the state to such Fund shall equal the amount paid for the same purpose from the income of each such person, and shall not exceed at any time six per centum (6%) of the compensation paid to each such person by the state.

There is hereby created as an agency of the State of Texas the Employees Retirement System of Texas, the rights of membership in which, the retirement privileges and benefits thereunder, and the management and operations of which shall be governed by the provisions herein contained and by present or hereafter enacted Acts of the Legislature not inconsistent herewith. The general administra-

tion and responsibility for the proper operation of said system are hereby vested in a State Board of Trustees, to be known as the State Board of Trustees of the Employees Retirement System of Texas, which Board shall be constituted and shall serve as may now or hereafter be provided by the Legislature. Said Board shall exercise such powers as are herein provided together with such other powers and duties not inconsistent herewith as may be prescribed by the Legislature. All moneys from whatever source coming into the Fund and all other securities, moneys, and assets of the Employees Retirement System of Texas shall be administered by said Board and said Board shall be the trustees thereof. The Treasurer of the State of Texas shall be custodian of said moneys and securities. Said Board is hereby authorized and empowered to acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any securities, evidence of debt, and other investments in which said securities, moneys, and assets have been or may hereafter be invested by said Board. Said Board is hereby authorized and empowered to invest and reinvest any of said moneys, securities, and assets, as well as the proceeds of any of such investments, in bonds, notes, or other evidences of indebtedness issued, or assumed or guaranteed in whole or in part, by the United States or any agency of the United States, or by the State of Texas, or by any county, city, school district, municipal corporation, or other political subdivision of the State of Texas, both general and special obligations; or in home office facilities to be used in administering the Employees Retirement System including land, equipment, and office building; or in such corporation bonds, notes, other evidences of indebtedness, and corporation stocks, including common and preferred stocks, of any corporation created or existing under the laws of the United States or of any of the states of the United States, as said Board may deem to be proper investments; provided that in making each and all of such investments said Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as probable safety of their capital; and further provided, that a sufficient sum shall be kept on hand to meet payments as they become due each year under such retirement plan, as may now or hereafter be provided by law. Unless investments authorized herein are hereafter further restricted by an Act of the Legislature, no more than one per cent (1%) of the book value of the total assets of the Employees Retirement System shall be invested in the stock of any one (1) corporation, nor shall more than five per cent (5%) of the voting stock of any one (1) corporation be owned; and provided further, that stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid cash dividends for ten (10) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors; and provided further, that not less than twenty-five per cent (25%) at any one time of the book value of investments of said Fund shall be

invested in Government and Municipal Securities as enumerated above. This Amendment shall be self-enacting and shall become effective immediately upon its adoption without any enabling legislation.

(b) Each county shall have the right to provide for and administer a Retirement, Disability and Death Compensation Fund for the appointive officers and employees of the county; provided same is authorized by a majority vote of the qualified voters of such county and after such election has been advertised by being published in at least one newspaper of general circulation in said county once each week for four consecutive weeks; provided that the amount contributed by the county to such Fund shall equal the amount paid for the same purpose from the income of each such person, and shall not exceed at any time five per centum (5%) of the compensation paid to each such person by the county, and shall in no one year exceed the sum of One Hundred and Eighty Dollars (\$180) for any such person.

All funds provided from the compensation of each such person, or by the county, for such Retirement, Disability and Death Compensation Fund, as are received by the county, shall be invested in bonds of the United States, the State of Texas, or counties or cities of this State, or in bonds issued by any agency of the United States Government, the payment of the principal of and interest on which is guaranteed by the United States, provided that a sufficient amount of said funds shall be kept on hand to meet the immediate payment of the amount likely to become due each year out of said Fund, such amount of funds to be kept on hand to be determined by the agency which may be provided by law to administer said Fund; and provided that the recipients of benefits from said Fund shall not be eligible for any other pension retirement funds or direct aid from the State of Texas, unless the Fund, the creation of which is provided for herein, contributed by the county, is released to the State of Texas as a condition to receiving such other pension aid.

(c) The Texas Legislature is authorized to enact appropriate laws to provide for a System of Retirement, Disability and Death Benefits for all the officers and employees of a county or other political subdivision of the state, or a political subdivision of a county; providing that when the Texas Legislature has passed the necessary enabling legislation pursuant to the Constitutional authorization, then the governing body of the county, or other political subdivision of the state, or political subdivision of the county shall make the determination as to whether a particular county or other political subdivision of the state, or subdivision of the county participates in this System; providing further that such System shall be operated at the expense of the county or other political subdivision of the state or political subdivision of the county electing to participate therein and the officers and employees covered by the System; and providing that the Legislature of the State of Texas shall never make an appropriation to pay the costs of this Retirement, Disability and Death Compensation System.

The Legislature may provide for a voluntary merger into the System herein authorized by this Constitutional Amendment of any System of Retirement, Disability and Death Compensation Benefits which may now exist or that may hereafter be established under subsection (b) of Section 62 of

Article XVI of the Texas Constitution; providing further that the Texas Legislature in the enabling statute will make the determination as to the amount of money that will be contributed by the county or other political subdivision of the state or political subdivision of the county to the State-wide System of Retirement, Disability and Death Benefits, and the Legislature shall further provide that the amount of money contributed by the county or other political subdivision of the state or subdivision of the county shall equal the amount paid for the same purpose from the income of each officer and employee covered by this State-wide System.

It is the further intention of the Legislature, in submitting this Constitutional Amendment, that the officers and employees of the county or other political subdivision of the state or political subdivision of a county may be included in these systems regardless of whether the county or other political subdivision of the state or political subdivision of the county participates in the Retirement, Disability and Death Benefit System authorized by this Constitutional Amendment, or whether they participate in a System under the provisions of subsection (b) of Section 62 of Article XVI of the Texas Constitution as the same is herein amended.

[Adopted Nov. 5, 1946. Amended Nov. 4, 1958; Nov. 8, 1966; Nov. 5, 1968.]

### § 63. Teachers and Employees Retirement Systems, Service Credit

Sec. 63. Qualified members of the Teacher Retirement System, in addition to the benefits allowed them under the Teacher Retirement System shall be entitled to credit in the Teacher Retirement System for all services, including prior service and membership service, earned or rendered by them as an appointive officer or employee of the State. Likewise, qualified members of the Employees Retirement System of Texas, in addition to the benefits allowed them under the Employees Retirement System of Texas shall be entitled to credit in the Employees Retirement System of Texas for all services, including prior service and membership service, earned or rendered by them as a teacher or person employed in the public schools, colleges, and universities supported wholly or partly by the State.

[Adopted Nov. 2, 1954.]

### § 64. Terms of Office, Certain Offices

Sec. 64. The office of Inspector of Hides and Animals, the elective district, county and precinct offices which have heretofore had terms of two years, shall hereafter have terms of four years; and the holders of such offices shall serve until their successors are qualified.

[Adopted Nov. 2, 1954.]

### § 65. Transition from two year to four year Terms of Office

Sec. 65. Staggering Terms of Office—The following officers elected at the General Election in November, 1954, and thereafter, shall serve for the full terms provided in this Constitution:

(a) District Clerks; (b) County Clerks; (c) County Judges; (d) Judges of the County Courts at Law, County Criminal Courts, County Probate Courts and

County Domestic Relations Courts; (e) County Treasurers; (f) Criminal District Attorneys; (g) County Surveyors; (h) Inspectors of Hides and Animals; (i) County Commissioners for Precincts Two and Four; (j) Justices of the Peace.

Notwithstanding other provisions of this Constitution, the following officers elected at the General Election in November, 1954, shall serve only for terms of two (2) years: (a) Sheriffs; (b) Assessors and Collectors of Taxes; (c) District Attorneys; (d) County Attorneys; (e) Public Weighers; (f) County Commissioners for Precincts One and Three; (g) Constables. At subsequent elections, such officers shall be elected for the full terms provided in this Constitution.

In any district, county or precinct where any of the aforementioned offices is of such nature that two (2) or more persons hold such office, with the result that candidates file for "Place No. 1," "Place No. 2," etc., the officers elected at the General Election in November, 1954, shall serve for a term of two (2) years if the designation of their office is an uneven number, and for a term of four (4) years if the designation of their office is an even number. Thereafter, all such officers shall be elected for the terms provided in this Constitution.

Provided, however, if any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled.

[Adopted Nov. 2, 1954. Amended Nov. 4, 1958.]

### § 66. Texas Rangers; Retirement and Disability Pension System for Rangers ineligible for Membership in Employees Retirement System

Sec. 66. The Legislature shall have authority to provide for a system of retirement and disability pensions for retiring Texas Rangers who have not been eligible at any time for membership in the Employees Retirement System of Texas as that retirement system was established by Chapter 352, Acts of the Fiftieth Legislature, Regular Session, 1947, and who have had as much as two (2) years service as a Texas Ranger, and to their widows; providing that no pension shall exceed Eighty Dollars (\$80) per month to any such Texas Ranger or his widow, provided that such widow was legally married prior to January 1, 1957, to a Texas Ranger qualifying for such pension.

These pensions may be paid only from the special fund created by Section 17, Article VII for a payment of pensions for services in the Confederate army and navy, frontier organizations, and the militia of the State of Texas, and for widows of such soldiers serving in said armies, navies, organizations or militia.

[Adopted Nov. 4, 1958.]

## ARTICLE XVII

## MODE OF AMENDING THE CONSTITUTION OF THIS STATE

## Section

1. Proposed Amendments; Submission to Voters; Adoption.
2. Constitutional Revision Commission; Establishment; Report; 1974 Constitutional Convention.

**§ 1. Proposed Amendments; Submission to Voters; Adoption**

Sec. 1. The Legislature, at any regular session, or at any special session when the matter is included within the purposes for which the session is convened, may propose amendments revising the Constitution, to be voted upon by the qualified electors for statewide offices and propositions, as defined in the Constitution and statutes of this State. The date of the elections shall be specified by the Legislature. The proposal for submission must be approved by a vote of two-thirds of all the members elected to each House, entered by yeas and nays on the journals.

A brief explanatory statement of the nature of a proposed amendment, together with the date of the election and the wording of the proposition as it is to appear on the ballot, shall be published twice in each newspaper in the State which meets requirements set by the Legislature for the publication of official notices of officers and departments of the state government. The explanatory statement shall be prepared by the Secretary of State and shall be approved by the Attorney General. The Secretary of State shall send a full and complete copy of the proposed amendment or amendments to each county clerk who shall post the same in a public place in the courthouse at least 30 days prior to the election on said amendment. The first notice shall be published not more than 60 days nor less than 50 days before the date of the election, and the second notice shall be published on the same day in the succeeding week. The Legislature shall fix the standards for the rate of charge for the publication, which may not be higher than the newspaper's published national rate for advertising per column inch.

The election shall be held in accordance with procedures prescribed by the Legislature, and the returning officer in each county shall make returns to the Secretary of State of the number of legal votes cast at the election for and against each amendment. If it appears from the returns that a majority of the votes cast have been cast in favor of an amendment, it shall become a part of this Constitution, and proclamation thereof shall be made by the Governor. [Adopted Feb. 15, 1876. Amended Nov. 7, 1972.]

**§ 2. Constitutional Revision Commission; Establishment; Report; 1974 Constitutional Convention**

Sec. 2. (a) When the legislature convenes in regular session in January, 1973, it shall provide by

concurrent resolution for the establishment of a constitutional revision commission. The legislature shall appropriate money to provide an adequate staff, office space, equipment, and supplies for the commission.

(b) The commission shall study the need for constitutional change and shall report its recommendations to the members of the legislature not later than November 1, 1973.

(c) The members of the 63rd Legislature shall be convened as a constitutional convention at noon on the second Tuesday in January, 1974. The lieutenant governor shall preside until a chairman of the convention is elected. The convention shall elect other officers it deems necessary, adopt temporary and permanent rules, and publish a journal of its proceedings. A person elected to fill a vacancy in the 63rd Legislature before dissolution of the convention becomes a member of the convention on taking office as a member of the legislature.

(d) Members of the convention shall receive compensation, mileage, per diem as determined by a five member committee, to be composed of the Governor, Lieutenant Governor, Speaker of the House, Chief Justice of the Supreme Court, and Chief Justice of the Court of Criminal Appeals. This shall not be held in conflict with Article XVI, Section 33 of the Texas Constitution. The convention may provide for the expenses of its members and for the employment of a staff for the convention, and for these purposes may by resolution appropriate money from the general revenue fund of the state treasury. Warrants shall be drawn pursuant to vouchers signed by the chairman or by a person authorized by him in writing to sign them.

(e) The convention, by resolution adopted on the vote of at least two-thirds of its members, may submit for a vote of the qualified electors of this state a new constitution which may contain alternative articles or sections, or may submit revisions of the existing constitution which may contain alternative articles or sections. Each resolution shall specify the date of the election, the form of the ballots, and the method of publicizing the proposals to be voted on. To be adopted, each proposal must receive the favorable vote of the majority of those voting on the proposal. The conduct of the election, the canvassing of the votes, and the reporting of the returns shall be as provided for elections under Section 1 of this article.

(f) The convention may be dissolved by resolution adopted on the vote of at least two-thirds of its members; but it is automatically dissolved at 11:59 p. m. on May 31, 1974, unless its duration is extended for a period not to exceed 60 days by resolution adopted on the vote of at least two-thirds of its members.

(g) The Bill of Rights of the present Texas Constitution shall be retained in full.

[Adopted Nov. 7, 1972.]

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# BUSINESS AND COMMERCE CODE

Acts 1967, 60th Leg., Ch. 785

Effective September 1, 1967

## Analysis

## Section Numbers

Title	Chapter
1. Uniform Commercial Code .....	1
2. Competition and Trade Practices .....	15
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## TITLE 1. UNIFORM COMMERCIAL CODE

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## Enactment

The Uniform Commercial Code was first enacted in Texas in 1965 (Acts 1965, chapter 721) to become effective at midnight June 30, 1966. Section 10-102 of the Code as then enacted repealed numerous existing provisions of the Texas Statutes relating to commercial transactions, but provided that transactions validly entered into before the effective date and the rights, duties and interests flowing from them should remain valid thereafter and could be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by the Act as though such repeal or amendment had not occurred.

Acts 1967, chapter 785, reenacted the Uniform Commercial Code as a part of the Business and Commerce Code and repealed Acts 1965, chapter 721. However, section 5 of the 1967 Act provided in part that the repeal of a statute by the Act did not affect the prior operation of the statute or any prior action taken under it.

The text of the Texas Uniform Commercial Code as set out herein is identified by section rather than article numbers. The section numbers correspond to the section numbers of the Uniform Commercial Code, except that as enacted in 1967 a period has been substituted for a dash so that section 1-101 in the official text is section 1.101 in the Texas Code, and so on. Additionally, most lettered subsections and numbered subdivisions of the Texas Code have been substituted for the numbered subsections and lettered subdivisions of the official text so that subdivision (a) of subsection (2) of section 1-102 in the official text is subdivision (1) of subsection (b) of section 1.102 in the Texas Code, and so on.

## Effective Date

Section 3 of Acts 1967, ch. 785 provided that "This Act takes effect on September 1, 1967."

## Table—Prior Statutory Provisions

Disposition tables are provided preceding this Code to enable the user to trace the disposition in the Texas Business and Commerce Code of the subject matter of articles repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 and Acts 1967, 60th Leg., p. 2343, ch. 785.

## CHAPTER 1. GENERAL PROVISIONS

### SUBCHAPTER A. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE TITLE

Section
1.101. Short Title.
1.102. Purposes; Rules of Construction; Variation by Agreement.
1.103. Supplementary General Principles of Law Applicable.
1.104. Construction Against Implicit Repeal.
1.105. Territorial Application of the Title; Parties' Power to Choose Applicable Law.
1.106. Remedies to be Liberally Administered.
1.107. Waiver or Renunciation of Claim or Right After Breach.
1.108. Severability.
1.109. Section Captions.

### SUBCHAPTER B. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.201. General Definitions.
1.202. Prima Facie Evidence by Third Party Documents.
1.203. Obligation of Good Faith.
1.204. Time; Reasonable Time; "Seasonably".
1.205. Course of Dealing and Usage of Trade.
1.206. Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.

Section

- 1.207. Performance or Acceptance Under Reservation of Rights.
- 1.208. Option to Accelerate at Will.

SUBCHAPTER A. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE TITLE

§ 1.101. Short Title

This title may be cited as Uniform Commercial Code.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.102. Purposes; Rules of Construction; Variation by Agreement

(a) This title shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this title are

- (1) to simplify, clarify and modernize the law governing commercial transactions;
- (2) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;
- (3) to make uniform the law among the various jurisdictions.

(c) The effect of provisions of this title may be varied by agreement, except as otherwise provided in this title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(d) The presence in certain provisions of this title of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under Subsection (c).

(e) In this title unless the context otherwise requires

- (1) words in the singular number include the plural, and in the plural include the singular;
- (2) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.103. Supplementary General Principles of Law Applicable

Unless displaced by the particular provisions of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.104. Construction Against Implicit Repeal

This title being a general body of law intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subse-

quent legislation if such construction can reasonably be avoided.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.105. Territorial Application of the Title; Parties' Power to Choose Applicable Law

(a) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this state.

(b) Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2.402.

Applicability of the chapter on Bank Deposits and Collections. Section 4.102.

Bulk transfers subject to the chapter on Bulk Transfers. Section 6.102.

Applicability of the chapter on Investment Securities. Section 8.106.

Perfection provisions of the chapter on Secured Transactions. Section 9.103.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 997, ch. 400, § 1, eff. Jan. 1, 1974.]

§ 1.106. Remedies to be Liberally Administered

(a) The remedies provided by this title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this title or by other rule of law.

(b) Any right or obligation declared by this title is enforceable by action unless the provision declaring it specifies a different and limited effect.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.107. Waiver or Renunciation of Claim or Right After Breach

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.108. Severability

If any provision or clause of this title or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and to this end the provisions of this title are declared to be severable.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.109. Section Captions

Section captions are parts of this title.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER B. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

§ 1.201. General Definitions

Subject to additional definitions contained in the subsequent chapters of this title which are applicable to specific chapters or subchapters thereof, and unless the context otherwise requires, in this title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title (Sections 1.205 and 2.208). Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts (Section 1.103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting

type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when

(A) he has actual knowledge of it; or

(B) he has received a notice or notification of it; or

(C) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(A) it comes to his attention; or

(B) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this title.

(30) "Person" includes an individual or an organization (See Section 1.102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue

or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2.401) is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper which is subject to Chapter 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under Section 2.401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Chapter 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (Section 2.326). Whether a lease is intended as security is to be determined by the facts of each case; however, (A) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (B) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3.303, 4.208 and 4.209) a person gives "value" for rights if he acquires them

(A) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(B) as security for or in total or partial satisfaction of a pre-existing claim; or

(C) by accepting delivery pursuant to a pre-existing contract for purchase; or

(D) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 997, ch. 400, § 2, Jan. 1, 1974.]

#### § 1.202. Prima Facie Evidence by Third Party Documents

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 1.203. Obligation of Good Faith

Every contract or duty within this title imposes an obligation of good faith in its performance or enforcement.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 1.204. Time; Reasonable Time; "Seasonably"

(a) Whenever this title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(b) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(c) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 1.205. Course of Dealing and Usage of Trade

(a) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(b) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation

that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(c) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(d) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(e) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(f) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 1.206. Statute of Frauds for Kinds of Personal Property Not Otherwise Covered

(a) Except in the cases described in Subsection (b) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond \$5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(b) Subsection (a) of this section does not apply to contracts for the sale of goods (Section 2.201) nor of securities (Section 8.319) nor to security agreements (Section 9.203).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 1.207. Performance or Acceptance Under Reservation of Rights

A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 1.208. Option to Accelerate at Will

A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

CHAPTER 2. SALES

SUBCHAPTER A. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

- Section  
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SUBCHAPTER A. SHORT TITLE, GENERAL  
CONSTRUCTION AND SUBJECT MATTER

§ 2.101. Short Title

This chapter may be cited as Uniform Commercial Code—Sales.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.102. Scope; Certain Security and Other Transactions Excluded From This Chapter

Unless the context otherwise requires, this chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.103. Definitions and Index of Definitions

(a) In this chapter unless the context otherwise requires

(1) "Buyer" means a person who buys or contracts to buy goods.

(2) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(3) "Receipt" of goods means taking physical possession of them.

(4) "Seller" means a person who sells or contracts to sell goods.

(b) Other definitions applying to this chapter or to specified subchapters thereof, and the sections in which they appear are:

"Acceptance". Section 2.606.

"Banker's credit". Section 2.325.

"Between merchants". Section 2.104.

"Cancellation". Section 2.106(d).

"Commercial unit". Section 2.105.

"Confirmed credit". Section 2.325.

"Conforming to contract". Section 2.106.

"Contract for sale". Section 2.106.

"Cover". Section 2.712.

"Entrusting". Section 2.403.

"Financing agency". Section 2.104.

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"Letter of credit". Section 2.325.

"Lot". Section 2.105.

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"Person in position of seller". Section 2.707.

"Present sale". Section 2.106.

"Sale". Section 2.106.

"Sale on approval". Section 2.326.

"Sale or return". Section 2.326.

"Termination". Section 2.106.

(c) The following definitions in other chapters apply to this chapter:

"Check". Section 3.104.

"Consignee". Section 7.102.

"Consignor". Section 7.102.

"Consumer goods". Section 9.109.

"Dishonor". Section 3.507.

"Draft". Section 3.104.

(d) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.104. Definitions: "Merchant"; "Between Merchants"; "Financing Agency"

(a) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(b) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 2.707).

(c) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.105. Definitions: Transferability; "Goods"; "Future" Goods; "Lot"; "Commercial Unit"

(a) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Chapter 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2.107).

(b) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(c) There may be a sale of a part interest in existing identified goods.

(d) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(e) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(f) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.106. Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation"**

(a) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2.401). A "present sale" means a sale which is accomplished by the making of the contract.

(b) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(c) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(d) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.107. Goods to be Severed From Realty: Recording**

(a) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(b) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in Subsection (a) or of timber to be cut is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(c) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 998, ch. 400, § 3, eff. Jan. 1, 1974.]

**SUBCHAPTER B. FORM, FORMATION AND READJUSTMENT OF CONTRACT**

**§ 2.201. Formal Requirements; Statute of Frauds**

(a) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(b) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of Subsection (a) against such party unless written notice of objection to its contents is given within ten days after it is received.

(c) A contract which does not satisfy the requirements of Subsection (a) but which is valid in other respects is enforceable

(1) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(2) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(3) with respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2.606).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.202. Final Written Expression: Parol or Extrinsic Evidence**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(1) by course of dealing or usage of trade (Section 1.205) or by course of performance (Section 2.208); and

(2) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 2.203. Seals Inoperative

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 2.204. Formation in General

(a) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(b) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(c) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 2.205. Firm Offers

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 2.206. Offer and Acceptance in Formation of Contract

(a) Unless otherwise unambiguously indicated by the language or circumstances

(1) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(2) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(b) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 2.207. Additional Terms in Acceptance or Confirmation

(a) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(b) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(1) the offer expressly limits acceptance to the terms of the offer;

(2) they materially alter it; or

(3) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(c) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this title.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 2.208. Course of Performance or Practical Construction

(a) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in within objection shall be relevant to determine the meaning of the agreement.

(b) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (Section 1.205).

(c) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 2.209. Modification, Rescission and Waiver

(a) An agreement modifying a contract within this chapter needs no consideration to be binding.

(b) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(c) The requirements of the statute of frauds section of this chapter (Section 2.201) must be satisfied if the contract as modified is within its provisions.

(d) Although an attempt at modification or rescission does not satisfy the requirements of Subsection (b) or (c) it can operate as a waiver.

(e) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.210. Delegation of Performance; Assignment of Rights**

(a) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(b) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(c) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(d) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(e) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 2.609).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**SUBCHAPTER C. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT**

**§ 2.301. General Obligations of Parties**

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.302. Unconscionable Contract or Clause**

(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.303. Allocation or Division of Risks**

Where this chapter allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.304. Price Payable in Money, Goods, Realty, or Otherwise**

(a) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(b) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this chapter, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.305. Open Price Term**

(a) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

- (1) nothing is said as to price; or
- (2) the price is left to be agreed by the parties and they fail to agree; or
- (3) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(b) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(c) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(d) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.306. Output, Requirements and Exclusive Dealings**

(a) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(b) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.307. Delivery in Single Lot or Several Lots**

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.308. Absence of Specified Place for Delivery**

Unless otherwise agreed

(1) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(2) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(3) documents of title may be delivered through customary banking channels.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.309. Absence of Specific Time Provisions; Notice of Termination**

(a) The time for shipment or delivery or any other action under a contract if not provided in this chapter or agreed upon shall be a reasonable time.

(b) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(c) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.310. Open Time for Payment or Running of Credit; Authority to Ship Under Reservation**

Unless otherwise agreed

(1) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(2) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 2.513); and

(3) if delivery is authorized and made by way of documents of title otherwise than by Subdivision (2) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(4) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.311. Options and Cooperation Respecting Performance**

(a) An agreement for sale which is otherwise sufficiently definite (Subsection (c) of Section 2.204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(b) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in Subsections (a)(3) and (c) of Section 2.319 specifications or arrangements relating to shipment are at the seller's option.

(c) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(1) is excused for any resulting delay in his own performance; and

(2) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.312. Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement**

(a) Subject to Subsection (b) there is in a contract for sale a warranty by the seller that

(1) the title conveyed shall be good, and its transfer rightful; and

(2) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(b) A warranty under Subsection (a) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(c) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.313. Express Warranties by Affirmation, Promise, Description, Sample**

(a) Express warranties by the seller are created as follows:

(1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.314. Implied Warranty: Merchantability; Usage of Trade

(a) Unless excluded or modified (Section 2.316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(b) Goods to be merchantable must be at least such as

(1) pass without objection in the trade under the contract description; and

(2) in the case of fungible goods, are of fair average quality within the description; and

(3) are fit for the ordinary purposes for which such goods are used; and

(4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(5) are adequately contained, packaged, and labeled as the agreement may require; and

(6) conform to the promises or affirmations of fact made on the container or label if any.

(c) Unless excluded or modified (Section 2.316) other implied warranties may arise from course of dealing or usage of trade.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.315. Implied Warranty: Fitness for Particular Purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.316. Exclusion or Modification of Warranties

(a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (Section 2.202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(b) Subject to Subsection (c), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(c) Notwithstanding Subsection (b)

(1) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(2) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(3) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(d) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (Sections 2.718 and 2.719).

(e) The implied warranties of merchantability and fitness shall not be applicable to the furnishing of human blood, blood plasma, or other human tissue or organs from a blood bank or reservoir of such other tissues or organs. Such blood, blood plasma or tissue or organs shall not for the purpose of this Title be considered commodities subject to sale or barter, but shall be considered as medical services.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.317. Cumulation and Conflict of Warranties Express or Implied

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample from an existing bulk displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.318. Chapter Neutral on Question of Third Party Beneficiaries of Warranties of Quality and on Need for Privity of Contract

This chapter does not provide whether anyone other than a buyer may take advantage of an ex-

press or implied warranty of quality made to the buyer or whether the buyer or anyone entitled to take advantage of a warranty made to the buyer may sue a third party other than the immediate seller for deficiencies in the quality of the goods. These matters are left to the courts for their determination.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.319. F.O.B. and F.A.S. Terms

(a) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(1) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this chapter (Section 2.504) and bear the expense and risk of putting them into the possession of the carrier; or

(2) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (Section 2.503);

(3) when under either Subdivision (1) or (2) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this chapter on the form of bill of lading (Section 2.323).

(b) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(1) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(2) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(c) Unless otherwise agreed in any case falling within Subsection (a)(1) or (3) or Subsection (b) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (Section 2.311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(d) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.320. C.I.F. and C. & F. Terms

(a) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(b) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(1) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(2) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(3) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(4) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(5) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(c) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(d) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.321. C.I.F. or C. & F.: "Net Landed Weights"; "Payment on Arrival"; Warranty of Condition on Arrival

Under a contract containing a term C.I.F. or C. & F.

(a) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(b) An agreement described in Subsection (a) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(c) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are

lost delivery of the documents and payment are due when the goods should have arrived.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.322. Delivery "Ex-Ship"

(a) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(b) Under such a term unless otherwise agreed

(1) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(2) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.323. Form of Bill of Lading Required in Overseas Shipment; "Overseas"

(a) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(b) Where in a case within Subsection (a) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(1) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (Subsection (a) of Section 2.508); and

(2) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(c) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.324. "No Arrival, No Sale" Term

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(1) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(2) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (Section 2.613).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.325. "Letter of Credit" Term; "Confirmed Credit"

(a) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(b) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(c) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.326. Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors

(a) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(1) a "sale on approval" if the goods are delivered primarily for use, and

(2) a "sale or return" if the goods are delivered primarily for resale.

(b) Except as provided in Subsection (c), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(c) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(1) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(2) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(3) complies with the filing provisions of the chapter on Secured Transactions (Chapter 9).

(d) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (Section 2.201) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (Section 2.202).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 2.327. Special Incidents of Sale on Approval and Sale or Return

(a) Under a sale on approval unless otherwise agreed

(1) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(2) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(3) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(b) Under a sale or return unless otherwise agreed

(1) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(2) the return is at the buyer's risk and expense.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 2.328. Sale by Auction

(a) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(b) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(c) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(d) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## SUBCHAPTER D. TITLE, CREDITORS AND GOOD FAITH PURCHASERS

### § 2.401. Passing of Title; Reservation for Security; Limited Application of This Section

Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the

provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(a) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2.501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the chapter on Secured Transactions (Chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(b) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(1) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(2) if the contract requires delivery at destination, title passes on tender there.

(c) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(1) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(2) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(d) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale".

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 2.402. Rights of Seller's Creditors Against Sold Goods

(a) Except as provided in Subsections (b) and (c), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (Section 2.502 and 2.716).

(b) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(c) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller

(1) under the provisions of the chapter on Secured Transactions (Chapter 9); or

(2) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.403. Power to Transfer; Good Faith Purchase of Goods; "Entrusting"**

(a) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(1) the transferor was deceived as to the identity of the purchaser, or

(2) the delivery was in exchange for a check which is later dishonored, or

(3) it was agreed that the transaction was to be a "cash sale", or

(4) the delivery was procured through fraud punishable as larcenous under the criminal law.

(b) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(c) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(d) The rights of other purchasers of goods and of lien creditors are governed by the chapters on Secured Transactions (Chapter 9), Bulk Transfers (Chapter 6) and Documents of Title (Chapter 7).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**SUBCHAPTER E. PERFORMANCE**

**§ 2.501. Insurable Interest in Goods; Manner of Identification of Goods**

(a) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(1) when the contract is made if it is for the sale of goods already existing and identified;

(2) if the contract is for the sale of future goods other than those described in Subdivision

(3), when goods are shipped, marked or other-

wise designated by the seller as goods to which the contract refers;

(3) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(b) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(c) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.502. Buyer's Right to Goods on Seller's Insolvency**

(a) Subject to Subsection (b) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(b) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.503. Manner of Seller's Tender of Delivery**

(a) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular

(1) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(2) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(b) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(c) Where the seller is required to deliver at a particular destination tender requires that he comply with Subsection (a) and also in any appropriate case tender documents as described in Subsections (d) and (e) of this section.

(d) Where goods are in the possession of a bailee and are to be delivered without being moved

(1) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgement by the bailee of the buyer's right to possession of the goods; but

(2) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(e) Where the contract requires the seller to deliver documents

(1) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (Subsection (b) of Section 2.323); and

(2) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.504. Shipment by Seller

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(1) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(2) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(3) promptly notify the buyer of the shipment.

Failure to notify the buyer under Subdivision (3) or to make a proper contract under Subdivision (1) is a ground for rejection only if material delay or loss ensues.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.505. Seller's Shipment Under Reservation

(a) Where the seller has identified goods to the contract by or before shipment:

(1) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(2) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (Subsection (b) of Section 2.507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(b) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.506. Rights of Financing Agency

(a) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(b) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.507. Effect of Seller's Tender; Delivery on Condition

(a) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(b) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.508. Cure by Seller of Improper Tender or Delivery; Replacement

(a) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(b) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.509. Risk of Loss in the Absence of Breach

(a) Where the contract requires or authorizes the seller to ship the goods by carrier

(1) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2.505); but

(2) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the

carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(b) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(1) on his receipt of a negotiable document of title covering the goods; or

(2) on acknowledgement by the bailee of the buyer's right to possession of the goods; or

(3) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in Subsection (d)(2) of Section 2.503.

(c) In any case not within Subsection (a) or (b), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(d) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (Section 2.327) and on effect of breach on risk of loss (Section 2.510).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.510. Effect of Breach on Risk of Loss**

(a) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(b) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(c) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.511. Tender of Payment by Buyer; Payment by Check**

(a) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(b) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(c) Subject to the provisions of this title on the effect of an instrument on an obligation (Section 3.802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.512. Payment by Buyer Before Inspection**

(a) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(1) the non-conformity appears without inspection; or

(2) despite tender of the required documents circumstances would justify injunction against honor under the provisions of this title (Section 5.114).

(b) Payment pursuant to Subsection (a) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.513. Buyer's Right to Inspection of Goods**

(a) Unless otherwise agreed and subject to Subsection (c), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(b) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(c) Unless otherwise agreed and subject to the provisions of this chapter on C.I.F. contracts (Subsection (c) of Section 2.321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(1) for delivery "C.O.D." or on other like terms; or

(2) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(d) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.514. When Documents Deliverable on Acceptance; When on Payment**

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.515. Preserving Evidence of Goods in Dispute**

In furtherance of the adjustment of any claim or dispute

(1) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(2) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER F. BREACH, REPUDIATION  
AND EXCUSE

§ 2.601. Buyer's Rights on Improper Delivery

Subject to the provisions of this chapter on breach in installment contracts (Section 2.612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2.718 and 2.719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

- (1) reject the whole; or
- (2) accept the whole; or
- (3) accept any commercial unit or units and reject the rest.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.602. Manner and Effect of Rightful Rejection

(a) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(b) Subject to the provisions of the two following sections on rejected goods (Sections 2.603 and 2.604),

(1) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(2) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this chapter (Subsection (c) of Section 2.711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(3) the buyer has no further obligations with regard to goods rightfully rejected.

(c) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this chapter on Seller's remedies in general (Section 2.703).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.603. Merchant Buyer's Duties as to Rightfully Rejected Goods

(a) Subject to any security interest in the buyer (Subsection (c) of Section 2.711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(b) When the buyer sells goods under Subsection (a), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(c) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.604. Buyer's Options as to Salvage of Rightfully Rejected Goods

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.605. Waiver of Buyer's Objections by Failure to Particularize

(a) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(1) where the seller could have cured it if stated seasonably; or

(2) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(b) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.606. What Constitutes Acceptance of Goods

(a) Acceptance of goods occurs when the buyer

(1) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(2) fails to make an effective rejection (Subsection (a) of Section 2.602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(3) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(b) Acceptance of a part of any commercial unit is acceptance of that entire unit.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.607. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim or Litigation to Person Answerable Over

(a) The buyer must pay at the contract rate for any goods accepted.

(b) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for non-conformity.

(c) Where a tender has been accepted

(1) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(2) if the claim is one for infringement or the like (Subsection (c) of Section 2.312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(d) The burden is on the buyer to establish any breach with respect to the goods accepted.

(e) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(1) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(2) if the claim is one for infringement or the like (Subsection (c) of Section 2.312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(f) The provisions of Subsections (c), (d) and (e) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (Subsection (c) of Section 2.312).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.608. Revocation of Acceptance in Whole or in Part**

(a) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(1) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(2) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(b) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(c) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.609. Right to Adequate Assurance of Performance**

(a) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in

writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(b) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(c) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(d) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.610. Anticipatory Repudiation**

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(1) for a commercially reasonable time await performance by the repudiating party; or

(2) resort to any remedy for breach (Section 2.703 or Section 2.711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(3) in either case suspend his own performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2.704).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.611. Retraction of Anticipatory Repudiation**

(a) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(b) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this chapter (Section 2.609).

(c) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.612. "Installment Contract"; Breach**

(a) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(b) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the

required documents; but if the non-conformity does not fall within Subsection (c) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(c) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.613. Casualty to Identified Goods

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Section 2.324) then

(1) if the loss is total the contract is avoided; and

(2) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.614. Substituted Performance

(a) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of delivery becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(b) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.615. Excuse by Failure of Presupposed Conditions

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(1) Delay in delivery or non-delivery in whole or in part by a seller who complies with Subdivisions (2) and (3) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic

governmental regulation or order whether or not it later proves to be invalid.

(2) Where the causes mentioned in Subdivision (1) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(3) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under Subdivision (2), of the estimated quota thus made available for the buyer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.616. Procedure on Notice Claiming Excuse

(a) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (Section 2.612), then also as to the whole,

(1) terminate and thereby discharge any unexecuted portion of the contract; or

(2) modify the contract by agreeing to take his available quota in substitution.

(b) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(c) The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### SUBCHAPTER G. REMEDIES

#### § 2.701. Remedies for Breach of Collateral Contracts Not Impaired

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.702. Seller's Remedies on Discovery of Buyer's Insolvency

(a) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (Section 2.705).

(b) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(c) The seller's right to reclaim under Subsection (b) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this chapter (Section 2.403). Successful reclamation of goods excludes all other remedies with respect to them.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.703. Seller's Remedies in General**

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 2.612), then also with respect to the whole undelivered balance, the aggrieved seller may

- (1) withhold delivery of such goods;
- (2) stop delivery by any bailee as hereafter provided (Section 2.705);
- (3) proceed under the next section respecting goods still unidentified to the contract;
- (4) resell and recover damages as hereafter provided (Section 2.706);
- (5) recover damages for non-acceptance (Section 2.708) or in a proper case the price (Section 2.709);
- (6) cancel.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.704. Seller's Right to Identify Goods to the Contract Notwithstanding Breach or to Salvage Unfinished Goods**

(a) An aggrieved seller under the preceding section may

- (1) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;
- (2) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(b) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.705. Seller's Stoppage of Delivery in Transit or Otherwise**

(a) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 2.702) and may stop delivery of carload, truckload, plane-load or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(b) As against such buyer the seller may stop delivery until

- (1) receipt of the goods by the buyer; or
- (2) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(3) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(4) negotiation to the buyer of any negotiable document of title covering the goods.

(c)

(1) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(2) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(3) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(4) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.706. Seller's Resale Including Contract for Resale**

(a) Under the conditions stated in Section 2.703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (Section 2.710), but less expenses saved in consequence of the buyer's breach.

(b) Except as otherwise provided in Subsection (c) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(c) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(d) Where the resale is at public sale

(1) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(2) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(3) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(4) the seller may buy.

(e) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(f) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2.707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (Subsection (c) of Section 2.711).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.707. "Person in the Position of a Seller"

(a) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(b) A person in the position of a seller may as provided in this chapter withhold or stop delivery (Section 2.705) and resell (Section 2.706) and recover incidental damages (Section 2.710).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.708. Seller's Damages for Non-Acceptance or Repudiation

(a) Subject to Subsection (b) and to the provisions of this chapter with respect to proof of market price (Section 2.723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this chapter (Section 2.710), but less expenses saved in consequence of the buyer's breach.

(b) If the measure of damages provided in Subsection (a) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this chapter (Section 2.710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.709. Action for the Price

(a) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(1) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(2) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(b) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment.

The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(c) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 2.610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.710. Seller's Incidental Damages

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods

(a) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2.612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(1) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(2) recover damages for non-delivery as provided in this chapter (Section 2.713).

(b) Where the seller fails to deliver or repudiates the buyer may also

(1) if the goods have been identified recover them as provided in this chapter (Section 2.502); or

(2) in a proper case obtain specific performance or replevy the goods as provided in this chapter (Section 2.716).

(c) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2.706).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.712. "Cover"; Buyer's Procurement of Substitute Goods

(a) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(b) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2.715), but less expenses saved in consequence of the seller's breach.

(c) Failure of the buyer to effect cover within this section does not bar him from any other remedy. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.713. Buyer's Damages for Non-Delivery or Repudiation**

(a) Subject to the provisions of this chapter with respect to proof of market price (Section 2.723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (Section 2.715), but less expenses saved in consequence of the seller's breach.

(b) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.714. Buyer's Damages for Breach in Regard to Accepted Goods**

(a) Where the buyer has accepted goods and given notification (Subsection (c) of Section 2.607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(b) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(c) In a proper case any incidental and consequential damages under the next section may also be recovered.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.715. Buyer's Incidental and Consequential Damages**

(a) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(b) Consequential damages resulting from the seller's breach include

(1) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(2) injury to person or property proximately resulting from any breach of warranty.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.716. Buyer's Right to Specific Performance or Replevin**

(a) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(b) The decree for specific performance may include such terms and conditions as to payment of the

price, damages, or other relief as the court may deem just.

(c) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.717. Deduction of Damages from the Price**

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.718. Liquidation or Limitation of Damages; Deposits**

(a) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(b) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(1) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with Subsection (a), or

(2) in the absence of such terms, twenty percent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(c) The buyer's right to restitution under Subsection (b) is subject to offset to the extent that the seller establishes

(1) a right to recover damages under the provisions of this chapter other than Subsection (a), and

(2) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(d) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of Subsection (b); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (Section 2.706).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 2.719. Contractual Modification or Limitation of Remedy**

(a) Subject to the provisions of Subsections (b) and (c) of this section and of the preceding section on liquidation and limitation of damages,

(1) the agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this

chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(2) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(b) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.

(c) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.720. Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.721. Remedies for Fraud

Remedies for material misrepresentation or fraud include all remedies available under this chapter for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.722. Who Can Sue Third Parties for Injury to Goods

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(1) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(2) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(3) either party may with the consent of the other sue for the benefit of whom it may concern.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.723. Proof of Market Price: Time and Place

(a) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 2.708 or Section 2.713) shall be determined according to the price of

such goods prevailing at the time when the aggrieved party learned of the repudiation.

(b) If evidence of a price prevailing at the times or places described in this chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(c) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.724. Admissibility of Market Quotations

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 2.725. Statute of Limitations in Contracts for Sale

(a) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(b) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(c) Where an action commenced within the time limited by Subsection (a) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(d) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this title becomes effective.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### CHAPTER 3. COMMERCIAL PAPER

#### SUBCHAPTER A. SHORT TITLE, FORM AND INTERPRETATION

##### Section

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Section

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SUBCHAPTER H. MISCELLANEOUS

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SUBCHAPTER A. SHORT TITLE, FORM AND INTERPRETATION

§ 3.101. Short Title

This chapter may be cited as Uniform Commercial Code—Commercial Paper.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.102. Definitions and Index of Definitions

(a) In this chapter unless the context otherwise requires

(1) "Issue" means the first delivery of an instrument to a holder or a remitter.

(2) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(3) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(4) "Secondary party" means a drawer or endorser.

(5) "Instrument" means a negotiable instrument.

(b) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance".	Section 3.410.
"Accommodation party".	Section 3.415.
"Alteration".	Section 3.407.
"Certificate of deposit".	Section 3.104.
"Certification".	Section 3.411.
"Check".	Section 3.104.
"Definite time".	Section 3.109.
"Dishonor".	Section 3.507.
"Draft".	Section 3.104.
"Holder in due course".	Section 3.302.
"Negotiation".	Section 3.202.

"Note".	Section 3.104.
"Notice of dishonor".	Section 3.508.
"On demand".	Section 3.108.
"Presentment".	Section 3.504.
"Protest".	Section 3.509.
"Restrictive Indorsement".	Section 3.205.
"Signature".	Section 3.401.

(c) The following definitions in other chapters apply to this chapter:

"Account".	Section 4.104.
"Banking Day".	Section 4.104.
"Clearing house".	Section 4.104.
"Collecting bank".	Section 4.105.
"Customer".	Section 4.104.
"Depository Bank".	Section 4.105.
"Documentary Draft".	Section 4.104.
"Intermediary Bank".	Section 4.105.
"Item".	Section 4.104.
"Midnight deadline".	Section 4.104.
"Payor bank".	Section 4.105.

(d) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.103. Limitations on Scope of Chapter

(a) This chapter does not apply to money, documents of title or investment securities.

(b) The provisions of this chapter are subject to the provisions of the chapter on Bank Deposits and Collections (Chapter 4) and Secured Transactions (Chapter 9).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.104. Form of Negotiable Instruments; "Draft"; "Check"; "Certificate of Deposit"; "Note"

(a) Any writing to be a negotiable instrument within this chapter must

- (1) be signed by the maker or drawer; and
- (2) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this chapter; and
- (3) be payable on demand or at a definite time; and
- (4) be payable to order or to bearer.

(b) A writing which complies with the requirements of this section is

- (1) a "draft" ("bill of exchange") if it is an order;
- (2) a "check" if it is a draft drawn on a bank and payable on demand;
- (3) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;
- (4) a "note" if it is a promise other than a certificate of deposit.

(c) As used in other chapters of this title, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this chapter as well as to instruments which are so negotiable.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.105. When Promise or Order Unconditional

(a) A promise or order otherwise unconditional is not made conditional by the fact that the instrument

(1) is subject to implied or constructive conditions; or

(2) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(3) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(4) states that it is drawn under a letter of credit; or

(5) states that it is secured, whether by mortgage, reservation of title or otherwise; or

(6) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(7) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(8) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(b) A promise or order is not unconditional if the instrument

(1) states that it is subject to or governed by any other agreement; or

(2) states that it is to be paid only out of a particular fund or source except as provided in this section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.106. Sum Certain

(a) The sum payable is a sum certain even though it is to be paid

(1) with stated interest or by stated installments; or

(2) with stated different rates of interest before and after default or a specified date; or

(3) with a stated discount or addition if paid before or after the date fixed for payment; or

(4) with exchange or less exchange, whether at a fixed rate or at the current rate; or

(5) with costs of collection or an attorney's fee or both upon default.

(b) Nothing in this section shall validate any term which is otherwise illegal.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.107. Money

(a) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(b) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that

number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.108. Payable on Demand**

Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.109. Definite Time**

(a) An instrument is payable at a definite time if by its terms it is payable

- (1) on or before a stated date or at a fixed period after a stated date; or
- (2) at a fixed period after sight; or
- (3) at a definite time subject to any acceleration; or
- (4) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(b) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.110. Payable to Order**

(a) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of

- (1) the maker or drawer; or
- (2) the drawee; or
- (3) a payee who is not maker, drawer or drawee; or
- (4) two or more payees together or in the alternative; or
- (5) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or
- (6) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or
- (7) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(b) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed."

(c) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.111. Payable to Bearer**

An instrument is payable to bearer when by its terms it is payable to

- (1) bearer or the order of bearer; or
- (2) a specified person or bearer; or
- (3) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.112. Terms and Omissions Not Affecting Negotiability**

(a) The negotiability of an instrument is not affected by

- (1) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or
- (2) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in case of default on those obligations the holder may realize on or dispose of the collateral; or
- (3) a promise or power to maintain or protect collateral or to give additional collateral; or
- (4) a term authorizing a confession of judgment on the instrument if it is not paid when due; or
- (5) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or
- (6) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or
- (7) a statement in a draft drawn in a set of parts (Section 3.801) to the effect that the order is effective only if no other part has been honored.

(b) Nothing in this section shall validate any term which is otherwise illegal.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.113. Seal**

An instrument otherwise negotiable is within this chapter even though it is under a seal.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.114. Date, Antedating, Postdating**

(a) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(b) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(c) Where the instrument or any signature thereon is dated, the date is presumed to be correct.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.115. Incomplete Instruments**

(a) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(b) If the completion is unauthorized the rules as to material alteration apply (Section 3.407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.116. Instruments Payable to Two or More Persons

An instrument payable to the order of two or more persons

(1) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(2) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.117. Instruments Payable With Words of Description

An instrument made payable to a named person with the addition of words describing him

(1) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

(2) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;

(3) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.118. Ambiguous Terms and Rules of Construction

The following rules apply to every instrument:

(1) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(2) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(3) Words control figures except that if the words are ambiguous figures control.

(4) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(5) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay."

(6) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accord-

ance with Section 3.604 tenders full payment when the instrument is due.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.119. Other Writings Affecting Instrument

(a) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(b) A separate agreement does not affect the negotiability of an instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.120. Instruments "Payable Through" Bank

An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.121. Instruments Payable at Bank

A note or acceptance which states that it is payable at a bank is the equivalent of a draft drawn on the bank payable when it falls due out of any funds of the maker or acceptor in current account or otherwise available for such payment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.122. Accrual of Cause of Action

(a) A cause of action against a maker or an acceptor accrues

(1) in the case of a time instrument on the day after maturity;

(2) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(b) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(c) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(d) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

(1) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(2) in all other cases from the date of accrual of the cause of action.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## SUBCHAPTER B. TRANSFER AND NEGOTIATION

### § 3.201. Transfer: Right to Indorsement

(a) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or

claim against it cannot improve his position by taking from a later holder in due course.

(b) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(c) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.202. Negotiation

(a) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(b) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(c) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(d) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.203. Wrong or Misspelled Name

Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.204. Special Indorsement; Blank Indorsement

(a) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

(b) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

(c) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.205. Restrictive Indorsements

An indorsement is restrictive which either

- (1) is conditional; or
- (2) purports to prohibit further transfer of the instrument; or
- (3) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or

(4) otherwise states that it is for the benefit or use of the indorser or of another person.  
[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.206. Effect of Restrictive Indorsement

(a) No restrictive indorsement prevents further transfer or negotiation of the instrument.

(b) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.

(c) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (Subdivisions (1) and (3) of Section 3.205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of Section 3.302 on what constitutes a holder in due course.

(d) The first taker under an indorsement for the benefit of the indorser or another person (Subdivision (4) of Section 3.205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of Section 3.302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (Subsection (b) of Section 3.304).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.207. Negotiation Effective Although It May Be Rescinded

(a) Negotiation is effective to transfer the instrument although the negotiation is

- (1) made by an infant, a corporation exceeding its powers, or any other person without capacity; or
- (2) obtained by fraud, duress or mistake of any kind; or
- (3) part of an illegal transaction; or
- (4) made in breach of duty.

(b) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.208. Reacquisition

Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and

if his indorsement has been cancelled is discharged as against subsequent holders in due course as well. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### SUBCHAPTER C. RIGHTS OF A HOLDER

##### § 3.301. Rights of a Holder

The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in Section 3.603 on payment or satisfaction, discharge it or enforce payment in his own name.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 3.302. Holder in Due Course

(a) A holder in due course is a holder who takes the instrument

(1) for value; and

(2) in good faith; and

(3) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(b) A payee may be a holder in due course.

(c) A holder does not become a holder in due course of an instrument:

(1) by purchase of it at judicial sale or by taking it under legal process; or

(2) by acquiring it in taking over an estate; or

(3) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(d) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 3.303. Taking for Value

A holder takes the instrument for value

(1) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(2) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(3) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 3.304. Notice to Purchaser

(a) The purchaser has notice of a claim or defense if

(1) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

(2) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(b) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or

as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(c) The purchaser has notice that an instrument is overdue if he has reason to know

(1) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(2) that acceleration of the instrument has been made; or

(3) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty days.

(d) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim

(1) that the instrument is antedated or post-dated;

(2) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

(3) that any party has signed for accommodation;

(4) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(5) that any person negotiating the instrument is or was a fiduciary;

(6) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(e) The filing or recording of a document does not of itself constitute notice within the provisions of this chapter to a person who would otherwise be a holder in due course.

(f) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 3.305. Rights of a Holder in Due Course

To the extent that a holder is a holder in due course he takes the instrument free from

(a) all claims to it on the part of any person; and

(b) all defenses of any party to the instrument with whom the holder has not dealt except

(1) infancy, to the extent that it is a defense to a simple contract; and

(2) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(3) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(4) discharge in insolvency proceedings; and

(5) any other discharge of which the holder has notice when he takes the instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.306. Rights of One Not Holder in Due Course**

Unless he has the rights of a holder in due course any person takes the instrument subject to

- (1) all valid claims to it on the part of any person; and
- (2) all defenses of any party which would be available in an action on a simple contract; and
- (3) the defenses of want or failure of consideration, non-performance of any condition precedent, non-delivery, or delivery for a special purpose (Section 3.408); and
- (4) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.307. Burden of Establishing Signatures, Defenses and Due Course**

(a) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

- (1) the burden of establishing it is on the party claiming under the signature; but
- (2) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(b) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(c) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER D. LIABILITY OF PARTIES

**§ 3.401. Signature**

(a) No person is liable on an instrument unless his signature appears thereon.

(b) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.402. Signature in Ambiguous Capacity**

Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.403. Signature by Authorized Representative**

(a) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(b) An authorized representative who signs his own name to an instrument

- (1) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;
- (2) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(c) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.404. Unauthorized Signatures**

(a) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(b) Any unauthorized signature may be ratified for all purposes of this chapter. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.405. Imposters; Signature in Name of Payee**

(a) An indorsement by any person in the name of a named payee is effective if

- (1) an imposter by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or
- (2) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or
- (3) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(b) Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.406. Negligence Contributing to Alteration or Unauthorized Signature**

Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable

commercial standards of the drawee's or payor's business.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 3.407. Alteration

(a) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

- (1) the number or relations of the parties; or
- (2) an incomplete instrument, by completing it otherwise than as authorized; or
- (3) the writing as signed, by adding to it or by removing any part of it.

(b) As against any person other than a subsequent holder in due course

(1) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(2) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(c) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 3.408. Consideration

Want or failure of consideration is a defense against any person not having the rights of a holder in due course (Section 3.305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this title under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 3.409. Draft Not an Assignment

(a) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(b) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 3.410. Definition and Operation of Acceptance

(a) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(b) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(c) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 3.411. Certification of a Check

(a) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(b) Unless otherwise agreed a bank has no obligation to certify a check.

(c) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 3.412. Acceptance Varying Draft

(a) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

(b) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(c) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 3.413. Contract of Maker, Drawer and Acceptor

(a) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to Section 3.115 on incomplete instruments.

(b) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(c) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 3.414. Contract of Indorser; Order of Liability

(a) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(b) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 3.415. Contract of Accommodation Party

(a) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(b) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(c) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(d) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(e) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.416. Contract of Guarantor**

(a) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(b) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(c) Words of guaranty which do not otherwise specify guarantee payment.

(d) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(e) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(f) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.417. Warranties on Presentment and Transfer**

(a) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that

(1) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(2) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith

(A) to a maker with respect to the maker's own signature; or

(B) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(C) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(3) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith

(A) to the maker of a note; or

(B) to the drawer of a draft whether or not the drawer is also the drawee; or

(C) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(D) to the acceptor of a draft with respect to an alteration made after the acceptance.

(b) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that

(1) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(2) all signatures are genuine or authorized; and

(3) the instrument has not been materially altered; and

(4) no defense of any party is good against him; and

(5) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(c) By transferring "without recourse" the transferor limits the obligation stated in Subsection (b)(4) to a warranty that he has no knowledge of such a defense.

(d) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.418. Finality of Payment or Acceptance**

Except for recovery of bank payments as provided in the chapter on Bank Deposits and Collections (Chapter 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.419. Conversion of Instrument; Innocent Representative**

(a) An instrument is converted when

(1) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(2) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(3) it is paid on a forged indorsement.

(b) In an action against a drawee under Subsection (a) the measure of the drawee's liability is the face amount of the instrument. In any other action under Subsection (a) the measure of liability is presumed to be the face amount of the instrument.

(c) Subject to the provisions of this title concerning restrictive indorsements a representative, including a depository or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(d) An intermediary bank or payor bank which is not a depository bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (Sections 3.205 and 3.206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### SUBCHAPTER E. PRESENTMENT, NOTICE OF DISHONOR AND PROTEST

##### § 3.501. When Presentment, Notice of Dishonor, and Protest Necessary or Permissible

(a) Unless excused (Section 3.511) presentment is necessary to charge secondary parties as follows:

(1) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(2) presentment for payment is necessary to charge any indorser;

(3) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in Section 3.502(a)(2).

(b) Unless excused (Section 3.511)

(1) notice of any dishonor is necessary to charge any indorser;

(2) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in Section 3.502(a)(2).

(c) Unless excused (Section 3.511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states, territories, dependencies and possessions of the United States, the District of Columbia and the Commonwealth of

Puerto Rico. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(d) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2466, ch. 830, § 1, eff. Sept. 1, 1969.]

##### § 3.502. Unexcused Delay; Discharge

(a) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

(1) any indorser is discharged; and

(2) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(b) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 3.503. Time of Presentment

(a) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(1) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(2) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(3) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(4) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(5) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(b) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(1) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

(2) with respect to the liability of an indorser, seven days after his indorsement.

(c) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(d) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.504. How Presentment Made**

(a) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(b) Presentment may be made

(1) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(2) through a clearing house; or

(3) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(c) It may be made

(1) to any one of two or more makers, acceptors, drawees or other payors; or

(2) to any person who has authority to make or refuse the acceptance or payment.

(d) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(e) In the cases described in Section 4.210 presentment may be made in the manner and with the result stated in that section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.505. Rights of Party to Whom Presentment Is Made**

(a) The party to whom presentment is made may without dishonor require

(1) exhibition of the instrument; and

(2) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(3) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(4) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(b) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.506. Time Allowed for Acceptance or Payment**

(a) Acceptance may be deferred without dishonor until the close of the next business day following

presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(b) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.507. Dishonor; Holder's Right of Recourse; Term Allowing Re-Presentment**

(a) An instrument is dishonored when

(1) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (Section 4.301); or

(2) presentment is excused and the instrument is not duly accepted or paid.

(b) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(c) Return of an instrument for lack of proper indorsement is not dishonor.

(d) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.508. Notice of Dishonor**

(a) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(b) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(c) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(d) Written notice is given when sent although it is not received.

(e) Notice to one partner is notice to each although the firm has been dissolved.

(f) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(g) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(h) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.509. Protest; Noting for Protest

(a) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice-consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(b) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(c) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(d) Subject to Subsection (e) any necessary protest is due by the time that notice of dishonor is due.

(e) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.510. Evidence of Dishonor and Notice of Dishonor

The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(1) a document regular in form as provided in the preceding section which purports to be a protest;

(2) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(3) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.511. Waived or Excused Presentment, Protest or Notice of Dishonor or Delay Therein

(a) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(b) Presentment or notice or protest as the case may be is entirely excused when

(1) the party to be charged has waived it expressly or by implication either before or after it is due; or

(2) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(3) by reasonable diligence the presentment or protest cannot be made or the notice given.

(c) Presentment is also entirely excused when

(1) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(2) acceptance or payment is refused but not for want of proper presentment.

(d) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(e) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(f) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## SUBCHAPTER F. DISCHARGE

### § 3.601. Discharge of Parties

(a) The extent of the discharge of any party from liability on an instrument is governed by the sections on

(1) payment or satisfaction (Section 3.603); or

(2) tender of payment (Section 3.604); or

(3) cancellation or renunciation (Section 3.605); or

(4) impairment of right of recourse or of collateral (Section 3.606); or

(5) reacquisition of the instrument by a prior party (Section 3.208); or

(6) fraudulent and material alteration (Section 3.407); or

(7) certification of a check (Section 3.411); or

(8) acceptance varying a draft (Section 3.412); or

(9) unexcused delay in presentment or notice of dishonor or protest (Section 3.502).

(b) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(c) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument

(1) reacquires the instrument in his own right; or

(2) is discharged under any provision of this Chapter, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (Section 3.606).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2466, ch. 830, § 2, eff. Sept. 1, 1969.]

**§ 3.602. Effect of Discharge Against Holder in Due Course**

No discharge of any party provided by this chapter is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.603. Payment or Satisfaction**

(a) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability

(1) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(2) of a party (other than an intermediary bank or a payor bank which is not a depository bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(b) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (Section 3.201).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.604. Tender of Payment**

(a) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(b) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(c) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.605. Cancellation and Renunciation**

(a) The holder of an instrument may even without consideration discharge any party

(1) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(2) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(b) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 3.606. Impairment of Recourse or of Collateral**

(a) The holder discharges any party to the instrument to the extent that without such party's consent the holder

(1) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(2) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(b) By express reservation of rights against a party with a right of recourse the holder preserves

(1) all his rights against such party as of the time when the instrument was originally due; and

(2) the right of the party to pay the instrument as of that time; and

(3) all rights of such party to recourse against others.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER G. ADVICE OF INTERNATIONAL SIGHT DRAFT

**§ 3.701. Letter of Advice of International Sight Draft**

(a) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(b) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(c) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER H. MISCELLANEOUS

**§ 3.801. Drafts in a Set**

(a) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(b) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby

becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(c) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under Subsection (b). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (Section 4.407).

(d) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.802. Effect of Instrument on Obligation for Which It Is Given

(a) Unless otherwise agreed where an instrument is taken for an underlying obligation

(1) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(2) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(b) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.803. Notice to Third Party

Where a defendant is sued for breach of an obligation for which a third person is answerable over under this chapter he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this chapter. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after reasonable receipt of the notice the person notified does come in and defend he is so bound.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.804. Lost, Destroyed or Stolen Instruments

The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 3.805. Instruments Not Payable to Order or to Bearer

This chapter applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this chapter but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## CHAPTER 4. BANK DEPOSITS AND COLLECTIONS

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- 4.406. Customer's Duty to Discover and Report Unauthorized Signature or Alteration.
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- 4.501. Handling of Documentary Drafts; Duty to Send for Presentment and to Notify Customer of Dishonor.
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SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

§ 4.101. Short Title

This chapter may be cited as Uniform Commercial Code—Bank Deposits and Collections.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.102. Applicability

(a) To the extent that items within this chapter are also within the scope of Chapters 3 and 8, they are subject to the provisions of those chapters. In the event of conflict the provisions of this chapter govern those of Chapter 3 but the provisions of Chapter 8 govern those of this chapter.

(b) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.103. Variation by Agreement; Measure of Damages; Certain Action Constituting Ordinary Care

(a) The effect of the provisions of this chapter may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under Subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Action or non-action approved by this chapter or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this chapter, prima facie constitutes the exercise of ordinary care.

(d) The specification or approval of certain procedures by this chapter does not constitute disapproval

of other procedures which may be reasonable under the circumstances.

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.104. Definitions and Index of Definitions

(a) In this chapter unless the context otherwise requires

(1) "Account" means any account with a bank and includes a checking, time, interest or savings account;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "Clearing house" means any association of banks or other payors regularly clearing items;

(5) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

(6) "Documentary draft" means any negotiable or non-negotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

(7) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;

(8) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(9) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

(10) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

(11) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this chapter and the sections in which they appear are:

"Collecting bank"	Section 4.105.
"Depository bank"	Section 4.105.
"Intermediary bank"	Section 4.105.
"Payor bank"	Section 4.105.
"Presenting bank"	Section 4.105.
"Remitting bank"	Section 4.105.

(c) The following definitions in other chapters apply to this chapter:

"Acceptance"	Section 3.410.
"Certificate of deposit"	Section 3.104.
"Certification"	Section 3.411.
"Check"	Section 3.104.
"Draft"	Section 3.104.
"Holder in due course"	Section 3.302.
"Notice of dishonor"	Section 3.508.
"Presentment"	Section 3.504.
"Protest"	Section 3.509.
"Secondary party"	Section 3.102.

(d) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.105. "Depository Bank"; "Intermediary Bank"; "Collecting Bank"; "Payor Bank"; "Presenting Bank"; "Remitting Bank"**

In this chapter unless the context otherwise requires:

(1) "Depository bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;

(2) "Payor bank" means a bank by which an item is payable as drawn or accepted;

(3) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depository or payor bank;

(4) "Collecting bank" means any bank handling the item for collection except the payor bank;

(5) "Presenting bank" means any bank presenting an item except a payor bank;

(6) "Remitting bank" means any payor or intermediary bank remitting for an item.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.106. Separate Office of a Bank**

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this chapter and under Chapter 3.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.107. Time of Receipt of Items**

(a) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(b) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.108. Delays**

(a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the ap-

proval of any person involved, waive, modify or extend time limits imposed or permitted by this title for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this title or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.109. Process of Posting**

The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

(1) verification of any signature;

(2) ascertaining that sufficient funds are available;

(3) affixing a "paid" or other stamp;

(4) entering a charge or entry to a customer's account;

(5) correcting or reversing an entry or erroneous action with respect to the item.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**SUBCHAPTER B. COLLECTION OF ITEMS:  
DEPOSITORY AND COLLECTING BANKS**

**§ 4.201. Presumption and Duration of Agency Status of Collecting Banks and Provisional Status of Credits; Applicability of Chapter; Item Indorsed "Pay Any Bank"**

(a) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (Subsection (c) of Section 4.211 and Sections 4.212 and 4.213) the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this chapter apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder

(1) until the item has been returned to the customer initiating collection; or

(2) until the item has been specially indorsed by a bank to a person who is not a bank.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.202. Responsibility for Collection; When Action Seasonable**

- (a) A collecting bank must use ordinary care in
  - (1) presenting an item or sending it for presentment; and
  - (2) sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor or directly to the depository bank under Subsection (b) of Section 4.212 after learning that the item has not been paid or accepted, as the case may be; and
  - (3) settling for an item when the bank receives final settlement; and
  - (4) making or providing for any necessary protest; and
  - (5) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(c) Subject to Subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.203. Effect of Instructions**

Subject to the provisions of Chapter 3 concerning conversion of instruments (Section 3.419) and the provisions of both Chapter 3 and this chapter concerning restrictive indorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.204. Methods of Sending and Presenting; Sending Direct to Payor Bank**

(a) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

- (b) A collecting bank may send
  - (1) any item direct to the payor bank;
  - (2) any item to any non-bank payor if authorized by its transferor; and
  - (3) any item other than documentary drafts to any non-bank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.205. Supplying Missing Indorsement; No Notice from Prior Indorsement**

(a) A depository bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

(b) An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.206. Transfer Between Banks**

Any agreed method which identifies the transferor or bank is sufficient for the item's further transfer to another bank.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.207. Warranties of Customer and Collecting Bank on Transfer or Presentment of Items; Time for Claims**

(a) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that

(1) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(2) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(A) to a maker with respect to the maker's own signature; or

(B) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(C) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(3) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(A) to the maker of a note; or

(B) to the drawer of a draft whether or not the drawer is also the drawee; or

(C) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(D) to the acceptor of an item with respect to an alteration made after the acceptance.

(b) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that

(1) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(2) all signatures are genuine or authorized; and

(3) the item has not been materially altered; and

(4) no defense of any party is good against him; and

(5) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(c) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(d) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 4.208. Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds

(a) A bank has a security interest in an item and any accompanying documents or the proceeds of either

(1) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(3) if it makes an advance on or against the item.

(b) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security

interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Chapter 9 except that

(1) no security agreement is necessary to make the security interest enforceable (Subsection (a)(2) of Section 9.203); and

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 4.209. When Bank Gives Value for Purposes of Holder in Due Course

For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of Section 3.302 on what constitutes a holder in due course.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 4.210. Presentment by Notice of Item Not Payable by, Through or at a Bank; Liability of Secondary Parties

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3.505 by the close of the bank's next banking day after it knows of the requirement.

(b) Where presentment is made by notice and neither honor nor request for compliance with a requirement under Section 3.505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 4.211. Media of Remittance; Provisional and Final Settlement in Remittance Cases

(a) A collecting bank may take in settlement of an item

(1) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(2) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

(3) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(4) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(b) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by Subsection (a) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(c) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement

(1) if the remittance instrument or authorization to charge is of a kind approved by Subsection (a) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(2) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by a cashier's check remitting bank which is not of a kind approved by Subsection (a)(2);—at the time of the receipt of such remittance check or obligation; or

(3) if in a case not covered by Subdivision (1) or (2) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.212. Right of Charge-Back or Refund**

(a) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (Subsection (c) of Section 4.211 and Subsections (b) and (c) of Section 4.213).

(b) Within the time and manner prescribed by this section and Section 4.301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depository bank and may send for collection a draft on the depository bank and obtain reimbursement. In such case, if the depository bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

(c) A depository bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (Section 4.301).

(d) The right to charge-back is not affected by

(1) prior use of the credit given for the item; or

(2) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(e) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 4.213. Final Payment of Item by Payor Bank; When Provisional Debits and Credits Become Final; When Certain Credits Become Available for Withdrawal**

(a) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(1) paid the item in cash; or

(2) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or

(3) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

(4) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Upon a final payment under Subdivisions (2), (3) or (4) the payor bank shall be accountable for the amount of the item.

(b) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(c) If a collecting bank receives a settlement for an item which is or becomes final (Subsection (c) of Section 4.211, Subsection (b) of Section 4.213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(d) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right

(1) in any case where the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(2) in any case where the bank is both a depository bank and a payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

(e) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 4.214. Insolvency and Preference

(a) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (Subsection (c) of Section 4.211, Subsections (a)(4), (b) and (c) of Section 4.213).

(d) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### SUBCHAPTER C. COLLECTION OF ITEMS: PAYOR BANKS

#### § 4.301. Deferred Posting; Recovery of Payment by Return of Items; Time of Dishonor

(a) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (Subsection (a) of Section 4.213) and before its midnight deadline it

(1) returns the item; or

(2) sends written notice of dishonor or non-payment if the item is held for protest or is otherwise unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit

given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(c) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(2) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 4.302. Payor Bank's Responsibility for Late Return of Item

In the absence of a valid defense such as breach of a presentment warranty (Subsection (a) of Section 4.207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of

(1) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 4.303. When Items Subject to Notice, Stop-Order, Legal Process or Setoff; Order in Which Items May be Charged or Certified

(a) Any knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

(1) accepted or certified the item;

(2) paid the item in cash;

(3) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;

(4) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

(5) become accountable for the amount of the item under Subsection (a)(4) of Section 4.213 and Section 4.302 dealing with the payor bank's responsibility for late return of items.

(b) Subject to the provisions of Subsection (a) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### SUBCHAPTER D. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

##### § 4.401. When Bank May Charge Customer's Account

(a) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(b) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to

- (1) the original tenor of his altered item; or
- (2) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 4.402. Bank's Liability to Customer for Wrongful Dishonor

A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 4.403. Customer's Right to Stop Payment; Burden of Proof of Loss

(a) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in Section 4.303.

(b) An order is binding upon the bank only if it is in writing, dated, signed, and describes the item with certainty. An order is effective for only six months unless renewed in writing.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 4.404. Bank Not Obligated to Pay Check More Than Six Months Old

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its custom-

er's account for a payment made thereafter in good faith.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 4.405. Death or Incompetence of Customer

(a) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 4.406. Customer's Duty to Discover and Report Unauthorized Signature or Alteration

(a) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(b) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by Subsection (a) the customer is precluded from asserting against the bank

(1) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(2) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(c) The preclusion under Subsection (b) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(d) Without regard to care or lack of care of either the customer or the bank a customer who does not within one year from the time the statement and items are made available to the customer (Subsection (a)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(e) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 4.407. Payor Bank's Right to Subrogation on Improper Payment

If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

(1) of any holder in due course on the item against the drawer or maker; and

(2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### SUBCHAPTER E. COLLECTION OF DOCUMENTARY DRAFTS

#### § 4.501. Handling of Documentary Drafts; Duty to Send for Presentment and to Notify Customer of Dishonor

A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 4.502. Presentment of "On Arrival" Drafts

When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 4.503. Responsibility of Presenting Bank for Documents and Goods; Report of Reasons for Dishonor; Referee in Case of Need

Unless otherwise instructed and except as provided in Chapter 5 a bank presenting a documentary draft

(1) must deliver the documents to the drawee on acceptance of the draft if it is payable more

than three days after presentment; otherwise, only on payment; and

(2) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 4.504. Privilege of Presenting Bank to Deal With Goods; Security Interest for Expenses

(a) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under Subsection (a) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## CHAPTER 5. LETTERS OF CREDIT

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#### § 5.101. Short Title

This chapter may be cited as Uniform Commercial Code—Letters of Credit.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.102. Scope

(a) This chapter applies

(1) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(2) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(3) to a credit issued by a bank or other person if the credit is not within Subdivision (1) or (2) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(b) Unless the engagement meets the requirements of Subsection (a), this chapter does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(c) This chapter deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this title or may hereafter develop. The fact that this chapter states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.103. Definitions

(a) In this chapter unless the context otherwise requires

(1) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this chapter (Section 5.102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(2) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(3) An "issuer" is a bank or other person issuing a credit.

(4) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(5) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(6) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(7) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(b) Other definitions applying to this chapter and the sections in which they appear are:

- "Notation Credit". Section 5.108.
- "Presenter". Section 5.112(c).

(c) Definitions in other chapters applying to this chapter and the sections in which they appear are:

- "Accept" or "Acceptance". Section 3.410.
- "Contract for sale". Section 2.106.
- "Draft". Section 3.104.
- "Holder in due course". Section 3.302.
- "Midnight deadline". Section 4.104.
- "Security". Section 8.102.

(d) In addition, Chapter contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.104. Formal Requirements; Signing

(a) Except as otherwise required in Subsection (a)(3) of Section 5.102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(b) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.105. Consideration

No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.106. Time and Effect of Establishment of Credit

(a) Unless otherwise agreed a credit is established

(1) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(2) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(b) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(c) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(d) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modifica-

tion or revocation and the issuer in turn is entitled to reimbursement from its customer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 5.107. Advice of Credit; Confirmation; Error in Statement of Terms**

(a) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(b) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(c) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(d) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 5.108. "Notation Credit"; Exhaustion of Credit**

(a) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit".

(b) Under a notation credit

(1) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(2) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

(c) If the credit is not a notation credit

(1) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(2) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 5.109. Issuer's Obligation to Its Customer**

(a) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility

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(1) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(2) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(3) based on knowledge or lack of knowledge of any usage of any particular trade.

(b) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(c) A non-bank issuer is not bound by any banking usage of which it has no knowledge.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 5.110. Availability of Credit in Portions; Presenter's Reservation of Lien or Claim**

(a) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(b) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentation authorizes such relinquishment. An explicit reservation of claim makes the draft or demand non-complying.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 5.111. Warranties on Transfer and Presentment**

(a) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Chapters 3, 4, 7 and 8.

(b) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Chapter 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Chapters 7 and 8.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 5.112. Time Allowed for Honor or Rejection; Withholding Honor or Rejection by Consent; "Presenter"**

(a) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit

(1) defer honor until the close of the third banking day following receipt of the documents; and

(2) further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit except as otherwise provided in Subsection (d) of Section 5.114 on conditional payment.

(b) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(c) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 5.113. Indemnities**

(a) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(b) An indemnity agreement inducing honor, negotiation or reimbursement

(1) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(2) unless a longer time is explicitly agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 5.114. Issuer's Duty and Privilege to Honor; Right to Reimbursement**

(a) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(b) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (Section 7.507) or of a security (Section 8.306) or is forged or fraudulent or there is fraud in the transaction

(1) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (Section 3.302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (Section 7.502) or a bona fide purchaser of a security (Section 8.302); and

(2) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the

documents but a court of appropriate jurisdiction may enjoin such honor.

(c) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(d) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

(1) any payment made on receipt of such notice is conditional; and

(2) the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

(3) in the event of such rejection, the issuer is entitled by charge back or otherwise to return of the payment made.

(e) In the case covered by Subsection (d) failure to reject documents within the time specified in Subdivision (2), constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 5.115. Remedy for Improper Dishonor or Anticipatory Repudiation**

(a) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (Section 2.707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under Section 2.710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(b) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under Section 2.610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 5.116. Transfer and Assignment**

(a) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(b) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of an account under Chapter 9 on Secured Transactions and is governed by that chapter except that

(1) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Chapter 9; and

(2) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(3) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(c) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 998, ch. 400, § 4, eff. Jan. 1, 1974.]

#### § 5.117. Insolvency of Bank Holding Funds for Documentary Credit

(a) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this chapter is made applicable by Subdivision (1) or (2) of Section 5.102(a) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(1) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(2) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(3) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(b) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## CHAPTER 6. BULK TRANSFERS

Section	
6.101.	Short Title.
6.102.	"Bulk Transfers"; Transfers of Equipment; Enterprises Subject to This Chapter; Bulk Transfers Subject to This Chapter.
6.103.	Transfers Excepted From This Chapter.

#### Section

6.104.	Schedule of Property, List of Creditors.
6.105.	Notice to Creditors.
6.106.	Application of the Proceeds.
6.107.	The Notice.
6.108.	Auction Sales; "Auctioneer".
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6.110.	Subsequent Transfers.
6.111.	Limitation of Actions and Levies.

#### § 6.101. Short Title

This chapter may be cited as Uniform Commercial Code—Bulk Transfers.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 6.102. "Bulk Transfers"; Transfers of Equipment; Enterprises Subject to This Chapter; Bulk Transfers Subject to This Chapter

(a) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (Section 9.109) of an enterprise subject to this chapter.

(b) A transfer of a substantial part of the equipment (Section 9.109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(c) The enterprises subject to this chapter are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(d) Except as limited by the following section all bulk transfers of goods located within this state are subject to this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 6.103. Transfers Excepted From This Chapter

The following transfers are not subject to this chapter:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interest;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the

transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which are exempt from execution.

Public notice under Subdivision (6) or (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 6.104. Schedule of Property, List of Creditors**

(a) Except as provided with respect to auction sales (Section 6.108), a bulk transfer subject to this chapter is ineffective against any creditor of the transferor unless:

(1) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(2) The parties prepare a schedule of the property transferred sufficient to identify it; and

(3) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the County Clerk of the county in which the transferor had its principal place of business in this state.

(b) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(c) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 6.105. Notice to Creditors**

In addition to the requirements of the preceding section, any bulk transfer subject to this chapter except one made by auction sale (Section 6.108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (Section 6.107).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 6.106. Application of the Proceeds**

In addition to the requirements of the two preceding sections:

(1) Upon every bulk transfer subject to this chapter for which new consideration becomes

payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (Section 6.104) or filed in writing in the place stated in the notice (Section 6.107) within thirty days after the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be made pro rata.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 6.107. The Notice**

(a) The notice to creditors (Section 6.105) shall state:

(1) that a bulk transfer is about to be made; and

(2) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

(3) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(b) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(1) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(2) the address where the schedule of property and list of creditors (Section 6.104) may be inspected;

(3) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(4) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and

(5) if for new consideration the time and place where creditors of the transferor are to file their claims.

(c) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (Section 6.104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 6.108. Auction Sales; "Auctioneer"**

(a) A bulk transfer is subject to this chapter even though it is by sale at auction, but only in the manner and with the results stated in this section.

(b) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of

the property to be sold, both prepared as before stated (Section 6.104).

(c) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(1) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this chapter (Section 6.104);

(2) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(3) assure that the net proceeds of the auction are applied as provided in this chapter (Section 6.106).

(d) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 6.109. What Creditors Protected; Credit for Payment to Particular Creditors

(a) The creditors of the transferor mentioned in this chapter are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (Sections 6.105 and 6.107) are not entitled to notice.

(b) Against the aggregate obligation imposed by the provisions of this chapter concerning the application of the proceeds (Section 6.106 and Subsection (c)(3) of 6.108) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 6.110. Subsequent Transfers

When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this chapter, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect, but

(2) a purchaser for value in good faith and without such notice takes free of such defect.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 6.111. Limitation of Actions and Levies

No action under this chapter shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## CHAPTER 7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

### SUBCHAPTER A. GENERAL

#### Section

- 7.101. Short Title.
- 7.102. Definitions and Index of Definitions.
- 7.103. Relation of Chapter to Treaty, Statute, Tariff, Classification or Regulation.
- 7.104. Negotiable and Non-Negotiable Warehouse Receipt, Bill of Lading or Other Document of Title.
- 7.105. Construction Against Negative Implication.

### SUBCHAPTER B. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

- 7.201. Who May Issue a Warehouse Receipt; Storage Under Government Bond.
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SUBCHAPTER A. GENERAL

§ 7.101. Short Title

This chapter may be cited as Uniform Commercial Code—Documents of Title.  
[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.102. Definitions and Index of Definitions

(a) In this chapter, unless the context otherwise requires:

(1) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(2) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(3) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(4) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(5) "Document" means document of title as defined in the general definitions in Chapter 1 (Section 1.201).

(6) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(7) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(8) "Warehouseman" is a person engaged in the business of storing goods for hire.

(b) Other definitions applying to this chapter or to specified subchapters thereof, and the sections in which they appear are:

"Duly negotiate". Section 7.501.

"Person entitled under the document". Section 7.403(d).

(c) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Contract for sale". Section 2.106.

"Overseas". Section 2.323.

"Receipt" of goods. Section 2.103.

(d) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.103. Relation of Chapter to Treaty, Statute, Tariff, Classification or Regulation

To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued

pursuant thereto is applicable, the provisions of this chapter are subject thereto.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.104. Negotiable and Non-Negotiable Warehouse Receipt, Bill of Lading or Other Document of Title

(a) A warehouse receipt, bill of lading or other document of title is negotiable

(1) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(2) where recognized in overseas trade, if it runs to a named person or assigns.

(b) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.105. Construction Against Negative Implication

The omission from either Subchapter B or Subchapter C of this chapter of a provision corresponding to a provision made in the other subchapter does not imply that a corresponding rule of law is not applicable.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER B. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

§ 7.201. Who May Issue a Warehouse Receipt; Storage Under Government Bond

(a) A warehouse receipt may be issued by any warehouseman.

(b) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.202. Form of Warehouse Receipt; Essential Terms; Optional Terms

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(1) the location of the warehouse where the goods are stored;

(2) the date of issue of the receipt;

(3) the consecutive number of the receipt;

(4) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(5) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(6) a description of the goods or of the packages containing them;

(7) the signature of the warehouseman, which may be made by his authorized agent;

(8) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (Section 7.209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(c) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this title and do not impair his obligation of delivery (Section 7.403) or his duty of care (Section 7.204). Any contrary provisions shall be ineffective. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.203. Liability for Non-Receipt or Misdescription

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.204. Duty of Care; Contractual Limitation of Warehouseman's Liability

(a) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is

effective with respect to the warehouseman's liability for conversion to his own use.

(c) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(d) This section does not impair or repeal Texas Revised Civil Statutes of 1925, Articles 5545 and 5546.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.205. Title Under Warehouse Receipt Defeated in Certain Cases

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.206. Termination of Storage at Warehouseman's Option

(a) A warehouseman may on notifying the person or whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (Section 7.210).

(b) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in Subsection (a) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(d) The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(e) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 7.207. Goods Must be Kept Separate; Fungible Goods

(a) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(b) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 7.208. Altered Warehouse Receipts

Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 7.209. Lien of Warehouseman

(a) (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law.

(2) If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(b) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in Subsection (a), such as for money advanced and interest. Such a security interest is governed by the chapter on Secured Transactions (Chapter 9).

(c) A warehouseman's lien for a security interest under Subsection (b) is effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under

Section 7.503. However, the warehouseman's specific lien for charges and expenses under Subsection (a)(1) is effective against any security interest. If the warehouseman learns of a perfected security interest owned by a person as to whom the document confers no right in the goods covered by it under Section 7.503 against the goods and fails thereafter to give such secured party (Section 9.105) written notice of the accrued and unpaid charges and expenses at the time when they have accrued for between two and six months, then the warehouseman's specific lien under Subsection (a)(1) is effective as against such secured party only with respect to unpaid charges and expenses which have accrued by the end of six months.

(d) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1971, 62nd Leg., p. 3048, ch. 1010, § 1, eff. June 15, 1971.]

### § 7.210. Enforcement of Warehouseman's Lien

(a) Except as provided in Subsection (b), a warehouseman's lien may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(b) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(3) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(4) The sale must conform to the terms of the notification.

(5) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(6) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

(d) The warehouseman may buy at any public sale pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(f) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(g) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(h) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either Subsection (a) or (b).

(i) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### SUBCHAPTER C. BILLS OF LADING: SPECIAL PROVISIONS

##### § 7.301. Liability for Non-Receipt or Misdescription; "Said to Contain"; "Shipper's Load and Count"; Improper Handling

(a) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said

to contain", "shipper's weight, load and count" or the like, if such indication be true.

(b) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity of bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(c) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(d) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(e) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 7.302. Through Bills of Lading and Similar Documents

(a) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(b) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(c) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any

receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 7.303. Diversion; Reconsignment; Change of Instructions**

(a) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

(1) the holder of a negotiable bill; or

(2) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(3) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(4) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(b) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 7.304. Bills of Lading in a Set**

(a) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(c) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(d) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(e) The bailee is obliged to deliver in accordance with Subchapter D of this chapter against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 7.305. Destination Bills**

(a) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other

receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 7.306. Altered Bills of Lading**

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 7.307. Lien of Carrier**

(a) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(b) A lien for charges and expenses under Subsection (a) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under Subsection (a) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(c) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 7.308. Enforcement of Carrier's Lien**

(a) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be

retained by the carrier subject to the terms of the bill and this chapter.

(c) The carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(e) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(f) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(g) A carrier's lien may be enforced in accordance with either Subsection (a) or the procedure set forth in Subsection (b) of Section 7.210.

(h) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.309. Duty of Care; Contractual Limitation of Carrier's Liability

(a) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### SUBCHAPTER D. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

#### § 7.401. Irregularities in Issue of Receipt or Bill or Conduct of Issuer

The obligations imposed by this chapter on an issuer apply to a document of title regardless of the fact that

(1) the document may not comply with the requirements of this chapter or of any other law or regulation regarding its issue, form or content; or

(2) the issuer may have violated laws regulating the conduct of his business; or

(3) the goods covered by the document were owned by the bailee at the time the document was issued; or

(4) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.402. Duplicate Receipt or Bill; Overissue

Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.403. Obligation of Warehouseman or Carrier to Deliver; Excuse

(a) The bailee must deliver the goods to a person entitled under the document who complies with Subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

(1) delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) damage to or delay, loss or destruction of the goods for which the bailee is not liable, but the burden of establishing negligence in case of damage or destruction by fire is on the person entitled under the document;

(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(4) the exercise by a seller of his right to stop delivery pursuant to the provisions of the chapter on Sales (Section 2.705);

(5) a diversion, reconsignment or other disposition pursuant to the provisions of this chapter (Section 7.303) or tariff regulating such right;

(6) release, satisfaction or any other fact affording a personal defense against the claimant;

(7) any other lawful excuse.

(b) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless the person claiming is one against whom the document confers no right under Section 7.503(a), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(d) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 7.404. No Liability for Good Faith Delivery Pursuant to Receipt or Bill**

A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this chapter is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**SUBCHAPTER E. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER**

**§ 7.501. Form of Negotiation and Requirements of "Due Negotiation"**

(a) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(b) (1) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

(2) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(c) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(d) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(e) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(f) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 7.502. Rights Acquired by Due Negotiation**

(a) Subject to the following section and to the provisions of Section 7.205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(1) title to the document;

(2) title to the goods;

(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this chapter. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 7.503. Document of Title to Goods Defeated in Certain Cases**

(a) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(1) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (Section 7.403) or with power of disposition under this title (Sections 2.403 and 9.307) or other statute or rule of law; nor

(2) acquiesced in the procurement by the bailor or his nominee of any document of title.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Subchapter D of this chapter pursuant to its own bill of lading discharges the carrier's obligation to delivery.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 7.504. Rights Acquired in the Absence of Due Negotiation; Effect of Diversion; Seller's Stoppage of Delivery**

(a) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(b) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(1) by those creditors of the transferor who could treat the sale as void under Section 2.402; or

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(3) as against the bailee by good faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(d) Delivery pursuant to a non-negotiable document may be stopped by a seller under Section 2.705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.505. Indorser Not a Guarantor for Other Parties

The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.506. Delivery Without Indorsement: Right to Compel Indorsement

The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.507. Warranties on Negotiation or Transfer of Receipt or Bill

Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

(1) that the document is genuine; and

(2) that he has no knowledge of any fact which would impair its validity or worth; and

(3) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.508. Warranties of Collecting Bank as to Documents

A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.509. Receipt or Bill: When Adequate Compliance With Commercial Contract

The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the chapters on Sales (Chapter 2) and on Letters of Credit (Chapter 5).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### SUBCHAPTER F. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

#### § 7.601. Lost and Missing Documents

(a) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of a non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(b) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.602. Attachment of Goods Covered by a Negotiable Document

Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 7.603. Conflicting Claims; Interpleader

If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## CHAPTER 8. INVESTMENT SECURITIES

## SUBCHAPTER A. SHORT TITLE AND GENERAL MATTERS

## Section

- 8.101. Short Title.
- 8.102. Definitions and Index of Definitions.
- 8.103. Issuer's Lien.
- 8.104. Effect of Overissue; "Overissue".
- 8.105. Securities Negotiable; Presumptions.
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## SUBCHAPTER B. ISSUE—ISSUER

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## SUBCHAPTER D. REGISTRATION

- 8.401. Duty of Issuer to Register Transfer.
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- 8.403. Limited Duty of Inquiry.
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## SUBCHAPTER A. SHORT TITLE AND GENERAL MATTERS

## § 8.101. Short Title

This chapter may be cited as Uniform Commercial Code—Investment Securities.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## § 8.102. Definitions and Index of Definitions

(a) In this chapter unless the context otherwise requires

- (1) A "security" is an instrument which

(A) is issued in bearer or registered form; and

(B) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(C) is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(D) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(2) A writing which is a security is governed by this chapter and not by Uniform Commercial Code—Commercial Paper even though it also meets the requirements of that chapter. This chapter does not apply to money.

(3) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(4) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.

(b) A "subsequent purchaser" is a person who takes other than by original issue.

(c) A "clearing corporation" is a corporation

(1) at least ninety per cent of the capital stock of which is held by or for one or more persons (other than individuals), each of whom

(A) is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws, or

(B) is a broker or dealer or investment company registered under the Securities Exchange Act of 1934<sup>1</sup> or the Investment Company Act of 1940,<sup>2</sup> or

(C) is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934, and none of whom, other than a national securities exchange or association, holds in excess of 20 per cent of the capital stock of such corporation; and

(2) any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.

(d) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(e) Other definitions applying to this chapter or to specified subchapters thereof and the sections in which they appear are:

"Adverse claim". Section 8.301.

"Bona fide purchaser". Section 8.302.

"Broker".	Section 8.303.
"Guarantee of the signature".	Section 8.402.
"Intermediary bank".	Section 4.105.
"Issuer".	Section 8.201.
"Overissue".	Section 8.104.

(f) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 1730, ch. 628, § 1, eff. June 16, 1973.]

<sup>1</sup> 15 U.S.C.A. § 77b et seq.

<sup>2</sup> 15 U.S.C.A. § 80a-1 et seq.

### § 8.103. Issuer's Lien

A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 8.104. Effect of Overissue; "Overissue"

(a) The provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but

(1) if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(2) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(b) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 8.105. Securities Negotiable; Presumptions

(a) Securities governed by this chapter are negotiable instruments.

(b) In any action on a security

(1) unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;

(2) when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(3) when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(4) after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (Section 8.202).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 8.106. Applicability

The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 8.107. Securities Deliverable; Action for Price

(a) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.

(b) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price

(1) of securities accepted by the buyer; and

(2) of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## SUBCHAPTER B. ISSUE—ISSUER

### § 8.201. "Issuer"

(a) With respect to obligations on or defenses to a security "issuer" includes a person who

(1) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

(2) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

(3) becomes responsible for or in place of any other person described as an issuer in this section.

(b) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

(c) With respect to registration of transfer (Subchapter D of this chapter) "issuer" means a person on whose behalf transfer books are maintained.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 8.202. Issuer's Responsibility and Defenses; Notice of Defect or Defense

(a) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(b) (1) A security other than one issued by a government or governmental agency or unit even

though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(2) The rule of Subdivision (1) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as otherwise provided in the case of certain unauthorized signatures on issue (Section 8.205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(d) All other defenses of the issuer including non-delivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(e) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 8.203. Staleness as Notice of Defects or Defenses**

(a) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer

(1) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(2) if the act or event is not covered by Subdivision (1) and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(b) A call which has been revoked is not within Subsection (a).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 8.204. Effect of Issuer's Restrictions on Transfer**

Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 8.205. Effect of Unauthorized Signature on Issue**

An unauthorized signature placed on a security prior to or in the course of issue is ineffective except

that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by

(1) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(2) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 8.206. Completion or Alteration of Instrument**

(a) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect

(1) any person may complete it by filling in the blanks as authorized; and

(2) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(b) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 8.207. Rights of Issuer With Respect to Registered Owners**

(a) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(b) Nothing in this chapter shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 8.208. Effect of Signature of Authenticating Trustee, Registrar or Transfer Agent**

(a) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that

(1) the security is genuine; and

(2) his own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and

(3) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(b) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER C. PURCHASE

**§ 8.301. Rights Acquired by Purchaser; "Adverse Claim"; Title Acquired by Bona Fide Purchaser**

(a) Upon delivery of a security the purchaser acquires the rights in the security which his transferor

had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(b) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(c) A purchaser of a limited interest acquires rights only to the extent of the interest purchased. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.302. "Bona Fide Purchaser"

A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.303. "Broker"

"Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this chapter determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.304. Notice to Purchaser of Adverse Claims

(a) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if

(1) the security whether in bearer or registered form has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(2) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(b) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.305. Staleness as Notice of Adverse Claims

An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase

(1) after one year from any date set for such presentment or surrender for redemption or exchange; or

(2) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.306. Warranties on Presentment and Transfer

(a) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (Section 8.311) in a necessary indorsement.

(b) A person by transferring a security to a purchaser for value warrants only that

(1) his transfer is effective and rightful; and

(2) the security is genuine and has not been materially altered; and

(3) he knows no fact which might impair the validity of the security.

(c) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(d) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under Subsection (c).

(e) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.307. Effect of Delivery Without Indorsement; Right to Compel Indorsement

Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.308. Indorsement, How Made; Special Indorsement; Indorser Not a Guarantor; Partial Assignment

(a) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or

when the signature of such person is written without more upon the back of the security.

(b) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(c) "An appropriate person" in Subsection (a) means

(1) the person specified by the security or by special indorsement to be entitled to the security; or

(2) where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor; or

(3) where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(4) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(5) where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(6) a person having power to sign under applicable law or controlling instrument; or

(7) to the extent that any of the foregoing persons may act through an agent,—his authorized agent.

(d) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

(e) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(f) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this chapter by virtue of any subsequent change of circumstances.

(g) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 8.309. Effect of Indorsement Without Delivery**

An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 8.310. Indorsement of Security in Bearer Form**

An indorsement of a security in bearer form may give notice of adverse claims (Section 8.304) but does not otherwise affect any right to registration the holder may possess.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 8.311. Effect of Unauthorized Indorsement**

Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness

(1) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or re-registered security on registration of transfer; and

(2) an issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (Section 8.404).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 8.312. Effect of Guaranteeing Signature or Indorsement**

(a) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing

(1) the signature was genuine; and

(2) the signer was an appropriate person to indorse (Section 8.308); and

(3) the signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(b) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (Subsection (a)) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(c) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 8.313. When Delivery to the Purchaser Occurs; Purchaser's Broker as Holder**

(a) Delivery to a purchaser occurs when

(1) he or a person designated by him acquires possession of a security; or

(2) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or

(3) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(4) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(5) appropriate entries on the books of a clearing corporation are made under Section 8.320.

(b) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in Subdivisions (2), (3) and (5) of Subsection (a). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(c) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.314. Duty to Deliver, When Completed

(a) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers

(1) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(2) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(b) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subsection and not within Subsection (a).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.315. Action Against Purchaser Based Upon Wrongful Transfer

(a) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(b) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this chapter on unauthorized indorsements (Section 8.311).

(c) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.316. Purchaser's Right to Requisites for Registration of Transfer on Books

Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.317. Attachment or Levy Upon Security

(a) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(b) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.318. No Conversion by Good Faith Delivery

An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 8.319. Statute of Frauds

A contract for the sale of securities is not enforceable by way of action or defense unless

(1) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(2) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(3) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under Subdivision (1) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

(4) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 8.320. Transfer or Pledge within a Central Depository System

#### (a) If a security

(1) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(2) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(3) is shown on the account of a transferor or pledgor on the books of the clearing corporation; then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(b) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(c) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (Section 8.301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (Sections 9.304 and 9.305). A transferee or pledgee under this section is a holder.

(d) A transfer or pledge under this section does not constitute a registration of transfer under Subchapter D of this chapter.

(e) That entries made on the books of the clearing corporation as provided in Subsection (a) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## SUBCHAPTER D: REGISTRATION

### § 8.401. Duty of Issuer to Register Transfer

(a) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if

(1) the security is indorsed by the appropriate person or persons (Section 8.308); and

(2) reasonable assurance is given that those indorsements are genuine and effective (Section 8.402); and

(3) the issuer has no duty to inquire into adverse claims or has discharged any such duty (Section 8.403); and

(4) any applicable law relating to the collection of taxes has been complied with; and

(5) the transfer is in fact rightful or is to a bona fide purchaser.

(b) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 8.402. Assurance That Indorsements Are Effective

(a) The issuer may require the following assurance that each necessary indorsement (Section 8.308) is genuine and effective

(1) in all cases, a guarantee of the signature (Subsection (a) of Section 8.312) of the person indorsing; and

(2) where the indorsement is by an agent, appropriate assurance of authority to sign;

(3) where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

(4) where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

(5) where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(b) A "guarantee of the signature" in Subsection (a) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

(c) "Appropriate evidence of appointment or incumbency" in Subsection (a) means

(1) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this Subdivision (2) except to the extent that the contents relate directly to the appointment or incumbency.

(d) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in Subsection (c)(2) both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, by-laws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 8.403. Limited Duty of Inquiry

(a) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if

(1) a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, re-issued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(2) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under Subsection (d) of Section 8.402.

(b) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either

(1) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(2) an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(c) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under Subsection (d) of Section 8.402 or receives notification of an adverse claim under Subsection (a) of this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular

(1) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(2) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement

of a fiduciary to the fiduciary himself or to his nominee.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 8.404. Liability and Non-Liability for Registration

(a) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if

(1) there were on or with the security the necessary indorsements (Section 8.308); and

(2) the issuer had no duty to inquire into adverse claims or has discharged any such duty (Section 8.403).

(b) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless

(1) the registration was pursuant to Subsection (a); or

(2) the owner is precluded from asserting any claim for registering the transfer under Subsection (a) of the following section; or

(3) such delivery would result in overissue, in which case the issuer's liability is governed by Section 8.104.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 8.405. Lost, Destroyed and Stolen Securities

(a) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

(b) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner

(1) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(2) files with the issuer a sufficient indemnity bond; and

(3) satisfies any other reasonable requirements imposed by the issuer.

(c) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by Section 8.104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 8.406. Duty of Authenticating Trustee, Transfer Agent or Registrar

(a) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an is-

suer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities

(1) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(2) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

(b) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**CHAPTER 9. SECURED TRANSACTIONS;  
SALES OF ACCOUNTS AND  
CHATTEL PAPER**

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**SUBCHAPTER A. SHORT TITLE, APPLICABILITY  
AND DEFINITIONS**

**§ 9.101. Short Title**

This chapter may be cited as Uniform Commercial Code—Secured Transactions.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.102. Policy and Subject Matter of Chapter**

(a) Except as otherwise provided in Section 9.104 on excluded transactions, this chapter applies

(1) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

(2) to any sale of accounts or chattel paper.

(b) This chapter applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other

lien or title retention contract and lease or consignment intended as security. This chapter does not apply to statutory liens except as provided in Section 9.310.

(c) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

### § 9.103. Perfection of Security Interests in Multiple State Transactions

#### (a) Documents, instruments and ordinary goods.

(1) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in Subsection (b), mobile goods described in Subsection (c), and minerals described in Subsection (e).

(2) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(3) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(4) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Subchapter C of this chapter<sup>1</sup> to perfect the security interest,

(A) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(B) if the action is taken before the expiration of the period specified in paragraph (A), the security interest continues perfected thereafter;

(C) for the purpose of priority over a buyer of consumer goods (Subsection (b) of Section 9.307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in paragraphs (A) and (B).

#### (b) Certificate of title.

(1) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(2) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(3) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation of a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (4) of Subsection (a).

(4) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

#### (c) Accounts, general intangibles and mobile goods.

(1) This subsection applies to accounts (other than an account described in Subsection (e) on minerals) and general intangibles and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in Subsection (b).

(2) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.

(3) If, however, the debtor is located in the jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or non-perfection of the security in-

terest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(4) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended,<sup>2</sup> it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(5) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(d) Chattel paper.

The rules stated for goods in Subsection (a) apply to a possessory security interest in chattel paper. The rules stated for accounts in Subsection (c) apply to a non-possessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(e) Minerals.

Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

<sup>1</sup> Section 9.301 et seq.

<sup>2</sup> Generally, see 49 U.S.C.A. § 1301 et seq.

§ 9.104. Transactions Excluded From Chapter

This chapter does not apply

(1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920,<sup>1</sup> to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(2) to a landlord's lien; or

(3) to a lien given by statute or other rule of law for services or materials except as provided in Section 9.310 on priority of such liens; or

(4) to a transfer of a claim for wages, salary or other compensation of an employee; or

(5) to a transfer by a government or governmental subdivision or agency; or

(6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (Section 9.306) and priorities in proceeds (Section 9.312); or

(8) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(9) to any right of set-off; or

(10) except to the extent that provision is made for fixtures in Section 9.313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(11) to a transfer in whole or in part of any claim arising out of tort; or

(12) to a transfer of an interest in any deposit account (Subsection (a)(5) of Section 9.105), except as provided with respect to proceeds (Section 9.306) and priorities in proceeds (Section 9.312).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

<sup>1</sup> 46 U.S.C.A. § 911 et seq.

§ 9.105. Definitions and Index of Definitions

(a) In this chapter unless the context otherwise requires:

(1) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(2) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(3) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(4) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(5) "Deposit account" means a demand, time, savings, passbook or like account maintained

with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(6) "Document" means document of title as defined in the general definitions of Chapter 1 (Section 1.201), and a receipt of the kind described in Subsection (b) of Section 7.201;

(7) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(8) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (Section 9.313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(9) "Instrument" means a negotiable instrument (defined in Section 3.104), or a security (defined in Section 8.102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(10) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(11) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(12) "Security agreement" means an agreement which creates or provides for a security interest;

(13) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(b) Other definitions applying to this chapter and the sections in which they appear are:

"Account".	Section 9.106.
"Attach".	Section 9.203.
"Construction mortgage".	Section 9.313(a).
"Consumer goods".	Section 9.109(1).
"Equipment".	Section 9.109(2).
"Farm products".	Section 9.109(3).
"Fixture".	Section 9.313.
"Fixture filing".	Section 9.313.
"General intangibles".	Section 9.106.
"Inventory".	Section 9.109(4).
"Lien creditor".	Section 9.301(c).
"Proceeds".	Section 9.306(a).
"Purchase money security interest".	Section 9.107.
"United States".	Section 9.103.

(c) The following definitions in other chapters apply to this chapter:

"Check".	Section 3.104.
"Contract for sale".	Section 2.106.
"Holder in due course".	Section 3.302.
"Note".	Section 3.104.
"Sale".	Section 2.106.

(d) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2466, ch. 830, § 3, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.106. Definitions: "Account"; "General Intangibles"

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2466, ch. 830, § 4, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.107. Definitions: "Purchase Money Security Interest"

A security interest is a "purchase money security interest" to the extent that it is

(1) taken or retained by the seller of the collateral to secure all or part of its price; or

(2) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.108. When After-Acquired Collateral Not Security For Antecedent Debt

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.109. Classification of Goods; "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory"

Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.110. Sufficiency of Description**

For the purposes of this chapter any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.111. Applicability of Bulk Transfer Laws**

The creation of a security interest is not a bulk transfer under Chapter 6 (see Section 6.103).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.112. Where Collateral is Not Owned by Debtor**

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under Section 9.502(b) or under Section 9.504(a), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

- (1) to receive statements under Section 9.208;
- (2) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under Section 9.505;
- (3) to redeem the collateral under Section 9.506;
- (4) to obtain injunctive or other relief under Section 9.507(a); and
- (5) to recover losses caused to him under Section 9.208(b).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.113. Security Interests Arising Under Chapter on Sales**

A security interest arising solely under the chapter on Sales (Chapter 2) is subject to the provisions

of this chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

- (1) no security agreement is necessary to make the security interest enforceable; and
- (2) no filing is required to perfect the security interest; and
- (3) the rights of the secured party on default by the debtor are governed by the chapter on Sales (Chapter 2).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.114. Consignment**

(a) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this chapter by Subsection (c)(3) of Section 2.326 has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if

- (1) the consignor complies with the filing provision of the chapter on Sales with respect to consignments (Subsection (c)(3) of Section 2.326) before the consignee receives possession of the goods; and
- (2) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and
- (3) the holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and
- (4) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(b) In the case of a consignment which is not a security interest and in which the requirements of the preceding subsection have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

[Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**SUBCHAPTER B. VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO**

**§ 9.201. General Validity of Security Agreement**

Except as otherwise provided by this title a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this chapter validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

### § 9.202. Title to Collateral Immaterial

Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

### § 9.203. Attachment and Enforceability of Security Interest; Proceeds, Formal Requirements

(a) Subject to the provisions of Section 4.208 on the security interest of a collecting bank and Section 9.113 on a security interest arising under the chapter on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless

(1) the collateral is in the possession of the secured party pursuant to agreement or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and

(2) value has been given; and

(3) the debtor has rights in the collateral.

(b) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in Subsection (a) have taken place unless explicit agreement postpones the time of attaching.

(c) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by Section 9.306.

(d) A transaction, although subject to this chapter, is also subject to Title 79, Revised Civil Statutes of Texas, 1925, as amended, and in the case of conflict between the provisions of this Chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2466, ch. 830, § 5, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

### § 9.204. After-Acquired Property; Future Advances

(a) Except as provided in Subsection (b), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(b) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (Section 9.314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(c) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (Subsection (a) of Section 9.105).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

### § 9.205. Use or Disposition of Collateral Without Accounting Permissible

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor

to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

### § 9.206. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists

(a) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the chapter on Commercial Paper (Chapter 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(b) When a seller retains a purchase money security interest in goods the chapter on Sales (Chapter 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

### § 9.207. Rights and Duties When Collateral is in Secured Party's Possession

(a) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Unless otherwise agreed, when collateral is in the secured party's possession

(1) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(3) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(4) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(5) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(c) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(d) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.208. Request for Statement of Account or List of Collateral**

(a) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(b) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(c) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**SUBCHAPTER C. RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY**

**§ 9.301. Persons Who Take Priority Over Unperfected Security Interests; Right of "Lien Creditor"**

(a) Except as otherwise provided in Subsection (b), an unperfected security interest is subordinate to the rights of

(1) persons entitled to priority under Section 9.312;

(2) a person who becomes a lien creditor before the security interest is perfected;

(3) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(4) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(b) If the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(c) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(d) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.302. When Filing is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Article Do Not Apply**

(a) A financing statement must be filed to perfect all security interests except the following:

(1) a security interest in collateral in possession of the secured party under Section 9.305;

(2) a security interest temporarily perfected in instruments or documents without delivery under Section 9.304 or in proceeds for a 10 day period under Section 9.306;

(3) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(4) a purchase money security interest in consumer goods; but notation on a certificate of title is required for goods covered by a statute referred to in Subsection (c)(2); and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 9.313;

(5) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(6) a security interest of a collecting bank (Section 4.208) or arising under the Chapter on Sales (see Section 9.113) or covered in Subsection (c) of this Section;

(7) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(b) If a secured party assigns a perfected security interest, no filing under this Chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(c) The filing of a financing statement otherwise required by this Chapter is not necessary or effective to perfect a security interest in property subject to

(1) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Chapter for filing of the security interest; or

(2) the following statutes of this state; the Certificate of Title Act, as amended (Article 1436—1, Vernon's Texas Penal Code);<sup>1</sup> but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Chapter (Subchapter D)<sup>2</sup> apply to a security interest in that collateral created by him as debtor; or Subchapter A, Chapter 35, Title 4, Business & Commerce Code;<sup>3</sup> or

(3) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (Subsection (b) of Section 9.103).

(d) Compliance with a statute or treaty described in Subsection (c) is equivalent to the filing of a financing statement under this Chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in Section 9.103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Chapter.

[Acts 1967, 60th Leg., p. 1984, ch. 785, §§ 1 to 3; Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

<sup>1</sup> Transferred; see, now, Civil Statutes, art. 6687-1.

<sup>2</sup> Section 9.401 et seq.

<sup>3</sup> Section 35.01 et seq.

### § 9.303. When Security Interest is Perfected; Continuity of Perfection

(a) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in Sections 9.302, 9.304, 9.305 and 9.306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(b) If a security interest is originally perfected in any way permitted under this chapter and is subsequently perfected in some other way under this chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

### § 9.304. Perfection of Security Interest in Instruments, Documents and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession

(a) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in Subsections (d) and (e) of this section and Subsections (b) and (c) of Section 9.306 on proceeds.

(b) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(c) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(d) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(e) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(1) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to Subsection (c) of Section 9.312; or

(2) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(f) After the 21 day period in Subsections (d) and (e) perfection depends upon compliance with applicable provisions of this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

### § 9.305. When Possession by Secured Party Perfects Security Interest Without Filing

A security interest in letters of credit and advices of credit (Subsection (b)(1) of Section 5.116), goods, instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A secur-

ity interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.306. "Proceeds"; Secured Party's Rights on Disposition of Collateral**

(a) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(b) Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(c) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(1) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(2) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected before the expiration of the ten day period. Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

(d) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(1) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

(2) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(3) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(4) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this Subdivision (4) is

(A) subject to any right of set-off; and

(B) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under Subdivisions (1) through (3) of this Subsection (d).

(e) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(1) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(2) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under Subdivision (1) to the extent that the transferee of the chattel paper was entitled to priority under Section 9.308.

(3) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under Subdivision (1).

(4) A security interest of an unpaid transferee asserted under Subdivision (2) or (3) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.307. Protection of Buyers of Goods**

(a) A buyer in ordinary course of business (Subdivision (9) of Section 1.201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(b) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

(c) A buyer other than a buyer in ordinary course of business (Subsection (a) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than 45 days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45 day period.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.308. Purchase of Chattel Paper and Instruments

A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument

(1) which is perfected under Section 9.304 (permissive filing and temporary perfection) or under Section 9.306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(2) which is claimed merely as proceeds of inventory subject to a security interest (Section 9.306) even though he knows that the specific paper or instrument is subject to the security interest.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.309. Protection of Purchasers of Instruments and Documents

Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (Section 3.302) or a holder to whom a negotiable document of title has been duly negotiated (Section 7.501) or a bona fide purchaser of a security (Section 8.301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to such holders or purchasers.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.310. Priority of Certain Liens Arising by Operation of Law

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.311. Alienability of Debtor's Rights: Judicial Process

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.312. Priorities Among Conflicting Security Interests in the Same Collateral

(a) The rules of priority stated in other sections of this subchapter and in the following sections shall govern when applicable: Section 4.208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; Section 9.103 on security interests related to other jurisdictions; Section 9.114 on consignments.

(b) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(c) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(1) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(2) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21 day period where the purchase money security interest is temporarily perfected without filing or possession (Subsection (e) of Section 9.304); and

(3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(d) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(e) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in Subsections (c) and (d) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(1) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is

earlier, provided that there is no period there-  
after when there is neither filing nor perfection.

(2) So long as conflicting security interests  
are unperfected, the first to attach has priority.

(f) For the purposes of Subsection (e) a date of  
filing or perfection as to collateral is also a date of  
filing or perfection as to proceeds.

(g) If future advances are made while a security  
interest is perfected by filing or the taking of pos-  
session, the security interest has the same priority  
for the purposes of Subsection (e) with respect to the  
future advances as it does with respect to the first  
advance. If a commitment is made before or while  
the security interest is so perfected, the security  
interest has the same priority with respect to ad-  
vances made pursuant thereto. In other cases a  
perfected security interest has priority from the date  
the advance is made.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd  
Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.313. Priority of Security Interests in Fixtures**

(a) In this section and in the provisions of Sub-  
chapter D of this chapter<sup>1</sup> referring to fixture fil-  
ing, unless the context otherwise requires

(1) goods are "fixtures" when they become so  
related to particular real estate that an interest  
in them arises under the real estate law of the  
state in which the real estate is situated;

(2) a "fixture filing" is the filing in the office  
where a mortgage on the real estate would be  
filed or recorded of a financing statement cover-  
ing goods which are or are to become fixtures  
and conforming to the requirements of Subsec-  
tion (e) of Section 9.402;

(3) a mortgage is a "construction mortgage"  
to the extent that it secures an obligation in-  
curred for the construction of an improvement  
on land including the acquisition cost of the  
land, if the recorded writing so indicates.

(b) A security interest under this chapter may be  
created in goods which are fixtures or may continue  
in goods which become fixtures, but no security  
interest exists under this chapter in ordinary build-  
ing materials incorporated into an improvement on  
land.

(c) This chapter does not prevent creation of an  
encumbrance upon fixtures pursuant to real estate  
law.

(d) A perfected security interest in fixtures has  
priority over the conflicting interest of an encum-  
brancer or owner of the real estate where

(1) the security interest is a purchase money  
security interest, the interest of the encum-  
brancer or owner arises before the goods be-  
come fixtures, the security interest is perfected  
by a fixture filing before the goods become  
fixtures or within ten days thereafter, and the  
debtor has an interest of record in the real  
estate or is in possession of the real estate; or

(2) the security interest is perfected by a fix-  
ture filing before the interest of the encum-  
brancer or owner is of record, the security inter-  
est has priority over any conflicting interest of a  
predecessor in title of the encumbrancer or own-  
er, and the debtor has an interest of record in  
the real estate or is in possession of the real  
estate; or

(3) the fixtures are readily removable factory  
or office machines or readily removable replace-  
ments of domestic appliances which are consum-  
er goods, and before the goods become fixtures  
the security interest is perfected by any method  
permitted by this chapter; or

(4) the conflicting interest is a lien on the real  
estate obtained by legal or equitable proceed-  
ings after the security interest was perfected by  
any method permitted by this chapter.

(e) A security interest in fixtures, whether or not  
perfected, has priority over the conflicting interest  
of an encumbrancer or owner of the real estate  
where

(1) the encumbrancer or owner has consented  
in writing to the security interest or has dis-  
claimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods  
as against the encumbrancer or owner. If the  
debtor's right terminates, the priority of the  
security interest continues for a reasonable  
time.

(f) Notwithstanding Subdivision (1) of Subsection  
(d) but otherwise subject to Subsections (d) and (e), a  
security interest in fixtures is subordinate to a con-  
struction mortgage recorded before the goods be-  
come fixtures if the goods become fixtures before  
the completion of the construction. To the extent  
that it is given to refinance a construction mortgage,  
a mortgage has this priority to the same extent as  
the construction mortgage.

(g) In cases not within the preceding subsections,  
a security interest in fixtures is subordinate to the  
conflicting interest of an encumbrancer or owner of  
the related real estate who is not the debtor.

(h) When the secured party has priority over all  
owners and encumbrancers of the real estate, he  
may, on default, subject to the provisions of Sub-  
chapter E,<sup>2</sup> remove his collateral from the real estate  
but he must reimburse any encumbrancer or owner  
of the real estate who is not the debtor and who has  
not otherwise agreed for the cost of repair of any  
physical injury, but not for any diminution in value  
of the real estate caused by the absence of the goods  
removed or by any necessity of replacing them. A  
person entitled to reimbursement may refuse per-  
mission to remove until the secured party gives  
adequate security for the performance of this obliga-  
tion.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd  
Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

<sup>1</sup> Section 9.401 et seq.  
<sup>2</sup> Section 9.501 et seq.

**§ 9.314. Accessions**

(a) A security interest in goods which attaches  
before they are installed in or affixed to other goods  
takes priority as to the goods installed or affixed  
(called in this section "accessions") over the claims of  
all persons to the whole except as stated in Subsec-  
tion (c) and subject to Section 9.315(a).

(b) A security interest which attaches to goods  
after they become part of a whole is valid against all  
persons subsequently acquiring interests in the  
whole except as stated in Subsection (c) but is inval-  
id against any person with an interest in the whole  
at the time the security interest attaches to the  
goods who has not in writing consented to the secur-

ity interest or disclaimed in interest in the goods as part of the whole.

(c) The security interests described in Subsections (a) and (b) do not take priority over

(1) a subsequent purchaser for value of any interest in the whole; or

(2) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(3) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(d) When under Subsections (a) or (b) and (c) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Subchapter E remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.315. Priority When Goods are Commingled or Processed

(a) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

(1) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(2) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which Subdivision (2) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 9.314.

(b) When under Subsection (a) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.316. Priority Subject to Subordination

Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

1 West's Tex.Stats. & Codes—12

#### § 9.317. Secured Party not Obligated on Contract of Debtor

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment

(a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9.206 the rights of an assignee are subject to

(1) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(b) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(c) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(d) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

### SUBCHAPTER D. FILING

#### § 9.401. Place of Filing; Erroneous Filing; Removal of Collateral

(a) The proper place to file in order to perfect a security interest is as follows:

(1) when the collateral is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the

County Clerk in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the County Clerk in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in the office of the County Clerk in the county where the land is located;

(2) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or when the financing statement is filed as a fixture filing (Section 9.313) and the collateral is goods which are or are to become fixtures, then in the office of the County Clerk in the county where a mortgage on the real estate would be filed or recorded;

(3) in all other cases, in the office of the Secretary of State.

(b) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(c) A filing which is made in the proper county continues effective for four months after a change to another county of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county after the expiration of the four-month period; in such case perfection dates from the time of perfection in the new county. A change in the use of the collateral does not impair the effectiveness of the original filing.

(d) The rules stated in Section 9.103 determine whether filing is necessary in this state.

(e) For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business.

[Acts 1967, 60th Leg., p. 1985, ch. 735, § 4; Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.402. Formal Requisites of Financing Statement; Amendments; Mortgage as Financing Statement**

(a) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to Subsection (e) of

Section 9.103, or when the financing statement is filed as a fixture filing (Section 9.313) and the collateral is goods which are or are to become fixtures, the statement must also comply with Subsection (e). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

(b) A financing statement which otherwise complies with Subsection (a) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

(1) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

(2) proceeds under Section 9.306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(3) collateral as to which the filing has lapsed; or

(4) collateral acquired after a change of name, identity or corporate structure of the debtor (Subsection (g)).

(c) A form substantially as follows is sufficient to comply with Subsection (a):

Name of debtor (or assignor) \_\_\_\_\_  
 Address \_\_\_\_\_  
 Name of secured party (or assignee) \_\_\_\_\_  
 Address \_\_\_\_\_

1. This financing statement covers the following types (or items) of property:

(Describe) \_\_\_\_\_

2. (If collateral is crops) The above described crops are growing or are to be grown on:  
 (Describe Real Estate) \_\_\_\_\_

3. (If applicable) The above goods are to become fixtures on (or where appropriate substitute either "The above timber is standing on \_\_\_\_\_" or "The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on \_\_\_\_\_")

(Describe Real Estate) \_\_\_\_\_

and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is \_\_\_\_\_

4. (If products of collateral are claimed) Products of the Collateral are also covered.

(use \_\_\_\_\_  
 whichever \_\_\_\_\_

Signature of Debtor (or Assignor)  
 is \_\_\_\_\_

applicable)  
 Signature of Secured Party (or Assignee)

(d) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(e) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or a financing statement filed as a fixture filing (Section 9.313), must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of the record owner.

(f) A mortgage is effective as a financing statement filed as a fixture filing from the date of its filing for record if (1) the goods are described in the mortgage by item or type, (2) the goods are or are to become fixtures related to the real estate described in the mortgage, (3) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (4) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(g) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(h) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

[Acts 1967, 60th Leg., p. 1985, ch. 735, §§ 5, 6; Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

### § 9.403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer

(a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(b) Except as provided in Subsection (f) a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(c) A continuation statement may be filed by the secured party within six months prior to the expiration of the five year period specified in Subsection (b). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with Subsection (b) of Section 9.405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in Subsection (b) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under Subsection (f) shall be retained.

(d) Except as provided in Subsection (g) a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(e) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be \$3.00 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$6.00, plus in each case, if the financing statement is subject to Subsection (e) of Section

9.402, \$3.00. The secured party may at his option show a trade name for any person.

(f) A real estate mortgage which is effective as a fixture filing under Subsection (f) of Section 9.402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(g) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or is filed as a fixture filing, it shall be filed for record and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

(h) The filing and other fees paid to the Secretary of State under this chapter shall be deposited in the general revenue fund of the state treasury.

[Acts 1967, 60th Leg., p. 1986, ch. 735, § 7; Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2466, ch. 830, § 6, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2987, ch. 985, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2716, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as Vernon's Ann.Civ.St. art. 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this section.*

**§ 9.404. Termination statement**

(a) If a financing statement covering consumer goods is filed on or after January 1, 1974, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by

the secured party of record and complying with Subsection (b) of Section 9.405, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for \$100, and in addition for any loss caused to the debtor by such failure.

(b) On presentation to the filing officer of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one year after receipt of the termination statement.

(c) If the termination statement is in the standard form prescribed by the Secretary of State, the uniform fee for filing and indexing the termination statement shall be \$3.00, and otherwise shall be \$6.00.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2466, ch. 830, § 7, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2987, ch. 985, § 2, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2716, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as Vernon's Ann.Civ.St. art. 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this section.*

**§ 9.405. Assignment of Security Interest: Duties of Filing Officer; Fees**

(a) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in Section 9.403(d). The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be \$3.00 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$6.00.

(b) A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name

and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be \$3.00 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$6.00. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (Subsection (f) of Section 9.402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this code.

(c) After the disclosure of filing of an assignment under this section, the assignee is the secured party of record.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2466, ch. 830, § 8, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2987, ch. 985, § 3, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2716, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as Vernon's Ann.Civ.St. art. 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this section.*

#### § 9.406. Release of Collateral; Duties of Filing Officer; Fees

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with Subsection (b) of Section 9.405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be \$3.00 if the

statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$6.00.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2466, ch. 830, § 9, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2988, ch. 985, § 4, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2716, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as Vernon's Ann.Civ.St. art. 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this section.*

#### § 9.407. Information From Filing Officer

(a) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(b) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be \$5.00 if the request for the certificate is in the standard form prescribed by the Secretary of State and otherwise shall be \$10.00. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of \$1.00 per page, at not less than \$5.00 per request concerning a debtor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2466, ch. 830, § 10, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2716, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as Vernon's Ann.Civ.St. art. 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this section.*

#### § 9.408. Financing Statements Covering Consigned or Leased Goods

A consignor or lessor of goods may file a financing statement using the terms "consignor," "consignee," "lessor," "lessee" or the like instead of the terms specified in Section 9.402. The provisions of this subchapter shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (Section 1.201(37)). However, if it is determined for other

reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or lease goods is perfected by such filing.

[Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.409. Prescribed Forms**

(a) The Secretary of State may prescribe the forms to be used in making any filing or in requesting any information of the filing officer under this chapter. Where the Secretary of State has prescribed the form and a person fails to use this form, the fee shall be twice that specified in the preceding sections.

(b) The filing and other fees paid to the Secretary of State under this chapter shall be deposited in the General Revenue Fund of the State Treasury.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

SUBCHAPTER E. DEFAULT

**§ 9.501. Default; Procedure When Security Agreement Covers Both Real and Personal Property**

(a) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this subchapter and except as limited by Subsection (c) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 9.207. The rights and remedies referred to in this subsection are cumulative.

(b) After default, the debtor has the rights and remedies provided in this subchapter, those provided in the security agreement and those provided in Section 9.207.

(c) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (Subsection (c) of Section 9.504 and Section 9.505) and with respect to redemption of collateral (Section 9.506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(1) Subsection (b) of Section 9.502 and Subsection (b) of Section 9.504 insofar as they require accounting for surplus proceeds of collateral;

(2) Subsection (c) of Section 9.504 and Subsection (a) of Section 9.505 which deal with disposition of collateral;

(3) Subsection (b) of Section 9.505 which deals with acceptance of collateral as discharge of obligation;

(4) Section 9.506 which deals with redemption of collateral; and

(5) Subsection (a) of Section 9.507 which deals with the secured party's liability for failure to comply with this subchapter.

(d) If the security agreement covers both real and personal property, the secured party may proceed under this subchapter as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this subchapter do not apply.

(e) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.502. Collection Rights of Secured Party**

(a) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under Section 9.306.

(b) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.503. Secured Party's Right to Take Possession After Default**

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 9.504.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition**

(a) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in

its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the chapter on Sales (Chapter 2). The proceeds of disposition shall be applied in the order following to

(1) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(2) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(3) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(b) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(c) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party who has duly filed a financial statement indexed in the name of the debtor in this state or from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(d) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this subchapter or of any judicial proceedings

(1) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(2) in any other case, if the purchaser acts in good faith.

(e) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation

(a) If the debtor has paid sixty per cent of the cash price in the case of a purchase money security interest in consumer goods or sixty per cent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this subchapter a secured party who has taken possession of collateral must dispose of it under Section 9.504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under Section 9.507(a) on secured party's liability.

(b) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party who has duly filed a financial statement indexed in the name of the debtor in this state or from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under Section 9.504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

#### § 9.506. Debtor's Right to Redeem Collateral

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 9.504 or before the obligation has been discharged under Section 9.505(b) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in

the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

**§ 9.507. Secured Party's Liability for Failure to Comply With This Subchapter**

(a) If it is established that the secured party is not proceeding in accordance with the provisions of this subchapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this subchapter. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the debt or the time price differential plus ten per cent of the cash price.

(b) The fact that a better price could have been obtained by a sale at different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

[Chapter 10. Reserved for expansion]

**CHAPTER 11. EFFECTIVE DATE AND TRANSITION PROVISIONS—1973 AMENDMENTS**

Section

- 11.101. Effective Date.
- 11.102. Preservation of Old Transition Provisions.
- 11.103. Transition to 1973 Amendments—General Rule.
- 11.104. Transition Provision on Change of Requirement of Filing.
- 11.105. Transition Provision on Change of Place of Filing.
- 11.106. Required Refilings.
- 11.107. Transition Provisions as to Priorities.
- 11.108. Presumption That Rule of Law Continues Unchanged.

**§ 11.101. Effective Date**

This Act<sup>1</sup> (referred to as the "1973 amendments") takes effect on January 1, 1974.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

<sup>1</sup> Amending §§ 1.105, 1.201(9), and (37), 2.107, 5.116, 9.101 et seq., 35.01 to 35.09; Civil Statutes, art. 6630 and repealing art. 6645.

**§ 11.102. Preservation of Old Transition Provisions**

The provisions of Article 10 of the Uniform Commercial Code, as amended, shall continue to apply to the amended code, and for this purpose this code as amended shall be considered one continuous statute.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

**§ 11.103. Transition to 1973 Amendments—General Rule**

Transactions validly entered into after June 30, 1966, and before January 1, 1974, and which were subject to the provisions of this title and which would be subject to the 1973 amendments if they had been entered into on or after January 1, 1974, and the rights, duties and interests flowing from such transactions remain valid on and after the latter date and may be terminated, completed, consummated or enforced as required or permitted by the 1973 amendments. Security interests arising out of such transactions which are perfected when the 1973 amendments become effective shall remain perfected until they lapse as provided in the code as amended, and may be continued as permitted by the code as amended, except as stated in Section 11.105.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

**§ 11.104. Transition Provision on Change of Requirement of Filing**

A security interest for the perfection of which filing or the taking of possession was required under this code and which attached prior to January 1, 1974, but was not perfected shall be deemed perfected on January 1, 1974, if this code as amended permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

**§ 11.105. Transition Provision on Change of Place of Filing**

(a) A financing statement or continuation statement filed prior to January 1, 1974, which shall not have lapsed prior to January 1, 1974, shall remain effective for the period provided in the code before January 1, 1974, but not less than five years after the filing.

(b) With respect to any collateral acquired by the debtor on or after January 1, 1974, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under the code with its 1973 amendments.

(c) The effectiveness of any financing statement or continuation statement filed prior to January 1, 1974, may be continued by a continuation statement as permitted by this code with 1973 amendments, except that if this code with 1973 amendments, requires a filing or a filing for record in an office where there was no previous financing statement, a new financing statement conforming to Section 11.106 shall be filed or filed for record in that office.

(d) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if the 1973 amendments had been in effect on the date of the filing for record of

the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under Subsection (f) of Section 9.402 of this code, as amended, on January 1, 1974.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

#### § 11.106. Required Refilings

(a) If a security interest is perfected or has priority when the 1973 amendments take effect as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under the 1973 amendments, the perfection and priority rights of the security interest continue until January 1, 1977. The perfection will then lapse unless a financing statement is filed as provided in Subsection (d) or unless the security interest is perfected otherwise than by filing.

(b) If a security interest is perfected when the 1973 amendments take effect under a law other than this title which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse on January 1, 1977, unless a financing statement is filed as provided in Subsection (d) or unless the security interest is perfected otherwise than by filing, or unless under Subsection (c) of Section 9.302 the other law continues to govern filing.

(c) If a security interest is perfected by a filing, refiling or recording under a law repealed by this Act which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless a financing statement is filed as provided in Subsection (d) or unless the security interest is perfected otherwise than by filing.

(d) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by this Act), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under this title or under any statute or other law repealed or modified by this Act is still effective. Section 9.401 and Section 9.103 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of Section 9.403(c) for continuation statements apply to such a financing statement.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

#### § 11.107. Transition Provisions as to Priorities

Except as otherwise provided in this chapter, this title as it existed before the 1973 amendments took effect shall apply to any questions of priority if the positions of the parties were fixed prior to January 1, 1974. In other cases questions of priority shall be determined by this title with 1973 amendments.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

#### § 11.108. Presumption That Rule of Law Continues Unchanged

Unless a change in law has clearly been made, the provisions of this title with 1973 amendments shall be deemed declaratory of the meaning of the title.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

[Chapter 12 to 14. Reserved for expansion]

## TITLE 2. COMPETITION AND TRADE PRACTICES

Chapter	Section
15. Monopolies, Trusts, and Conspiracies in Restraint of Trade	15.01
16. Trademarks	16.01
17. Deceptive Trade Practices	17.01

### CHAPTER 15. MONOPOLIES, TRUSTS, AND CONSPIRACIES IN RESTRAINT OF TRADE

#### SUBCHAPTER A. DEFINITIONS AND PROHIBITIONS

Section	
15.01.	Monopoly Defined.
15.02.	Trust Defined.
15.03.	Conspiracy in Restraint of Trade Defined.
15.04.	Monopoly, Trust, and Conspiracy in Restraint of Trade Prohibited; Agreement Violating Prohibition Void.
15.05.	Public Utility Prohibited from Injuring Competition or Discriminating in Rates.
15.06.	Publication Tying Arrangement Prohibited.

#### SUBCHAPTER B. PROCEDURE AND EVIDENCE

15.12.	Declaratory Judgment Action.
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#### SUBCHAPTER D. RECOVERY OF DAMAGES PURSUANT TO FEDERAL ANTITRUST LAWS

15.40.	Authority, Powers, and Duties of Attorney General.
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#### SUBCHAPTER A. DEFINITIONS AND PROHIBITIONS

#### § 15.01. Monopoly Defined

A "monopoly" is a combination or consolidation of two or more corporations effected by

(1) bringing the direction of their affairs under common management or control to create, or where the common management or control

tends to create, a trust as defined in Section 15.02 of this code; or

(2) one corporation acquiring (in whole or part and whether directly, through trustees, or otherwise) the stock, bonds, franchise or other rights, or physical property of one or more other corporations to prevent or lessen, or where the acquisition tends to prevent or lessen, competition.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 15.02. Trust Defined**

(a) In this section, unless the context requires a different definition, "person" does not include municipal corporation. (No source citation.)

(b) A "trust" is a combination of capital, skill, or acts by two or more persons to

(1) restrict, or tend to restrict, trade, commerce, aids to commerce, the preparation of tangible personal property for market or transportation, or the free pursuit of a lawful business; or

(2) fix, maintain, increase, or reduce the price of tangible personal property, the cost of insurance, or the cost of preparing tangible personal property for market or transportation; or

(3) prevent or lessen competition in

(A) the manufacture, transportation, sale, or purchase of tangible personal property;

(B) the business of insurance;

(C) aids to commerce; or

(D) preparing tangible personal property for market or transportation; or

(4) affect, control, or establish the price of tangible personal property, or the cost of transportation, insurance, or preparing tangible personal property for market or transportation; or

(5) agree

(A) not to sell, dispose of, transport, or prepare tangible personal property for market or transportation, or not to make an insurance contract, at a price below a common standard or figure;

(B) to maintain the price of tangible personal property, the charge for transportation or insurance, or the cost of preparing tangible personal property for market or transportation at a fixed or graded figure;

(C) to affect or maintain the price of tangible personal property or the cost of transportation, insurance, or preparing tangible personal property for market or transportation in order to preclude free competition between or among themselves or others in the sale or transportation of tangible personal property, in the business of transportation or insurance, or in preparing tangible personal property for market or transportation; or

(D) to pool, combine, or unite an interest they have in the sale or purchase of tangible personal property, or in the charge for transportation, insurance, or preparing tangible personal property for market or transportation, so that the price of the tangible

personal property, or charge for transportation, insurance, or preparing tangible personal property for market or transportation, might be in any manner affected; or

(6) regulate, fix, or limit the output of tangible personal property, or the amount of insurance undertaken, or the amount of work performed in preparing tangible personal property for market or transportation; or

(7) refrain from engaging in business, or from buying or selling tangible personal property, partially or entirely in this state.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 15.03. Conspiracy in Restraint of Trade Defined**

(a) It is a conspiracy in restraint of trade for

(1) two or more persons engaged in buying or selling tangible personal property to agree not to buy from or sell to another person tangible personal property;

(2) two or more persons to agree to boycott, or threaten not to buy from or sell to, a person because that person buys from or sells to another person;

(3) two or more persons to agree to boycott, or not to deal with, the tangible personal property of another person; or

(4) an employer and labor union or other organization to agree or combine so that

(A) a person is denied the right to work for an employer because of membership or nonmembership in the labor union or other organization; or

(B) membership or nonmembership in the labor union or other organization is made a condition of obtaining or keeping a job with the employer.

(b) It is not a conspiracy in restraint of trade for

(1) employees to agree to quit their employment, or to refuse to deal with tangible personal property of their immediate employer, unless their refusal to deal with tangible personal property of their immediate employer is intended to induce, or has the effect of inducing, that employer to refrain from buying or otherwise acquiring tangible personal property from a person; or

(2) persons to agree to refer for employment a migratory farm worker who works on seasonal crops if the referral is made irrespective of whether or not the worker belongs to a labor union or other organization.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 15.04. Monopoly, Trust, and Conspiracy in Restraint of Trade Prohibited; Agreement Violating Prohibition Void**

(a) Every monopoly, trust, and conspiracy in restraint of trade, as defined in Sections 15.01, 15.02, and 15.03 of this code, respectively, is illegal and prohibited.

(b) An agreement violating the prohibition against a monopoly, trust, or conspiracy in restraint of trade contained in Subsection (a) of this section is void and unenforceable in law or equity.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 15.05. Public Utility Prohibited from Injuring Competition or Discriminating in Rates

(a) In this section, unless the context requires a different definition, "utility" means an individual, company, partnership, or corporation in the business of transporting or selling natural gas, electric current and power, telephone or telegraph service, or a similar public utility.

(b) No utility may intentionally prevent or hinder legitimate competition among utilities. No utility doing business in more than one municipality or county may discriminate between or among persons in rates, prices, or kinds of service for the purpose of injuring a competitor or preventing or hindering competition among utilities.

(c) For purposes of this section,

(1) "subsidiary utility" means a utility that is controlled by another individual, company, partnership, or corporation;

(2) "controlling company" means an individual, company, partnership, or corporation that controls a subsidiary utility;

(3) the act of a subsidiary utility is the act of its controlling company and of every other subsidiary utility of that controlling company;

(4) the act of a controlling company is the act of each of its subsidiary utilities; and

(5) the costs of production and transportation shall be considered in determining whether or not discrimination in rates, prices, or kinds of service exists.

(d) A utility's reduction of rates or prices below those required by an ordinance or proposed in a petition is prima facie evidence of an intent to prevent competition or injure a competitor if

(1) a municipality has required by ordinance, or its governing body, a majority of its citizens, or a majority of the residents of a community served by the utility has requested by petition, that the utility lower the rates or prices charged for its services;

(2) the petition proposes rates or prices for the utility to charge which the municipality, its citizens, or the residents believe to be fair and reasonable;

(3) the utility first refuses or fails to reduce its rates or prices;

(4) within 12 months after the refusal or failure another utility begins, or attempts to begin, serving the municipality or community; and

(5) the reduction is made after the other utility began, or attempted to begin, serving the municipality or community.

(e) It is not prima facie evidence of an intent to prevent competition or injure a competitor for a utility to reduce its rates or prices to the level of those charged by the municipality or a competing utility, even though the reduced rates or prices are below those required by the ordinance or requested in the petition.

(f) A utility adjudged guilty of violating a provision of Subsection (b) of this section forfeits its charter or articles of incorporation (or permit or certificate of authority) and right to do business in this state. The attorney general on learning of the violation shall file suit, or institute quo warranto

proceedings, in a district court in any county in this state to obtain the forfeiture.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 15.06. Publication Tying Arrangement Prohibited

(a) No wholesale distributor or news agency, or its agent or employee, may require or demand that a retailer purchase or accept from the wholesale distributor or news agency a particular publication so that the retailer can obtain another publication from the wholesale distributor or news agency.

(b) A wholesale distributor or news agency, or its agent or employee, who violates a provision of Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than six months or by a fine of not more than \$1,000 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 15.07 to 15.11 reserved for expansion]

## SUBCHAPTER B. PROCEDURE AND EVIDENCE

### § 15.12. Declaratory Judgment Action

(a) A person (other than a foreign corporation not having a permit or certificate of authority to do business in this state) uncertain of whether or not his action or proposed action violates or will violate the prohibition contained in Section 15.04 of this code may file suit against the state for declaratory judgment, citing this section as authority, in one of the Travis County district courts.

(b) Citation and all process in the suit shall be served on the attorney general, who shall represent the state. The petition shall describe in detail the person's action, or proposed action, and all other relevant facts, and the court in its declaratory judgment shall fully recite the action, or proposed action, and other facts considered.

(c) A declaratory judgment granted under this section which rules that action or proposed action does not violate the prohibition contained in Section 15.04 of this code

(1) shall be strictly construed and may not be extended by implication to an action or fact not recited in the judgment;

(2) does not bind the state with reference to a person not a party to the suit in which the judgment was granted; and

(3) does not estop the state from subsequently establishing a violation of the prohibition contained in Section 15.04 of this code based on an action or fact not recited in the declaratory judgment, which action or fact, when combined with an action or fact recited in the judgment, constitutes a violation of the prohibition contained in Section 15.04 of this code.

(d) A person filing suit under this section shall pay all costs of the suit.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 15.13. Attorney General's Assistants

An assistant attorney general, county attorney, district attorney, or criminal district attorney acting under the attorney general's direction has the powers and duties of the attorney general set out in Sections 15.14-15.17 of this code.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 15.14. Discovery Procedure**

(a) If the attorney general believes that a person knows of a violation of the prohibition contained in Section 15.04 of this code, he may apply to the county judge or to a justice of the peace in the county where the person is located to compel the examination of the person.

(b) Upon receipt of the application, the county judge or justice of the peace shall

- (1) summon the person as in a criminal case;
- (2) administer an oath to him;
- (3) transcribe his statement;
- (4) have him swear to and sign his statement; and
- (5) deliver his statement to the attorney general.

(c) A person summoned under Subsection (b) of this section is guilty of contempt of court if he fails to

- (1) appear in response to the summons;
- (2) make a sworn statement of the facts he knows; or
- (3) sign his written statement.

(d) A person guilty of contempt under Subsection (c) of this section may be

- (1) fined not more than \$100; and
- (2) attached and imprisoned in the county jail until he makes a full statement about the facts he knows.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 15.15. Party to Suit May Subpoena Witness**

(a) A party to a suit brought to enforce the prohibition contained in Section 15.04 of this code, or to enforce the laws conserving natural resources, may apply to the clerk of the court in which the suit is pending to subpoena a witness located anywhere in the state. On receipt of the application, the clerk shall issue the subpoena applied for but may not issue more than five subpoenas each for state witnesses and defense witnesses without first obtaining the court's written approval.

(b) A witness subpoenaed under Subsection (a) of this section who fails to appear and testify in compliance with the subpoena is guilty of contempt of court and may be

- (1) fined not more than \$100; and
- (2) attached and imprisoned in the county jail until he appears in court and testifies about the facts he knows.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 15.16. State May Compel Attendance of Defendant and Production of Documentary Evidence**

(a) In this section, unless the context requires a different definition,

- (1) "witness" includes
  - (A) director, officer, agent, and employee of a defendant corporation or joint stock association;
  - (B) member of a defendant partnership; and
  - (C) individual defendant; and

(2) "court" includes special commissioner appointed under Section 15.19 of this code.

(b) The attorney general in a suit brought to enforce the prohibition contained in Section 15.04 of this code, or to enforce the laws regulating corporations, may request the appearance and testimony of a witness, and his production of documentary evidence, at a place in or out of the state by written application to the court in term time or vacation.

(c) The attorney general in the application shall

- (1) state the name and address of each witness whose testimony he wishes to take;
- (2) describe in a general way the documentary evidence he wishes produced; and
- (3) state the place where and the time when the witness is to appear and testify or produce documentary evidence.

(d) On receipt of the attorney general's application, the court shall immediately issue a written notice, directed to the witness and defendant or his attorney, requiring the defendant or his attorney to notify the witness of the place where and the time when he is to appear and testify or produce documentary evidence.

(e) A defendant or his attorney notified by written notice issued under Subsection (d) of this section

- (1) that a witness is wanted to testify shall immediately inform the witness of the place where and time when he is required to appear and testify; and
- (2) to produce documentary evidence shall produce the evidence if it belongs to the defendant or is under his control at the place and time specified in the notice.

(f) A witness notified under Subsection (e) of this section shall remain in attendance before the court from day to day until discharged by the court. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 15.17. Sanction for Failure to Appear or Produce Documentary Evidence**

(a) The court on motion of the attorney general and after a hearing shall strike all of the defendant's pleadings and render default judgment against him if a witness fails or refuses to appear and testify or produce documentary evidence in compliance with a written notice issued under Section 15.16(d) of this code.

(b) A defendant's pleadings may not be stricken, nor default judgment rendered against him, if the defendant

(1) files with the court a sworn statement that

- (A) a witness's failure or refusal to attend and testify was due to no act or fault of the defendant;
- (B) documentary evidence demanded was not in defendant's possession or control and could not be produced; and
- (C) defendant complied with the written notice to the best of his ability; and

(2) the court after a hearing is satisfied that the defendant's statement is true.

(c) The court after the hearing provided in Subsection (b)(2) of this section may make additional

orders concerning evidence that it considers necessary.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 15.18. Service of Written Notice

(a) Written notice issued under Section 15.16(d) of this code must allow the witness named in the notice at least 10 days after the day of service before he is required to appear and testify or produce documentary evidence in compliance with the written notice.

(b) Written notice issued under Section 15.16(d) of this code may be served, and the return completed for it, by a sheriff, constable, or a disinterested person competent to make oath of the fact of service. The person serving the written notice shall deliver a copy to the person to be served, or to his attorney, shall endorse (either on the original notice or on an attachment to it) the date, time, and manner of service and the name of the person served, and shall sign the return. If the person serving the written notice is not a sheriff or constable, he shall swear to the return before someone authorized to administer an oath.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 15.19. Special Commissioner Appointed to Take Evidence

(a) A party to a suit brought to enforce the prohibition contained in Section 15.04 of this code, or to enforce the laws regulating corporations, may apply in term time or vacation to the court in which the suit is pending for appointment of a special commissioner to take evidence at a location in or out of the state as designated in the application. Upon receipt of the application, the court shall appoint a disinterested person as special commissioner, who shall qualify by taking the constitutional oath of office.

(b) A special commissioner appointed under Subsection (a) of this section may

(1) issue

(A) a written notice under Section 15.16(d) of this code, or a subpoena, to compel the attendance and testimony of a witness or the production of documentary evidence; and

(B) an attachment for a witness;

(2) punish for contempt of court to the extent provided by law for the court appointing him;

(3) administer an oath to a witness; and

(4) have a witness examined orally and his testimony transcribed, sworn to, and signed by the witness.

(c) The special commissioner shall

(1) note and reserve each objection to the evidence taken for the court hearing the suit and may not exclude evidence;

(2) with all convenient speed certify and return the evidence taken to the court appointing him.

(d) Evidence taken by a special commissioner is admissible in the suit for which it was taken, subject to objection made at the time it is offered in the suit.

(e) When filed with the court appointing him, a special commissioner's certificate, showing the failure or refusal of a witness to appear and testify or

produce documentary evidence, is prima facie evidence of the failure or refusal.

(f) A special commissioner appointed under Subsection (a) of this section is entitled to be reimbursed for his actual travel expenses and to the fee allowed by law to a notary public for taking a deposition. A special commissioner's travel expenses and fee are taxed as costs in the suit and collected as in a civil case.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 15.20. Immunity of State's Witness

A person testifying or producing documentary evidence for the state in a discovery procedure under Section 15.14 of this code, in a suit brought to enforce the prohibition contained in Section 15.04 of this code, or in a suit brought to enforce the laws regulating corporations, is immune from indictment and prosecution for anything about which he truthfully testifies or produces documentary evidence.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 15.21. Priority of Civil Suits and Cumulative Effect of Subchapter

(a) A civil suit filed by the state under Section 15.29, 15.30, or 15.32 of this code has priority over all other court business, civil or criminal, except a criminal prosecution in which the defendant is in jail.

(b) The provisions of Sections 15.14 and 15.16–15.20 of this code

(1) are cumulative of and do not repeal other law relating to securing evidence; and

(2) provide additional means of securing evidence to enforce the prohibition contained in Section 15.04 of this code and the laws regulating corporations.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 15.22. Witness Fees

(a) A witness residing outside the county in which a suit is pending, before he need comply with a subpoena issued under Section 15.15(a) of this code, must be tendered by the party calling him his anticipated expenses, not to exceed four cents a mile and \$2 a day, for going to, attending, and returning from court. In the case of a state witness, these expenses shall be paid in the same manner as in a felony case.

(b) A person complying with a written notice or summons issued under Section 15.16(d) or 15.14 of this code, respectively, is entitled to four cents a mile and \$1 a day for going to, attending, and returning from court. A person shall file a sworn claim for his mileage and per diem with the court, and the mileage and per diem shall be taxed as costs and collected as in a civil case.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 15.23 to 15.27 reserved for expansion]

#### SUBCHAPTER. C. CIVIL AND CRIMINAL PENALTIES

#### § 15.28. Definitions

In Sections 15.29–15.31 of this code, unless the context requires a different definition,

(1) "domestic corporation" means a corporation organized under the law of this state;

(2) "foreign corporation" means a corporation organized under the law of another state or country; and

(3) "successor" means a corporation to which another corporation has transferred its property and business or which has assumed payment of its obligations.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 15.29. Charter of Domestic Corporation Forfeited**

(a) When he believes the public interest requires it, the attorney general shall file suit to forfeit the charter or articles of incorporation of a domestic corporation which has violated or is violating the prohibition contained in Section 15.04 of this code. The attorney general may file suit under this subsection in a district court in any county in the state.

(b) To the extent consistent with this chapter, the law governing quo warranto applies to a suit filed under Subsection (a) of this section.

(c) If he finds the public interest requires it, in a suit filed under Subsection (a) of this section, the court may forfeit the charter or articles of incorporation of a domestic corporation adjudged guilty of violating the prohibition contained in Section 15.04 of this code. The forfeiture is in addition to other penalties provided by law.

(d) The successor to a domestic corporation whose charter or articles of incorporation has been forfeited under Subsection (c) of this section may not incorporate or do business in this state.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 15.30. Foreign Corporation Enjoined From Doing Business**

(a) If a foreign corporation has violated or is violating the prohibition contained in Section 15.04 of this code, the attorney general may file suit in a district court in Travis County to permanently enjoin the foreign corporation from doing business or incorporating in this state.

(b) If the court finds the public interest requires it, in a suit filed under Subsection (a) of this section, it shall permanently enjoin from doing business or incorporating in this state a foreign corporation adjudged guilty of violating the prohibition contained in Section 15.04 of this code. The injunction is in addition to other penalties provided by law.

(c) The successor to a foreign corporation permanently enjoined from doing business in this state may not incorporate or do business in this state.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 15.31. Reinstatement of Enjoined Foreign Corporation**

(a) Five or more years after being enjoined from doing business in this state under Section 15.30(b) of this code, a foreign corporation or its successor may apply for reinstatement to the district court originally granting the injunction. The corporation shall have a copy of the application, and all other papers, served on the attorney general, who shall represent the state in the reinstatement proceeding.

(b) On receipt of the application, the court shall hold a hearing on it, may compel the production of documentary evidence, and may appoint a special commissioner under Section 15.19 of this code to take testimony either in or out of the state.

(c) The court after the hearing may modify the original injunction and permit the foreign corporation or its successor to incorporate or secure a certificate of authority to do business in this state, if the corporation or its successor has established that the enjoined corporation

(1) fully obeyed the injunction and paid all fines adjudged against it;

(2) has organized or reorganized its affairs so that it may do business in this state without violating a state law; and

(3) is not itself violating, and is not connected with a person who is violating, the prohibition contained in Section 15.04 of this code.

(d) If the court modifies the original injunction in a reinstatement proceeding, it shall retain jurisdiction over the proceeding. The attorney general for good cause shall apply to the court to set aside the modification. If the attorney general establishes that the reinstated foreign corporation or its successor has violated or is violating, or is connected with a person who is violating, the prohibition contained in Section 15.04 of this code, the court shall set aside the modification and permanently enjoin the foreign corporation or its successor from doing business or incorporating in this state. If the modification is set aside, all proceedings based on it are void.

(e) The clerk of the court shall forward to the secretary of state a certified copy of the court's judgment in a reinstatement proceeding, and the secretary of state shall comply with the judgment.

(f) A foreign corporation or its successor seeking reinstatement shall pay all expenses of the proceeding, including a reasonable attorney's fee fixed by the court. The attorney general shall deposit the attorney's fee in the state treasury to the credit of the general revenue fund.

(g) A foreign corporation or its successor adjudged guilty a second time of violating the prohibition contained in Section 15.04 of this code may not apply for reinstatement under Subsection (a) of this section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 15.32. Monetary Penalty**

(a) A person adjudged guilty of violating the prohibition contained in Section 15.04 of this code shall pay a fine to the state of not less than \$50 nor more than \$1,500 for each day of violation. The attorney general, or a district, criminal district, or county attorney acting under his direction, shall represent the state in a suit filed to collect this fine.

(b) Each district court in this state has jurisdiction and venue over a suit filed under Subsection (a) of this section, and once suit is filed, it may not be transferred to another county except on order of the court.

(c) A district, criminal district, or county attorney representing the state in a suit filed to enforce the prohibition contained in Section 15.04 of this code, or to collect a fine under Subsection (a) of this section, is entitled to a fee equal to

(1) 10 percent of the amount collected up to and including \$50,000; and

(2) five percent of the amount collected over \$50,000; or

(3) one-half of the percentages specified in Subdivisions (1) and (2) of this subsection, if the suit is compromised before final judgment in the trial court.

(d) The fee specified in Subsection (c) of this section may be retained by the district, criminal district, or county attorney collecting it and is in addition to other fees allowed him by law.

(e) A district, criminal district, or county attorney representing the state, who ceases to hold office before a fine is collected, is entitled to share equally with his successor in the fee specified in Subsection (c) of this section. A contract hiring special counsel to assist in representing the state is binding on the district, criminal district, or county attorney making the contract and subsequently retiring from office. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 15.33. Criminal Penalties

(a) A person may not agree to form, form, be a party to the formation of, or aid a monopoly, trust, or conspiracy in restraint of trade, as defined in Sections 15.01, 15.02, and 15.03(a)(1)–(3) of this code, respectively.

(b) A person acting as a member, agent, employee, officer, director, or stockholder of a business, firm, corporation, or association may not

(1) sell, purchase, contract, do business or any other act for, or form or operate, the business, firm, corporation, or association in violation of the prohibition against a monopoly, trust, and conspiracy in restraint of trade, as defined in Sections 15.01, 15.02, and 15.03(a)(1)–(3) of this code, respectively; or

(2) in this state, with an intent to drive out competition or financially injure a competitor,

(A) sell a product below the cost of its manufacture or production;

(B) give away a product; or

(C) give a secret rebate on the sale price of a product.

(c) A person who forms outside this state a monopoly, trust, or conspiracy in restraint of trade, as defined in Sections 15.01, 15.02, and 15.03(a)(1)–(3) of this code, respectively, may not, with respect to the monopoly, trust, or conspiracy in restraint of trade,

(1) cause or permit it to do business, operate, or have an effect in this state;

(2) aid it to do business in this state or otherwise violate the prohibition against a monopoly, trust, or conspiracy in restraint of trade, as defined in Sections 15.01, 15.02, and 15.03(a)(1)–(3) of this code, respectively; or

(3) buy, sell, or contract for it.

(d) A person who violates a provision of Subsection (a), (b) or (c) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not less than 2 nor more than 10 years.

(e) A criminal prosecution under this section may be brought in Travis or any other county in which a monopoly, trust, or conspiracy in restraint of trade is allegedly operating.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 15.34. Exemption From Criminal Penalties

Section 15.33 of this code does not apply to agricultural products or livestock while in the hands of the producer or raiser.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## SUBCHAPTER D. RECOVERY OF DAMAGES PURSUANT TO FEDERAL ANTITRUST LAWS

### § 15.40. Authority, Powers, and Duties of Attorney General

(a) The attorney general may bring an action on behalf of the state or of any of its political subdivisions or tax supported institutions to recover the damages provided for by the federal antitrust laws, Title 15, United States Code,<sup>1</sup> provided that the attorney general shall notify in writing any political subdivision or tax supported institution of his intention to bring any such action on its behalf, and at any time within 30 days thereafter, such political subdivision or tax supported institution may, by formal resolution of its governing body or as otherwise specifically provided by applicable law, withdraw the authority of the attorney general to bring the intended action. In any action brought pursuant to this section on behalf of any political subdivision or tax supported institution of the state, the state shall retain for deposit in the general revenue fund of the State Treasury, out of the proceeds, if any, resulting from such action, an amount equal to the expense incurred by the state in the investigation and prosecution of such action.

(b) In any action brought by the attorney general pursuant to the federal antitrust laws for the recovery of damages by the estate or any of its political subdivisions or tax supported institutions, in addition to his other powers and authority the attorney general may enter into contracts relating to the investigation and the prosecution of such action with any other party who could bring a similar action or who has brought such an action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly, or to share common expenses or to cooperate in any manner relative to such action. In any such action the attorney general may undertake, among other things, either to render legal services as special counsel to, or to obtain the legal services of special counsel from, any department or agency of the United States, any other state or any department or agency thereof, any county, city, public corporation or public district of this state or of any other state, that has brought or intends to bring a similar action for the recovery of damages, or their duly authorized legal representatives in such action.

[Acts 1969, 61st Leg., p. 1708, ch. 559, § 1; eff. June 10, 1969.]

<sup>1</sup> 15 U.S.C.A. § 15 et seq.

## CHAPTER 16. TRADEMARKS

### SUBCHAPTER A. GENERAL PROVISIONS

#### Section

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16.02. When Mark Considered to be Used.

SUBCHAPTER B. REGISTRATION OF MARK

Section

- 16.08. Registrable Marks.
- 16.09. Classes of Goods and Services.
- 16.10. Application for Registration.
- 16.11. Registration by Secretary of State.
- 16.12. Term of Registration.
- 16.13. Notice of Expiration of Registration.
- 16.14. Renewal of Registration and Reregistration.
- 16.15. Record, Notice, and Proof of Registration.
- 16.16. Cancellation of Registration.
- 16.17. Assignment of Mark and Registration.
- 16.18. Recordation of Assignment and its Effect.

SUBCHAPTER C. COURT ACTION

- 16.24. Review of Secretary of State's Decisions.
- 16.25. Suit to Cancel Registration.
- 16.26. Infringement of Registered Mark.
- 16.27. Exceptions to Liability for Infringement.
- 16.28. Procuring Application or Registration by Fraud.

SUBCHAPTER A. GENERAL PROVISIONS

§ 16.01. Definitions

(a) In this chapter, unless the context requires a different definition,

(1) "applicant" means the person applying for registration of a mark under this chapter and includes his legal representative, successor, assignee, and predecessor in title to the mark sought to be registered;

(2) "mark" includes service mark and trademark;

(3) "registrant" means the person to whom a registration has been issued under this chapter and includes his legal representative, successor, assignee, and predecessor in title to the registration;

(4) "service mark" means a word, name, symbol, device, slogan or any combination thereof which, whether registered or not, has been adopted and used by a person to identify his services and distinguish them from the services of others, and includes the titles, designations, character names, and distinctive features of broadcast or other advertising;

(5) "trademark" means a word, name, symbol, device, slogan or any combination thereof which, whether registered or not, has been adopted and used by a person to identify his goods and distinguish them from the goods manufactured or sold by others; and

(6) "trade name" includes individual name, surname, firm name, corporate name, and lawfully adopted name or title used by a person to identify his business, vocation, or occupation.

(b) This chapter does not apply to the registration or use of livestock brands or other indicia of ownership of goods which do not qualify as a "mark" as defined in this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.02. When Mark Considered to be Used

(a) A mark is considered to be used in this state in connection with goods when

- (1) it is placed on
  - (A) the goods;

- (B) containers of the goods;
- (C) displays associated with the goods;
- or
- (D) tags or labels affixed to the goods; and

(2) the goods are sold, displayed for sale, or otherwise publicly distributed in this state.

(b) A mark is considered to be used in this state in connection with services when

(1) it is used or displayed in this state in connection with selling or advertising the services; and

(2) the services are rendered in this state.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 16.03 to 16.07 reserved for expansion]

SUBCHAPTER B. REGISTRATION OF MARK

§ 16.08. Registrable Marks

(a) A mark in actual use in connection with the applicant's goods or services, which distinguishes his goods or services from those of others, is registrable unless it

(1) is, or includes matter which is, immoral, deceptive, or scandalous;

(2) may disparage, or falsely suggest a connection with, or bring into contempt or disrepute

- (A) a person, whether living or dead;
- (B) an institution;
- (C) a belief; or
- (D) a national symbol;

(3) depicts or simulates the flag, coat of arms, or other insignia of

- (A) the United States;
- (B) a state;
- (C) a municipality; or
- (D) a foreign nation;

(4) is or includes the name, signature, or portrait of a living individual who has not consented in writing to its registration;

(5) is

(A) merely descriptive or deceptively misdescriptive of the applicant's goods or services;

(B) primarily geographically descriptive or deceptively misdescriptive of the applicant's goods or services; or

(C) primarily merely a surname; or

(6) is likely to cause confusion or mistake, or to deceive, because, when applied to the applicant's goods or services, it resembles another person's unabandoned mark registered in this state.

(b) Subsection (a)(5) of this section does not prevent the registration of a mark that has become distinctive as applied to the applicant's goods or services. The secretary of state may accept as evidence that a mark has become distinctive as applied to the applicant's goods or services proof of substantially exclusive and continuous use of the mark by the applicant in this state for the five years next preceding the date on which the applicant filed his application for registration.

(c) A trade name is not registrable under this chapter. However, if a trade name is also a service mark or trademark, as defined in this chapter, it is registrable as a service mark or trademark.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 16.09. Classes of Goods and Services

(a) An applicant may include in a single application for registration of a mark all goods or services in connection with which the mark is actually being used and which are in a single class. An applicant may not include in a single application for registration goods or services which are not in a single class.

(b) The classes of goods are:

- (1) Class 1: raw or partly prepared materials;
- (2) Class 2: receptacles;
- (3) Class 3: baggage, animal equipments, portfolios, and pocketbooks;
- (4) Class 4: abrasives and polishing materials;
- (5) Class 5: adhesives;
- (6) Class 6: chemicals and chemical compositions;
- (7) Class 7: cordage;
- (8) Class 8: smokers' articles, not including tobacco products;
- (9) Class 9: explosives, firearms, equipments, and projectiles;
- (10) Class 10: fertilizers;
- (11) Class 11: inks and inking materials;
- (12) Class 12: construction materials;
- (13) Class 13: hardware, and plumbing and steam-fitting supplies;
- (14) Class 14: metals, and metal castings and forgings;
- (15) Class 15: oils and greases;
- (16) Class 16: protective and decorative coatings;
- (17) Class 17: tobacco products;
- (18) Class 18: medicines and pharmaceutical preparations;
- (19) Class 19: vehicles;
- (20) Class 20: linoleum and oilcloth;
- (21) Class 21: electrical apparatus, machines, and supplies;
- (22) Class 22: games, toys, and sporting goods;
- (23) Class 23: cutlery, machinery, and tools and parts thereof;
- (24) Class 24: laundry appliances and machines;
- (25) Class 25: locks and safes;
- (26) Class 26: measuring and scientific appliances;
- (27) Class 27: horological instruments;
- (28) Class 28: jewelry and precious metalware;
- (29) Class 29: brooms, brushes, and dusters;

- (30) Class 30: crockery, earthenware, and porcelain;
- (31) Class 31: filters and refrigerators;
- (32) Class 32: furniture and upholstery;
- (33) Class 33: glassware;
- (34) Class 34: heating, lighting, and ventilating apparatus;
- (35) Class 35: belting, hose, machinery packing, and non-metallic tires;
- (36) Class 36: musical instruments and supplies;
- (37) Class 37: paper and stationery;
- (38) Class 38: prints and publications;
- (39) Class 39: clothing;
- (40) Class 40: fancy goods, furnishings, and notions;
- (41) Class 41: canes, parasols, and umbrellas;
- (42) Class 42: knitted, netted, and textile fabrics, and substitutes therefor;
- (43) Class 43: thread and yarn;
- (44) Class 44: dental, medical, and surgical appliances;
- (45) Class 45: soft drinks and carbonated waters;
- (46) Class 46: foods and ingredients of foods;
- (47) Class 47: wines;
- (48) Class 48: malt beverages and liquors;
- (49) Class 49: distilled alcoholic liquors;
- (50) Class 50: merchandise not otherwise classified;
- (51) Class 51: cosmetics and toilet preparations; and
- (52) Class 52: detergents and soaps.

(c) The classes of services are:

- (1) Class 100: miscellaneous;
- (2) Class 101: advertising and business;
- (3) Class 102: insurance and financial;
- (4) Class 103: construction and repair;
- (5) Class 104: communication;
- (6) Class 105: transportation and storage;
- (7) Class 106: material treatment; and
- (8) Class 107: education and entertainment.

(d) The classes of goods and services enumerated in Subsections (b) and (c) of this section are established for the convenient administration of this chapter and do not limit or expand an applicant's or registrant's rights. The secretary of state may amend the classes of goods and services to conform to those now or later established by the U.S. Patent Office.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 16.10. Application for Registration

(a) A person shall file his application to register a mark in the office of the secretary of state on a form prescribed by the secretary of state.

(b) The applicant shall include in the application (1) the name and business address of the applicant;

(2) the state of incorporation of the applicant if the applicant is a corporation;

(3) an appointment of the secretary of state as the applicant's agent for service of process only in suits relating to the registration which may be issued if the applicant

(A) is or becomes a

(i) nonresident individual, partnership, or association; or

(ii) foreign corporation without a certificate of authority to do business in this state; or

(B) cannot be found in this state;

(4) the names or a description of the goods or services in connection with which the mark is being used;

(5) the manner in which the mark is being used in connection with the goods or services;

(6) the class in which the applicant believes the goods or services belong;

(7) the date on which the applicant first used the mark anywhere in connection with the goods or services;

(8) the date on which the applicant first used the mark in this state in connection with the goods or services;

(9) a statement that the applicant believes he is the owner of the mark and that, to the best of his knowledge, no other person is entitled to use the mark in this state

(A) in the identical form used by the applicant; or

(B) in a form that is likely, when used in connection with the goods or services, to cause confusion or mistake, or to deceive, because of its resemblance to the mark used by the applicant; and

(10) such additional information or documents as the secretary of state may reasonably require.

(c) The applicant shall

(1) prepare and file the application with the secretary of state in duplicate originals; and

(2) submit as part of the application to the secretary of state

(A) two identical specimens or facsimiles of the mark as actually used, one specimen or facsimile with each duplicate original application; and

(B) a filing fee of \$10 payable to the secretary of state.

(d) The applicant or his agent shall sign and verify the application.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 16.11. Registration by Secretary of State**

If the application satisfies the requirements of this chapter, and the filing fee is paid, the secretary of state shall

(1) endorse on each duplicate original application

(A) the word "filed"; and

(B) the date on which the application was filed;

(2) file one of the duplicate original applications in his office;

(3) issue a certificate of registration evidencing registration on the date on which the application was filed;

(4) attach the other duplicate original application to the certificate of registration; and

(5) deliver the certificate of registration with the attached duplicate original application to the applicant.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 16.12. Term of Registration**

(a) The registration of a mark under this chapter is effective for a term of 10 years from the date of registration.

(b) A registration in force before May 2, 1962, expires 10 years from the date of registration.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 16.13. Notice of Expiration of Registration**

(a) During the period beginning 12 months and ending 6 months before the day a registration expires, the secretary of state shall, by writing to the last known address of the registrant under this chapter or under a prior act, notify the registrant of the necessity for renewing or reregistering under Section 16.14 of this code.

(b) Neither the secretary of state's failure to notify a registrant nor the registrant's nonreceipt of a notice under Subsection (a) of this section

(1) extends the term of a registration; or

(2) excuses the registrant's failure to renew or reregister.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 16.14. Renewal of Registration and Reregistration**

(a) The registration of a mark under this chapter may be renewed for an additional 10-year term by filing a renewal application within six months before the day the registration expires on a form prescribed by the secretary of state. The registrant shall submit as part of his renewal application to the secretary of state

(1) an affidavit stating that

(A) the mark is still in use in this state; or

(B) nonuse of the mark in this state

(i) is due to special circumstances which excuse the nonuse; and

(ii) is not due to an intention to abandon the mark in this state; and

(2) a renewal fee of \$10 payable to the secretary of state.

(b) A registrant may renew a registration under Subsection (a) of this section for successive terms of 10 years.

(c) A mark for which a registration was in force before May 2, 1962, may be reregistered by filing an original application under Section 16.10 of this code

within six months before the day the registration expires.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 16.15. Record, Notice, and Proof of Registration

(a) The secretary of state shall keep for public examination a record of all

(1) marks registered, reregistered, or renewed under this chapter; and

(2) assignments recorded under Section 16.18 of this code.

(b) Registration of a mark under this chapter is constructive notice throughout this state of the registrant's claim of ownership of the mark throughout this state.

(c) A certificate of registration issued by the secretary of state under this chapter, or a copy of it certified by the secretary of state, is admissible in evidence as prima facie proof of

(1) the validity of the registration;

(2) the registrant's ownership of the mark; and

(3) the registrant's exclusive right to use the mark in commerce in this state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated in the certificate.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 16.16. Cancellation of Registration

(a) The secretary of state shall cancel

(1) all registrations in force before May 2, 1962, which are more than 10 years old and which have not been reregistered under Section 16.14(c) of this code;

(2) a registration on receipt of a voluntary request for cancellation from the registrant under this chapter or under a prior act as identified by the records of the secretary of state;

(3) registrations granted under this chapter and not renewed under Section 16.14(a) of this code;

(4) a registration concerning which a district or appellate court has rendered a final judgment, which has become unappealable, cancelling the registration or finding that

(A) the registered mark has been abandoned;

(B) the registrant under this chapter or under a prior act is not the owner of the mark;

(C) the registration was granted contrary to the provisions of this chapter;

(D) the registration was obtained fraudulently; or

(E) the registered mark has become incapable of serving as a mark.

(b) The clerk of the court whose final judgment cancels a registration or makes any of the findings specified in Subsection (a)(4) of this section shall, when the judgment becomes unappealable, transmit a certified copy of it to the secretary of state.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 16.17. Assignment of Mark and Registration

(a) A mark and its registration under this chapter are assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill connected with the use of, and symbolized by, the mark.

(b) An assignment shall be made by duly executed written instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 16.18. Recordation of Assignment and Its Effect

(a) An assignment made under Section 16.17 of this code may be recorded with the secretary of state by

(1) filing with him

(A) the original assignment; and

(B) a duplicate original or legible photocopy on durable paper of the assignment; and

(2) paying him a fee of \$3.

(b) If an assignment has been properly filed for record under Subsection (a) of this section, the secretary of state shall

(1) issue in the assignee's name a new certificate of registration for the remainder of the term of the mark's registration, reregistration, or last renewal;

(2) endorse on the original and duplicate original assignment or photocopy the

(A) words "Filed for record in the office of the Secretary of State, State of Texas"; and

(B) date on which the assignment was filed for record;

(3) file the duplicate original or photocopy of the assignment in his office; and

(4) return the endorsed original assignment to the assignee or his representative.

(c) The assignment of a mark registered under this chapter is void against a purchaser who purchases the mark for value after the assignment is made and without notice of it unless the assignment is recorded by the secretary of state

(1) within three months after the date of the assignment; or

(2) before the mark is purchased.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 16.19 to 16.23 reserved for expansion]

#### SUBCHAPTER C. COURT ACTION

#### § 16.24. Review of Secretary of State's Decisions

(a) Final action taken or a final decision made by the secretary of state under this chapter may be reviewed by a suit filed in one of the Travis County district courts.

(b) A suit filed under Subsection (a) of this section is tried de novo, as an appeal from a justice court to a county court, and

(1) every decision or action concerning an issue in the suit made or taken by the secretary of state before the suit was filed is void;

(2) the district court shall determine the issues in the suit as if no decision had been made or action taken by the secretary of state; and

(3) the district court may not apply in any form the substantial evidence rule in reviewing a decision or action of the secretary of state.

(c) The legislature declares that

(1) this section is not severable from the other sections of this chapter;

(2) it would not have enacted this chapter without this section; and

(3) this chapter is void if a court in a final judgment which becomes unappealable invalidates this section in whole or part.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 16.25. Suit to Cancel Registration**

(a) A person who believes that he is or will be damaged by a registration under this chapter may sue to cancel the registration in a district court having venue.

(b) The clerk of a court in which suit is filed under Subsection (a) of this section shall transmit notice of the suit to the secretary of state, who shall place the notice in the registration file with proper notations and endorsements.

(c) When the registrant's agent for service of process is the secretary of state, the secretary of state shall forward notice of the suit by registered mail to the registrant at his last address of record.

(d) If the court finds that the losing party in a suit filed under Subsection (a) of this section should have known his position was without merit, the court may award the successful party his reasonable attorneys' fees and charge them as part of the costs against the losing party.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 16.26. Infringement of Registered Mark**

(a) Subject to Section 16.27 of this code, a person commits an infringement if, without the registrant's consent, he

(1) uses anywhere in this state a reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter in connection with selling, offering for sale, or advertising goods or services when the use is likely to deceive or cause confusion or mistake as to the source or origin of the goods or services; or

(2) reproduces, counterfeits, copies, or colorably imitates a mark registered under this chapter and applies the reproduction, counterfeit, copy, or colorable imitation to a label, sign, print, package, wrapper, receptacle, or advertisement intended to be used in selling, leasing, distributing, or rendering goods or services in this state when the use is likely to deceive or cause confusion or mistake as to the source or origin of the goods or services.

(b) A registrant may sue for damages and to enjoin an infringement proscribed by Subsection (a) of this section in a district court having venue.

(c) If the district court determines that there has been an infringement, it shall enjoin the act of infringement and may

(1) require the infringer to pay the registrant all damages resulting from the acts of infringement and occurring from and after the date two years before the day the suit was filed; and

(2) order that the infringing reproductions, counterfeits, copies, or colorable imitations in the possession or under the control of the infringer be

(A) delivered to an officer of the court;

(B) delivered to the registrant; or

(C) destroyed.

(d) A registrant is entitled to recover damages under Subsection (c)(1) of this section only for an infringement that occurred during the period of time the infringer had actual knowledge of the registrant's mark.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 16.27. Exceptions to Liability for Infringement**

(a) No registration under this chapter adversely affects common law rights acquired prior to registration under this chapter. However, during any period when the registration of a mark under this chapter is in force and the registrant has not abandoned the mark, no common law rights as against the registrant of the mark may be acquired.

(b) The owner or operator of a radio or television station, or the owner or publisher of a newspaper, magazine, directory, or other publication, is not liable in that business under Section 16.26 of this code for the use of a registered mark furnished by one of his advertisers or customers.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 16.28. Procuring Application or Registration by Fraud**

(a) No person may procure for himself or another the filing of an application or the registration of a mark under this chapter by knowingly making a false or fraudulent representation or declaration, oral or written, or by any other fraudulent means.

(b) A person injured by the false or fraudulent procurement of an application or registration may sue the person who violated Subsection (a) of this section in a district court having venue and

(1) recover from him damages resulting from use of the fraudulently registered mark, plus costs of suit, including attorneys' fees; and

(2) have the registration cancelled.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**CHAPTER 17. DECEPTIVE TRADE PRACTICES**

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Section

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SUBCHAPTER A. GENERAL PROVISIONS

§ 17.01. Definitions

In this chapter, unless the context requires a different definition,

- (1) "container" includes bale, barrel, bottle, box, cask, keg, and package; and
- (2) "proprietary mark" includes word, name, symbol, device, and any combination of them in any form or arrangement, used by a person to identify his tangible personal property and distinguish it from the tangible personal property of another.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 17.02 to 17.06 reserved for expansion]

SUBCHAPTER B. DECEPTIVE ADVERTISING,  
PACKING, SELLING, AND EXPORTING

§ 17.07. Using Representation of Texas Flag in  
Advertising and Selling

- (a) No person may use a representation of the Texas flag
  - (1) to advertise or publicize tangible personal property or a commercial undertaking; or
  - (2) for a trade or commercial purpose.

(b) No person may offer to sell tangible personal property bearing a representation of the Texas flag.

(c) Subsection (a) of this section does not apply to a fraternal or patriotic organization using the Texas flag for an emblem.

(d) A person who violates a provision of Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$100.

(e) A person who violates Subsection (b) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$50.

(f) A person who violates Subsection (a) or (b) of this section commits a separate offense each day he violates a provision of either subsection.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 17.08. Using Representation of Great Seal of  
Texas in Advertising

(a) No person may use a representation of the Great Seal of Texas

- (1) to advertise or publicize tangible personal property or a commercial undertaking; or
- (2) for a commercial purpose.

(b) A person who reproduces an official document bearing the Great Seal of Texas does not violate Subsection (a) of this section if the document is

- (1) reproduced in complete form; and
- (2) used for a purpose related to the purpose for which the document was issued by the state.

(c) A person who violates a provision of Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$100.

(d) A person who violates Subsection (a) of this section commits a separate offense each day he violates a provision of that subsection.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 17.09. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(d), eff. January 1, 1974.

§ 17.10. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(d), eff. January 1, 1974.

§ 17.11. Deceptive Wholesale and Going-Out-Of-  
Business Advertising

(a) In Subsection (b) of this section, unless the context requires a different definition, "wholesaler" means a person who sells for the purpose of resale and not directly to a consuming purchaser.

(b) No person may wilfully misrepresent the nature of his business by using in selling or advertising the word manufacturer, wholesaler, retailer, or other word of similar meaning.

(c) No person may wilfully misrepresent the ownership of a business for the purpose of holding a liquidation sale, auction sale, or other sale which represents that the business is going out of business. A person who advertises a liquidation sale, auction sale, or going-out-of-business sale shall state the correct name and permanent address of the owner of the business in the advertising.

(d) A person who violates a provision of Subsection (b) or (c) of this section is guilty of a misde-

meanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$500.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 17.12. Deceptive Advertising**

(a) No person may disseminate a statement he knows materially misrepresents the cost or character of tangible personal property, a security, service, or anything he may offer for the purpose of

(1) selling, contracting to sell, otherwise disposing of, or contracting to dispose of the tangible personal property, security, service, or anything he may offer; or

(2) inducing a person to contract with regard to the tangible personal property, security, service, or anything he may offer.

(b) No person may solicit advertising in the name of a club, association, or organization without the written permission of such club, association, or organization or distribute any publication purporting to represent officially a club, association, or organization without the written authority of or a contract with such club, association, or organization and without listing in such publication the complete name and address of the club, association, or organization endorsing it.

(c) A person's proprietary mark appearing on or in a statement described in Subsection (a) of this section is prima facie evidence that the person disseminated the statement.

(d) A person who violates a provision of Subsection (a) or (b) of this Section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2045, ch. 701, § 1, eff. June 12, 1969.]

[Sections 17.13 to 17.17 reserved for expansion]

**SUBCHAPTER C. REGULATING THE SALE OR TRANSFER OF SECONDHAND WATCHES**

**§ 17.18. Applicability of Subchapter to Secondhand Watches**

(a) A watch is secondhand if its

(1) case, movement, or case and movement as a unit, has been previously sold or transferred to a person for his own use or the use of another;

(2) serial number, movement number, or other identification mark or number has been removed, altered, or covered up;

(3) movement is more than one year old and has been repaired even though the watch has been returned to the seller or transferor for exchange or credit as described in Subsection (b)(1) of this section.

(b) A watch is not secondhand if

(1) after the sale or transfer described in Subsection (a)(1) of this section,

(A) the purchaser or transferee returns the watch to the seller or transferor for exchange or credit within one year from the date of sale or transfer to him;

(B) the seller or transferor keeps a written record showing

(i) the purchaser's or transferee's name;

(ii) the date of sale or transfer;

(iii) the serial number on the case and movement, if present; and

(iv) any proprietary mark;

(C) the record is kept for at least five years from the date of sale or transfer; and

(D) the record is open for inspection at the seller's or transferor's business address during business hours by

(i) the county or district attorney of the county in which the seller or transferor does business; or

(ii) his duly authorized representative; or

(2) Its movement is merely cleaned, oiled, or recased.

(c) The provisions of Subsections (a) and (b) of this section do not apply to a pawnbroker's auction sale of unredeemed pledges.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 17.19. Labeling Secondhand Watches**

No person in the business of buying or selling watches may sell or exchange, offer to sell or exchange, possess, or display with intent to sell or exchange a secondhand watch unless he

(1) fastens to the watch a clearly written or printed tag bearing the word "secondhand"; and

(2) places the tag so the word "secondhand" is in plain sight at all times.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 17.20. Content of Invoice for Secondhand Watch**

(a) No person in the business of buying or selling watches may sell or transfer a secondhand watch unless he gives the purchaser or transferee a written invoice

(1) bearing the words "secondhand watch" in letters larger than any other letters on the invoice, except those of the letterhead; and

(2) listing the following items:

(A) the seller's or transferor's name and address;

(B) the purchaser's or transferee's name and address;

(C) the date of sale or transfer;

(D) the name of the watch or its manufacturer; and

(E) the serial number or proprietary mark on the watch or, if the serial number or proprietary mark has been removed, altered, or covered up, a statement to that effect.

(b) The seller or transferor shall keep on file a duplicate of the invoice required by Subsection (a) of this section for at least five years from the date of sale or transfer.

(c) The county or district attorney, or his authorized representative, of the county in which the seller or transferor does business may inspect the duplicate invoice described in Subsection (b) of this section

(1) during the seller's or transferor's business hours; and

(2) at the seller's or transferor's business address.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 17.21. Advertising Watch as Secondhand

No person may advertise or display a secondhand watch for sale or exchange unless he clearly states in the advertisement or display that the watch is secondhand.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 17.22. Criminal Penalty

A person, or his agent or employee, who violates a provision of Section 17.19, 17.20, or 17.21 of this code is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than 100 days or by a fine of not more than \$500 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 17.23 to 17.27 reserved for expansion]

### SUBCHAPTER D. COUNTERFEITING OR CHANGING A REQUIRED MARK; MISUSE OF CONTAINER BEARING MARK

§ 17.28. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(d), eff. January 1, 1974

#### § 17.29. Misusing Container; Evidence of Misuse and Container's Ownership

(a) In this section, unless the context requires a different definition, "container" also includes drink-dispensing fountain.

(b) Unless the owner of a reusable container bearing a proprietary mark (or one acting with the owner's written permission) agrees, no person may

(1) fill the container for sale or other commercial purpose;

(2) deface, cover up, or remove the proprietary mark from the container; or

(3) refuse to return the container to the owner if he requests its return.

(c) A person's wilful

(1) possession of a full or empty reusable container without the owner's permission is prima facie evidence of his violating a provision of Subsection (b) of this section;

(2) use, purchase, sale, or other disposition of a full or empty reusable container without the owner's permission is prima facie evidence of his violating a provision of Subsection (b) of this section; and

(3) breaking, damaging, or destroying a full or empty reusable container is prima facie evidence of his violating a provision of Subsection (b) of this section.

(d) In an action in which the ownership of a reusable container is in issue, a person's proprietary mark on the container is prima facie evidence that the person or his licensee owns the container.

(e) A person who violates a provision of Subsection (b) of this section is guilty of a misdemeanor and upon conviction is punishable by

(1) a fine of not less than \$25 nor more than \$50 for each violation concerning a drink-dispensing fountain; or

(2) a fine of not less than \$5 nor more than \$10 for each violation concerning any other container.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

#### § 17.30. Misusing Dairy Container Bearing Proprietary Mark

(a) In this section, unless the context requires a different definition, "dairy container" includes butter box, ice cream can, ice cream tub, milk bottle, milk bottle case, milk can, and milk jar.

(b) Without the owner's consent, no person may

(1) fill with milk, cream, butter, or ice cream; damage; mutilate; or destroy a dairy container bearing the owner's commonly used proprietary mark; or

(2) wilfully refuse to return on request to the owner a dairy container bearing his commonly used proprietary mark.

(c) Without the owner's written consent, no person may

(1) deface or remove an owner's proprietary mark from a dairy container; or

(2) substitute on a dairy container his proprietary mark for that of the owner.

(d) A person's commonly used proprietary mark on a dairy container is prima facie evidence of that person's ownership of the container.

(e) A person who violates a provision of Subsection (b) or (c) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 17.31 to 17.40 reserved for expansion]

### SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION

#### § 17.41. Short Title

This subchapter may be cited as the Deceptive Trade Practices-Consumer Protection Act.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

#### § 17.42. Waivers: Public Policy

Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

#### § 17.43. Cumulative Remedies

The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided for in any other law. The provisions of this subchapter do not in any way preclude other political subdivisions of this state from dealing with deceptive trade practices.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

#### § 17.44. Construction and Application

This subchapter shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

## § 17.45. Definitions

As used in this subchapter:

- (1) "Goods" means tangible chattels bought for use.
  - (2) "Services" means work, labor, and services for other than commercial or business use, including services furnished in connection with the sale or repair of goods.
  - (3) "Person" means an individual, partnership, corporation, association, or other group, however organized.
  - (4) "Consumer" means an individual who seeks or acquires by purchase or lease, any goods or services.
  - (5) "Merchant" means a party to a consumer transaction other than a consumer.
  - (6) "Trade" and "commerce" mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.
  - (7) "Documentary material" includes the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated.
  - (8) "Consumer protection division" means the antitrust and consumer protection division of the attorney general's office.
  - (9) "Knowingly" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.
- [Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

## § 17.46. Deceptive Trade Practices Unlawful

- (a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.
- (b) The term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:
  - (1) passing off goods or services as those of another;
  - (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
  - (3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
  - (4) using deceptive representations or designations of geographic origin in connection with goods or services;
  - (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;
  - (6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;
  - (7) representing that goods or services are of a particular standard, quality, or grade, or that

goods are of a particular style or model, if they are of another;

- (8) disparaging the goods, services, or business of another by false or misleading representation of facts;
- (9) advertising goods or services with intent not to sell them as advertised;
- (10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;
- (11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
- (12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- (13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;
- (14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;
- (15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;
- (16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;
- (17) advertising of any sale by fraudulently representing that a person is going out of business;
- (18) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;
- (19) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 of the Business & Commerce Code to involve obligations in excess of those which are appropriate to the goods; or
- (20) selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a multi-level distributorship. As used herein, "multi-level distribu-

torship" means a sales plan for the distribution of goods or services in which promises of rebate or payment are made to individuals, conditioned upon those individuals recommending or securing additional individuals to assume positions in the sales operation, and where the rebate or payment is not exclusively conditioned on or in relation to proceeds from the retail sales of goods.

(c) It is the intent of the legislature that in construing Subsection (a) of this section the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the Federal Trade Commission and federal courts to Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)].

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

#### § 17.47. Restraining Orders

(a) Whenever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary or permanent injunction the use of such method, act, or practice. The consumer protection division may bring any action under this section against a licensed insurer or insurance agent for a violation of this subchapter, Article 21.21, Texas Insurance Code, as amended, or the rules and regulations of the State Board of Insurance issued under Article 21.21, Texas Insurance Code, as amended, only on the written request of the State Board of Insurance or the commissioner of insurance.

Nothing herein shall require the consumer protection division to notify such person that court action is or may be under consideration. Provided, however, the consumer protection division shall, at least seven days prior to instituting such court action, contact such person to inform him in general of the alleged unlawful conduct. Cessation of unlawful conduct after such prior contact shall not render such court action moot under any circumstances, and such injunctive relief shall lie even if such person has ceased such unlawful conduct after such prior contact. Such prior contact shall not be required if, in the opinion of the consumer protection division, there is good cause to believe that such person would evade service of process if prior contact were made or that such person would destroy relevant records if prior contact were made.

(b) An action brought under Subsection (a) of this section may be commenced in the district court of the county in which the person against whom it is brought resides, has his principal place of business, is doing business, or in the district court of the county where the transaction occurred, or, on the consent of the parties, in a district court of Travis County. The court may issue temporary or permanent injunctions to restrain and prevent violations of this subchapter and the injunctions shall be issued without bond.

(c) In addition to the request for a temporary or permanent injunction in a proceeding brought under Subsection (a) of this section, the consumer protection division, on a finding by the court that the defendant has engaged or is engaging in a practice declared to be unlawful by this subchapter, may

request a civil penalty of not more than \$2,000 per violation, not to exceed a total of \$10,000, to be paid to the state.

(d) The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or restoration of money or property, real or personal, which may have been acquired by means of any act or practice restrained. Damages may not include any damages incurred beyond a point two years prior to the institution of the action by the consumer protection division. Orders of the court may also include the appointment of a receiver or a sequestration of assets if a person who has been ordered by a court to make restitution under this section has failed to do so within three months after the order to make restitution has become final and nonappealable.

(e) Any person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than \$10,000 per violation, not to exceed \$50,000. In determining whether or not an injunction has been violated the court shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in these cases, the consumer protection division, or the district or county attorney with prior notice to the consumer protection division, acting in the name of the state, may petition for recovery of civil penalties under this section.

(f) An order of the court awarding civil penalties under Subsection (e) of this section applies only to violations of the injunction incurred prior to the awarding of the penalty order. Second or subsequent violations of an injunction issued under this section are subject to the same penalties set out in Subsection (e) of this section.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

#### § 17.48. Duty of District and County Attorney

(a) It is the duty of the district and county attorneys to lend to the consumer protection division any assistance requested in the commencement and prosecutions of action under this subchapter.

(b) A district or county attorney, with prior written notice to the consumer protection division, may institute and prosecute actions seeking injunctive relief under this subchapter, after complying with the prior contact provisions of Subsection (a) of Section 17.47 of this subchapter. On request, the consumer protection division shall assist the district or county attorney in any action taken under this subchapter. If an action is prosecuted by a district or county attorney alone, he shall make a full report to the consumer protection division including the final disposition of the matter. No district or county attorney may bring an action under this section against any licensed insurer or licensed insurance agent transacting business under the authority and jurisdiction of the State Board of Insurance unless first requested in writing to do so by the State Board of Insurance, the commissioner of insurance, or the consumer protection division pursuant to a request by the State Board of Insurance or commissioner of insurance.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

## § 17.49. Exemptions

(a) Nothing in this subchapter shall apply to the owner or employees of a regularly published newspaper, magazine, or telephone directory, or broadcast station, or billboard, wherein any advertisement in violation of this subchapter is published or disseminated, unless it is established that the owner or employees of the advertising medium have knowledge of the false, deceptive, or misleading acts or practices declared to be unlawful by this subchapter, or had a direct or substantial financial interest in the sale or distribution of the unlawfully advertised good or service. Financial interest as used in this section relates to an expectation which would be the direct result of such advertisement.

(b) Nothing in this subchapter shall apply to acts or practices authorized under specific rules or regulations promulgated by the Federal Trade Commission under Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 145(a)(1)]. The provisions of this subchapter do apply to any act or practice prohibited or not specifically authorized by a rule or regulation of the Federal Trade Commission. An act or practice is not specifically authorized if no rule or regulation has been issued on the act or practice.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

## § 17.50. Relief for Consumers

(a) A consumer may maintain an action if he has been adversely affected by any of the following:

(1) the use or employment by any person of an act or practice declared to be unlawful by Section 17.46 of this subchapter;

(2) a failure by any person to comply with an express or implied warranty;

(3) any unconscionable action or course of action by any person; or

(4) the use or employment by any person of an act or practice in violation of Article 21.21, Texas Insurance Code, as amended, or rules or regulations issued by the State Board of Insurance under Article 21.21, Texas Insurance Code, as amended.

(b) In a suit filed under this section, each consumer who prevails may obtain:

(1) three times the amount of actual damages plus court costs and attorneys' fees reasonable in relation to the amount of work expended;

(2) an order enjoining such acts or failure to act;

(3) orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and

(4) any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state if the judgment has not been satisfied within three months of the date of the final judgment. The court may not revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person is a licensee of or regulated by a state agency which has statutory authority to

revoke or suspend a license or to appoint a receiver or trustee.

(c) On a finding by the court that an action under this section was groundless and brought in bad faith or for the purpose of harassment, the court may award to the defendant reasonable attorneys' fees in relation to the amount of work expended, and court costs.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

## § 17.51. Class Actions

(a) If a consumer has been damaged in an amount in excess of \$10 by an unlawful method, act, or practice contained in Subsection (b) of Section 17.46 of this subchapter, an act or practice in violation of Article 21.21, Texas Insurance Code, as amended, or rules or regulations issued by the State Board of Insurance under Article 21.21, Texas Insurance Code, as amended, or by an act or practice or type of act or practice occurring subsequent to the time the act or practice or type of act or practice was declared unlawful or deceptive to the consumer by a final judgment of an appellate court of proper jurisdiction and venue of this state that was reported officially, a consumer may bring an action on behalf of himself and other consumers if the unlawful act or practice has caused damage to the other consumers who are similarly situated, to recover damages and relief as provided in this subchapter.

(b) A plaintiff who prevails in a class action under this subchapter may recover:

(1) court costs and attorneys' fees reasonable in relation to the amount of work expended in addition to actual damages;

(2) an order enjoining the act or failure to act;

(3) any orders which may be necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and

(4) any other relief which the court deems proper including the appointment of a receiver or revocation of a license or certificate to engage in business in this state if the judgment has not been satisfied within six months of the date of issuance of the final judgment. The court may not revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person is a licensee of or regulated by a state agency which has statutory authority to revoke or suspend a license or to appoint a receiver or trustee.

(c) On a finding by the court that an action under this section was brought in bad faith or for purposes of harassment, the court may award to the defendant reasonable attorneys' fees in relation to the work expended, and court costs.

(d) An action under this section may not be maintained or shall be stayed if proceedings regarding an administrative class action under Section 14, Article 21.21, Texas Insurance Code, as amended, have been initiated regarding the same acts or practices and the same defendant in the action under this section.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

### § 17.52. Class Action: Procedure

(a) The court shall permit one or more members of a class to sue or be sued as representative parties on behalf of the class only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) An action may be maintained as a class action if the prerequisites of Subsection (a) of this section are satisfied and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of controversy concentrating the litigation of the claims in the particular forum; and

(D) the difficulties likely to be encountered in the management of a class action.

(c) In construing this section, the courts of Texas shall be guided by the decisions of the federal courts interpreting Rule 23, Federal Rules of Civil Procedure.

(d) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be maintained as a class action. An order under this subsection may be altered or amended before a decision on the merits. An order determining that the action may or may not be brought as a class

action is an interlocutory order which is appealable and the procedures provided in Rule 385, Texas Rules of Civil Procedure, apply.

(e) If the action is permitted as a class action, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

(f) The notice shall contain a statement that:

(1) the court will exclude the member notified from the class if he so requests by a specified date;

(2) the judgment, whether favorable or not, will include all members who do not request exclusion; and

(3) any member who does not request exclusion, if he desires, may enter an appearance through counsel.

(g) A class action may not be dismissed, settled, or compromised without the approval of the court, and notice of the proposed dismissal, settlement, or compromise shall be given to all members of the class in such manner as the court directs.

(h) When appropriate, an action may be brought or maintained as a class action with respect to particular issues or a class may be divided into subclasses and each subclass treated as a class, and the provisions of this section shall be construed and applied accordingly.

(i) The judgment in a class action shall describe those to whom the notice was directed and who have not requested exclusion and those the court finds to be members of the class. The court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

(j) In the conduct of a class action the court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members or to the attorney general of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly; or

(5) dealing with similar procedural matters.

(k) The filing of a suit under this section tolls the statute of limitations for bringing a suit by an individual under Section 17.50 of this subchapter. An order of the court denying the bringing of a suit as a class action does not affect the ability of an

individual to bring the same or a similar suit under Section 17.50 of this subchapter.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

**§ 17.53. Preliminary Notice**

(a) At least 30 days prior to the commencement of a suit for damages under Section 17.51 of this subchapter, the consumer must notify the intended defendant of his complaint and make demand that the defendant provide relief to the consumer and others similarly situated.

(b) The notice must be in writing and sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, the intended defendants' principal place of business in this state, or if neither will effect notice, to the office of the Secretary of State of Texas.

(c) An action for injunctive relief under Section 17.51 of this subchapter may be commenced without compliance with Subsection (a) of this section. Not less than 30 days after the commencement of an action for injunctive relief, and after compliance with the provisions of Subsection (a) of this section, the consumer may amend his complaint without leave of court to include a request for damages.

(d) No damages may be awarded to a consumer class under this section if within 30 days of receipt of the notice the intended defendant furnished the consumer, by certified or registered mail, return receipt requested, a written offer of settlement. The offer of settlement must include a statement that:

(1) all consumers similarly situated have been adequately identified or a reasonable effort to identify such other consumers has been made, and a description of the class so identified and the method employed to identify them;

(2) all consumers so identified have been notified that upon their request the intended defendant will provide relief to the consumer and all others similarly situated, and a complete explanation of the relief being afforded and a copy of the notice or communication which the intended defendant is providing to the members of the class;

(3) the relief being afforded the consumer has been, or if said offer is accepted by the consumer, will be given within a stated reasonable period of time; and

(4) the practice complained of has ceased.

(e) Attempts to comply with the provisions of this section by a person receiving a demand shall be an offer to compromise and shall be inadmissible as evidence. Attempts to comply with a demand shall not be considered an admission of engaging in an unlawful act or practice. Evidence of compliance or attempts to comply with the provisions of this section may be introduced by a defendant for the purpose of establishing good faith or to show compliance with the provisions of this section.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

**§ 17.54. Damages: Defense**

No award of damages may be given in any action filed under Section 17.51 of this subchapter if the defendant:

(1) proves that the action complained of resulted from a bona fide error notwithstanding

the use of reasonable procedures adopted to avoid any error; and

(2) made restitution of any consideration received from any member of the class.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

**§ 17.55. Promotional Material**

If damages or civil penalties are assessed against the seller of goods or services for advertisements or promotional material in a suit filed under Section 17.47, 17.48, 17.50, or 17.51 of this subchapter, the seller of the goods or services has a cause of action against a third party for the amount of damages or civil penalties assessed against the seller plus attorneys' fees on a showing that:

(1) the seller received the advertisements or promotional material from the third party;

(2) the seller's only action with regard to the advertisements or promotional material was to disseminate the material; and

(3) the seller has ceased disseminating the material.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

**§ 17.56. Venue**

An action brought under Section 17.50 or 17.51 of this subchapter may be commenced in the county in which the person against whom the suit is brought resides, has his principal place of business, or is doing business.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

**§ 17.57. Subpoenas**

The clerk of a district court at the request of any party to a suit pending in his court which is brought under this subchapter shall issue a subpoena for any witness or witnesses who may be represented to reside within 100 miles of the courthouse of the county in which the suit is pending or who may be found within such distance at the time of trial. The clerk shall issue a separate subpoena and a copy thereof for each witness subpoenaed. When an action is pending in Travis County on the consent of the parties a subpoena may be issued for any witness or witnesses who may be represented to reside within 100 miles of the courthouse of a county in which the suit could otherwise have been brought or who may be found within such distance at the time of the trial.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

**§ 17.58. Voluntary Compliance**

(a) In the administration of this subchapter the consumer protection division may accept assurance of voluntary compliance with respect to any act or practice which violates this subchapter from any person who is engaging in, has engaged in, or is about to engage in the act or practice. The assurance shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or does business or in the district court of Travis County.

(b) The acceptance of an assurance of voluntary compliance may be conditioned on the stipulation that the person in violation of this subchapter restore to any person in interest any money or property, real or personal, which may have been acquired by means of acts or practices which violate this subchapter.

(c) An assurance of voluntary compliance shall not be considered an admission of prior violation of this subchapter. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this subchapter.

(d) Matters closed by the filing of an assurance of voluntary compliance may be reopened at any time. Assurances of voluntary compliance shall in no way affect individual rights of action under this subchapter, except that the rights of individuals with regard to money or property received pursuant to a stipulation in the voluntary compliance under Subsection (b) of this section are governed by the terms of the voluntary compliance.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

#### § 17.59. Powers of Receiver

(a) When a receiver is appointed by the court under this subchapter, he shall have the power to sue for, collect, receive, and take into his possession all the goods and chattels, rights and credits, money, and effects, lands, tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description, derived by means of any practice declared to be illegal and prohibited by this subchapter, including property with which such property has been mingled if it cannot be identified in kind because of the commingling, and to sell, convey, and assign the property and hold and dispose of the proceeds under the direction of the court. Any person who has suffered damages as a result of use or employment of any unlawful practices and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in the proceedings and may make any orders or judgments required.

(b) If the claims of consumers remain unsatisfied after distribution of the assets, the court may order that all persons who knowingly participated in the unlawful enterprise be held jointly and severally liable to the extent of the unsatisfied consumer claims if such person:

(1) contributed substantial personal services, money, credit, real, personal, or mixed property, or any other thing of substantial value with the expectation of sharing in the profits of the enterprise; and

(2) had knowledge or should have had knowledge of the unlawful purpose of the enterprise at the time such things of value were contributed, or freely continued in the association or other relationship after gaining knowledge of the unlawful purpose of the enterprise.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

#### § 17.60. Reports and Examinations

Whenever the consumer protection division has reason to believe that a person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter,

or when it reasonably believes it to be in the public interest to conduct an investigation to ascertain whether any person is engaging in, has engaged in, or is about to engage in any such act or practice, an authorized member of the division may:

(1) require the person to file on the prescribed forms a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged violation and such other data and information as the consumer protection division deems necessary;

(2) examine under oath any person in connection with this alleged violation;

(3) examine any merchandise or sample of merchandise deemed necessary and proper; and

(4) pursuant to an order of the appropriate court, impound any sample of merchandise that is produced in accordance with this subchapter and retain it in the possession of the division until the completion of all proceedings in connection with which the merchandise is produced.

This section shall not apply to licensed insurers or licensed insurance agents transacting an insurance business in this state under the authority and jurisdiction of the State Board of Insurance unless the State Board of Insurance or the Insurance Commissioner has requested in writing that the consumer protection division file an action under Section 17.47 of this subchapter.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

#### § 17.61. Civil Investigative Demand

(a) Whenever the consumer protection division believes that any person may be in possession, custody, or control of the original copy of any documentary material relevant to the subject matter of an investigation of a possible violation of this subchapter, an authorized agent of the division may execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying. This section shall not apply to licensed insurers or licensed insurance agents transacting an insurance business in this state under the authority and jurisdiction of the State Board of Insurance unless the State Board of Insurance or the Insurance Commissioner has requested in writing that the consumer protection division file an action under Section 17.47 of this subchapter.

(b) Each demand shall:

(1) state the statute and section under which the alleged violation is being investigated, and the general subject matter of the investigation;

(2) describe the class or classes of documentary material to be produced with reasonable specificity so as to fairly indicate the material demanded;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify the members of the consumer protection division to whom the documentary material is to be made available for inspection and copying.

(c) A civil investigative demand may contain a requirement or disclosure of documentary material which would be discoverable under the Texas Rules of Civil Procedure.

(d) Service of any demand may be made by:

(1) delivering a duly executed copy of the demand to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) delivering a duly executed copy of the demand to the principal place of business in the state of the person to be served;

(3) mailing by registered mail or certified mail a duly executed copy of the demand addressed to the person to be served at the principal place of business in this state, or if the person has no place of business in this state, to his principal office or place of business.

(e) Documentary material demanded pursuant to this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at other times and places as may be agreed on by the person served and the consumer protection division.

(f) No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for good cause shown, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the consumer protection division without the consent of the person who produced the material. The consumer protection division shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or any duly authorized representative of that person. The consumer protection division may use the documentary material or copies of it as it determines necessary in the enforcement of this subchapter, including presentation before any court. Any material which contains trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material.

(g) At any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside the demand, stating good cause, may be filed in the district court in the county where the parties reside, or a district court of Travis County.

(h) A person on whom a demand is served under this section shall comply with the terms of the demand unless otherwise provided by a court order.

(i) Personal service of a similar investigative demand under this section may be made on any person outside of this state if the person has engaged in conduct in violation of this subchapter. Such persons shall be deemed to have submitted themselves to the jurisdiction of this state within the meaning of this section.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

§ 17.62. Penalties

(a) Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with Section 17.60 or 17.61 of this subchapter, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material or merchandise or sample of

merchandise is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000 or by confinement in the county jail for not more than one year, or both.

(b) If a person fails to comply with a directive of the consumer protection division under Section 17.60 of this subchapter or with a civil investigative demand for documentary material served on him under Section 17.61 of this subchapter, or if satisfactory copying or reproduction of the material cannot be done and the person refuses to surrender the material, the consumer protection division may file in the district court in the county in which the person resides, is found, or transacts business, and serve on the person, a petition for an order of the court for enforcement of Sections 17.60 and 17.61 of this subchapter. If the person transacts business in more than one county, the petition shall be filed in the county in which the person maintains his principal place of business, or in another county agreed on by the parties to the petition.

(c) When a petition is filed in the district court in any county under this section, the court shall have jurisdiction to hear and determine the matter presented and to enter any order required to carry into effect the provisions of Sections 17.60 and 17.61 of this subchapter. Any final order entered is subject to appeal to the Texas Supreme Court. Failure to comply with any final order entered under this section is punishable by contempt.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

§ 17.63. Application

The provisions of this subchapter apply only to acts or practices occurring after the effective date of this subchapter, except a right of action or power granted to the attorney general under Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> prior to the effective date of this subchapter.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

<sup>1</sup> Civil Statutes, art. 5069—10.01 et seq.

[Chapters 18 to 22 reserved for expansion]

TITLE 3. INSOLVENCY, FRAUDULENT TRANSFERS, AND FRAUD

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24. Fraudulent Transfers	24.01
25. Property under Lien	25.01
26. Statute of Frauds	26.01
27. Fraud	27.01

CHAPTER 23. ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

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## Section

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- 23.30. Creditor's Consent to Assignment.  
 23.31. Creditor's Proof and Assignee's Allowance of Claim.  
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 23.33. Nonconsenting Creditor's Right to Surplus.

## SUBCHAPTER A. GENERAL PROVISIONS

## § 23.01. Definitions

In this chapter, unless the context requires a different definition,

(1) "assigned estate" means all the real and personal estate of an assigning debtor passing to the consenting creditors under an assignment by virtue of Section 23.02 or 23.09(b) of this code;

(2) "assignee" means an assignee for the benefit of creditors;

(3) "assigning debtor" means a person executing an assignment;

(4) "assignment" means a general assignment for the benefit of creditors made under this chapter;

(5) "consenting creditor" means a creditor who has consented to an assignment in one of the ways provided by Section 23.30 of this code; and

(6) "real and personal estate" does not include property exempt by law from execution.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## § 23.02. Nature and Effect of Assignment

(a) A debtor may assign his real and personal estate under this chapter to an assignee for the benefit of the debtor's creditors.

(b) An assigning debtor shall provide in the assignment for distribution of all his real and personal estate to each consenting creditor in proportion to each consenting creditor's claim.

(c) Regardless of an expression to the contrary, an assignment passes all an assigning debtor's real and personal estate to each consenting creditor in proportion to each consenting creditor's claim.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 23.03 to 23.07 reserved for expansion]

## SUBCHAPTER B. THE ASSIGNMENT

## § 23.08. Form and Content of Assignment

(a) For an assignment to be valid,

(1) the assigning debtor must make the assignment in writing; and

(2) it must be proved or acknowledged and recorded in the manner provided by law for the conveyance of real estate.

(b) The assigning debtor shall attach to his assignment an inventory containing the following information:

(1) a list naming each creditor of the assigning debtor;

(2) the resident address, if known, of each creditor;

(3) the amount owed each creditor and the type of debt;

(4) the consideration for the debt and the place where the debt arose;

(5) a description of each existing judgment or security for the payment of the debt;

(6) a schedule of all the assigning debtor's real and personal estate at the date of the assignment;

(7) a description of

(A) each encumbrance on the real and personal estate; and

(B) each voucher and security relating to the estate; and

(8) the value of the estate.

(c) The assigning debtor shall sign the inventory required by Subsection (b) of this section and swear that it is just and true.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## § 23.09. Fraud Does Not Defeat Assignment

(a) An assignment is not affected and a consenting creditor is not deprived of his proportionate share of the assigned estate by the fraudulent act or intent of the assigning debtor or assignee. A consenting creditor is a proper party to a suit filed to enforce a right under an assignment, or to protect an interest in an assigned estate.

(b) Except as to an innocent purchaser for value, a transfer of property made in contemplation of an assignment with an intent to defeat, delay, defraud, or give preference to a creditor is void and the property passes under the assignment rather than by the transfer.

(c) An assignee may sue to recover property transferred with an intent described in Subsection (b) of this section, and when the property is recovered, the assignee shall apply it for the benefit of the assigning debtor's creditors along with property belonging to the assigned estate already in the assignee's possession. If an assignee neglects or refuses to sue to recover property transferred with an intent described in Subsection (b) of this section, a creditor, after securing the assignee against cost or liability, may sue in the assignee's name to recover the property.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## § 23.10. Assignment Discharges Debtor

If an assigning debtor makes an assignment, he is discharged from liability on the claim of a consenting creditor unless the consenting creditor does not receive at least one-third of the amount allowed on his claim against the assigned estate.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 23.11 to 23.15 reserved for expansion]

SUBCHAPTER C. DUTIES AND RIGHTS  
OF ASSIGNEE

§ 23.16. Assignee's Qualifications, Duty to Record Assignment, and Bond

(a) An assignee shall be a resident of this state and a resident of the county in which the assigning debtor resides, or in which the assigning debtor's principal business was conducted.

(b) Immediately after the assignment instrument is executed and delivered to him, the assignee shall record it in the county of his residence and in each county in which there is real property conveyed to the assignee by the assignment.

(c) Within five days after delivery to him of the assignment instrument, the assignee shall execute a bond

(1) with a surety who must be approved by the judge of either the county or district court in the county of the assignee's residence;

(2) conditioned that he will perform faithfully his duties as assignee and distribute proportionately the net proceeds of the assigned estate to the consenting creditors entitled to it under the assignment;

(3) in an amount fixed by the county or district judge;

(4) payable to the state; and

(5) which inures to the benefit of the assigning debtor and each of the creditors.

(d) The assignee shall file the bond with the county clerk of the county in which the assigning debtor resides and then the assignee shall take possession of the assigned estate and carry out the assignment.

(e) An assignment is valid as against an assigning debtor or his creditors even though the assignee fails to execute and file a bond as required by Subsections (c) and (d) of this section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.17. Notice of Assignee's Appointment

(a) Within 30 days after an assignment is executed, the assignee shall publish notice of his appointment as assignee in a newspaper published in the county

(1) where the assigning debtor resides or where he operated his principal business before the assignment; or

(2) nearest the assigning debtor's residence or principal business if a newspaper is not published in the county of the assigning debtor's residence or principal business.

(b) The assignee shall publish notice of his appointment as assignee once each week for three consecutive weeks.

(c) The assignee shall notify by mail each of the assigning debtor's listed creditors of his appointment as assignee.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.18. Replacement of Assignee

(a) A county or district court of the county in which the assignee resides shall remove or replace the assignee on application of the assigning debtor or a creditor, or on its own motion,

(1) if the court is satisfied that the assignee has not executed and filed the bond required by Sections 23.16(c) and (d) of this code;

(2) if the assignee refuses or fails to serve for any reason; or

(3) for good cause.

(b) On removal, resignation, or death of the assignee, the court shall appoint in writing a new assignee in term time or vacation.

(c) As soon as the new assignee executes and files a bond as required by Sections 23.16(c) and (d) of this code, he shall take possession of the assigned estate and carry out the assignment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.19. Assignee's Duty to Distribute Assigned Estate

Each time an assignee has enough money to pay 10 percent of the assigning debtor's debts, he shall distribute the money among the creditors entitled to receive it in proportion to their claims allowed under Section 23.31(b) of this code.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.20. Discount of Claim Not Due and Allowance of Secured Claim

(a) The assignee may allow a claim which is not due at its present value by discounting it at the legal rate.

(b) If a creditor holds collateral to secure his claim worth less than his claim, the assignee may estimate the value of the collateral and allow the creditor as a claim against the assigned estate only the difference between the value of the collateral and the amount of the claim.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.21. Assignee's Entitlement to Compensation

An assignee is entitled to reasonable compensation for his services and reimbursement for his necessary expenses, including an attorney's fee, all of which shall be fixed by the county or district court who approved his bond. The compensation, expenses, and attorney's fee fixed by the county or district court shall be paid out of the assigned estate.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.22. Examination of Debtor or Other Person

(a) The court in which a proceeding involving an assigned estate has been filed may, after reasonable notice to each person concerned, compel any person to answer questions under oath on

(1) application of a creditor of the assigning debtor; or

(2) its own motion.

(b) The court may compel attendance and an answer to any question concerning the assigned estate by writ or order as in other cases. Questions asked and answers given during the examination shall be in writing, the person examined shall swear to and sign his answers before the clerk, and the questions and answers shall be filed with the clerk for use by anyone interested in the proceeding.

(c) The court shall charge the cost of the examination against the applicant or the assigned estate, as the court deems proper.

(d) The assigning debtor may not be prosecuted or punished for an answer given by him during the examination.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 23.23. Assignee's Final Report and Discharge

(a) An assignee wishing to be discharged from his appointment shall prepare and file for record with the county clerk of the county in which his assignment is recorded a sworn report describing

(1) all property which came into his possession under the assignment; and

(2) how and to whom he distributed the property.

(b) The assignee shall also deposit in the registry of the court who approved his bond money belonging to the assigned estate still in his possession at the time he files his report under Subsection (a) of this section. The court shall distribute the money under this chapter to the consenting creditors and assignee and, in the case of surplus, to the nonconsenting creditors and assigning debtor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 23.24. Time Limit on Bringing Action Against Assignee

An action against an assignee based on his conduct in carrying out the assignment, as shown in his report filed under Section 23.23(a) of this code, must be brought within 12 months after the report is filed or the action is barred.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 23.25 to 23.29 reserved for expansion]

## SUBCHAPTER D. DUTIES AND RIGHTS OF CREDITORS

### § 23.30. Creditor's Consent to Assignment

(a) A creditor must inform the assignee in writing of his consent to the assignment within four months after the assignee gives the notice required by Section 23.17 of this code.

(b) If a creditor is not given actual notice of an assignment, but subsequently learns of the assignment, he may consent to the assignment at any time before the first distribution of the assigned estate is begun.

(c) Receipt by a creditor of payment for part of his claim from the assignee is conclusive evidence of the creditor's consent to the assignment.

(d) If a creditor does not consent to an assignment, he is not entitled to receive any of the assigned estate under the assignment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 23.31. Creditor's Proof and Assignee's Allowance of Claim

(a) Within six months after the first publication of notice of appointment required by Section 23.17 of this code, a consenting creditor must file with the assignee a statement, sworn to by the creditor, his agent, or attorney,

(1) describing the nature and amount of the creditor's claim against the assigning debtor; and

(2) stating that

(A) the claim is true;

(B) the debt is just; and

(C) all proper credits or offsets have been allowed against the claim.

(b) The assignee shall allow a claim filed under Subsection (a) of this section against the assigned estate unless he has good reason to believe the claim is not just and true.

(c) If a creditor does not file a statement in the time required by Subsection (a) of this section, he is not entitled to receive any of the assigned estate.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 23.32. Creditor's Suit on Disputed Claim

(a) The assignee shall give any creditor a copy of any statement of claim filed under Section 23.31(a) of this code if the creditor requests a copy.

(b) Within eight months after the first publication of notice required by Section 23.17 of this code, an assigning debtor or creditor may sue to

(1) set aside an allowance made on a claim by the assignee; and

(2) restrain payment of the claim by the assignee.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 23.33. Nonconsenting Creditor's Right to Surplus

If a creditor does not consent to an assignment, he may garnishee the assignee for the excess of the assigned estate remaining in the assignee's possession after the assignee has paid

(1) each consenting creditor the amount of his claim allowed under Section 23.31(b) of this code; and

(2) the expense of carrying out the assignment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

## CHAPTER 24. FRAUDULENT TRANSFERS

### Section

24.01. Definition of Transfer.

24.02. Transfer to Defraud Is Void.

24.03. Debtor's Transfer Not for Value Is Void.

24.04. Fraudulent Gift of Tangible Personal Property Is Void.

24.05. Pretended Loan of Tangible Personal Property Is Ineffective.

### § 24.01. Definition of Transfer

In this chapter, unless the context requires a different definition, "transfer" includes conveyance, gift, assignment, and charge.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

### § 24.02. Transfer to Defraud Is Void

(a) A transfer of real or personal property, a suit, a decree, judgment, or execution, or a bond or other writing is void with respect to a creditor, purchaser, or other interested person if the transfer, suit, decree, judgment, execution, or bond or other writing was intended to

(1) delay or hinder any creditor, purchaser, or other interested person from obtaining that to which he is, or may become, entitled; or

(2) defraud any creditor, purchaser, or other interested person of that to which he is, or may become, entitled.

(b) The title of a purchaser for value is not void under Subsection (a) of this section unless he purchased with notice of

(1) the intent of his transferor to delay, hinder, or defraud; or

(2) the fraud that voided the title of his transferor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 24.03. Debtor's Transfer Not for Value Is Void**

(a) A transfer by a debtor is void with respect to an existing creditor of the debtor if the transfer is not made for fair consideration, unless, in addition to the property transferred, the debtor has at the time of transfer enough property in this state subject to execution to pay all of his existing debts.

(b) Subsection (a) of this section does not void a transfer with respect to a subsequent creditor of or purchaser from the debtor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 24.04. Fraudulent Gift of Tangible Personal Property Is Void**

A gift of tangible personal property is void unless

(1) the gift is evidenced by

(A) a deed that has been duly acknowledged or proved and recorded; or

(B) a will that has been duly probated; or

(2) actual possession of the subject matter of the gift is in the donee or someone claiming under him.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 24.05. Pretended Loan of Tangible Personal Property Is Ineffective**

(a) With respect to a creditor of or purchaser from the possessor of tangible personal property, a pretended loan of tangible personal property is fraudulent, and the absolute title to the tangible personal property is in the possessor, if

(1) the possessor, or someone claiming under him, has possessed the tangible personal property for two years; and

(2) the lender of the tangible personal property has not, during those two years, made and pursued by law a demand for the tangible personal property.

(b) With respect to a creditor of or purchaser from the possessor of tangible personal property, a pretended reservation or limitation on the use of tangible personal property is fraudulent, and the absolute title to the tangible personal property is in the possessor, if the possessor, or someone claiming under him, has possessed the tangible personal property for two years.

(c) Neither Subsection (a) nor (b) of this section applies to a loan, or reservation or limitation on the use, of tangible personal property if the loan, reservation, or limitation is evidenced by a

(1) duly probated will; or

(2) duly acknowledged or proved and recorded deed or other writing.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**CHAPTER 25. PROPERTY UNDER LIEN**

[Repealed]

Section  
25.01 to 25.03. Repealed.

§§ 25.01 to 25.03. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(d), eff. January 1, 1974.

**CHAPTER 26. STATUTE OF FRAUDS**

Section  
26.01. Promise or Agreement Must be In Writing.

**§ 26.01. Promise or Agreement Must be In Writing**

(a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is

(1) in writing; and

(2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.

(b) Subsection (a) of this section applies to

(1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;

(2) a promise by one person to answer for the debt, default, or miscarriage of another person;

(3) an agreement made on consideration of marriage;

(4) a contract for the sale of real estate;

(5) a lease of real estate for a term longer than one year;

(6) an agreement which is not to be performed within one year from the date of making the agreement; and

(7) a promise or agreement to pay a commission for the sale or purchase of

(A) an oil or gas mining lease;

(B) an oil or gas royalty;

(C) minerals; or

(D) a mineral interest.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**CHAPTER 27. FRAUD**

Section  
27.01. Fraud In Real Estate and Stock Transactions.

**§ 27.01. Fraud In Real Estate and Stock Transactions**

(a) Fraud in a transaction involving real estate or stock in a corporation or joint stock company consists of a

(1) false representation of a past or existing material fact, when the false representation is

(A) made to a person for the purpose of inducing that person to enter into a contract; and

(B) relied on by that person in entering into that contract; or

(2) false promise to do an act, when the false promise is

(A) material;

(B) made with the intention of not fulfilling it;

(C) made to a person for the purpose of inducing that person to enter into a contract; and

(D) relied on by that person in entering into that contract.

(b) A person who makes a false representation or false promise, and a person who benefits from that false representation or false promise, commit the fraud described in Subsection (a) of this section and are jointly and severally liable to the person defrauded for actual damages. The measure of actual damages is the difference between the value of the real estate or stock as represented or promised, and its actual value in the condition in which it is delivered at the time of the contract.

(c) A person who wilfully makes a false representation or false promise, and a person who knowingly benefits from a false representation or false promise, commit the fraud described in Subsection (a) of this section and are liable to the person defrauded for exemplary damages not to exceed twice the amount of the actual damages.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Chapters 28 to 32 reserved for expansion]

#### TITLE 4. MISCELLANEOUS COMMERCIAL PROVISIONS

Chapter	Section
33. Fiduciary Security Transfers .....	33.01
34. Principal and Surety .....	34.01
35. Miscellaneous .....	35.01

#### CHAPTER 33. FIDUCIARY SECURITY TRANSFERS

Section	Description
33.01.	Definitions.
33.02.	Registration In the Name of a Fiduciary.
33.03.	Assignment by a Fiduciary.
33.04.	Requirement of Signature Guarantee.
33.05.	Evidence of Appointment or Incumbency.
33.06.	Adverse Claims.
33.07.	Nonliability of Corporation and Transfer Agent.
33.08.	Nonliability of Third Persons.
33.09.	Territorial Application.
33.10.	Tax Obligations.

##### § 33.01. Definitions

In this chapter, unless the context requires a different definition,

(1) "assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust, or other instrument of transfer;

(2) "claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a

custodian, or a claim of any similar interest, whether the claim is asserted by the claimant, a fiduciary, or any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties;

(3) "corporation" means a private or public corporation, association, or trust issuing a security;

(4) "fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee;

(5) "person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity;

(6) "security" includes any share of stock, bond, debenture, note, or other security issued by a corporation which is registered as to ownership on the books of the corporation;

(7) "transfer" means a change on the books of a corporation in the registered ownership of a security; and

(8) "transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 33.02. Registration In the Name of a Fiduciary

A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 33.03. Assignment by a Fiduciary

Except as otherwise provided in this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary

(1) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

##### § 33.04. Requirement of Signature Guarantee

For the transfer of a security to come within the terms of this Chapter, the signature on the assign-

ment of the security must be guaranteed by any state or national bank incorporated in the United States (acting by and through one of its officers), by an unincorporated bank duly licensed to do business in the State of Texas (acting by and through any proprietor or partner), or by a firm that is a member of the New York Stock Exchange (acting by and through a duly authorized agent).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2018, ch. 691, § 1, eff. Sept. 1, 1969.]

**§ 33.05. Evidence of Appointment or Incumbency**

(a) A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(1) in case of a fiduciary appointed or qualified by a court, a certificate issued by that court or an officer thereof and dated within 60 days before the transfer; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate.

(b) Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under Subsection (a)(2) of this section if the standards are not manifestly unreasonable.

(c) Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to Subsection (a)(2) of this section except to the extent that the contents relate directly to the appointment or incumbency.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 33.06. Adverse Claims**

(a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue of which the security is a part, provides an address for communications directed to the claimant, and is received before the transfer. Nothing in this chapter relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in Subsection (b) of this section.

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails this notice, it shall withhold the transfer for 30 days after the mailing and shall then make the transfer unless restrained by court order.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 33.07. Nonliability of Corporation and Transfer Agent**

A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 33.08. Nonliability of Third Persons**

(a) No person who participates in the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary (including a person who guarantees the signature of the fiduciary) is liable for participation in a breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that

(1) he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary; or

(2) the transaction was otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this chapter incurs no liability.

(c) This section does not impose any liability on the corporation or its transfer agent.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 33.09. Territorial Application**

(a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized; provided, however, that for purposes of this Act, a National Banking Association shall be deemed to have been organized in the state in which its principal banking house is located.

(b) This chapter applies to the rights and duties of a person

(1) other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary; and

(2) who guarantees in this state the signature of a fiduciary in connection with such a transaction.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2019, ch. 692, § 1, eff. June 12, 1969.]

**§ 33.10. Tax Obligations**

This chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**CHAPTER 34. PRINCIPAL AND SURETY**

**Section**

34.01. Definition of Surety.

34.02. Surety May Require Suit on Accrued Right of Action.

## Section

- 34.03. Levy First on Principal's Property.  
 34.04. Subrogation Rights of Surety.  
 34.05. Officer Compelled to Pay on Judgment Treated As Surety.

**§ 34.01. Definition of Surety**

In this chapter, unless the context requires a different definition, "surety" includes endorser, guarantor, drawer of a draft which has been accepted, and every other form of suretyship, whether created by express contract or by operation of law.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 34.02. Surety May Require Suit on Accrued Right of Action**

(a) When a right of action has accrued on a contract for the payment of money or performance of an act, a surety on the contract may require by written notice that the obligee forthwith sue on the contract.

(b) A surety who gives notice to an obligee under Subsection (a) of this section is discharged from all liability on the contract if the obligee

(1) is not under legal disability; and either

(2) fails to sue on the contract during the first term of court after receiving the notice, or during the second term showing good cause for the delay; or

(3) fails to prosecute the suit to judgment and execution.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 34.03. Levy First on Principal's Property**

(a) If a judgment granted against two or more defendants finds a suretyship relation between or among them, the court shall order the sheriff to levy the execution

(1) first, against the principal's property which is located in the county where the judgment was granted;

(2) second, if the sheriff cannot find enough of the principal's property in the county to satisfy the execution, against so much of the principal's property as he finds; and

(3) third, against so much of the surety's property as is necessary to make up the balance of the amount shown in the writ of execution.

(b) The clerk shall note the order to the sheriff on the writ of execution.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 34.04. Subrogation Rights of Surety**

(a) A judgment is not discharged by a surety's payment of it in whole or part if the payment is compelled or, if voluntarily made, is applied to the judgment because of the suretyship relation.

(b) A surety who pays on a judgment as described in Subsection (a) of this section is subrogated to all of the judgment creditor's rights under the judgment. A subrogated surety is entitled

(1) to execution on the judgment against the principal's property for the amount of his payment, plus interest and costs; and

(2) if there is more than one surety, to execution on the judgment against both the principal's property and the property of his cosurety

or cosureties for the amount his payment exceeded his proportionate share of the judgment, plus interest and costs.

(c) A subrogated surety seeking execution under Subsection (b) of this section shall apply for it to the clerk or court, and execution shall be levied, collected, and returned as in other cases.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 34.05. Officer Compelled to Pay on Judgment Treated As Surety**

(a) An officer has the rights of a surety provided in Section 34.04 of this code if compelled to pay a judgment in whole or part because of his default.

(b) An officer who fails to pay over money collected, or who wastes property levied on by him or in his possession, does not have the rights of a surety provided in Section 34.04 of this code.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**CHAPTER 35. MISCELLANEOUS****SUBCHAPTER A. FILING OF UTILITY SECURITY INSTRUMENTS**

## Section

- 35.01. Definitions.  
 35.02. Filing Utility Security Instruments With Secretary of State; Perfection; Notice.  
 35.03. Duration of Notice.  
 35.04. Notice of Name Change, Merger or Consolidation.  
 35.05. Filing of Security Instruments and Statement of Name Change, Merger or Consolidation by Secretary of State; Fees.  
 35.06. Information From Secretary of State.  
 35.07. Recording of Notice in County of Real Property; Separate Index by County Clerk of Security Instruments and Continuation Statements.  
 35.08. Prior Perfected Liens; Refiling With Secretary of State.  
 35.09. Repealer.

**SUBCHAPTER B. DUTIES OF RAILROAD COMMISSION AND CRIMINAL OFFENSES INVOLVING BILLS OF LADING**

- 35.14. Definitions.  
 35.15. Duties of Railroad Commission.  
 35.16. Agent Wrongfully Failing to Issue Bill of Lading.  
 35.17. Agent Issuing Fraudulent Bill of Lading.  
 35.18. Agent Issuing Duplicate Order Bill of Lading.  
 35.19. Repealed.  
 35.20. Inducing Issuance of Fraudulent Bill of Lading.  
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**SUBCHAPTER C. CRIMINAL OFFENSES INVOLVING WAREHOUSE RECEIPTS**

- 35.27. Definitions.  
 35.28. Warehouseman Issuing Fraudulent Warehouse Receipt.  
 35.29. Warehouseman Failing to State His Ownership of Goods on Receipt.  
 35.30. Warehouseman Issuing Warehouse Receipt Without Goods.  
 35.31. Warehouseman Issuing Duplicate Warehouse Receipt.  
 35.32. Warehouseman Wrongfully Delivering Goods.  
 35.33. Failing to Disclose Ownership of Goods.

**SUBCHAPTER D. MISCELLANEOUS**

- 35.39. Damages on Protested, Out-of-State Draft.  
 35.40. Identification of Patent Right Note or Lien.

SUBCHAPTER A. FILING OF UTILITY SECURITY INSTRUMENTS

§ 35.01. Definitions

(a) In Sections 35.02–35.08 of this code, unless the context requires a different definition,

(1) "Security instrument" means a mortgage, deed of trust, security agreement or other instrument executed to secure the payment of a bond, note, or other obligation of a utility, or instruments supplementary or amendatory thereto (including any signed copy thereof); and

(2) "Utility" means a person engaged in this state in the

(A) generation, transmission, or distribution and sale of electric power;

(B) transportation, distribution and sale through a local distribution system of natural or other gas for domestic, commercial, industrial, or other use;

(C) ownership or operation of a pipeline for the transmission or sale of natural or other gas, crude oil or petroleum products to other pipeline companies, refineries, local distribution systems, municipalities, or industrial consumers;

(D) provision of telephone or telegraph service to others;

(E) production, transmission, or distribution and sale of steam or water;

(F) operation of a railroad; and

(G) the provision of sewer service to others.

(b) The definitions in Chapters 1 and 9 of this code also apply to this subchapter.

[Acts 1967, 60th Leg., p. 1987, ch. 735, § 10; Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

§ 35.02. Filing Utility Security Instruments With Secretary of State; Perfection; Notice

(a) Payment of the statutory filing fee and deposit for filing in the office of the Secretary of State of a security instrument executed by a utility which states conspicuously on its title page: "This Instrument Grants A Security Interest By A Utility" shall, subject to the provisions of Subsection (b) of this section

(1) constitute perfection of a security interest created by the security instrument in any personal property (including goods which are, or are to become, fixtures) in which a security interest may be perfected by filing under Chapter 9 of this code, located in this state, and owned by the utility when the security instrument was executed or to be acquired by the utility after execution of the security instrument; and

(2) be taken and held as notice to all persons of the existence of such security instrument and the interest granted therein, as security, in any real property (or fixtures thereon, or to be placed thereon) located in this state and owned by the utility when the security instrument was executed or to be acquired by the utility after the execution of the security instrument; pro-

vided that the security instrument shall first be proven, acknowledged or certified as otherwise required by law for the recording of real property mortgages.

(b) For perfection or notice to be effective as to a particular item of property, the filed security instrument must

(1) identify the property by type, character, or description if it is presently owned personal property (including fixtures); provided that for such purposes, any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described;

(2) provide a description of the property if it is presently owned real property; and

(3) state conspicuously on its title page: "This Instrument Contains After-Acquired Property Provisions" if the property is to be acquired after the execution of the security instrument.

(c) Filing under this section satisfies any requirement of

(1) filing of the security instrument or a financing statement in the office of a county clerk where such would otherwise be necessary to perfect a security interest; and

(2) recording of the security instrument in the office of a county clerk where such would otherwise cause the security instrument to be effective and valid as to all creditors and subsequent purchasers for valuable consideration without notice.

(d) The provisions in Chapter 9 of this code pertaining to priorities and remedies shall apply to security interests in personal property (including fixtures) perfected under this section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

§ 35.03. Duration of Notice

The perfection or notice provided by any security instrument filed under Section 35.02 of this code is effective from the date of deposit for filing until the interest granted as security is released by the filing of a termination statement, or a release of all or a part of the property, signed by the secured party, and no renewal, refiling or continuation statement shall be required to continue such effectiveness.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

§ 35.04. Notice of Name Change, Merger or Consolidation

(a) Where a utility changes its name or merges or consolidates with another person after the deposit for filing of a security instrument executed by it, a written statement of the name change, merger or consolidation shall promptly be deposited for filing in the office of the Secretary of State. Any such statement must be signed by the secured party and the utility, identify the appropriate security instrument by file number, and state the name of the utility after the name change, merger or consolidation.

(b) A security instrument deposited for filing before the name change, merger or consolidation is not

effective to provide perfection or notice of interests granted as security under Section 35.02 of this Chapter in property acquired by the utility more than four months after the name change, merger or consolidation, unless the written statement is deposited for filing as required by Subsection (a) before the expiration of that time.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

**§ 35.05. Filing of Security Instruments and Statement of Name Change, Merger or Consolidation by Secretary of State; Fees**

(a) The Secretary of State shall endorse upon any security instrument and any statement of name change, merger, or consolidation deposited for filing in his office, the day and hour of receipt and the file number assigned to it. Such endorsement shall, in the absence of other evidence, be conclusive proof of the time and fact of deposit for filing.

(b) The Secretary of State shall retain in his office all security instruments and statements of name change, merger, or consolidation deposited in his office and shall file such in adequate filing devices.

(c) The uniform fee for filing and indexing a security instrument, or an instrument supplementary or amendatory thereto, and a statement of name change, merger, or consolidation and for stamping a copy of such documents, furnished by the secured party or the utility, to show the date and place of filing shall be \$6.00.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

**§ 35.06. Information From Secretary of State**

Upon the request of any person, the Secretary of State shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective security instrument naming a particular utility, and if there is, giving the date and hour of filing of such instrument and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be \$5.00 if the request for the certificate is in the standard form prescribed by the Secretary of State, and otherwise shall be \$10.00. Upon request the Secretary of State shall furnish a copy of any filed security instrument for a uniform fee of \$1.00 per page, but not less than \$5.00 nor more than \$50.00 per request concerning a particular utility.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

**§ 35.07. Recording of Notice in County of Real Property; Separate Index by County Clerk of Security Instruments and Continuation Statements**

(a) If any security instrument filed with the office of the Secretary of State under Section 35.02 of this code grants an interest, as security, in any real property owned by the utility, a notice of utility security instrument affecting real property shall be recorded in the office of the county clerk in the county where the real property is located, stating

(1) the name of the utility which executed the security instrument;

(2) that a security instrument affecting real property in the county has been executed by the utility; and

(3) that such security instrument was filed, and other security instruments may be on file, in the office of the Secretary of State.

(b) It shall not be necessary to record a notice regarding other security instruments executed by the utility, and the notice recorded under Subsection (a) of this section shall be sufficient to provide notice of any and all other security instruments

(1) executed by the utility;

(2) filed in the office of the Secretary of State; and

(3) granting an interest, as security, in any real property, and fixtures thereto, located in the county where such notice was recorded.

(c) Notices recorded under Subsection (a) of this section shall be recorded and indexed by the county clerk in the same records and indices as are mortgages on real property.

(d) The county clerk shall maintain a separate index of utility security instruments and continuation statements recorded under prior law.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

**§ 35.08. Prior Perfected Liens; Refiling With Secretary of State**

The perfection or notice provided by any security instrument covering any real or personal property located in this state which was heretofore filed or recorded in the office of the Secretary of State or the office of the county clerk of any county in this state continues effective until it would have lapsed under prior law or January 1, 1978, whichever occurs first; but it may be filed or refiled prior to such time in the office of the Secretary of State as provided in Section 35.02 of this code, and such filing or refiled shall continue the effectiveness as provided in Sections 35.02 and 35.03 of this code.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

**§ 35.09. Repealer**

The following act and all other acts and parts of acts inconsistent herewith are hereby repealed:

Article 6645, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

**[Sections 35.10 to 35.13 reserved for expansion]**

**SUBCHAPTER B. DUTIES OF RAILROAD COMMISSION AND CRIMINAL OFFENSES INVOLVING BILLS OF LADING**

**§ 35.14. Definitions**

In Sections 35.15–35.21 of this code, unless the context requires a different definition,

(1) "agent" includes officer, employee, and receiver;

(2) "airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill;

(3) "bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of trans-

porting or forwarding goods, and includes an airbill;

(4) "common carrier" in Sections 35.15-35.17 of this code does not include a pipeline company or express company; and

(5) "goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 35.15. Duties of Railroad Commission**

(a) The railroad commission shall

(1) prescribe forms, terms, and conditions for authenticating, certifying, or validating bills of lading issued by a common carrier;

(2) regulate the manner of issuing bills of lading by a common carrier; and

(3) take other action necessary to carry out the purposes of Chapter 7 of this code.

(b) After giving reasonable notice to interested common carriers and to the public, the railroad commission may amend a rule promulgated under Subsection (a) of this section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 35.16. Agent Wrongfully Failing to Issue Bill of Lading**

(a) An agent of a common carrier may not after lawful demand fail or refuse to issue a bill of lading in accordance with Chapter 7 of this code or a rule of the railroad commission.

(b) An agent who violates a provision of Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than six months or by a fine of not more than \$200 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 35.17. Agent Issuing Fraudulent Bill of Lading**

(a) An agent of a common carrier may not with intent to defraud a person

(1) issue a bill of lading;

(2) misdescribe in a bill of lading goods or their quantity described in the bill of lading; or

(3) issue a bill of lading without authority.

(b) An agent who violates a provision of Subsection (a) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not less than 2 nor more than 10 years.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 35.18. Agent Issuing Duplicate Order Bill of Lading**

(a) Except where customary in overseas transportation, an agent of a common carrier may not knowingly issue or aid in issuing an order bill of lading in duplicate or in a set of parts.

(b) An agent who violates a provision of Subsection (a) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not more than five years and by a fine of not more than \$5,000.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.19. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(d), eff. January 1, 1974

**§ 35.20. Inducing Issuance of Fraudulent Bill of Lading**

(a) A person may not with intent to defraud induce an agent of a common carrier to

(1) issue to him a bill of lading; or

(2) materially misrepresent in a bill of lading issued on behalf of the common carrier the quantity of goods described in the bill of lading.

(b) A person who violates a provision of Subsection (a) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not less than two nor more than five years.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 35.21. Negotiating Fraudulent Bill of Lading**

(a) A person may not with intent to defraud negotiate or transfer a bill of lading

(1) issued in violation of Chapter 7 of this code; or

(2) containing a false, material statement of fact.

(b) A person who violates a provision of Subsection (a) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not more than 10 years.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 35.22 to 35.26 reserved for expansion]

SUBCHAPTER C. CRIMINAL OFFENSES INVOLVING WAREHOUSE RECEIPTS

**§ 35.27. Definitions**

In Sections 35.28-35.33 of this code, unless the context requires a different definition,

(1) "goods" means all things which are treated as movable for the purposes of a contract of storage or transportation;

(2) "issue" includes aiding in the issue of;

(3) "warehouseman" means a person engaged in the business of storing goods for hire; and

(4) "warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 35.28. Warehouseman Issuing Fraudulent Warehouse Receipt**

(a) A warehouseman, his officer, agent, or employee, may not with intent to defraud issue a warehouse receipt which contains a false statement of fact.

(b) A warehouseman, his officer, agent, or employee, who violates Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than one year or by a fine of not more than \$1,000 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 35.29. Warehouseman Failing to State His Ownership of Goods on Receipt**

(a) A warehouseman, his officer, agent, or employee, may not knowingly issue a negotiable warehouse receipt describing goods the warehouseman owns and is storing (whether the warehouseman owns them solely, jointly, or in common) unless he states the warehouseman's ownership on the receipt.

(b) A warehouseman, his officer, agent, or employee, who violates Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than one year or by a fine of not more than \$1,000.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 35.30. Warehouseman Issuing Warehouse Receipt Without Goods**

(a) A warehouseman, his officer, agent, or employee, may not issue a warehouse receipt if he knows at the time of issuance that the goods described in the warehouse receipt are not under his actual control.

(b) A warehouseman, his officer, agent, or employee, who violates Subsection (a) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not more than five years or by a fine of not more than \$5,000 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 35.31. Warehouseman Issuing Duplicate Warehouse Receipt**

(a) A warehouseman, his officer, agent, or employee, may not issue a duplicate or additional negotiable warehouse receipt for goods if he knows at the time of issuance that a previously issued negotiable warehouse receipt describing those goods is outstanding and uncanceled.

(b) Subsection (a) of this section does not apply if

(1) the word "Duplicate" is plainly placed on the duplicate or additional negotiable warehouse receipt; or

(2) goods described in the outstanding and uncanceled negotiable warehouse receipt were delivered pursuant to court order on proof that the receipt was lost or destroyed.

(c) A warehouseman, his officer, agent, or employee, who violates Subsection (a) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not more than five years or by a fine of not more than \$5,000 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 35.32. Warehouseman Wrongfully Delivering Goods**

(a) A warehouseman, his officer, agent, or employee, may not knowingly deliver goods described in a negotiable warehouse receipt and stored with him unless the receipt is surrendered to him at or before the time he delivers the goods.

(b) Subsection (a) of this section does not apply if the goods are

(1) delivered pursuant to court order on proof that the negotiable warehouse receipt describing them was lost or destroyed;

(2) lawfully sold to satisfy a warehouseman's lien; or

(3) disposed of because of their perishable or hazardous nature.

(c) A warehouseman, his officer, agent, or employee, who violates Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than one year or by a fine of not more than \$1,000 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 35.33. Failing to Disclose Ownership of Goods**

(a) A person who obtains a negotiable warehouse receipt describing goods he does not own, or goods subject to a lien, may not with intent to defraud negotiate the receipt for value without disclosing his lack of ownership or the lien's existence.

(b) A person who violates a provision of Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than one year or by a fine of not more than \$1,000 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 35.34 to 35.38 reserved for expansion]

SUBCHAPTER D. MISCELLANEOUS

**§ 35.39. Damages on Protested, Out-of-State Draft**

The holder of a protested draft is entitled to damages equalling 10 percent of the amount of the draft, plus interest and costs of suit, if the

(1) draft was drawn by a merchant in this state on his agent or factor outside this state; and

(2) drawer's or indorser's liability on the draft has been fixed.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**§ 35.40. Identification of Patent Right Note or Lien**

(a) A note or lien evidencing or securing the purchase price for a patent right or patent right territory must contain on its face a statement that it was given for a patent right or patent right territory.

(b) The statement required by Subsection (a) of this section

(1) is notice to a subsequent purchaser of the note or lien of all equities between the original parties to the note or lien; and

(2) subjects a subsequent holder of the note or lien to all defenses available against the original parties to the note or lien.

(c) A person selling a patent right or patent right territory may not take a note or lien evidencing or securing the purchase price for it without placing on the face of the note or lien the statement required by Subsection (a) of this section.

(d) A person who violates Subsection (c) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

# DISPOSITION TABLE 1

## Former Texas Statutes and Uniform Laws to Business and Commerce Code (Title 1)

Where there are no relevant sections in the Texas Business and Commerce Code, that fact is noted by the use of the abbreviation "N" for "None."  
The letter "S" before a section of the Business and Commerce Code means "Sec.". The abbreviation "Cf." before a section means "Compare."

### ACCOUNTS RECEIVABLE

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
260-1, § 1	N.	1,201(11) 9.105(1) (d) 9.106 9.306(5)	260-1, § 5	N.	9.403 9.404
§ 2	N.	9.204 9.302 S. 9.405	§ 6	N.	9.201 9.302 9.306 9.318
§ 3	N.	9.203 9.302 9.402	§ 7	N.	9.306 9.318
§ 4	N.	9.303 9.401 9.403 9.407	§ 8	N.	9.205 9.306

### COLLECTIONS

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
342-701	N.	1,201(4) 4.104 4.105	342-704	N.	4.301
342-702	N.	4.201	342-705	N.	4.213
342-703	N.	4.103 4.201 4.202	342-706	N.	4.214
			342-711	N.	4.406
			342-712	N.	4.303 4.403

## DISPOSITION TABLE 1

## BILLS AND NOTES

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
567	N.	3.413	571	N.	S. 3.122
568	N.	3.122			S. 3.202
		3.201			S. 3.306
		3.302	575	N.	3.501
		3.305			3.502
		3.409			3.509
569	N.	1.103	576	N.	3.509
		3.409			3.510
570	N.	3.122			
		3.304			
		3.409			

## BILLS OF LADING

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
890	N.	S. 7.102	893	N.	S. 7.104
		S. 7.301	894	N.	N.
891	N.	7.104	895	N.	7.304
		7.309			7.403
892	N.	1.201(6)	896	N.	7.403
		7.104	897	N.	7.601
		7.304	898	N.	7.308
		7.402			7.403

## STOCK TRANSFERS

Civ.Stats. Article	U.S.T.A.1 Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	U.S.T.A.1 Sec.	Texas Bus. & C. Sec.
1302-6.02	1	8.309	1302-6.17	16	8.206
1302-6.03	2	N.	1302-6.18	17	8.405
1302-6.04	3	8.207	1302-6.19	18	1.103
1302-6.05	4	N.	1302-6.20	19	1.102(1)
1302-6.06	5	N.	1302-6.21	20	8.308
1302-6.07	6	N.	1302-6.22	21	N.
1302-6.08	7	8.301	1302-6.23	N.	N.
		8.315	1302-6.24	22	1.201(19)
1302-6.09	8	S. 8.308(5)			1.201(28)
1302-6.10	9	8.307			1.201(30)
1302-6.11	10	8.309			1.201(32)
1302-6.12	11	8.306			1.201(33)
1302-6.13	12	8.306			1.201(44)
1302-6.14	13	8.317			8.313
1302-6.15	14	8.317	1302-6.01	26	S. 8.101
1302-6.16	15	8.103			
		8.204			

1. Uniform Stock Transfer Act.

FRAUDULENT CONVEYANCES

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
4000	N.	9.201	4001	N.	6.105
		9.202			6.106
4001	N.	6.102	4002	N.	6.104
		6.103			6.106
		6.104	4003	N.	6.103

CHATTEL MORTGAGES

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
5489	N.	9.204	5495	N.	9.404
5490	N.	9.201	5496	N.	N.
		9.301	5497	N.	9.401
		9.302	5497a	N.	S. 9.301
		9.401			S. 9.312
		9.403	5498	N.	S. 9.401
5492	N.	9.403(4)			S. 9.403
5493	N.	N.	5499	N.	N.
5494	N.	9.403(4)	5499a	N.	N.

TRUST RECEIPTS

Civ.Stats. Article	U.T.R.A.1 Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	U.T.R.A.1 Sec.	Texas Bus. & C. Sec.
5499a-51, § 1	1	1.201(9)	5499a-51, § 8	8	9.301(1)
		1.201(15)			9.302
		1.201(28)			9.311
		1.201(30)	§ 8(1)	8(1)	9.304
		1.201(32)	§ 8(2)	8(2)	9.301
		1.201(33)	§ 9	9	2.403
		1.201(37)	§ 9(1)		
		1.201(44)	(a)	9(1) (a)	9.308
		S. 2.403			9.309
		9.105	§ 9(2)	9(2)	2.403
		9.301(3)			9.307
§ 2	2	9.110	§ 9(2)		
		9.203	(b)	9(2) (b)	9.301
§ 3	3	9.201	§ 9(3)	9(3)	9.318
		9.304	§ 10	10	9.306
§ 4	4	9.401			9.308
§ 5	5	9.201	§ 11	11	9.310
§ 6	6	9.207(2) (a)	§ 12	12	9.317
		9.501	§ 13	13	9.401
		9.503			9.402
		9.504	§ 13(3)	13(3)	9.402
		9.505			9.403
§ 7	7	9.302(1)	§ 13(4)	13(4)	9.402
		9.304			9.403
		9.501	§§ 14 to		
			22		
			(incl.)	14 to 22 (incl.)	N.

1. Uniform Trust Receipts Act.

## DISPOSITION TABLE 1

## LIENS

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
5506c, § 1	N.	9.109	5506c, § 4	N.	9.310
§ 2	N.	9.110			9.317
		9.201	§ 5	N.	9.403
		9.203			9.404
		9.207(2) (a)	§ 6	N.	9.205
		9.301			9.306
		9.302	§ 7	N.	9.302
		9.303	§ 8	N.	S. 9.302
		9.401			9.401
§ 3	N.	9.401	§ 9	N.	N.
		9.403	§ 10	N.	9.307
§ 4	N.	9.303			9.310
		9.307(1)			

## WAREHOUSE RECEIPTS

Civ.Stats. Article	U.W.R.A.1 Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	U.W.R.A.1 Sec.	Texas Bus. & C. Sec.
5575	N.	S. 7.202	5627	16	7.403
		S. 7.204			7.603
5576	N.	7.104	5628	17	7.603
		S. 7.205	5629	18	7.603
		7.501	5630	19	7.403
		7.502	5631	20	7.203
5604	N.	7.209			7.401
5605	N.	7.210	5632	21	7.204
5606	N.	S. 7.209	5633	22	7.207
5607	N.	7.206	5634	23	7.207
		7.403	5635	24	7.207(2)
5609	N.	7.104	5636	25	7.602
		7.501	5637	26	N.
		7.502	5638	27	7.209
5612	1	1.201(45)			7.307
		7.201	5639	28	7.209
		7.401			7.307
5613	2	7.104	5640	29	7.209
		7.202			7.307
		7.209(2)	5641	30	7.209
5614	3	7.104			7.307
		7.204	5642	31	7.209
5615	4	7.104			7.307
5616	5	7.104	5643	32	7.209
5617	6	7.402			7.210(7)
5618	7	7.104			7.307
5619	8	7.403	5644	33	7.206
5620	9	S. 2.705			7.210
		7.403			7.308
5621	10	7.403	5645	34	7.206
		7.404	5646	35	7.210(7)
5622	11	2.705	5647	36	7.403(1) (c)
		7.403	5648	37	7.501
5623	12	7.403	5649	38	7.501
5624	13	7.208	5650	39	7.501
5625	14	7.601	5651	40	7.501
5626	15	N.			

1. Uniform Warehouse Receipts Act.

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Civ.Stats. Article	U.W.R.A.1 Sec.	Texas Bus. & C. Sec.
5652	41	7.502 7.503 7.504
5653	42	7.504
5654	43	7.506
5655	44	7.507
5656	45	7.505
5657	46	2.506(2) 7.508
5658	47	7.501 7.502
5659	48	7.502
5660	49	S. 2.705 7.502
5661	N.	N.

Civ.Stats. Article	U.W.R.A.1 Sec.	Texas Bus. & C. Sec.
5662	N.	N.
5663	56	1.103
	57	1.102(1)
5664	58	S. 1.201(1) 1.201(14) S. 1.201(17) S. 1.201(19) S. 1.201(20) 1.201(28) 1.201(30) 1.201(32) 1.201(33) 1.201(44) 7.102
5665	62	S. 7.101

1. Uniform Warehouse Receipts Act.

NEGOTIABLE INSTRUMENTS

Civ.Stats. Article	U.N.I.L.1 Sec.	Texas Bus. & C. Sec.
5932, § 1	1	3.104
	1(5)	3.102
5932, § 2	2	3.106
5932, § 3	3	3.105
5932, § 4	4	3.109
5932, § 5	5	3.104 3.112
5932, § 6	6	3.112 6(1) 3.114 6(4) 3.113 6(5) 1.201(24) 3.106 3.107
5932, § 7	7	3.108 3.502
5932, § 8	8	3.110
5932, § 9	9	3.111 9(3) 3.405 9(5) 3.204
5932, § 10	10	3.104
5932, § 11	11	3.114
5932, § 12	12	3.114
5932, § 13	13	3.115
5932, § 14	14	3.115 3.407 8.206
5932, § 15	15	3.115 3.305 3.407 8.206
5932, § 16	16	3.305 3.306 8.202
5932, § 17	17	3.118 17(3) 3.109 3.114
	17(6)	3.402
5932, § 18	18	3.401

Civ.Stats. Article	U.N.I.L.1 Sec.	Texas Bus. & C. Sec.
5932, § 19	19	3.403
5932, § 20	20	3.403
5932, § 21	21	3.403
5932, § 22	22	3.207
5932, § 23	23	3.404 8.202 8.205 8.311
5933, § 24	24	3.408
5933, § 25	25	1.201(44) 3.303 3.408
5933, § 26	26	1.201(44) 3.303
5933, § 27	27	1.201(44) 3.201 3.303
		4.209
5933, § 28	28	3.306 3.408 3.415 8.202
5933, § 29	29	3.415 8.201
5934, § 30	30	3.102 3.202 8.309
5934, § 31	31	3.202 8.308
5934, § 32	32	3.202 8.308
5934, § 33	33	3.204 8.308
5934, § 34	34	3.204 8.308
5934, § 35	35	3.204 8.308

1. Uniform Negotiable Instruments Law.

## DISPOSITION TABLE 1

Civ.Stats. Article	U.N.I.L. <sup>1</sup> Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	U.N.I.L. <sup>1</sup> Sec.	Texas Bus. & C. Sec.
5934, § 36	36	3.204	5936, § 62	62	3.413
		3.205			3.418
		3.206			8.201
		8.308			8.202
5934, § 37	37	3.205	5936, § 63	63	3.402
		3.206	5936, § 64	64	3.415
		8.304			8.308
		8.308	5936, § 65	65	3.417
5934, § 38	38	3.414			4.207(2)
5934, § 39	39	3.205			8.306
		3.206			8.308
5934, § 40	40	3.204	5936, § 66	66	3.414
		8.310			4.207(2)
5934, § 41	41	3.116			8.306
5934, § 42	42	3.117			8.308
5934, § 43	43	3.203	5936, § 67	67	3.414
5934, § 44	44	3.414			8.306
5934, § 45	45	3.304			8.308
5934, § 46	46	N.	5936, § 68	68	3.118
5934, § 47	47	3.206			3.414
5934, § 48	48	3.208			8.308
		3.605	5936, § 69	69	3.417
5934, § 49	49	3.201			8.306
		8.307			8.308
5934, § 50	50	3.208	5937, § 70	70	3.501
5935, § 51	51	3.301			3.502
		3.603			3.604
5935, § 52	52	3.302	5937, § 71	71	3.503
		3.304	5937, § 72	72	3.503
		8.301			3.504
		8.302	5937, § 73	73	3.504
5935, § 52(2)	52(2)	3.302(1) (c)	5937, § 74	74	3.505
		8.203	5937, § 75	75	3.503
		8.305	5937, § 76	76	S. 3.504
5935, § 53	53	3.304	5937, § 77	77	3.504
		8.203	5937, § 78	78	3.504
		8.305	5937, § 79	79	3.511
5935, § 54	54	3.303	5937, § 80	80	3.511
5935, § 55	55	3.304	5937, § 81	81	3.511
5935, § 56	56	1.201(25)	5937, § 82	82	3.511
		3.304	5937, § 83	83	3.507
		8.202	5937, § 84	84	3.507(2)
		8.304	5937, § 85	85	3.503
5935, § 57	57	3.305	5937, § 86	86	3.503
		8.202	5937, § 87	87	3.121
		8.301	5937, § 88	88	3.603
5935, § 58	58	3.201	5938, § 89	89	3.501
		3.207			3.502
		3.306	5938, § 90	90	3.508
		8.301	5938, § 91	91	3.508
5935, § 59	59	3.207	5938, § 92	92	3.508
		3.306	5938, § 93	93	3.508
		3.307	5938, § 94	94	3.508
		8.105	5938, § 95	95	3.508
		8.301	5938, § 96	96	3.508
5936, § 60	60	3.413	5938, § 97	97	3.508
		8.201	5938, § 98	98	3.508
		8.202	5938, § 99	99	3.508
5936, § 61	61	3.413	5938, § 100	100	3.508
		8.201	5938, § 101	101	3.508
		8.202	5938, § 102	102	3.508

1. Uniform Negotiable Instruments Law.

		Texas				Texas	
Civ.Stats.	U.N.I.L.L.1	Bus. & C.	Sec.	Civ.Stats.	U.N.I.L.L.1	Bus. & C.	Sec.
Article	Sec.			Article	Sec.		
5938, § 103	103		3.508	5942, § 145	145		3.503
5938, § 104	104		3.508				3.504
5938, § 105	105		3.508	5942, § 146	146		3.503
5938, § 106	106		3.508	5942, § 147	147		3.511
5938, § 107	107		3.508	5942, § 148	148		3.511
5938, § 108	108		3.508	5942, § 149	149		3.507
5938, § 109	109		3.511	5942, § 150	150		3.501
5938, § 110	110		3.511(G)				3.502
5938, § 111	111		3.511				3.511
5938, § 112	112		3.511	5942, § 151	151		3.501
5938, § 113	113		3.511				3.507(2)
5938, § 114	114		3.511				3.511
5938, § 115	115		3.511	5943, § 152	152		3.501
5938, § 116	116		3.511				3.502
5938, § 117	117		N.	5943, § 153	153		3.509
5938, § 118	118		3.501	5943, § 154	154		3.509
5939, § 119	119		3.601	5943, § 155	155		3.509
			3.603	5943, § 156	156		3.509
5939, § 119(3)	119(3)	Cf.	1.107	5943, § 157	157		3.501
			3.605	5943, § 158	158		3.501
5939, § 120	120		3.208				3.509
			3.601	5943, § 159	159		3.511
			3.604	5943, § 160	160		3.509
			3.606	5944, § 161	161		3.410
5939, § 120(2)	120(2)	Cf.	1.107	5944, § 162	162		3.410
			3.605	5944, § 163	163		3.410
5939, § 121	121		3.208	5944, § 164	164		3.410
			3.601	5944, § 165	165		3.410
			3.603	5944, § 166	166		3.410
5939, § 122	122	Cf.	1.107	5944, § 167	167		3.410
			3.605	5944, § 168	168		3.410
5939, § 123	123		3.605	5944, § 169	169		3.410
5939, § 124	124		3.407	5944, § 170	170		3.410
			8.206	5945, § 171	171		3.603
5939, § 125	125		3.407	5945, § 172	172		3.603
5940, § 126	126		3.104	5945, § 173	173		3.603
5940, § 127	127		3.409	5945, § 174	174		3.603
5940, § 128	128		3.102	5945, § 175	175		3.603
5940, § 129	129		3.501	5945, § 176	176		3.603
5940, § 130	130		3.118	5945, § 177	177		3.603
			3.511	5946, § 178	178		3.801
5940, § 131	131		4.503	5946, § 179	179		3.801
5941, § 132	132		3.410	5946, § 180	180		3.801
5941, § 133	133		3.410	5946, § 181	181		3.801
5941, § 134	134		3.410	5946, § 182	182		3.801
5941, § 135	135		3.410	5946, § 183	183		3.801
5941, § 136	136		3.410	5947, § 184	184		3.104
			3.506	5947, § 185	185		3.104
			5.112	5947, § 186	186		3.501
5941, § 137	137		3.410				3.502
			3.419				3.503
5941, § 138	138		3.410	5947, § 187	187		3.411
5941, § 139	139		3.412	5947, § 188	188		3.411
5941, § 140	140		3.412	5947, § 189	189		3.409
5941, § 141	141		3.412	5948, § 190	190		N.
5941, § 142	142		3.412	5948, § 191	191		S. 1.201(1)
5942, § 143	143		3.501				S. 1.201(4)
5942, § 144	144		3.501				S. 1.201(5)
			3.502				1.201(14)
			3.503				S. 1.201(20)
							1.201(28)

1. Uniform Negotiable Instruments Law.

DISPOSITION TABLE 1

Civ.Stats. Article	U.N.I.L. <sup>1</sup> Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	U.N.I.L. <sup>1</sup> Sec.	Texas Bus. & C. Sec.
5948, § 191	191	1.201(30)	5948, § 192	192	N.
		1.201(44)	5948, § 193	193	3.503
		1.201(46)	5948, § 194	194	N.
		3.102	5948, § 195	195	N.
		3.410	5948, § 196	196	1.103
		8.313		* * * *	

1. Uniform Negotiable Instruments Law.

## DISPOSITION TABLE 2

### Former Articles to Business and Commerce Code (Titles 2, 3 and 4)

Disposition Table No. 1 shows where the subject matter of articles and sections repealed by the Uniform Commercial Code in 1965 is covered in Title 1, Uniform Commercial Code, of the Business and Commerce Code. Table No. 2 shows where the subject matter of other repealed articles and sections is covered in the remaining Titles of the Business and Commerce Code.

#### CIVIL STATUTES

Civil Statutes Article	Business and Commerce Code Section	Civil Statutes Article	Business and Commerce Code Section
261 -----	23.02(b) (c)	851—C § 1 (part) -----	16.01 subsec. (a) (part)
262 -----	23.08	§ 1(a) -----	16.01 subsec. (a) (2) (4) (5)
263 -----	23.10	§ 1(b) -----	16.01 subsec. (a) (1)
264 -----	23.17	§ 1(c) -----	16.01 subsec. (a) (3)
265 sent. 1 -----	23.30 subsec. (a)	§ 1(d) -----	16.02
sent. 2 -----	23.30 subsec. (d)	§ 1(e) -----	16.01 subsec. (a) (6)
sent. 3, 4 -----	23.30 subsec. (b), (c)	§ 1(f) -----	16.08 subsec. (a)
266 sent. 1, 2, 3 -----	23.16	851—C § 2(a)-(d), (e) sent. 1 (part) -----	16.08 subsec. (a) (1)-(5)
sent. 4, 5 -----	23.18	§ 2(e) sent. 1 (part), 2 -----	16.08 subsec. (b)
267 -----	23.09 subsec. (a)	§ 2(f) -----	16.10 subsec. (a), (b)
268 -----	23.09 subsec. (b) (c)	§ 3 sent. 1 -----	16.10 subsec. (d)
269 sent. 1, 2 -----	23.31	§ 3 sent. 2 -----	16.10 subsec. (c) (2)
sent. 3 -----	23.32 subsec. (b)	§ 3 sent. 3, 4 -----	16.10 subsec. (c) (1)
sent. 4 -----	23.32 subsec. (a)	§ 4 sent. 1 -----	16.11
270 -----	23.19	§ 4 -----	16.15 subsec. (c)
271 -----	23.21	§ 5 -----	16.15 subsec. (b)
272 -----	23.33	§ 6 -----	16.24
273 -----	23.22	§ 7 sent. 1 (part) -----	16.12 subsec. (a)
274 sent. 1, 2 -----	23.20	§ 7 sent. 1 (part), 2, 3, 4 -----	16.14 subsec. (a), (b)
sent. 3 -----	23.23	§ 7 sent. 5 -----	16.12 subsec. (b)
577 -----	23.24	§ 7 sent. 6, 7 -----	16.14 subsec. (c)
578 -----	35.39	§ 8 sent. 1, 2 (part) -----	16.13
582—1 § 1 -----	35.40 subsec. (a), (b)	§ 8 sent. 2 (part), 4, 5 -----	16.18 subsec. (a), (b)
§ 2 -----	33.01	§ 8 sent. 3 -----	16.18 subsec. (c)
§ 3 -----	33.02	§ 9 -----	16.15 subsec. (a)
§ 3a -----	33.03	§ 10 -----	16.16 subsec. (a)
§ 4 -----	33.04	§ 11 sent. 1, 2 (part) -----	16.25 subsec. (a)
§ 5 -----	33.05	§ 11 sent. 2 (part) -----	16.25 subsec. (c)
582—1 § 6 -----	33.06	§ 11 sent. 3 -----	16.25 subsec. (b)
§ 7 -----	33.07	§ 11 sent. 4 -----	16.25 subsec. (d)
§ 8 -----	33.08	§ 11 sent. 5 -----	16.16 subsec. (b)
§ 9 -----	33.09		
843 sent. 1 -----	33.10		
sent. 2 -----	17.29 subsec. (d)		
	17.29 subsec. (b)		

DISPOSITION TABLE 2

Civil Statutes Article	Business and Commerce Code Section	Civil Statutes Article	Business and Commerce Code Section
185—C § 12 (part)	16.09 subsec. (b), (c)	7434	15.29 subsec. (b)
§ 12 sent. 1	16.09 subsec. (d)	7435 sent. 1	15.31 subsec. (a)
§ 12 sent. 2, 3	16.09 subsec. (a)		15.31 subsec. (c) (1)
§ 12 sent. 4	16.09 subsec. (d)	sent. 2	15.31 subsec. (c)
§ 13	16.28		(2), (3)
§ 14 sent. 1, 2 (part)	16.27 subsec. (a)	sent. 3	15.31 subsec. (a)
§ 14 sent. 2 (part)	16.01 subsec. (b)	sent. 4	15.31 subsec. (g)
§ 15 sent. 1	16.26 subsec. (a)	sent. 5	15.31 subsec. (b)
§ 15 sent. 2	16.27 subsec. (b)		15.31 subsec. (c) (1)
§ 16	16.26 subsec. (b), (c), (d)	sent. 6	15.31 subsec. (b)
899	35.15	sent. 7	15.31 subsec. (a)
1438a § 1	35.01 subsec. (a)	sent. 8	15.31 subsec. (b)
§ 2 sent. 1	35.02	sent. 9	15.31 subsec. (f)
§ 2 sent. 2	35.07	sent. 10, 11	15.31 subsec. (d)
§ 3	35.03	7436 sent. 1	15.32 subsec. (a)
§ 4	35.06	sent. 2	15.32 subsec. (b)
§ 5 sent. 1	35.04	sent. 3	15.32 subsec. (a)
§ 5 sent. 2, 3, 4	35.05 subsec. (a), (b)	sent. 4	15.32 subsec. (c)
§ 5 sent. 5, 6	35.08		15.32 subsec. (d)
3995	26.01 subsec. (a), (b) (1)–(6)	sent. 6, 7	15.32 subsec. (e)
3995a	26.01 subsec. (b) (7)	sent. 8	15.32 subsec. (c)
3996 (part)	24.01	7436a	15.12
3996 (part)	24.02	7437	15.04 subsec. (b)
3997	24.03	7438	15.21 subsec. (a)
3998	24.04	7439	15.14
3999	24.05	7439a sent. 1, 2	15.15 subsec. (a)
4004 sent. 1, 3, 4	27.01	sent. 3	15.15 subsec. (b)
6244	34.02 subsec. (a)		15.22 subsec. (a)
6245	34.02 subsec. (b)	sent. 4	15.22 subsec. (a)
6247	34.03	7440	15.16 subsec. (b)
6248	34.04 subsec. (a)	7441 sent. 1	15.16 subsec. (c)
	34.04 subsec. (b) (1)	sent. 2	15.16 subsec. (d)
	34.04 subsec. (c)	sent. 3	15.16 subsec. (f)
6249	34.04 subsec. (b) (2)	7442	15.16 subsec. (e) (2)
6250	34.05	7443 sent. 1	15.16 subsec. (e) (1)
6252	34.01	sent. 2	15.17 subsec. (a)
7426	15.02	sent. 3	15.17 subsec. (a), (b), (c)
7427	15.01	sent. 4	15.19 subsec. (e)
7428 subd. 1, 2	15.03 subsec. (a) (1), (2)	sent. 5, 6	15.22 subsec. (b)
subd. 3 (part)	15.03 subsec. (b) (1)	7444 sent. 1	15.19 subsec. (a)
subd. 3 (part)	15.03 subsec. (a) (3)	sent. 2	15.19 subsec. (b)
7428a	15.05	sent. 3	15.19 subsec. (a) (c)
7428—1	15.03 subsec. (a) (4)	sent. 4, 5	15.19 subsec. (c)
7428—2	15.03 subsec. (b) (2)	sent. 6	15.19 subsec. (d)
7429	15.04 subsec. (a)	sent. 7	15.19 subsec. (f)
7430	15.29 subsec. (c)	7445 sent. 1	15.18 subsec. (a)
7431	15.29 subsec. (a)	sent. 2	15.16 subsec. (f)
7432	15.29 subsec. (d)	sent. 3–5	15.18 subsec. (b)
7433	15.30 subsec. (a), (b)	7446	15.20
		7447	15.21 subsec. (b)

## PENAL CODE (1925)

Penal Code Article	Business and Commerce Code Section	Penal Code Article	Business and Commerce Code Section
150 sent. 1	17.07 subsec. (a)	1137l—3 par. (c) sent. 2	1718 subsec. (b) (2)
sent. 2	17.07 subsec. (d)	1137l—4	17.22
sent. 3	17.07 subsec. (c)	1137l—5	17.18 subsec. (c)
151 sent. 1	17.07 subsec. (b)	1554 sent. 1	17.12 subsec. (a), (c)
sent. 2	17.07 subsec. (e)	sent. 2	17.12 subsec. (b)
sent. 3	17.07 subsec. (f)	1554a § 1 sent. 1	17.11 subsec. (b)
157a sent. 1	17.08 subsec. (a)	§ 1 sent. 2	17.11 subsec. (a)
sent. 2	17.08 subsec. (c) (d)	§ 1a	17.11 subsec. (c)
sent. 3	17.08 subsec. (b)	§ 2	17.11 subsec. (d)
527a	15.06	1557	25.01
1018	35.30		25.03 subsec. (a)
1019	35.28	1558 sent. 1	25.02 subsec. (a)
1020	35.31 subsec. (a), (b) (1), (c)	sent. 2	25.03 subsec. (b)
1021	35.31 subsec. (b) (2)		25.01 subsec. (b)
1022	35.29	1632	15.02
1023	35.32 subsec. (a) (c)	1633	15.01
1024	35.32 subsec. (b)	1634 subd. 1, 2	15.03 subsec. (a)
1025	35.33		(1), (2)
1058 sent. 1	17.29 subsec. (d)	subd. 3	15.03 subsec. (a)
sent. 2	17.29 subsec. (b)		(3), (b) (1)
1059	17.29 subsec. (c)	1635	15.33 subsec. (d)
1060	17.29 subsec. (e)	1636	15.14
1063	17.30 subsec. (a) (b)	1637	15.33 subsec. (a)
1064	17.30 subsec. (c) (e)	1638	15.33 subsec. (b)
1065	17.30 subsec. (d)	1639	15.33 subsec. (c) (d)
1066a	17.10	1640	15.33 subsec. (d)
1113	17.28	1641	15.33 subsec. (e)
1114	17.09 subsec. (a)	1642	15.34
	(1), (2), (b)	1643	_____
1115	17.09 subsec. (a)	1644	_____
	(3), (c)	1674	See 7.301 et seq.
1130	35.40 subsec. (c), (d)	to	
1137l	17.19	1677	
1137l—1	17.20	1678	35.16
1137l—2	17.21	1679	35.17
1137l—3 par. (a)	17.18 subsec. (a) (1)	1680	35.19
	17.18 subsec. (b) (1)	1681	35.18
par. (b)	17.18 subsec. (a) (2)	1682	35.21
par. (c) sent. 1	17.18 subsec. (a) (3)	1683	35.20

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# TEXAS EDUCATION CODE

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Enactment

*Titles 1 and 2 of the Texas Education Code and the chapter on public junior colleges in Title 3 were enacted by Acts 1969, 61st Leg., p. 2735, ch. 889, effective September 1, 1969.*

*The laws relating to higher education were included in the Code by Acts 1971, 62nd Leg., p. 3072, ch. 1024, Article 1, § 1, effective September 1, 1971, which amended and reenacted Title 3. Article 1, § 2, thereof provided:*

*"Sec. 2. LEGISLATIVE INTENT. This is intended as a recodification only and no substantive changes are intended by this legislation."*

*Article 2 of the 1971 Act, which by sections 1 to 44 incorporated the provisions of certain acts passed during the 62nd legislative session into the Code, provided in sections 45 to 48:*

*"Section 45. Each section of this article takes effect only if and when the legislation on which it is based takes effect, but not earlier than September 1, 1971.*

*"Section 46. All provisions of the Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) apply to this article.*

*"Section 47. This article is intended as a codification only, and nothing in this article is intended to effect any substantive change in the law.*

*"Section 48. As each section of this article takes effect, the Act on which it is based is repealed."*

*Acts 1971, 62nd Leg., p. 1449, ch. 405, which by sections 1 to 53 incorporated the provisions of certain acts passed during the regular and second called sessions of the 61st Legislature into the Code, and which by section 54 repealed the acts so incorporated, provided in sections 55 and 56:*

*"Sec. 55. Nothing in this Act is intended to make any change in the substantive law, but this Act is merely intended to be a recodification of the present law.*

*"Sec. 56. If any other Act passed at the same session of the Legislature conflicts with any provision of this Act, the other Act prevails."*

*Acts 1971, 62nd Leg., p. 3007, ch. 994, which codified various omitted civil and penal statutes and repealed said statutes, provided in section 18:*

*"Sec. 18. If any other Act passed at the same session of the Legislature conflicts with any provision of this Act, the other Act prevails."*

Conversion Table

*A conversion table is provided at the end of this Code to enable the user to trace the disposition in the Texas Education Code of the subject matter of repealed articles of the Civil Statutes and Penal Code.*

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. TITLE, ORGANIZATION, AND PURPOSE

Section	
1.01.	Short Title.
1.02.	Organization.
1.03.	Purpose and Objectives.
1.04.	Applicability.

§ 1.01. Short Title

This code shall be known and may be cited as the "Texas Education Code."

[Acts 1969, 61st Leg., p. 2736, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 1.02. Organization

(a) The division of this code into titles, subtitles, chapters, subchapters, sections, subsections and subdivisions, and the use of captions in connection therewith, are solely for convenience and shall have no legal effect in construing the provisions of the code.

(b) This code has been organized and subdivided in the following manner:

(1) the code is divided into titles, containing groups of related chapters;

(2) the code is also divided into chapters, which are numbered consecutively throughout the code;

(3) chapters are divided into sections, each of which carries the initial arabic numeral of the chapter in which it is found, and the arrangement of sections within chapters is determined by the numbers following the decimal;

(4) sections are divided into subsections, and the subsections are numbered consecutively with lowercase letters enclosed in parentheses;

(5) subsections are divided into subdivisions, and subdivisions are numbered consecutively with arabic numerals enclosed in parentheses;

(6) subdivisions are divided into paragraphs, and paragraphs are numbered consecutively with capital letters enclosed in parentheses; and

(7) paragraphs are divided into subparagraphs, and subparagraphs are numbered consecutively with lowercase Roman numerals enclosed in parentheses.

[Acts 1969, 61st Leg., p. 2736, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 1.03. Purpose and Objectives

The aim in adopting this code is to bring together in a unified and organized form the existing law relating to tax-supported educational institutions and to simplify, clarify, and harmonize existing law relating both to the public school system and to the state-supported institutions of higher education.

[Acts 1969, 61st Leg., p. 2737, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 1.04. Applicability

(a) This code shall apply to all educational institutions supported either wholly or in part by state tax funds unless specifically excluded.

(b) This code shall not apply to those eleemosynary institutions under the control and direction of the Department of Mental Health and Mental Retardation or to the institutions and activities of the Texas Youth Council.

[Acts 1969, 61st Leg., p. 2737, ch. 889, § 1, eff. Sept. 1, 1969.]

## CHAPTER 2. GENERAL PROVISIONS

### Section

- 2.01. Public Education in General.
- 2.02. The Flying of the State Flag.
- 2.03. Dedication to the People of Texas.
- 2.04. Protection of Land in Use by Schools.
- 2.05. Motor Vehicles Owned and Used by State-Supported Educational Institutions.
- 2.06. Oath of Office and Allegiance.
- 2.07. Assignment, Transfer, or Pledge of Compensation.
- 2.08. Forfeiture of Position.
- 2.09. Immunization.
- 2.10. Maintenance of Existing Institutions.

### § 2.01. Public Education in General

The objective of state support and maintenance of a system of public education is education for citizenship and is grounded upon conviction that a general diffusion of knowledge is essential for the welfare of Texas and for the preservation of the liberties and rights of citizens.

[Acts 1969, 61st Leg., p. 2737, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 2.02. The Flying of the State Flag

On all regular school days, every school and other educational institution covered by this code shall fly the Texas flag in accordance with the general rules governing its use.

[Acts 1969, 61st Leg., p. 2737, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 2.03. Dedication to the People of Texas

The educational institutions covered by this code are designed for and are open to the people of the State of Texas, subject only to such rules and regulations as the governing boards of such institutions may be authorized in this code to make and enforce for the welfare of the various institutions under their control.

[Acts 1969, 61st Leg., p. 2737, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 2.04. Protection of Land in Use by Schools

No public road shall be opened across land owned and used by any school district or other educational institution covered by this code without the consent of the regents, directors, or trustees of that institution and approval of the governor, unless the land is subject to sale under the general laws of Texas. The roads already opened across such land may be closed by the authorities in charge whenever they deem it necessary to protect the interest of the institution and on repayment with eight percent interest of the amount actually paid out as appears on the records of the commissioners court, by the situs county for the land's condemnation.

[Acts 1969, 61st Leg., p. 2738, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 2.05. Motor Vehicles Owned and Used by State-Supported Educational Institutions

(a) Motor vehicles, trailers, and semitrailers which are the property of and used exclusively by any school district, institution of higher education, or agency in charge, or branch are exempt from the payment of state registration fee. Nevertheless, the owners of such vehicles must comply with the general statutes relating to motor vehicle registration.

(b) Application for license plates, identification of vehicles and transfer of ownership are governed by the general statutes relating to motor vehicles and such special provisions of those statutes that relate to the particular type of vehicle concerned.

[Acts 1969, 61st Leg., p. 2738, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 2.06. Oath of Office and Allegiance

(a) No public funds shall be paid to any person as a teacher, instructor, visiting instructor, or other employee connected with any tax-supported educational institution in Texas unless he takes the oath of office required of members of the legislature and all other state officers, as provided in Article XVI, Section 1, of the Texas Constitution.

(b) Foreign visiting instructors, refugees, and political refugees from conquered countries are exempted from the requirements in Subsection (a) of this section if they file an affidavit, on a form prescribed by the attorney general of Texas, stating, among other things, that they are not members of the Communist, Fascist, or Nazi parties, nor of any bund, or affiliated organization, and that they will not engage in any un-American activities, nor teach any doctrines contrary to the constitution and laws of the United States of America or of the State of Texas.

(c) Any teacher or instructor of any tax-supported educational institution in Texas who shall be found guilty of openly advocating doctrines which seek to undermine or overthrow by force or violence the

republican and democratic forms of government in the United States or which in any way seek to establish a government that does not rest upon the fundamental principle of consent of the governed, shall after a full adjudicative hearing by his employing or appointing authority be dismissed.

[Acts 1969, 61st Leg., p. 2738, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 2.07. Assignment, Transfer, or Pledge of Compensation**

(a) The terms "teacher" and "school employee" used in this section include:

(1) any person employed by any public school district, in an executive, administrative, or clerical capacity, or as a superintendent, principal, teacher, or instructor; and

(2) any person employed by a university, college, or other educational institution in an executive, administrative, or clerical capacity, or as a professor, instructor, or in any similar capacity.

(b) Any teacher's or school employee's assignment, pledge, or transfer of his salary or wages as security for indebtedness—or any interest or part of his salary or wages—then due or which may become due under an existing contract of employment shall be enforceable only under the following conditions:

(1) Before or at the time of execution, delivery, or acceptance of an assignment, pledge, or transfer, written approval must be obtained from the employing authority or officer, and if the teacher or school employee executing the instrument is employed by:

(A) a common school district, approval of his assignment, pledge, or transfer must be obtained from either the secretary or chairman of the district board of trustees and also from the county superintendent of the county in which the district is located;

(B) an independent school district, approval of his assignment, pledge, or transfer must be obtained either from the president or secretary of the board of trustees or from the superintendent or business manager of the independent school district; and

(C) a college, university, or any other educational institution, approval of his assignment, pledge, or transfer must be obtained from the salary disbursement officer of the college, university, or other educational institution;

(2) Any assignment, pledge, or transfer must be in writing and acknowledged as required for the acknowledgment of deeds or other recorded instruments, and if executed by a married person, it must also be executed and acknowledged in a like manner by his or her spouse; however, the employer approving an assignment, pledge, or transfer need not acknowledge it; and

(3) An assignment, pledge, or transfer shall be enforceable only to the extent that the indebtedness it secures is a valid and enforceable obligation.

(c) Any school district, college, university, or other educational institution, or county superintendent—or disbursing agent—shall honor an assignment, pledge, or transfer fulfilling the conditions of Subsection (b) of this section without incurring any

liability to the teacher or school employee executing the assignment, pledge, or transfer. Payment to any assignee, pledgee, or transferee in accordance with the terms of the instrument shall constitute payment to or for the account of the assignor, pledgor, or transferor. However, an assignment, pledge, or transfer shall be enforceable only to the extent of salary due or which may become due during continuation of the assignor's employment as a teacher or school employee.

(d) Venue for any suit against the employer of a teacher or school employee to enforce an assignment, pledge, or transfer of salary shall be in the county where the employing school or educational institution is located.

[Acts 1969, 61st Leg., p. 2738, ch. 889, § 1, eff. Sept. 1, 1969.]

**Saved from Repeal**

*Acts 1955, 54th Leg., p. 595, ch. 203, relating to actions on assignment of wages, and classified as Vernon's Ann.Civ.St. art. 5159c, provided, in part, in § 3 that "nothing in this Act shall in any manner affect or repeal any part of Acts, 1939, Forty-sixth Legislature, page 282, Chapter 13, as amended (codified as Vernon's Article 2883a) [now, this section].*

**§ 2.08. Forfeiture of Position**

During the term of his employment, a trustee or teacher in any public school or institution of higher learning in Texas, county or city superintendent, university president, or college president shall not act as agent or attorney for any textbook publishing company selling textbooks in Texas. Acceptance of the agency or attorneyship shall by operation of law forfeit his position with the public schools.

[Acts 1969, 61st Leg., p. 2739, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 2.09. Immunization**

(a) No person may be admitted to any elementary or secondary school or institution of higher education unless he has been immunized against diphtheria, rubeola, rubella, tetanus, poliomyelitis, and smallpox, except as provided in Subsection (c).

(b) Subject to the provisions of Subsection (c) the State Board of Health may modify or delete any of the immunizations in Subsection (a) or may require immunizations against additional diseases as a requirement for admission to any elementary or secondary school or institution of higher education.

(c) No form of immunization is required for a person's admission to any elementary or secondary school or institution of higher education when the person applying for admission submits to the admitting official either of the following:

(1) an affidavit or a certificate signed by a doctor who is duly registered and licensed under the Medical Practice Act of Texas,<sup>1</sup> in which it is stated that, in the doctor's opinion, the immunization required would be injurious to the health and well-being of the applicant or any member of his family or household; or

(2) an affidavit signed by the applicant or, if a minor, by his parent or guardian stating that the immunization conflicts with the tenets and practice of a recognized church or religious de-

nomination of which the applicant is an adherent or member; provided, however, that this exemption does not apply in times of emergency or epidemic declared by the Commissioner of Health.

(d) The State Department of Health shall provide the required immunizations to children in areas where no local provision exists to provide these services.

(e) A person may be provisionally admitted to an elementary or secondary school or institution of higher education if he has begun the required immunizations and if he continues to receive the necessary immunizations as rapidly as is medically feasible. The State Department of Health shall promulgate rules and regulations relating to the provisional admission of persons to an elementary or secondary school or institution of higher education.

[Acts 1969, 61st Leg., p. 2740, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 702, ch. 67, § 1, eff. April 26, 1971; Acts 1971, 62nd Leg., p. 1441, ch. 398, §§ 1, 2, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 599, ch. 253, § 1, eff. June 11, 1973.]

<sup>1</sup> Civil Statutes, art. 4498 et seq.

## § 2.10. Maintenance of Existing Institutions

No law establishing or providing for the maintenance of any public educational institution shall be affected or impaired by the repealing clause of this code unless expressly altered or repealed in some preceding or subsequent section herein.

[Acts 1969, 61st Leg., p. 2740, ch. 889, § 1, eff. Sept. 1, 1969.]

## CHAPTER 3. TEACHER RETIREMENT SYSTEM

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*Chapter 3 of the Education Code, formerly consisting of a Section 3.01 which provided that 1969 H.B.No.241 (hereinafter cited) governed the Teacher Retirement System, was amended by Acts 1971, 62nd Leg., p. 1449, ch. 405, § 1, effective May 26, 1971, to consist of Subchapters A to D containing Sections 3.01 to 3.62. These sections incorporate the provisions of Civil Statutes Arts. 2922-1.01 to 2922-4.11, enacted by Acts 1969, 61st Leg., p. 109, (H.B.241) ch. 41 which was repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(2).*

*The 1971 Act, which by sections 1 to 53 incorporated the provisions of certain acts passed during the regular and second called sessions of the 61st Legislature into the Code, and which by section 54 repealed the acts so incorporated, provided in sections 55 and 56:*

*"Sec. 55. Nothing in this Act is intended to make any change in the substantive law, but this Act is merely intended to be a recodification of the present law.*

*"Sec. 56. If any other Act passed at the same session of the Legislature conflicts with any provision of this Act, the other Act prevails."*

### SUBCHAPTER A. GENERAL PROVISIONS

## § 3.01. Establishment and General Provisions

(a) The Teacher Retirement System of Texas established under the laws of this state shall be continued in corporate existence.

(b) Rights of membership in the retirement system, its retirement privileges and benefits, and its management and operation shall be governed by the provisions of this chapter.

(c) The retirement system shall continue to be known as the Teacher Retirement System of Texas, and by this name all its business transacted, all its funds invested, and all its cash, securities, and other properties held.

(d) The retirement system shall provide for the payment of retirement annuities and other benefits to employees and to beneficiaries of employees of the several departments, institutions, subdivisions, and agencies now or hereafter comprising the public school system of this state.

(e) The retirement system shall have the powers and privileges of a corporation as well as the powers, privileges, and immunities conferred.

[Acts 1971, 62nd Leg., p. 1449, ch. 405, § 1, eff. May 26, 1971.]

## § 3.02. Definitions and Qualifications of Terms

(a) In this chapter, unless the context clearly requires a different meaning, the words and phrases

defined below in this section shall have the meanings hereinbelow given.

(1) "Retirement system" means the Teacher Retirement System of Texas, as defined in Section 3.01 of this code.

(2) "Public school" means any educational institution or organization in this state which under the laws of Texas is entitled to be supported wholly or partly by state, county, school district, or other municipal corporation funds.

(3) "Teacher" means any person employed to render teaching service on a full-time, regular salary basis by the governing board of any school district created under the laws of this state, by any county school board, by the State Board of Trustees of the Retirement System, by the State Board of Education, by the Central Education Agency, by the board of regents of any college or university, or by any other legally constituted board or agency of any public school.

(4) "Teaching service" means service rendered in organized public education in this state in professional or business administration, or in supervision or instruction.

(5) "Auxiliary employee" means a person other than a "teacher" employed on a full-time, regular salary basis by the boards or agencies listed in Subsection (a)(3) of this section.

(6) "Teaching" or "taught" means all regular services rendered by teachers and auxiliary employees which contribute directly or indirectly to instruction offered in the public schools of this state.

(7) "Employer" means the State of Texas or any of its designated agents or agencies responsible for public education, to include those boards and agencies listed in Subsection (a)(3) of this section.

(8) "Member" means any teacher or auxiliary employee included in the membership of the retirement system in accordance with this chapter.

(9) "State Board of Trustees" means the board established to administer the retirement system under the terms of this chapter.

(10) "Service" means service as a teacher or auxiliary employee in the public schools of this state, or in one of the other departments, institutions, or agencies of the public school system of Texas.

(11) "Prior service" means service by such person as a teacher or auxiliary employee prior to:

(A) September 1, 1937, as relates to any person who became a member or who at any time on or before August 31, 1949, was eligible for membership in the retirement system; or

(B) September 1, 1949, as relates to any person who for the first time became eligible for membership in the retirement system on or after September 1, 1949.

(12) "Membership service" means service rendered as a teacher or auxiliary employee while a member of the retirement system.

(13) "Creditable service" means the prior service, membership service, and military leave service for which a member of the retirement system is entitled to credit under the provisions of this chapter.

(14) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member and credited with the authorized interest to his individual account in the member savings account.

(15) "Annual compensation" means the compensation that is paid or payable to a teacher or auxiliary employee by his employers for service during a school year, except that compensation in excess of \$25,000 for school years after September 1, 1969, and compensation in excess of \$8,400 for school years prior to September 1, 1969, shall not be included as annual compensation.

(16) "Military duty" means:

(A) active duty in the Armed Forces of the United States during World War I or a period within 12 months thereafter;

(B) active duty in the Armed Forces of the United States during World War II or a period within 12 months thereafter; and

(C) any active duty, while a member of the retirement system, in the Armed Forces or Reserve Components of the United States or any of their auxiliaries, or the American Red Cross, or the Federal Bureau of Investigation, or as a civil service librarian under a war-service appointment, and during either a period when the United States was or is at war or involved in a police action with foreign powers, as defined by the State Board of Trustees in accordance with this chapter, or a period within 12 months thereafter.

(17) "Retirement" means withdrawal from service with a retirement benefit or allowance granted under the provisions of this chapter.

(18) "Beneficiary" means any person receiving an annuity, retirement benefit or allowance, or other benefit provided in this chapter.

(19) "Designated beneficiary" means any person nominated by a member to receive in case of the member's death any benefit payable after such death under the provisions of this chapter.

(20) As to retirements under the retirement system prior to May 31, 1971, the term "standard annuity" shall have the meaning given such term by the laws in effect at the date of the retirement of the member, as to retirement benefits, or at the date of death of the member as to death benefits allowed under the system prior to May 31, 1971. As to benefits arising by reason of retirement or death of any member on or after May 31, 1971, the term "standard annuity" means an annuity payable in equal monthly installments, aggregating in 12 months:

(A) one and seventy-five one-hundredths percent (1.75%) for each year of prior service credit multiplied by the member's "best-five-years-average compensation"; plus

(B) one and seventy-five one-hundredths percent (1.75%) for each year of membership service multiplied by the member's "best-five-years-average compensation."

(21) "Best-five-years-average compensation" means the average annual compensation received by the member as a teacher or as an auxiliary employee during the 5 years of creditable service (whether or not consecutive) in which the member earned the highest annual compensation. For school years prior to September 1, 1969, compensation in excess of \$8,400 shall be excluded in calculating the best-five-years-average compensation, and for school years after September 1, 1969, compensation in excess of \$25,000 shall be excluded in calculating the best-five-years-average compensation.

(22) "School year" means the year beginning on or about September 1 of any calendar year and ending August 31 of the following calendar year.

(23) "Actuarial equivalent" of any benefit means a benefit of equal monetary value when computed upon the basis of annuity or mortality tables and on an interest or discount rate adopted by the State Board of Trustees for such purpose from time to time and in force at the time the benefit is originally entered upon.

(b) In case of doubt the State Board of Trustees of the retirement system shall determine whether a person is a "teacher" or "auxiliary employee" within the contemplation of this chapter.

(c) In cases where the annual compensation includes maintenance, the State Board of Trustees shall fix the value of that part of the compensation not paid in money.

[Acts 1971, 62nd Leg., p. 1450, ch. 405, § 1, eff. May 26, 1971.]

### § 3.03. Membership

(a) All persons who on the effective date of this code were members of the Teacher Retirement System of Texas shall continue as members subject to the provisions of this chapter, except as provided in Chapter 729, Acts of the 60th Legislature, Regular Session, 1967 (Article 2922-1i, Vernon's Texas Civil Statutes<sup>1</sup>).

(b) Every person who may be employed as a teacher or auxiliary employee in any public school or other branch or unit of the public school system of this state shall become a member of the retirement system as a condition of his employment. This subsection shall not apply to require membership of any person who

(1) has heretofore, pursuant to authority of former laws, executed and filed a waiver of membership in the retirement system; however, any such person may elect to become a member at the beginning of any school year, but shall not be entitled to credit for prior service unless payments for the waived service are made as provided in Section 3.25 of this code;

(2) was or may be for the first time employed as a teacher or auxiliary employee, and who at such time was or may be more than 60 years of age; however, such person may elect to become a member of the retirement system as of the effective date of employment by notifying his employer and the State Board of Trustees within 90 days from the effective date of employment; or

(3) elects to participate in the retirement program provided by Chapter 729, Acts of the 60th Legislature, Regular Session, 1967 (Article 2922-1i, Vernon's Texas Civil Statutes).

[Acts 1971, 62nd Leg., p. 1452, ch. 405, § 1, eff. May 26, 1971.]

<sup>1</sup> Repealed; see, now, § 51.351 et seq.

### § 3.04. Termination of Membership

(a) Membership in the retirement system shall terminate if the member

(1) dies;

(2) withdraws his accumulated contributions while absent from service;

(3) accepts retirement under this chapter; or

(4) is absent from service more than five consecutive years within any period of six consecutive years, except as provided in Subsections (b) and (c) of this section.

(b) Absence from service shall not terminate membership if the member does not withdraw his accumulated contributions and has 10 or more years of creditable service, regardless of age, at or before the time he ceases to be employed in the public schools of Texas.

(c) A member is not considered to be absent from service while rendering active military duty.

(d) If the membership of any member shall terminate, except by death or retirement, all his creditable service theretofore allowed or earned shall be forfeited.

(e) Should a person whose membership has terminated again become a member, he shall enter the retirement system upon the same terms as a person entering service for the first time on that date and shall not be entitled to credit for prior service or other terminated service, unless it is reinstated upon the terms and conditions set out in Section 3.25 of this code.

[Acts 1971, 62nd Leg., p. 1452, ch. 405, § 1, eff. May 26, 1971.]

### § 3.05. Reciprocal Service

Any member of the teacher retirement system may claim credit with the teacher retirement system for service rendered as a state employee as provided in Chapter 230, Acts of the 56th Legislature, Regular Session, 1959 (Article 6228a-2, Vernon's Texas Civil Statutes).

[Acts 1971, 62nd Leg., p. 1453, ch. 405, § 1, eff. May 26, 1971.]

### § 3.06. Offenses Against the Retirement System

(a) Any person convicted of confiscation, misappropriation, or conversion of money representing deductions from members' salaries, and/or belonging to the retirement system; or intentional falsification, or acquiescence therein, of any statement or record in order to defraud the retirement system, is guilty of a felony and for each offense shall be confined in the state penitentiary for any term of years not less than one nor more than five.

(b) Any person convicted of violating any provision of this chapter (excluding those felonies set out in Subsection (a) of this section) is guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$1,000.

(c) A member of the retirement system convicted of intentionally receiving money which should have been deducted from his salary in accordance with this chapter is guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500.

(d) The state commissioner of education may cancel the teacher certificate of any person committing any offense set out above in this section when notified thereof by the State Board of Trustees and after giving the person opportunity for a fair hearing. Actual prosecution of any person committing any of the offenses named in this section is not prerequisite to the commissioner's cancellation action. Appeal from the commissioner's action lies with the State Board of Education, whose decision in the matter is final.

[Acts 1971, 62nd Leg., p. 1453, ch. 405, § 1, eff. May 26, 1971.]

**§ 3.07. Exemptions From Execution**

Retirement allowances, annuities, refunded contributions, optional benefits, money in the various accounts created by this chapter, or any other right accrued or accruing to any person under the provisions of this chapter are exempt from any state or municipal tax, levy, sale, garnishment, attachment, or any other process whatsoever, and shall be unassailable except as provided in this chapter.

[Acts 1971, 62nd Leg., p. 1453, ch. 405, § 1, eff. May 26, 1971.]

[Sections 3.08 to 3.20 reserved for expansion]

**SUBCHAPTER B. CREDITABLE SERVICE**

**§ 3.21. Determination**

(a) The State Board of Trustees shall determine by appropriate rules and regulations how much service in any year is equivalent to one creditable year of service, but in no case shall more than one creditable year of service be given for all service in one school year.

(b) Years of creditable service at retirement, on which the amounts of retirement benefit or allowance of a member is based, shall consist of the number of years of membership service credits, prior service credits, and military leave credits to which he is entitled. Such service credits shall be determined and regulated by Sections 3.22-3.25 of this code.

[Acts 1971, 62nd Leg., p. 1453, ch. 405, § 1, eff. May 26, 1971.]

**§ 3.22. Prior Service Credits**

(a) Under the rules and regulations adopted by the State Board of Trustees each person on becoming a member of the retirement system for the first time shall file a detailed statement of all his prior service as a teacher or auxiliary employee in Texas.

(b) Subject to the restrictions in Subsection (a) of this section and to such other rules and regulations as they may adopt, the State Board of Trustees, as soon as practicable after the filing of the statements of service, shall verify and adjust the service claimed and shall grant one year of prior service credit for each year of prior service approved.

(c) After verification and adjustment, the State Board of Trustees shall notify each member of the number of years of prior service credits which have been granted.

(d) Nothing in this section shall require the filing of new claims for credits by members who have previously verified and had prior service credits approved.

(e) In addition to teachers who became members in 1937, and auxiliaries who became members in 1949, any member who has credit for five consecutive years of membership service and who has no unpaid, waived, withdrawn, or delinquent service shall be entitled to credit for prior service.

(f) Any member shall be entitled to one year of prior service credit for each year of military duty performed during World War I or within a period of 12 months thereafter.

[Acts 1971, 62nd Leg., p. 1454, ch. 405, § 1, eff. May 26, 1971.]

**§ 3.23. Membership Service Credits**

(a) Under such rules and regulations as the State Board of Trustees may adopt, a member shall be allowed membership service credit for each year of service rendered in accordance with the provisions of this chapter if he has made and maintained with the retirement system all deposits and payments required by this chapter or prior existing laws.

(b) Any member who performed one or more years of military duty while a member of the retirement system shall be permitted to deposit to his individual account in the member savings account for each year of duty an amount equal to his deposits made with the retirement system during the last preceding full year of service as a teacher or auxiliary employee. He shall then be entitled to one year of membership service credit for each year of military duty.

(c) Any member who performed one or more years of military duty during World War II and within a period of 12 months thereafter shall be permitted to deposit to his individual account in the member savings account for each year of such military duty, but not to exceed five years, an amount equal to his deposits made with the retirement system during the first full year of service as a teacher or auxiliary employee after becoming a member of the retirement system. He shall then be entitled to one year of membership service credit for each year of military duty.

(d) Any member who performed one or more years of service as educational adviser in the Civilian Conservation Corps shall be permitted to deposit to his individual account in the member savings account for each year of service as an educational adviser, but not to exceed five years, an amount equal to his deposits made with the Retirement System during the first full year of service as a teacher or auxiliary employee after becoming a member of the Retirement System. He shall then be entitled to one year of membership service credit for each year of educational adviser duty.

[Acts 1971, 62nd Leg., p. 1454, ch. 405, § 1, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 393, ch. 173, § 1, eff. Aug. 27, 1973.]

**§ 3.24. Military Leave Credits**

Military leave credit shall be granted to any member who has performed, or may perform, a period of military duty, but who failed or fails to make deposits entitling him under this chapter to membership

service credit. The member shall be credited with a year of service for each year of military duty in determining his eligibility for retirement under this chapter, but military leave credit shall not be included in calculating the amount of benefits payable to the member upon retirement.

[Acts 1971, 62nd Leg., p. 1455, ch. 405, § 1, eff. May 26, 1971.]

### § 3.25. Reinstatement of Service Credits

(a) Any teacher or auxiliary employee who has executed a waiver of membership in the retirement system shall have the privilege of electing to receive full membership service credit, provided such teacher or auxiliary employee after becoming a member of the retirement system shall deposit all back deposits, assessments, and dues which he would have paid or deposited had he been a member of the retirement system during each of the years he actually taught or was employed as an auxiliary employee in the public schools following the date on which he first became eligible for membership in the retirement system, together with interest from the date each amount was payable at the rate of five percent per annum. One-half of the interest shall be credited to the state contribution account.

(b) Any person who terminates or has terminated membership in the retirement system by withdrawal of deposits or by absence from service shall have the privilege of reinstating such terminated membership by rendering service for five subsequent consecutive creditable years or seven subsequent creditable years within any ten-year period and depositing the amount withdrawn plus membership fees for the years during which membership was terminated plus a reinstatement fee of two and one-half percent per annum from the date of withdrawal to date of redeposit. The reinstatement fee shall be credited to the state contribution account.

(c) Any person who terminates or has terminated membership in the retirement system by retiring under the provisions of Section 3.31 of this chapter shall have the privilege of reinstating such terminated membership by rendering service for five consecutive years and depositing both an amount equal to service retirement benefits received plus a reinstatement fee of two and one-half percent per annum from the date of his return to employment to the date of redeposit and an amount equal to six percent of his total annual compensation after his return to employment plus a reinstatement fee of two and one-half percent per annum on each year's annual compensation from the end of the respective year of service to the date of deposit plus membership fees for the years after his return to employment. Upon payment of the amount required by this subsection the reinstated member shall receive credit for each year's service both before and after his initial retirement. Reinstatement fees shall be credited to the state contribution account.

(d) The amounts to be deposited shall be determined in each case by the State Board of Trustees and no person shall be granted retirement upon such service credits until the amount so determined is paid in full.

[Acts 1971, 62nd Leg., p. 1455, ch. 405, § 1, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 393, ch. 173, § 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 708, ch. 303, § 1, eff. June 11, 1973.]

### § 3.26. Purchase of Credit for Out-of-State Teaching

(a) Any member of the retirement system who has been employed as a teacher in any public school system maintained in whole or in part by any other state or territory of the United States or by the United States for children of United States citizens may purchase equivalent membership service credits under this retirement system for such teaching.

(b) For each year that out-of-state service credit is desired, the member shall deposit to his individual account with the retirement system 12 percent of the annual compensation received during his first year as a teacher of this state which is both after the out-of-state teaching and September 1, 1956, or, in the event the member has no creditable service in Texas after September 1, 1956, 12 percent of his rate of annual compensation during his last creditable year of service in Texas prior to that date and subsequent to the out-of-state teaching. A deposit for at least one year's credit must be made with the initial application and all payments for out-of-state service for which credit is desired must be made before retirement.

(c) For each year that deposits are made, the member shall be granted immediately upon payment of the required deposit one year's membership service credit subject, however, to the special conditions which are:

(1) No person shall be allowed to acquire credits on the basis of teaching employment outside this state in excess of one year for each two years of service in Texas.

(2) In the event credits for employment outside this state must be disallowed in part because of the member's failure to qualify the non-Texas service under the provisions of this section, his deposits made for the years disallowed (considered to be those last purchased) will be refunded to him.

(3) No more than 10 years' total credit can be purchased under the provisions of this section.

(d) No member by reason of any credits purchased for non-Texas teaching employment shall be entitled to service retirement benefits under this chapter until he has actually rendered at least 10 years of creditable service in Texas, excluding any credit for non-Texas employment. Equivalent membership service credits granted for out-of-state teaching shall not be used in computing the member's "best-ten-years-average compensation."

(e) All such deposits shall be credited, pending retirement, to the member's individual account in the member savings account.

[Acts 1971, 62nd Leg., p. 1455, ch. 405, § 1, eff. May 26, 1971.]

[Sections 3.27 to 3.30 reserved for expansion]

## SUBCHAPTER C. BENEFITS

### § 3.31. Service Retirement Benefits

(a) The date of retirement for any eligible member shall be the last day of any month in which he makes written application to the State Board of Trustees, or in which he satisfies the age and service requirements of this subsection, whichever is later.

A member who retires after the effective date of this chapter shall be eligible to retire:

(1) with a standard service retirement benefit consisting of a standard annuity (calculated as provided in Section 3.02(a)(20) of this code) payable in monthly installments during such retired member's life, provided he has completed 10 or more years of creditable service and has attained the age of 65 years;

(2) with a service retirement allowance consisting of the actuarial equivalent of the standard service retirement benefit allowable under Subsection (a)(1) of this section for a like amount of creditable service reduced for early retirement from age 65, provided he has completed at least 15 years of creditable service and has attained the age of 55 years;

(3) with a standard service retirement benefit consisting of a standard annuity (calculated as provided in Section 3.02(a)(20) of this code) payable in monthly installments during such retired member's life, provided he has completed 20 or more years of creditable service and has attained the age of 60 years;

(4) with a service retirement allowance consisting of the actuarial equivalent of the standard service retirement benefit allowable under Subsection (a)(3) of this section for a like amount of service reduced for early retirement from age 60, provided he has completed at least 20 years of creditable service and has attained the age of 55 years; or

(5) with a service retirement allowance consisting of the actuarial equivalent of the standard service retirement benefit allowable under Subsection (a)(3) of this section for a like amount of creditable service reduced for early retirement from age 60, provided he has completed 30 or more years of creditable service.

(b) In lieu of any service retirement benefit allowable under Subsection (a) of this section, a member may elect, by giving notice to the State Board of Trustees in writing before the date fixed for retirement, to receive the actuarial equivalent of the benefit in the form of a reduced monthly amount payable throughout his lifetime, with provision for:

(1) Option One: on his death, the same monthly payments shall be made to and continued throughout the life of the person nominated by the member's written designation filed with the State Board of Trustees prior to his retirement; or

(2) Option Two: on his death, one-half of the same monthly payments shall be made to and continued throughout the life of the person nominated by the member's written designation filed with the State Board of Trustees prior to his retirement; or

(3) Option Three: on his death before 60 monthly payments have been made, they shall continue to the person nominated by the member in writing, or to such person's executor or administrator, until the remainder of the 60 payments have been made; or

(4) Option Four: on his death before 120 monthly payments have been made, they shall continue to the person nominated by the member in writing, or to such person's executor or

administrator, until the remainder of the 120 payments have been made; or

(5) Option Five: any other benefit arrangement approved by the State Board of Trustees and certified by the actuary to constitute the actuarial equivalent of the standard annuity retirement benefit to which the member is entitled under Subsection (a) of this section.

(c) A teacher member who takes service retirement upon or after attaining 65 years of age and completing 10 or more but less than 20 years of creditable service shall in any event be entitled to receive a minimum standard service retirement benefit of \$75 per month or its actuarial equivalent.

(d) An auxiliary member who retires upon or after attaining 60 years of age and completing 20 or more years of creditable service shall in any event be entitled to receive a minimum standard service retirement benefit of \$95 per month or its actuarial equivalent. An auxiliary member who takes service retirement on or after attaining 65 years of age and completing 10 or more but less than 20 years of creditable service shall in any event be entitled to receive a minimum standard service retirement benefit of \$60 per month or its actuarial equivalent.

(e) A teacher member who has retired or who retires on a standard service retirement benefit shall in any event be entitled to receive a minimum standard service retirement benefit of \$6.50 per month for each year of prior service credit and membership service credit to which he is entitled. A teacher member who has retired or who retires on a service retirement allowance or option other than a standard service retirement benefit shall in any event be entitled to receive the actuarial equivalent of a minimum standard service retirement benefit of \$6.50 per month for each year of prior service credit and membership service credit to which he is entitled.

(f) No annuity payment authorized under the provisions of this chapter shall be made for any fraction of a month in which the annuitant dies.

(g) At any time before his date of retirement a member by giving written notice to the State Board of Trustees may revoke his application for retirement and may make, revoke, or change his selection of an option as provided in Subsection (b) of this section. Except as specifically provided in this chapter, no person who has retired under the provisions of this chapter may revoke his retirement nor make, revoke, or change his selection of an option under Subsection (b) of this section.

[Acts 1971, 62nd Leg., p. 1456, ch. 405, § 1, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 393, ch. 173, §§ 3, 4, eff. Aug. 27, 1973.]

§ 3.32. Disability Benefits

(a) Upon application of a member, or (where the member is unable to make application) of his employer or legal representative acting in behalf of the member, the State Board of Trustees may, after the filing of said application, retire such member upon the applicable disability benefit set out below if the medical board after a medical examination, certifies that the member is mentally or physically disabled from further performance of duty and that such disability is probably permanent.

(b) If the member has less than 10 years of creditable service at the date of his retirement, he shall be paid a monthly disability benefit of \$50 for the duration of such disability, or for life, or for a period equal to the number of months of creditable service rendered by such member prior to date of such retirement, whichever term is shortest.

(c) If the member has more than 10 years of creditable service, but is not eligible for service retirement, he shall receive for the duration of his disability the standard annuity calculated on the basis of his creditable service to date of retirement, or the sum of \$50 per month, whichever is greater. In the event the disability retirement occurs after or continues until he attains 60 years of age, his disability shall be conclusively presumed continuous for the remainder of his life.

(d) Once each year during the first five years following disability retirement and once every three years thereafter, the State Board of Trustees may require any member who retired on a disability benefit and who has not yet attained age 60 to undergo a medical examination by a physician or physicians designated by the State Board of Trustees at the retired member's residence or any other place mutually agreed upon. Should he refuse to submit to at least one such medical examination during any authorized examination period, his allowance shall be discontinued until he consents to an examination; if his refusal continues for one year, all his rights to his allowance shall be revoked by the State Board of Trustees.

(e) If a person under 60 years of age who is receiving a disability retirement benefit is restored to active service, or if the medical board certifies to the State Board of Trustees that he is no longer physically or mentally disabled from further performance of duty and the State Board of Trustees concurs, his allowance shall be discontinued, he shall again become a member of the retirement system and the sum in his account before disability retirement, less all disability benefits paid to him, shall be transferred from the retired reserve account to his individual account in the member savings account. On restoration to membership, any creditable service used to compute a member's benefit when he retired shall be restored to full force and effect.

(f) If a person receiving a disability retirement benefit is gainfully employed, his allowance shall be suspended or reduced to an amount by which his salary earned during his last year of creditable service exceeds his present earnings. Should his earnings later change, his allowance may be further modified, but shall never exceed his original allowance.

(g) No member eligible for service retirement without reduction shall be allowed to retire on a disability allowance.

[Acts 1971, 62nd Leg., p. 1457, ch. 405, § 1, eff. May 26, 1971.]

### § 3.33. Beneficiary Designation

(a) Any member may provide in writing on a form the State Board of Trustees prescribes that the benefits payable under this chapter in the event of his death shall be paid to the designated beneficiary. The member may change or revoke a designation previously made by filing with the State Board of

Trustees, on a form it prescribes, a notice of change or revocation.

(b) In the event a member fails to designate a beneficiary, or the designated beneficiary predeceases the member and there is no designation effective at the date of death, the death benefits and election right to survivor benefits shall vest (in the order listed) with

(1) the surviving widow or surviving dependent widower of the deceased; or

(2) the children of the deceased in equal portions; or

(3) the dependent parent or parents of the deceased in equal portions.

(c) If none of the persons named in Subsection (b)(1), (2), and (3) of this section survive, then, to the member's estate, or to his heirs, in complete discharge of all claims for death and survivor benefits under this chapter, there shall be paid

(1) the return of the accumulated contributions of the member; or

(2) a \$500 lump sum if death occurs after retirement.

[Acts 1971, 62nd Leg., p. 1458, ch. 405, § 1, eff. May 26, 1971.]

### § 3.34. Death Benefits

(a) If a member dies before retirement and during any school year in which he is in service, his eligible designated beneficiary shall be paid, at the beneficiary's election, the greatest of the following amounts in the manner the State Board of Trustees by rule may prescribe:

(1) the annual compensation of the member for the preceding school year; or

(2) the rate of annual compensation of the member for the current school year; or

(3) 60 monthly payments equal to the monthly installments of a standard annuity (calculated as provided in Section 3.02(a)(20) of this code); or

(4) an annuity payable for the designated beneficiary's life with payments equal to those under Option One in Section 3.31(b)(1) of this code had the member retired at the end of the month preceding his death; or

(5) the accumulated contributions of the member's member savings account.

(b) In the event the designated beneficiary is other than a surviving widow, dependent widower, child, grandchild, brother, sister, or dependent parent of the deceased, or other person financially dependent on the deceased, the death benefits payable to the beneficiary under the provisions of this chapter shall be limited to the accumulated contributions in the member's member savings account.

(c) If a member dies during an absence from service, his designated beneficiary shall be paid:

(1) the same benefits payable upon the member's death in active service if the absence of the member from service was due to sickness, accident, or other cause which the State Board of Trustees determines to be involuntary or in furtherance of the objectives or welfare of the public school system, or during a period when he was eligible to retire or would become eligible

without further service to retire within five years of his last covered employment; or

(2) the accumulated contributions in the member's individual account if the absence of the member from service was not the result of sickness, accident, or other justifiable cause determined in this chapter.

[Acts 1971, 62nd Leg., p. 1459, ch. 405, § 1, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 394, ch. 173, § 5, eff. Aug. 27, 1973.]

§ 3.35. Survivor Benefits

(a) If a teacher member dies before retirement, his designated beneficiary (if entitled to a death benefit other than the accumulated contributions of the member) may elect, in lieu of the applicable death benefit authorized under Section 3.34 of this code, to receive a lump sum payment of \$500 plus the following applicable survivor benefits:

(1) if the designated beneficiary is the widow, dependent widower, or dependent parent of the deceased member, he may elect to receive for life a monthly benefit of \$75 commencing at age 65 or immediately if the beneficiary has already attained that age; or

(2) if the designated beneficiary is the widow or dependent widower of the deceased and has one or more children under 18 years of age or has the custody of one or more children of the deceased under 18 years of age, he may elect to receive a monthly benefit of \$150 until the youngest child attains the age of 18 years, and at that time all payments shall cease until the beneficiary attains age 65 when he shall receive for life a monthly benefit of \$75; or

(3) if the designated beneficiary or beneficiaries are the deceased's dependent children under the age of 18 years, they may, on election of their guardian, receive a total monthly benefit of \$150 so long as there are two or more such children under 18 years of age; thereafter, when there is only one child remaining under 18 years of age, he may receive \$75 per month until attaining 18 years.

(b) If the designated beneficiary is a widow, dependent widower, or dependent parent of the deceased, the benefits payable under Subsection (a)(1) and (2) of this section shall cease upon the beneficiary's death or remarriage; in that event, however, payment of the benefits provided in Subsection (a)(3) of this section will commence if applicable.

(c) If an auxiliary member dies before retirement, his designated beneficiary or beneficiaries shall be entitled to the same elections provided in Subsection (a) of this section except that the monthly benefits shall be two-thirds of the amount payable to the beneficiary or beneficiaries of a deceased teacher member if his rate of compensation for his last year of employment was less than \$3,800.

[Acts 1971, 62nd Leg., p. 1459, ch. 405, § 1, eff. May 26, 1971.]

§ 3.36. Benefits Payable Upon Death After Retirement

(a) If a retired member dies while receiving a retirement benefit, his eligible designated beneficiary shall be entitled to the same survivor benefits provided for designated beneficiaries of members in

active service at death. Any benefit payable to the designated beneficiary under a service retirement option previously elected by the deceased shall not be affected by the beneficiary's eligibility for survivor benefits. The lump sum payment of \$500 shall be made regardless of the beneficiary's eligibility for any other survivor benefit.

(b) If a member retires upon a disability retirement benefit and dies while drawing his benefit, his beneficiary may elect to receive, in lieu of the benefit provided in Subsection (a) of this section, the same death benefit to which he would have been entitled had the deceased been in active service at death, less all disability payments made to the deceased.

(c) An unremarried widow or widower, as designated beneficiary of a member of the retirement system with 25 or more years of creditable service who died prior to April 8, 1957, shall be entitled to receive survivor benefits provided in this chapter for beneficiaries of members with a creditable year of service, except that the \$500 lump sum amount shall not be payable, and provided that such beneficiary did not receive or is not receiving a death benefit other than the return of the member's deposits plus accumulated interest.

(d) Any unremarried widow or widower, as designated beneficiary of a retired member who did not have a creditable year of service after November 23, 1956, and who died prior to August 23, 1963, while receiving a retirement annuity from the retirement system, shall be entitled to receive survivor benefits provided elsewhere in this chapter, except that the lump sum amount shall not be payable.

(e) Benefits provided in Subsections (c) and (d) of this section shall become effective on the last day of the month in which the qualified beneficiary applies to the retirement system in such form as may be prescribed by the State Board of Trustees and payments shall be due from and after that date only, and the same age requirements specified elsewhere in this chapter shall apply to the provisions of these subsections.

(f) Upon the death of a retired member receiving service retirement benefits under Subsection (a) of Section 3.31 or service retirement benefits under Subsections (b)(1), (2) or (5) of Section 3.31 of this chapter when the retired member's designated beneficiary predeceases him, there shall be paid to the designated beneficiary, or to those provided in Subsections (b) and (c) of Section 3.33 of this chapter if there is no designated beneficiary in existence at the time of the retired member's death, an amount equal to the retired member's accumulated contributions less the total amount of service retirement benefits paid pursuant to Section 3.31 of this chapter to the retired member.

(g) Upon the death of a retired member's designated beneficiary who is receiving an annuity under Option One or Option Two as provided by Subsection (b) of Section 3.31 of this chapter or under Option Five of that subsection, if such option results in a total payment of benefits which is less than the accumulated contributions of the retired member, the estate or the heirs of the beneficiary shall be refunded an amount equal to the accumulated contributions of the retired member less the total amount of service retirement benefits paid pursuant

to Section 3.31 of this chapter to the retired member and his designated beneficiary.

(h) Payments provided by Subsections (f) and (g) of this section shall not affect the right of an eligible beneficiary to receive survivor benefits provided in this chapter nor the right of any beneficiary to receive the lump sum payment of \$500 as provided in Subsection (a) of this section.

[Acts 1971, 62nd Leg., p. 1460, ch. 405, § 1, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 394, ch. 173, § 6, eff. Aug. 27, 1973.]

### § 3.37. Employment After Retirement

(a) Any person receiving a service retirement benefit from the retirement system may be employed in the public schools of Texas:

(1) on a part-time day-to-day basis only not to exceed 80 school days in any one school year as a substitute for an employee who is absent from duty;

(2) as a substitute in a vacant position until such position can be filled, but not to exceed 30 days, but any substitute employment in a vacant position shall be deducted from the 80 days permitted as a substitute for an absent employee; or

(3) on as much as a one-third time basis if the retired member is over age 60.

(b) This employment will not affect any person's rights to any benefits under the retirement system. However, it will not entitle a person to additional creditable service under the retirement system and the person so employed shall not be required to make further contributions to the system.

(c) A person who reports for duty as a substitute during any day and works any portion of that day, shall be considered to have worked one day. The State Board of Trustees of the retirement system shall by rule define "one-third time basis" and shall adopt rules governing the employment of a substitute.

(d) A person receiving a service retirement from the retirement system who is employed in any position in the public schools of Texas except as provided in this section, shall forfeit all retirement benefits for any month in which such employment occurs. Employment which begins as substituting may become permanent employment. A person who substitutes on a day-to-day basis in a regular position for an absent employee for more than 80 school days or for more than 30 school days in a vacant position and then continues in the same position shall be considered to have been a regular employee since the first day of employment and forfeits his retirement benefits for all months of employment in that position.

[Acts 1971, 62nd Leg., p. 1461, ch. 405, § 1, eff. May 26, 1971.]

### § 3.38. Limited Adjustment of Benefits in Effect

(a) Except as provided in this section, nothing in this chapter is intended to affect benefits allowed prior to May 31, 1971, by reason of retirement or death, prior to such date, of a member of the system.

(b) Beginning with the first day of March, 1971, a retired member shall have his monthly benefit increased by 10 percent of the amount he received during the preceding month or would have received

the preceding month if his benefit had not been suspended.

(c) Beginning with the first day of March, 1971, any person who, as beneficiary of a member, is receiving a benefit under the provisions of Section 3.01(b) or Section 3.04(a)(3) or Section 3.04(a)(4) of Chapter 41, Acts of the Regular Session of the 61st Texas Legislature, 1969,<sup>1</sup> shall have his monthly benefit increased by 10 percent of the amount he received during the preceding month.

(d) If, after increasing benefits to retired teacher members and beneficiaries of retired teacher members as provided in Subsections (b) and (c) of this section, the benefit is still less than the minimum benefit provided in Section 3.31(e) of this code, then the retired teacher member or his beneficiary shall be entitled to receive the minimum or the actuarial equivalent of the minimum provided by Section 3.31(e) of this code.

(e) Any person with more than 20 years and less than 25 years of service who has retired under a provision of the laws which governed the Teacher Retirement System of Texas granting a retirement annuity based upon the actuarial equivalent of a standard service retirement benefit reduced for early retirement from age 65 shall receive an annuity recomputed under the terms of Subsection (a)(4) of Section 3.31 of this chapter. The increase in payments to those affected shall begin on the last day of the month of the effective date of this subsection and shall not be retroactive to their respective dates of retirement.

[Acts 1971, 62nd Leg., p. 1461, ch. 405, § 1, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 395, ch. 173, §§ 7, 8, eff. Aug. 27, 1973.]

<sup>1</sup> Repealed; see, now, sections 3.31(b); 3.34(a)(3), (4).

### § 3.39. Optional Deductions for Medicare Payments

Any eligible person receiving retirement benefits under Section 3.31 of this chapter may authorize in writing the retirement system to deduct from his monthly annuity payment the amount required as a monthly premium for hospital insurance benefits provided to uninsured individuals not otherwise eligible for medical insurance for the aged as provided by Part A of Title XVIII of the Social Security Act<sup>1</sup> and for supplementary medical insurance benefits for the aged as provided by Part B of Title XVIII of the Social Security Act.<sup>2</sup> The retirement system shall, upon making these authorized deductions, pay the required premiums for the retired member to the Treasury of the United States subject to the laws of the United States and the rules and regulations of the Secretary of Health, Education, and Welfare concerning the time and manner of payment.

[Acts 1973, 63rd Leg., p. 395, ch. 173, § 9, eff. Aug. 27, 1973.]

<sup>1</sup> 42 U.S.C.A. § 1395c et seq.

<sup>2</sup> 42 U.S.C.A. § 1395j et seq.

[Sections 3.40 to 3.50 reserved for expansion]

## SUBCHAPTER D. ADMINISTRATION AND ORGANIZATION

### § 3.51. Establishment of Accounts

According to the purpose for which they are held, all assets of the retirement system shall be credited

to one of five accounts: the member savings account, the state contribution account, the retired reserve account, the interest account, and the expense account.

[Acts 1971, 62nd Leg., p. 1462, ch. 405, § 1, eff. May 26, 1971.]

**§ 3.52. Member Savings Account**

(a) In the member savings account shall be accumulated the regular percentage contributions made by members from their compensation together with interest allowable thereon. Interest on members' contributions shall be credited annually on August 31 at the rate of two and one-half percent of the balance in the account on the preceding September 1.

(b) Whenever any person ceases to be a member of the retirement system, except by death or retirement under the terms of this chapter, he shall be paid, after applying in writing on a form prescribed by the State Board of Trustees, all accumulated contributions in his individual account in the member savings account; his account shall be closed, and his membership (if not previously ended) shall be terminated.

(c) Accumulated contributions in any member's account at the date of termination of membership shall bear no interest thereafter.

(d) Seven years after cessation of service of a member with less than 10 years of service, and if no previous demand has been made, all accumulated contributions of a member shall be returned to him or his heirs. If the member or his heirs cannot be found, his accumulated contributions shall escheat to the retirement system and be credited to the retired reserve account.

[Acts 1971, 62nd Leg., p. 1462, ch. 405, § 1, eff. May 26, 1971.]

**§ 3.53. State Contribution Account**

In the state contribution account shall be accumulated all contributions hereafter made to the retirement system by the State of Texas as provided in Section 3.58 of this code, interest as provided in Section 3.55(b)(4) of this code, the retirement annuities forfeited by members who return to employment under the provisions of Section 3.37(d) of this code, and reinstatement fees and interest as provided in Section 3.25 of this code.

[Acts 1971, 62nd Leg., p. 1462, ch. 405, § 1, eff. May 26, 1971.]

**§ 3.54. Retired Reserve Account**

(a) In the retired reserve account shall be held all reserves for benefits heretofore or hereafter granted under the retirement system. From this account shall be paid all retirement annuities and all death or survivor benefits provided in this chapter. This account shall consist of transfers previously authorized by law and of future transfers made.

(b) To the retired reserve account shall be transferred:

- (1) the accumulated contributions in the member's individual account in the member savings account on his retirement or approval for payment of any benefit authorized under this chapter (except for the return of his accumulated contributions); plus, additional reserves from

the state contribution account which are certified by the actuary as necessary to provide for the payment of the approved benefit as it becomes due;

(2) interest as specified in Section 3.55(b)(2) of this code; and

(3) accounts as specified in Section 3.52(d) of this code.

[Acts 1971, 62nd Leg., p. 1462, ch. 405, § 1, eff. May 26, 1971.]

**§ 3.55. Interest Account**

(a) Into the interest account shall be paid all income, interest, and dividends derived from deposits and investments authorized by this chapter. Net capital gains realized from the sale of securities will be accumulated in the interest account until a reserve equal to 10 percent total common stock investments has been established. Annually, the excess over 10 percent will be transferred to the state contribution account together with any other balance remaining in the interest account.

(b) Once each year on August 31, transfers from the interest account shall be made:

(1) to the member savings account in an amount sufficient to credit the members' contributions with interest at the rate of two and one-half percent;

(2) to the retired reserve account in an amount sufficient to credit the average balance of the reserve account with interest at the rate of four and three-fourths percent per annum;

(3) to the expense account in an amount designated by the State Board of Trustees pursuant to Section 3.56(d) of this chapter; and

(4) to the state contribution account any balance remaining in the interest account.

(c) On August 31 of each year the State Board of Trustees may authorize by resolution a transfer from the interest account to the retired reserve account of an amount calculated by a rate in excess of that required by Subsection (b)(2) of Section 3.55 of this chapter, provided that the actuary designated in accordance with Subsection (o) of Section 3.59 of this chapter shall have recommended such rate as sufficient to fund the retired reserve account at an adequate level.

[Acts 1971, 62nd Leg., p. 1463, ch. 405, § 1, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 395, ch. 173, § 10, eff. Aug. 27, 1973.]

**§ 3.56. Expense Account**

(a) From the expense account shall be paid all expenses of administration and maintenance of the retirement system.

(b) The executive secretary shall prepare annually an itemized expense budget for the ensuing fiscal year and submit it to the State Board of Trustees for review and adoption.

(c) All membership fees required by provisions of this chapter shall be credited to the expense account. This fee payment shall be made to the State Board of Trustees each year with the member's first payment to the member savings account in the same manner provided in this chapter for payments to the member savings account. If the member is inactive, he shall pay the membership fee directly to the

Teacher Retirement System. If this fee payment is not made, however, the State Board of Trustees may deduct it from the member's first payment, or from the member's accumulated contributions in his member savings account before a refund is made.

(d) The State Board of Trustees by resolution recorded in its minutes shall transfer to the expense account from the interest account an amount necessary to cover the expenses as estimated for the year including the expense of servicing mortgages insured by the Federal Housing Administration under the National Housing Act.<sup>1</sup>

[Acts 1971, 62nd Leg., p. 1463, ch. 405, § 1, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 145, ch. 76, § 1, eff. May 7, 1973.]

<sup>1</sup> 12 U.S.C.A. § 1701 et seq.

### § 3.57. Member Contributions

(a) "Member Contributions": The rate of contributions required of each member of the retirement system shall be five percent of his annual compensation or \$180, whichever is the lesser, for service rendered by teachers between September 1, 1937, and September 1, 1957, or by auxiliaries for service rendered between September 1, 1949, and September 1, 1957, and for any member six percent of the first \$8,400 of his annual compensation for service rendered on or after September 1, 1957, to September 1, 1969. The rate of contribution required of each member after September 1, 1969, shall be six percent of his annual compensation. Every member shall also pay for operation of the system, an annual membership fee of \$5 which shall be credited to the expense account.

(b) Each employer shall deduct from the salary of each member six percent of his compensation for each payroll period.

(c) These deductions shall be made although they reduce a member's minimum compensation provided by law. Every member shall be deemed to consent to the deductions made and the payment of his compensation, less said deductions, shall constitute a complete release of all claims, except for benefits provided under this chapter for service rendered by him during the payment period.

(d) Each employer or his designated disbursing officer shall send all deductions and a certification of earnings of the member to the executive secretary, at such time and in such form as the State Board of Trustees may prescribe. All deductions received shall be deposited with the state treasurer whereupon they shall be deemed appropriated for use according to the provisions of this chapter.

(e) For the purpose of collecting contributions of members employed in common school or other school districts under his jurisdiction, the county superintendent or ex officio county superintendent is designated to perform the duties listed in this chapter.

(f) Any other educational institution supported in whole or part by the state shall have contributions deducted from the funds regularly appropriated by the state for its current maintenance.

(g) If deductions which should have been made from any member's salary were not in fact made, the member must pay these deductions, on terms prescribed by the State Board of Trustees. The member shall thereupon receive credit for the prior service to which he may be entitled under this chapter.

(h) The records of the State Board of Trustees shall be open to public inspection and any member shall be furnished, upon written request, no more often than once each year, with a statement of the amount in his individual account.

[Acts 1971, 62nd Leg., p. 1464, ch. 405, § 1, eff. May 26, 1971.]

### § 3.58. State Contributions

(a) "State Contributions": The State of Texas shall contribute during each year an amount equal to the collective deposits paid by all members of the retirement system during that same year. All assets heretofore contributed by the state to the retirement system, together with the contributions hereafter made, shall be held, credited, transferred, and expended for payment of authorized benefits as provided in this chapter.

(b) On or before November 1 preceding each regular session of the legislature, the State Board of Trustees shall certify to the state comptroller for his review and adoption the amount necessary to pay the state's matching contributions to the teacher retirement system for the ensuing biennium. This amount shall be included in the budget of the state which the governor submits to the legislature. The State Board of Trustees shall certify on or before August 31 of each year to the state comptroller and treasurer the estimated amount of contributions to be received from members during the ensuing year.

(c) All money appropriated by the state for the teacher retirement system shall be paid in monthly installments as provided in Chapter 3, Acts of 57th Legislature, 2nd Called Session, 1961 (Article 7083a, Section 2(3), Vernon's Texas Civil Statutes).<sup>1</sup> Each monthly installment shall be paid into the state contribution account.

[Acts 1971, 62nd Leg., p. 1464, ch. 405, § 1, eff. May 26, 1971.]

<sup>1</sup> See Civil Statutes, Art. 7083a.2.

### § 3.59. General Administration

(a) General administration of and responsibility for proper operation of the retirement system in accordance with the provisions of this chapter are vested in a State Board of Trustees, which shall consist of nine persons appointed as specified in Subsections (b), (c) and (d) of this section.

(b) Three members shall be appointed by the governor, with the advice and consent of the senate, one to hold office for the term of two years ending August 31, 1957, one to hold office for the term of four years ending August 31, 1959, and the third to hold office for the term of six years ending August 31, 1961.

(c) Two members shall be nominated by the State Board of Education subject to confirmation by two-thirds of the senate, one of whom shall hold office for a term ending August 31, 1973, and the other for a term of four years ending August 31, 1977.

(d) Four members shall be appointed by the governor, with the advice and consent of the senate, subject to the following requirements:

(1) Three such members shall each be appointed from a slate of three teacher members of the retirement system nominated by written ballot by the membership of the retirement system at an election conducted under the rules

and regulations adopted by the State Board of Trustees, one member to hold office for a term ending August 31, 1973, one member to hold office for a term ending August 31, 1975, and one member to hold office for a term ending August 31, 1977.

(2) One such member shall be appointed from a slate of three former teachers who have retired and are receiving benefits under the provisions of this chapter or of previous laws governing the Teacher Retirement System of Texas and who have been nominated by written ballot by those persons who have retired and are receiving benefits under the provisions of this chapter or of previous laws governing the Teacher Retirement System of Texas at an election conducted under the rules and regulations adopted by the State Board of Trustees. The retired teacher member shall hold office for a term of two years ending August 31, 1975. The State Board of Trustees shall send directly to all retired teachers notice of deadlines for filing as a candidate for nomination, information on procedures to follow in filing as such candidate, and written ballots.

(e) After expiration of the original terms, all appointments of trustees shall be for a term of six years. A vacancy in the office of a trustee shall be filled for the unexpired term in the same manner as the office was previously filled.

(f) The trustees shall serve without compensation, but shall be reimbursed from the expense account for all necessary expenses they may incur because of service on the board.

(g) Within 10 days after his appointment, each trustee, in addition to the constitutional oath, shall subscribe to the following: "I do solemnly swear that I shall, to the best of my ability, discharge the duties of a trustee of the Teacher Retirement System and shall diligently and honestly administer the affairs of its State Board of Trustees and that I shall not knowingly violate or willingly permit to be violated any provision of law applicable to the retirement system." Trustees shall subscribe to this oath before any officer qualified to administer oaths in Texas and file it in the office of the secretary of state.

(h) Each trustee shall be entitled to one vote and a majority of trustees present shall constitute the quorum necessary for a board decision at any meeting.

(i) Subject to the limitations in this chapter, the State Board of Trustees shall, from time to time, establish rules and regulations for membership eligibility, administration of the funds created by this chapter, and for transaction of its business.

(j) The State Board of Trustees shall elect from its membership a chairman. By a majority vote of all its members, the board shall appoint an executive secretary who is not one of its members but who has been a Texas citizen three years immediately preceding his appointment. The secretary shall recommend to the State Board of Trustees actuarial and other services necessary to administer the retirement system. The rate of compensation of all persons employed by the State Board of Trustees, as well as the amounts necessary for other expenses for the operation of the retirement system, shall be

approved by the State Board of Trustees, provided they shall be no greater than those for similar services performed for the State of Texas.

(k) The State Board of Trustees shall keep in convenient form data necessary for actuarial valuation of the various accounts of the retirement system and for checking the expenses of the system.

(l) The State Board of Trustees shall keep and open to public inspection a record of all of its proceedings. It shall publish annually a report showing the fiscal transactions of the retirement system for the preceding school year, the amount of the accumulated cash and securities of the system, and the last balance sheet presenting an actuarial valuation of the assets and liabilities of the retirement system.

(m) The attorney general of the State of Texas shall be legal advisor to the State Board of Trustees and represent it in all litigation.

(n) The State Board of Trustees shall appoint a medical board to be composed of three physicians not eligible to participate in the retirement system. They shall be legally qualified to practice medicine in Texas and shall be physicians in good standing in the medical profession. If required, other physicians may be employed to report on special cases. The medical board shall pass upon all medical examinations required by the provisions of this chapter, investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and report in writing to the State Board of Trustees its conclusions and recommendations upon the matters referred to it.

(o) The State Board of Trustees shall designate an actuary as its technical advisor. At least once every five years the actuary, on the authorization of the State Board of Trustees, shall:

(1) investigate the mortality, service, and compensation experience of members and beneficiaries of the retirement system;

(2) recommend, on the basis of this investigation, to the State Board of Trustees such tables and rates as are required; and

(3) make a valuation of all assets in and liabilities of the accounts created by this chapter based on tables and rates adopted by the State Board of Trustees.

(p) If by error in the records a member or beneficiary received more or less from the retirement system than he was entitled to receive, the State Board of Trustees shall correct the error and, so far as practical, adjust future payments so that he receives the actuarial equivalent of the benefit to which he was entitled.

[Acts 1971, 62nd Leg., p. 1465, ch. 405, § 1, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 24, ch. 21, § 1, eff. April 3, 1973.]

### § 3.60. Management and Investment of Funds

(a) The State Board of Trustees shall be the trustee of all funds, securities, money, and other assets of the retirement system with full power to invest and reinvest them, as authorized by Article III, Section 48b, of the Texas Constitution.

(b) All assets belonging to the retirement system from whatever source derived, shall be invested as a single fund and all securities acquired shall be held

collectively for the proportionate benefit of all accounts of the system.

(c) The state treasurer shall be custodian of all securities and cash. All payments from the accounts shall be made by him on warrants drawn by the state comptroller and authorized by vouchers signed by the executive secretary or such persons as the State Board of Trustees may designate. An attested copy of the board's resolution designating those persons shall be filed with the comptroller as his authority for issuing these warrants. The state treasurer shall furnish annually to the State Board of Trustees a sworn statement of the amount of funds in his custody belonging to the Teacher Retirement System.

(d) For meeting annuity and other disbursements, available cash not exceeding 10 percent of the combined assets in the retirement system, may be kept on deposit with the state treasurer.

(e) No trustee or employee of the State Board of Trustees shall have any direct or indirect interest in the gains from investments made with system assets, nor as trustee or employee receive any compensation for his service other than designated salary and authorized expenses. Any interest a person may have in the retirement funds as a member of the retirement system, however, is excluded from the preceding prohibition.

(f) Income from investments of funds shall be credited and expended as provided in this chapter. [Acts 1971, 62nd Leg., p. 1466, ch. 405, § 1, eff. May 26, 1971.]

### § 3.61. Bonds

(a) Bonds in the following amounts shall be required of: the state treasurer, on becoming custodian of the Teacher Retirement fund, \$50,000; the executive secretary, \$25,000; and any other employees and trustees of the board, in an amount the board deems necessary and sufficient.

(b) All bonds shall be made with a solvent surety company authorized to do business in Texas, shall be payable to the State Board of Trustees, shall be approved by the board and the attorney general, and shall be conditioned upon the bonded person's faithful performance of all his duties.

(c) Expenses incident to execution of the bonds, including premiums thereon, shall be paid by the State Board of Trustees from the expense account. [Acts 1971, 62nd Leg., p. 1467, ch. 405, § 1, eff. May 26, 1971.]

### § 3.62. Records—Microfilm, Etc.

(a) The retirement system is hereby authorized to photograph, microphotograph, or film all records pertaining to a member's individual file, accounting records, district report records, and investment records, and whenever the retirement system shall have photographed, microphotographed, or filmed such records and whenever such photographs, microphotographs, or films have been placed in conveniently accessible files and provisions made for preserving, examining, and using the same, the retirement system may cause the original record from which the photographs, microphotographs, or films have been made to be disposed of or destroyed.

(b) Photographs or microphotographs or films of any record photographed, microphotographed, or

filmed, as herein provided, shall have the same force and effect as the originals thereof would have had, and shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. Duly certified or authenticated copies of such photographs or microphotographs or films shall be admitted in evidence equally with the original photographs or microphotographs or films.

(c) The executive secretary or his duly authorized representative is hereby authorized to certify to the authenticity of any photograph, microphotograph, or film herein authorized and shall make such charges therefor as may be authorized by law. Such certified records shall be furnished to any person who is authorized by law.

[Acts 1971, 62nd Leg., p. 1467, ch. 405, § 1, eff. May 26, 1971.]

## CHAPTER 4. PENAL PROVISIONS

### Section

- 4.01. Repealed.
- 4.02. Interference with Operation of Foundation School Program.
- 4.03. Failure to Comply with Budget Requirements.
- 4.04. Violations by Treasurer or Depository.
- 4.05. Improper Payment of Salaries.
- 4.06. [Blank].
- 4.07. Unlawful Inquiry Into Religious Affiliation of Applicants for Positions.
- 4.08. Unlawful Inquiry Into Religious Affiliation.
- 4.09. Failure to Transfer Pupils and Funds.
- 4.10. Alteration of Teacher's Certificate.
- 4.11. Approving Voucher Without Certificate.
- 4.12. Traffic in Certificate Examinations.
- 4.13. Preventing Use of Adopted Textbooks.
- 4.14. Accepting Rebate on Textbooks.
- 4.15. Failure to Teach Texas History.
- 4.16. Failure to Teach Patriotism.
- 4.17. Repealed.
- 4.18. Operation of School Buses.
- 4.19. Hazing.
- 4.20. Fraternities, Sororities, Secret Societies.
- 4.21. Soliciting Pupils to Join Secret Societies.
- 4.22. Taking Intoxicants to Athletic Events.
- 4.23. Loitering on School Property.
- 4.24. Violation of Free Textbook Law.
- 4.25. Thwarting Compulsory Attendance Law.
- 4.26. Refusal to Answer Census Trustee.
- 4.27. Unlawful Campaign Contributions.
- 4.28. Interference with the Peaceful Operation of the Public Schools.
- 4.29. Falsifying Documents.
- 4.30. Disruptive Activities.
- 4.31. Exhibition of Firearms.
- 4.32. [Blank].
- 4.33. Disruption of Classes.

### § 4.01. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(1), eff. May 26, 1971

Section 4.01 prohibited a violation of duty by a school trustee, and was derived from:

- Acts 1931, 42nd Leg., p. 42, ch. 33, § 2.
- Acts 1969, 61st Leg., p. 179, ch. 75, § 4.
- Penal Code, art. 294a.

### § 4.02. Interference with Operation of Foundation School Program

(a) Any person who shall confiscate, misappropriate, or convert money appropriated to the Foundation School Fund to carry out the purposes of that program as set out in Chapter 16 of this code<sup>1</sup> after such money is received by the school district or

board of county school trustees in accordance with the terms of Chapter 16, shall be guilty of a felony and upon conviction shall be punished by confinement in the state penitentiary for not less than one year nor more than five years.

(b) Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified, any record, form, report, or budget required under the provisions of Chapter 16 of this code, or the rules of the state officials charged with the enforcement of the Foundation School Program, in any attempt to defraud the state or its school system as a result of such act, shall be guilty of a felony and upon conviction shall be punished by confinement in the state penitentiary for not less than one year nor more than five years. Such proceedings shall be instituted by the proper district or county attorney in accordance with Article 339, Revised Civil Statutes, 1925, or any other law appertaining thereto.

(c) Should any change or error in the records, forms, reports, or budgets result in any school district receiving from the Foundation School Fund more or less than it would have been entitled to receive had said records been correct, the commissioner of education shall correct such error, and so far as practicable shall adjust the payment in such a manner that the amount to which such district was correctly eligible shall be paid.

(d) Any person, including any county superintendent or ex officio county superintendent, school bus driver, school trustee, or any district superintendent, principal or other administrative personnel, or teacher of a school district, or its treasurer or proper disbursing officer, who violates any of the provisions of Chapter 16 of this code other than those to which subsections (a) and (b) of this section apply, shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$1000. Proceedings shall be instituted by the proper district or county attorney upon receipt of information from the state commissioner of education.

(e) If any person shall knowingly submit incorrect information to the Central Education Agency in any report required by Chapter 16 of this code or by the rules of the agency or by the commissioner of education for the honest administration of the Foundation School Program, such offenses shall constitute a felony, and any person upon conviction shall be punished by confinement in the state penitentiary for not less than two nor more than five years. [Acts 1969, 61st Leg., p. 2742, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 16.01 et seq.

**§ 4.03. Failure to Comply with Budget Requirements**

(a) Whoever fails to comply with the duties assigned him with regard to the preparation or the following of a county school budget or who violates any provision of Section 17.56 of this code shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$25 nor more than \$100.

(b) Any county superintendent approving any expenditure of school funds in excess of the item or items appropriated in the adopted budget or a supplementary or amended budget shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$100.

(c) Whoever fails to comply with the duties assigned him with regard to the preparation or the following of a budget of an independent school district or who violates any provision of Section 23.42 of this code shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$25 nor more than \$100.

(d) Each and any trustee of an independent school district who votes to approve any expenditure of school funds in excess of the item or items appropriated in the adopted budget or a supplementary or amended budget shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$25 nor more than \$100.

(e) Charges of the violation of this section may be instituted by the proper county or district attorney or by the attorney general.

[Acts 1969, 61st Leg., p. 2743, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 4.04. Violations by Treasurer or Depository**

(a) If any person who is by law a treasurer of any school district in this state, or if any officer, director, stockholder, agent, or employee of any corporation that is by law the treasurer or depository of any school district in this state shall fraudulently take, misapply, or convert to his own use any money, property, or other thing of value belonging to such district that may have come into his possession by virtue of his being treasurer of such district or that may have come into his possession by virtue of the corporation of which he is officer, director, stockholder, agent, or employee being the treasurer or depository of such district, or shall secrete the same with intent to take, misapply, or convert it to his own use or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be guilty of a felony and upon conviction shall be confined in the state penitentiary not less than 2 nor more than 10 years.

(b) Any county or city treasurer or treasurer of the school board of each city or town having exclusive control of its schools who fails to make and transmit any report and certified copy thereof, or either, required by law, shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$50 nor more than \$500.

[Acts 1969, 61st Leg., p. 2744, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 4.05. Improper Payment of Salaries**

Any employee of the state or of any district, county, city, town, or school, who may be responsible for the payment of the salary of any county judge acting as ex officio county superintendent of public schools, or of any county, district, or town superintendent or principal, or other school officer, or any teacher, librarian, assessor, county treasurer, treasurer of county school depository, or treasurer of school district depository, after notice by the commissioner of education that the person has failed to comply with the provisions of Sec. 21.254 of this code shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$50 nor more than \$500.

[Acts 1969, 61st Leg., p. 2744, ch. 889, § 1, eff. Sept. 1, 1971.]

## § 4.06. [Blank]

## § 4.07. Unlawful Inquiry Into Religious Affiliation of Applicants for Positions

(a) No board of education, trustee of a school district, superintendent, principal, or teacher of a public school, or other official or employee of a board of education shall directly or indirectly ask, indicate, or transmit orally or in writing the religion or religious affiliation of any person seeking employment or official position in the public schools of the State of Texas, except to inquire of the applicant whether or not he or she believes in the existence of a Supreme Being.

(b) No department, agency, or commission or any agent or employee of the state shall have the right to inquire, request, or in any manner directly or indirectly indicate, require, or request the religious affiliation of any applicant for any position in the public education system of this state.

(c) Any person who shall violate any provision of this section, or who shall aid or incite the violation of any provision of this section, shall for each and every violation thereof be liable to a penalty of not less than \$100 nor more than \$500, to be recovered by the person aggrieved thereby or by any resident of this state, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or the defendant shall reside; and such person shall also for every such offense be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$100 nor more than \$500 or shall be imprisoned not less than 30 days nor more than 90 days, or both. [Acts 1969, 61st Leg., p. 2744, ch. 889, § 1, eff. Sept. 1, 1969.]

## § 4.08. Unlawful Inquiry Into Religious Affiliation

(a) No person or organization employed or maintained to obtain or aid in obtaining positions for public school employees shall directly or indirectly ask or communicate orally or in writing, the religion or religious affiliation of anyone applying for employment in the public schools of this state, except to inquire whether or not he believes in the existence of a Supreme Being.

(b) Violation of Section (a) above shall subject the violator for each offense to:

(1) a civil penalty of not less than \$100 nor more than \$500, recoverable by the aggrieved applicant or his assignee in any court of competent jurisdiction located in the county of plaintiff's or defendant's residence; and

(2) a criminal punishment, of misdemeanor status, consisting of a fine of not less than \$100 nor more than \$500 or a jail term of not less than 30 days nor more than 90 days, or both.

[Acts 1969, 61st Leg., p. 2745, ch. 889, § 1, eff. Sept. 1, 1969.]

## § 4.09. Failure to Transfer Pupils and Funds

Any county judge serving as ex officio county superintendent or any county superintendent, district, city or town superintendent or any school officer, who refuses to transfer pupils and funds as provided in Subchapter C of Chapter 21 of this code<sup>1</sup> shall be fined not less than \$50 nor more than \$500 or be confined in jail not more than 60 days, or both.

[Acts 1969, 61st Leg., p. 2745, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 21.061 et seq.

## § 4.10. Alteration of Teacher's Certificate

Whoever shall wilfully raise, change, or alter any teacher's certificate or diploma, or other instrument having the force of a teacher's certificate, shall be deemed guilty of a felony and upon conviction shall be confined in the penitentiary not less than two nor more than seven years.

[Acts 1969, 61st Leg., p. 2745, ch. 889, § 1, eff. Sept. 1, 1969.]

## § 4.11. Approving Voucher Without Certificate

Any county or city superintendent or school trustee who approves any teacher's contract or voucher before the person has presented a valid teacher's certificate shall be fined not less than \$25 nor more than \$100.

[Acts 1969, 61st Leg., p. 2745, ch. 889, § 1, eff. Sept. 1, 1969.]

## § 4.12. Traffic in Certificate Examinations

Whoever shall sell, barter, or give away, prior to any forthcoming examination, to applicants for teachers' certificates, or to any person, the questions to be used by any board of examiners in the examination of teachers at any forthcoming examination; or any person who shall accept or otherwise obtain possession of such questions, or the answers thereto, prior to any such examination; or whoever shall use the same fraudulently at the time of said examination, or thereafter; or who shall permit or aid in the substitution of examination papers fraudulently prepared to be substituted for examination papers prepared during the examination; or who accepts remuneration for the granting of certificates or for aiding others to obtain certificates, except as provided for by law, shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$500 and imprisoned in jail for not less than 20 days nor more than 60 days.

[Acts 1969, 61st Leg., p. 2745, ch. 889, § 1, eff. Sept. 1, 1969.]

## § 4.13. Preventing Use of Adopted Textbooks

Any school trustee who shall prevent or aid in preventing the use in any public school in this state of the books or any of them as adopted under the provisions of Chapter 12 of this code,<sup>1</sup> or any teacher in any public school in this state who shall wilfully fail or refuse to use the books adopted shall be guilty of a misdemeanor and upon conviction shall be fined a sum of not less than \$5 and not more than \$50 for each offense, and each day of such wilful failure or refusal by a teacher or wilful prevention of the use of the books by a trustee shall constitute a separate offense.

[Acts 1969, 61st Leg., p. 2746, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 12.01 et seq.

## § 4.14. Accepting Rebate on Textbooks

Any school trustee or teacher who shall ever receive any commission or rebate on any books used in the schools with which he is concerned as trustee or teacher shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$50 and not more than \$100.

[Acts 1969, 61st Leg., p. 2746, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 4.15. Failure to Teach Texas History**

The history of Texas shall be taught in all public schools in and only in the history course of all such schools. The said course shall be not less than two hours in any one week. The commissioner of education shall notify the various county and city superintendents as to how said course shall be divided, and any city or county superintendent who fails or refuses to follow the provisions of this section shall be fined not less than \$25 nor more than \$200.

[Acts 1969, 61st Leg., p. 2746, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 4.16. Failure to Teach Patriotism**

Any official or employee of the public free schools of this state who fails to perform his legal duty in connection with the requirement that the daily program of every public school shall be so formulated as to include at least 10 minutes for the teaching of intelligent patriotism, including the needs of the state and federal governments, the duty of the citizen to the state and the obligation of the state to the citizen, shall be subject to a fine of not more than \$500 or removal from office or both fine and removal from office.

[Acts 1969, 61st Leg., p. 2746, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 4.17. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(1), eff. May 26, 1971**

Section 4.17 provided penalties for failure of any school official to use the English language as required by § 21.109, and was derived from:

- Acts 1918, 4th C.S., p. 170.
- Acts 1927, 40th Leg., p. 267, ch. 188.
- Acts 1933, 43rd Leg., p. 335, ch. 125.
- Acts 1969, 61st Leg., p. 871, ch. 289, § 4.
- Penal Code, art. 288.

**§ 4.18. Operation of School Buses**

(a) All vehicles used for the transportation of pupils to and/or from any school or college shall have a sign on the front and rear and on each side of the vehicle, showing the words "School Bus" and such words shall be plainly readable in letters not less than eight inches in height. It shall be the duty of the operator of any school bus to see that the signs are displayed, but if a school bus is being operated on a highway for any purpose other than the transportation of pupils, the markings indicating "School Bus" shall be covered or concealed.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor unless such violation is by other law of this state declared to be a felony. Every person convicted of a misdemeanor for violation of this section shall be fined not less than \$1 nor more than \$200 or confined in the county jail not to exceed 90 days or both; provided, however, that if death results to any person, caused either actually or remotely by a noncompliance or violation of this section, then and in that event, the party or parties so offending shall be punished as is now provided by law.

[Acts 1969, 61st Leg., p. 2747, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 4.19. Hazing**

(a) No student of the University of Texas, or Texas A & M University, or any state school of Texas, or any other state-supported institution of higher education, shall engage in what is commonly known and recognized as hazing, or encourage, aid, or assist any other person thus offending.

(b) "Hazing" is defined as follows:

(1) any wilful act by one student alone or acting with others, directed against any other student of such educational institution, done for the purpose of submitting the student made the subject of the attack committed, to indignity or humiliation, without his consent;

(2) any wilful act of any one student alone, or acting with others, directed against any other student of such educational institution, done for the purpose of intimidating the student attacked by threatening such student with social or other ostracism, or of submitting such student to ignominy, shame, or disgrace among his fellow students, and acts calculated to produce such results;

(3) any wilful act of any one student alone, or acting with others, directed against any other student of such educational institution, done for the purpose of humbling, or that is reasonably calculated to humble the pride, stifle the ambition, or blight the courage of the student attacked, or to discourage any such student from longer remaining in such educational institution or reasonably to cause him to leave the institution rather than submit to such acts; or

(4) any wilful act by any one student alone, or acting with others, in striking, beating, bruising, or maiming; or seriously offering, threatening, or attempting to strike, beat, bruise, or maim, or to do or seriously offer, threaten, or attempt to do physical violence to any student of any such educational institution or any assault upon any such students made for the purpose of committing any of the acts, or producing any of the results, to such student as defined in this section.

(c) No teacher, instructor, member of any faculty, or any officer or director, or a member of any governing board of any state-supported educational institution shall knowingly permit, encourage, aid, or assist any student in committing the offense of hazing, or wilfully acquiesce in the commission of such offense, or fail to report promptly his knowledge or any reasonable information within his knowledge of the presence and practice of hazing in the institution in which he may be serving to the executive head or governing board of such institution. Any act of omission or commission shall be deemed "hazing" under the provisions of this section.

(d) Any student of any state-supported educational institution of this state who shall commit the offense of hazing shall be fined not less than \$25 nor more than \$250 or shall be confined in jail not less than 10 days nor more than three months, or both.

(e) Any teacher, instructor, or member of any faculty, or officer or director of any state-supported educational institution who shall commit the offense of hazing shall be fined not less than \$50 or not more than \$500 or shall be imprisoned in jail not less than

30 days or not more than six months, or both, and in addition thereto shall be immediately discharged and removed from his then position or office in the institution, and shall thereafter be ineligible to reinstatement or reemployment as teacher, instructor, member of faculty, officer, or director in any state-supported educational institution for a period of three years.

(f) Nothing in this section shall be construed as in any manner affecting or repealing any law of this state respecting homicide, or murder, manslaughter, assault with intent to murder, or aggravated assault. [Acts 1969, 61st Leg., p. 2747, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 3007, ch. 994, § 1, eff. Aug. 30, 1971.]

#### § 4.20. Fraternities, Sororities, Secret Societies

(a) In all counties of this state, public school fraternities, sororities, and secret societies are prohibited in all the public schools of this state supported in whole or in part from public funds, which schools are below the rank or grade of colleges, and including within said provisions all high schools and junior high schools and all public schools of lower grades.

(b) A public school fraternity, sorority, or secret society as used in this section is hereby defined to be any organization composed wholly or in part of pupils of public schools below the rank of college or junior college as herein provided, which seeks to perpetuate itself by taking in additional members from the pupils enrolled in such school on the basis of the decision of its membership rather than upon the free choice of any pupil in the school who is qualified by the rules of the school to fill the special aims of the organization.

(c) Any public school fraternity, sorority, or secret society as defined in this section is hereby declared to be an organization inimical to the public good.

(d) It shall be the duty of school directors, boards of education, school instructors, and other corporate authority managing and controlling any of the public schools of this state within the provisions of this section to suspend or expel from the school under their control any pupil of such school who shall be or remain a member of, or who shall join or promise to join, or who shall become pledged to become a member of, or who shall solicit any other person to join, promise to join, or be pledged to become a member of any such public school fraternity, or sorority, or secret society. The above restrictions shall not be construed to apply to agencies for public welfare, viz.: Boy Scouts, Hi-Y, Girl Reserves, DeMolay, Rainbow Girls, Pan-American Clubs, scholarship societies, and other kindred educational organizations sponsored by the state or national education authorities.

(e) Any person violating any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than \$25 nor more than \$200 for each offense.

(f) The provisions of this section shall not apply to any universities, colleges, or schools organized for higher education beyond the high school and junior high school level, but the same shall apply to high schools, junior high schools, and all schools of lower grades.

[Acts 1969, 61st Leg., p. 2748, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 4.21. Soliciting Pupils to Join Secret Societies

(a) It shall be unlawful for any person not enrolled in a public school to solicit any student enrolled in any public school to join or pledge any public school fraternity, sorority, or secret society, or to solicit any such student to attend a meeting thereof, or any meeting where membership therein is encouraged.

(b) A public school fraternity, sorority, or secret society is any organization composed wholly or partially of students of public schools below the rank of college or junior college which seeks to perpetuate itself by taking in additional members from the student body of the school on the basis of its members' decision rather than on the free choice of any student qualified by the rules of the school to fulfill the special aims of the organization. This definition, however, does not apply to agencies organized for the public welfare including the Boy Scouts, Hi-Y, Girl Reserves, DeMolay, Rainbow Girls, Pan-American Clubs, scholarship societies, or any other kindred education organization sponsored by state or national education authorities.

(c) Universities, colleges, or other schools organized for education beyond the high school level are exempted from all provisions of this section.

(d) Any person convicted of violating any provision of this section shall be deemed guilty of a misdemeanor and upon conviction for each offense shall be fined not less than \$25 nor more than \$200. [Acts 1969, 61st Leg., p. 2749, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 4.22. Taking Intoxicants to Athletic Events

(a) The possession of any intoxicating beverage while entering or inside any enclosure, field, or stadium where athletic events sponsored or participated in by the public schools of this state are being held is unlawful.

(b) If any officer of this state sees any person violating this section, he shall immediately seize the intoxicating beverage and within a reasonable time deliver it to the county or district attorney to be held as evidence until the trial of the accused possessor and then dispose of same.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25 nor more than \$200.

[Acts 1969, 61st Leg., p. 2749, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 4.23. Loitering on School Property

(a) Any person loitering upon school property after being warned to leave by the person in charge shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25.00 nor more than \$200.00.

(b) School property for the purposes of this Act shall include the grounds of any public school and any grounds or buildings used for school sponsored assemblies or for activities.

[Acts 1969, 61st Leg., p. 2749, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 706, ch. 71, § 1, eff. April 26, 1971.]

#### § 4.24. Violation of Free Textbook Law

Any person convicted of wilfully violating any law providing for the purchase and distribution of free

textbooks for the public schools shall be fined not less than \$5 nor more than \$100.

[Acts 1969, 61st Leg., p. 2750, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 4.25. Thwarting Compulsory Attendance Law**

(a) If any parent or person standing in parental relation to a child, within the compulsory school attendance ages and not lawfully exempt or properly excused from school attendance, fails to require such child to attend school for such periods as required by law, it shall be the duty of the proper attendance officer to warn, in writing, the parent or person standing in parental relation that attendance must be immediately required. If after this warning the parent or person standing in parental relation wilfully fails to comply, the attendance officer shall file a complaint against him in the county court, or in the justice court of his resident precinct. Any parent or person standing in parental relation convicted of wilfully violating this section shall be fined not less than \$5 nor more than \$25 for the first offense, not less than \$10 nor more than \$50 for the second offense, and not less than \$25 nor more than \$100 for a subsequent offense. Each day the child remains out of school after the warning has been given or the child ordered to school by the juvenile court may constitute a separate offense.

(b) If any parent or person standing in parental relation can prove that he is unable to compel his child to attend school, he shall be exempt from the penalties provided in this section and his child may be proceeded against as a habitual truant and committed to a state juvenile training school or any other suitable school agreed upon between his parent or person standing in parental relation and the judge of the juvenile court.

(c) At the trial of any person charged with violating the provisions of this section, the attendance records of the child or ward may be presented in court by any authorized employee of the school district.

[Acts 1969, 61st Leg., p. 2750, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1484, ch. 405, §§ 3, 4, eff. May 26, 1971.]

**§ 4.26. Refusal to Answer Census Trustee**

Any person who is in a position of control over a child who will be over six but under 17 years of age on the next September 1 and who, although requested by the census trustee, refuses to comply with the requirements in Section 14.03<sup>1</sup> of this code shall be fined not less than \$5 nor more than \$10.

[Acts 1969, 61st Leg., p. 2750, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Repealed.

**§ 4.27. Unlawful Campaign Contributions**

(a) It shall be unlawful for any person, group of persons, organization, or corporation engaged in manufacturing, shipping, selling, storing, or advertising textbooks or in any other manner connected with the textbook business to make a financial contribution to or take part in, directly or indirectly, the campaign of any person seeking election to the State Board of Education.

(b) It shall be unlawful for anyone interested in selling bonds of any type whatsoever to make a

financial contribution to or take part in, directly or indirectly, the campaign of any person seeking election to the State Board of Education.

(c) Any person convicted of violating any provision of this section shall be fined not less than \$500 nor more than \$1,000 or sentenced to serve a jail term of not less than 90 days nor more than 180 days, or both.

[Acts 1969, 61st Leg., p. 2750, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 4.28. Interference with the Peaceful Operation of the Public Schools**

(a) In order to maintain law, peace, and order in the operation of the public schools without the use of military force, the county judge of each county in this state is authorized to require any organization, operating or functioning within the county and engaged in activities designed to hinder, harass, or interfere with the powers and duties of the State of Texas in controlling and operating its public schools to file with the county clerk, within seven days after such request is made, the following information, subscribed under oath before a notary public:

- (1) the official name of the organization and list of members;
- (2) the office, place of business, headquarters, or usual meeting place of the organization;
- (3) the officers, agents, servants, employees, or representatives of the organization;
- (4) the purpose or purposes of the organization; and
- (5) a statement disclosing whether the organization is subordinate to a parent organization and, if so, the name of the parent organization.

(b) The term "organization" as used in this section means any group of persons, whether incorporated or unincorporated, and includes any civic, fraternal, political, mutual benefit, legal, medical, trade, or other kind of organization.

(c) The information filed pursuant to Subsection (a) of this section is hereby declared public and subject to the inspection of any interested party.

(d) Any person having custody or control of the records of an organization who fails to furnish the information requested or any other person or organization who shall violate any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than \$50 nor more than \$200, and each day of violation shall constitute a separate offense.

[Acts 1969, 61st Leg., p. 2750, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 4.29. Falsifying Documents**

(a) No person may buy, sell, create, duplicate, alter, give, or obtain, or attempt to buy, sell, create, duplicate, alter, give, or obtain a diploma, certificate, academic record, certificate of enrollment, or other instrument which purports to signify merit or achievement conferred by an institution of education in this state with the intent to use fraudulently that document or to allow the fraudulent use of the document.

(b) A person who violates this section or who aids another in violating this section is guilty of a misdemeanor and upon conviction is punishable by a fine

of not more than \$1,000, and/or confinement in the county jail for a period not to exceed one year. [Acts 1971, 62nd Leg., p. 1484, ch. 405, § 5, eff. May 26, 1971.]

#### § 4.30. Disruptive Activities

(a) No person or group of persons acting in concert may wilfully engage in disruptive activity or disrupt a lawful assembly on the campus or property of any private or public school or institution of higher education or public vocational and technical school or institute.

(b) For the purposes of this section, disruptive activity means:

(1) obstructing or restraining the passage of persons in an exit, entrance, or hallway of any building without the authorization of the administration of the school;

(2) seizing control of any building or portion of a building for the purpose of interfering with any administrative, educational, research, or other authorized activity;

(3) preventing or attempting to prevent by force or violence or the threat of force or violence any lawful assembly authorized by the school administration;

(4) disrupting by force or violence or the threat of force or violence a lawful assembly in progress; or

(5) obstructing or restraining the passage of any person at an exit or entrance to said campus or property or preventing or attempting to prevent by force or violence or by threats thereof the ingress or egress of any person to or from said property or campus without the authorization of the administration of the school.

(c) For the purposes of this section, a lawful assembly is disrupted when any person in attendance is rendered incapable of participating in the assembly due to the use of force or violence or due to a reasonable fear that force or violence is likely to occur.

(d) A person who violates any provision of this section, is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed \$200 or by confinement in jail for not less than 10 days nor more than 6 months, or both.

(e) Any person who is convicted the third time of violating this section shall not thereafter be eligible to attend any school, college, or university receiving funds from the State of Texas for a period of two years from such third conviction.

(f) Nothing herein shall be construed to infringe upon any right of free speech or expression guaranteed by the Constitutions of the United States or the State of Texas.

[Acts 1971, 62nd Leg., p. 1484, ch. 405, § 6, eff. May 26, 1971.]

#### § 4.31. Exhibition of Firearms

(a) It shall be unlawful to interfere with the normal activities, the normal occupancy, or normal use of any building or portion of a campus of any private or public school or institution of higher education or public vocational and technical school or institute by exhibiting or using or threatening to exhibit or use a firearm.

(b) A person who violates this section is guilty of a felony and upon conviction is punishable by a fine of up to \$1,000 or by imprisonment in jail for a period not to exceed six months, or by both fine and imprisonment, or by imprisonment in the state penitentiary for a period not to exceed five years.

[Acts 1971, 62nd Leg., p. 1485, ch. 405, § 7, eff. May 26, 1971.]

#### § 4.32. [Blank]

#### § 4.33. Disruption of Classes

(a) Any person who, on school property or on public property within 500 feet of school property, shall alone or in concert with others wilfully disrupt the conduct of classes or other school activities shall be guilty of a misdemeanor and upon conviction therefor shall be punished by a fine not to exceed \$200.

(b) In this section:

(1) "School property" shall include public school campuses or school grounds upon which any public school is located, and any grounds or buildings used by a school for assemblies or other school-sponsored activities.

(2) "Public property" shall include any street, highway, alley, public park, or sidewalk.

(3) Conduct which disrupts the educational activities of a school includes:

(A) emission by any means of noise of an intensity which prevents or hinders classroom instruction;

(B) enticement or attempted enticement of students away from classes or other school activities which students are required to attend; and

(C) prevention or attempted prevention of students from attending classes or other school activities which students are required to attend.

(c) The provisions of this section shall be cumulative of existing law, and should any portion hereof be found to be in conflict with any provision of existing law, the provisions hereof shall prevail.

[Acts 1971, 62nd Leg., p. 3341, ch. 1024, art. 2, § 11, eff. Sept. 1, 1971.]

## TITLE 2. PUBLIC SCHOOLS

### CHAPTER 11. CENTRAL EDUCATION AGENCY

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SUBCHAPTER A. GENERAL PROVISIONS

§ 11.01. Composition and Purpose

The State Board of Education, the State Board for Vocational Education, the state commissioner of education, and the State Department of Education shall comprise the Central Education Agency. It shall carry out such educational functions as may be assigned to it by the legislature, but all educational functions not specifically delegated to the Central Education Agency shall be performed by county boards of education or district boards of trustees. [Acts 1969, 61st Leg., p. 2752, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 11.02. General Powers and Duties

(a) The Central Education Agency shall exercise general control of the system of public education at the state level in accordance with the provisions of this code.

(b) Any activity with persons under 21 years of age which is carried on in the state by other state or

federal agencies, except higher education in approved colleges, shall be subject in its education aspects to the rules and regulations of the Central Education Agency.

(c) Except for agreements entered into by the governing board of a state university or college, the Central Education Agency shall be the sole agency of the State of Texas empowered to enter into agreements with respect to education undertakings, including provision of school lunches and the construction of school buildings, with an agency of the federal government. No county board of education or board of trustees of a school district shall enter into contracts with, or accept money from, an agency of the federal government except under rules and regulations prescribed by the Central Education Agency.

[Acts 1969, 61st Leg., p. 2753, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 11.03. Supervision of the Texas School for the Deaf

The Central Education Agency shall have exclusive jurisdiction and control over the Texas School for the Deaf, and it shall be the duty of the commissioner of education to appoint a superintendent for that school, subject to approval by the State Board of Education. Such jurisdiction shall extend but not be limited to the physical assets of the school, and appropriations made for its benefit shall be administered and expended by the agency.

[Acts 1969, 61st Leg., p. 2753, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 11.04. Superintendent of the Texas School for the Deaf

(a) The superintendent of the Texas School for the Deaf shall be a graduate of an accredited university or college, shall have a minimum of one school year of full-time classroom teaching, shall have at least a total of five years' experience in educating the deaf with at least two of those years acquired in some supervisory capacity in training the deaf, and shall have special training in the education of the deaf in a duly certified school granting such special training.

(b) The superintendent shall reside at the school and shall devote his time exclusively to the duties of his office.

(c) The superintendent may be removed from office by the State Board of Education on recommendation of the commissioner of education for the commission of any felony or any other offense involving moral turpitude, or for failure to carry out the duties of his office.

[Acts 1969, 61st Leg., p. 2753, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 11.05. Printing at the Texas School for the Deaf

(a) The art of printing, in all its branches, shall be among the subjects of study offered at the Texas School for the Deaf.

(b) A competent, practical printer shall be employed as instructor.

(c) Any public printing for the state may be performed at the Texas School for the Deaf without regard to any contract with an individual, firm, or corporation for public printing.

[Acts 1969, 61st Leg., p. 2753, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 11.051. Travel and Clothing Expenses for Certain Deaf Students**

(a) In this section, "economically deprived children" means children having parents or guardians whose financial condition is such that it would work a hardship upon them to pay the travel or clothing expenses of their children.

(b) The travel expenses of economically deprived children attending the Texas School for the Deaf shall be paid by the state out of funds appropriated by the legislature. The superintendent of the school shall, subject to the requirements of Subsection (c) of this section, make the determination in his sole discretion of which children are entitled to have their travel expenses paid.

(c) No money appropriated for travel expenses may be expended except in compliance with the following rules:

(1) The travel expenses shall be paid only when it is necessary for the student to travel to his home, and only for trips to and returning from his home.

(2) The superintendent of the school shall plan the travel of students so as to achieve maximum economy and efficiency.

(3) A student traveling by rented or public conveyance is entitled to a travel allowance equal to the actual cost of necessary transportation, meals, and lodging.

(d) The expenses of purchasing clothes for economically deprived children attending the Texas School for the Deaf shall be paid out of funds appropriated by the legislature. The superintendent of the school shall make the determination in his sole discretion of which children are entitled to have clothes purchased for them.

[Acts 1971, 62nd Leg., p. 3348, ch. 1024, art. 2, § 21, eff. Sept. 1, 1971.]

**§ 11.06. Supervision of the Texas School for the Blind**

The Central Education Agency shall have exclusive jurisdiction and control over the Texas School for the Blind. It shall be the duty of the commissioner of education to appoint a superintendent for that school, subject to approval by the State Board of Education. Such jurisdiction shall extend but not be limited to the physical assets of said school, and appropriations made for its benefit shall be administered and expended by the agency.

[Acts 1969, 61st Leg., p. 2754, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 11.07. Superintendent of the Texas School for the Blind**

(a) The superintendent of the Texas School for the Blind shall be a graduate of an accredited university or college and shall have a minimum of four years of educational administrative experience, at least two years of which shall have been in the education or supervisory training of the blind.

(b) The superintendent shall reside at the school and shall devote his time exclusively to the duties of his office.

(c) The superintendent may be removed from office by the State Board of Education on recommendation of the commissioner of education for the commission of any felony or any other offense involving moral turpitude, or for failure to carry out the duties of his office.

[Acts 1969, 61st Leg., p. 2754, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 11.08. Skilled Oculist for the Texas School for the Blind**

A skilled oculist shall be employed to examine regularly all students at the Texas School for the Blind and to administer treatment to all cases of curable blindness among such students.

[Acts 1969, 61st Leg., p. 2754, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 11.09. Preschool Program for Children With Hearing Loss**

(a) The Central Education Agency shall develop a special program for preschool children who have a hearing loss sufficiently severe to prevent adequate progress in speech development.

(b) The purpose of the program shall be to prepare such children for entry in the first grade of the Texas School for the Deaf or the Texas public schools by providing them with a command of some form of communication with others.

(c) Any child three years of age or older on his last birthday, who has a hearing loss sufficiently severe to prevent adequate speech development, shall be eligible for such a program.

(d) The Central Education Agency shall establish the academic requirements for teachers who teach in this program and shall issue certificates to teachers who meet such standards.

(e) The cost of operating this special program shall be borne by the state and each participating district on the same percentage basis applicable to financing the Foundation School Program within the district. The cost of the program shall include a salary—not to exceed the prevailing local salary scale—as well as a maintenance and operational allotment of \$50 per month for each teacher. The state's share of the cost will be paid from the foundation school program fund and shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for Foundation School Program purposes.

[Acts 1969, 61st Leg., p. 2754, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 11.10. Special Day Schools for the Deaf**

(a) The Central Education Agency is authorized to approve the establishment and operation of county-wide special day schools for the deaf in all counties having a population of 300,000 or more inhabitants, according to the last preceding federal census. Such schools shall be administered by a centrally located school district designated by the Central Education Agency in each such county, and the school districts accepting the designation shall provide appropriate physical facilities, buildings, equipment, supplies, materials, and transportation to all eligible children residing in the county without regard to school district boundaries.

(b) The provisions of this section may apply to any two contiguous counties whose cumulative population exceeds 140,000 but does not exceed 335,000, according to the last preceding federal census, provided that such two-county day schools shall be administered by one school district designated by the Central Education Agency.

(c) School districts in counties contiguous to those authorized to operate a bi-county day school for the deaf may participate in the day school for the deaf program upon approval by the Central Education Agency of requests from a school district in a county contiguous to those counties authorized to operate the bi-county day school and the school district designated to conduct the school. Participation of school districts in counties contiguous to those authorized to operate the bi-county day school for the deaf shall be on the same basis as for school districts within the counties authorized to operate the school.

(d) (1) All deaf children between the scholastic ages of 6 and 21, inclusive, residing in the county or multi-county providing a day school program herein authorized for such scholastics, shall be eligible to attend the school designated by the operating district.

(2) Provided, however, not later than June 1, the governing board of any school district, within a county or multi-county which has in operation a day school program approved under this law, may file with the Central Education Agency notice withdrawing for a next ensuing school year from such day school program to operate in lieu thereof an exceptional children program providing for the education of all its resident deaf children under applicable provisions of Subsection (4)a of Section 1 of Article III, Chapter 334, Acts of the 51st Legislature, 1949, as amended (Article 2922-13,<sup>1</sup> Vernon's Texas Civil Statutes).

(e) Deaf children between the scholastic ages of 6 and 13, inclusive, in such counties (heretofore eligible for admission in the Texas School for the Deaf) shall not be eligible for admission to the Texas School for the Deaf except upon recommendation of the superintendent of the operating district with the concurrence of the superintendent of the Texas School for the Deaf.

(f) Students between the scholastic ages of 6 and 13, inclusive, enrolled in the Texas School for the Deaf prior to August 28, 1961, from counties herein authorized to provide and which do provide countywide day schools shall have the option of continuing their program at Texas School for the Deaf or returning to their homes to attend the designated day schools authorized by this code.

(g) Children enrolled in the countywide day schools in such counties, who become 14 years of age on or before December 31, shall be eligible for admission to the Texas School for the Deaf or to continue their academic training and program of vocational planning, guidance, and training in the special day school.

(h) Total cost of operating countywide day schools authorized by this section shall be borne entirely by the state and shall be paid from the foundation school program fund. Such costs shall be considered and included by the Foundation School Fund Budget Committee in estimating the funds needed for purposes of the Foundation School Program and such

countywide day school program. No part of the operating costs herein provided for shall be charged to any of the school districts of this state.

(i) Operating costs for the program in each county shall be determined and paid on the basis of the following factors:

(1) one teacher unit shall be allocated for every eight eligible deaf pupils or major fraction of eight, except that in the case of a bi-county day school authorized by Subsection (b) of this section which has participating school districts as authorized by Subsection (c) of this section one teacher unit shall be allocated for every seven eligible deaf pupils or major fraction of seven;

(2) schools with 15 or more teacher units shall be allocated a full-time principal unit except that a bi-county day school authorized by Subsection (b) of this section which has participating school districts as authorized by Subsection (c) of this section shall be allocated a full-time principal unit;

(3) one supervisor shall be allocated for every 10 teacher units but not to exceed three supervisors; provided, however, that each approved school shall have at least one supervisor;

(4) one visiting teacher unit shall be allocated for each countywide or bi-county day school for the deaf;

(5) salaries of the teacher, supervisor, principal, and visiting teacher shall be determined, respectively, in accordance with the official salary schedule of the district where the day school is established;

(6) an operation expense allotment, including transportation, of \$700 per each eligible deaf pupil enrolled in the program each current school year;

(7) one initial allotment in the amount of \$3,000 per each teacher unit approved for the first year of operation only shall be allowed for the acquisition of transportation vehicles, auditory and other classroom equipment, and other aids and adjustments needed for training the deaf pupils in this program; and

(8) an allocation of \$1,000 operating fund for each continuing teacher unit activated for the 1969-1970 school year shall be made.

(j) No state funds provided for in Subsection (i) of this section shall be used for any other purpose than for the countywide special day schools for the deaf program herein referred to.

(k) The Central Education Agency shall approve the educational program for the countywide day schools, and the program shall be comparable to that of the Texas School for the Deaf.

(l) Except for school districts in any county already participating in the operation of countywide special day schools for the deaf, school districts in counties contiguous to counties participating in bi-county day schools for the deaf and also school districts in counties contiguous to those counties authorized to be added under this subsection may participate in the multi-county day school for the deaf program upon approval by the Texas Education Agency of requests from the applying school district and the school district designated to conduct the

school. Participation of school districts in all counties authorized to be added to the multi-county day school for the deaf program by this subsection shall be on the same basis as for school districts within the counties already included in the program.

(m) For the purposes of this section, any bi-county day school for the deaf which serves one or more additional counties may be referred to as a multi-county day school.

(n) The legislature by the addition of this and the following subsections to this Section 11.10, Texas Education Code, intends to continue a process of providing better education available to deaf children on a statewide basis in Texas, and to afford all deaf children an opportunity for achievement more equal to their peers with normal hearing.

(o) To carry out legislative intent and the objectives of subsections (n) and the following subsections of this Section 11.10, the Central Education Agency shall employ a Director of Deaf Education (at a salary not exceeding \$30,000) with the responsibility to develop and administer a comprehensive statewide plan for deaf education services including continuing diagnosis and evaluation, counseling and teaching, and designed to accomplish the following objectives:

(1) Assisting and counseling parents of children of any age whose hearing is determined by professionally acceptable evaluation to be non-functional for education purposes, such assistance and counseling to be provided in each of the regional day school programs for the deaf hereinbelow authorized, and admitting all children between the ages of three and 21 whose hearing is determined by professionally acceptable evaluation to be nonfunctional for educational purposes to the regional day school programs for the deaf; and

(2) Enabling a majority or as many as may be practicable of deaf children to reside with their parents or guardians and be afforded compensatory education in their home school districts or in facilities of regional day school programs for the deaf; and

(3) Enabling deaf children who are unable to attend schools at their place of residence and whose parents or guardians live too far from facilities of regional day school programs for the deaf for daily commuting or to be accommodated five nights a week in foster homes or other residential school facilities provided for by the Central Education Agency in order that such children may attend a regional day school program for the deaf; and

(4) Enrolling children in the Texas School for the Deaf at Austin or any other educational facility for the deaf upon the joint recommendations of the Director of Deaf Education, the superintendent of the child's regional day school program for the deaf, and the Superintendent of the Texas School for the Deaf at Austin, admitting to the Texas School for the Deaf only those children whose needs can best be met in that institution, designating the Texas School for the Deaf as the principal regional school for the central region of the state and Superintendent of the Texas School for the Deaf as the superintendent of the central region; and

(5) Encouraging children enrolled in regional day school programs for the deaf who have demonstrated ability to do so to return to regular school classes on a part-time, full-time or trial basis. Supplemental aid from the regional day school program for the deaf shall be made available to such children; and

(6) Recognizing the need for development of oral communications abilities in deaf children and the ability of many to achieve high educational excellence through that method, but also recognizing the inability of some to gain their education successfully by this means, the comprehensive plan developed by the Central Education Agency will call for the use of methods of communication which will best meet the needs of each individual deaf child in this state, with each child to be examined thoroughly so as to ascertain his potential for communications through oral means. The state director and regional superintendents may establish separate programs to accommodate diverse communication methodologies.

(p) The Central Education Agency shall apportion the state into not more than eight nor less than five areas each furnishing a regional day school program for the deaf. Geographic areas of each regional day school program for the deaf may be revised by the Central Education Agency for betterment of education for the deaf. Activities of a regional day school program for the deaf may be conducted on more than one site.

(q) The Central Education Agency shall employ a superintendent for each regional day school program for the deaf. These superintendents shall be responsible to the Director of Deaf Education of the Central Education Agency.

It is the intent of the legislature that local resources be utilized to the fullest practicable extent in the establishment and operation of the regional day school programs for the deaf. Regional superintendents are authorized and expected to contract with any qualified public or private organization or qualified individuals for diagnostic, evaluation and instructional services or any other services incidental to the education of deaf children, including transportation and/or maintenance.

Upon the recommendation of regional superintendents of the regional day school programs for the deaf the Central Education Agency shall employ educational and other personnel, may purchase or lease real or personal property, may accept gifts or grants of real or personal property or services from any source, public or private, including independent school districts and any institution of higher learning in this state, for the purpose of establishing and operating regional day school programs for the deaf.

The Central Education Agency may provide by rule or regulation that upon establishment of each regional school the countywide school(s) in that region shall become a part of the regional school operation and that all equipment, classroom supplies, and other personal property owned by the countywide schools shall become the property of the regional day school. When any such programs are combined, the directors and employees of the former countywide schools shall be employed in appropriate, substantially similar capacities within the regional day school program for that region.

(r) Costs of operation of the regional day school programs for the deaf shall be borne by the state and paid from the Foundation School Program Fund. Such costs shall be considered and included by the Foundation School Fund Budget Committee in estimating the needs for purposes of the Foundation School Program and the regional day school programs for the deaf. However, funds allocated to countywide schools shall remain so allocated except in those regions in which the countywide program has been made a part of the appropriate region, as aforesaid. Funds specially appropriated to the regional day school program by the General Appropriations Act of the 63rd Legislature, or any substitute therefor, shall be used so as to implement as completely as may be possible the provisions of this Act during the next biennium and in accordance with a budget of expenditures approved by the State Board of Education with the first funds, however, hereby required to be expended for staffing and planning of the regional day school program. Such funds may be used in conjunction with funds from the Foundation School Program Fund in accordance with rules and regulations adopted by the Central Education Agency, the allocation and reallocation of which is hereby authorized. While the principal cost of educating deaf children shall be borne by the state, independent school districts and all institutions of higher learning in the state are hereby authorized and encouraged to make available real or personal property or services in cooperation with the regional day school programs for the deaf for any activities related to education and betterment of education of deaf children including but not limited to research and personnel training and development. It is the intent of the legislature in enacting this subsection that the use of all of the educational resources of this state be maximized to carry out the intent and objectives of this Act.

(s) Operating costs for the program in each regional day school program for the deaf shall be determined and paid on the following basis:

(1) An estimated allocation of \$2,700 for each student enrolled in the program of the regional day school program for the deaf in any current year.

(2) Considering that the professional leadership represented in the new positions of Director of Deaf Education and regional superintendents is vital to the effect of this Act, salaries for these positions shall permit recruitment and retention of properly qualified persons.

(3) Teachers, principals, supervisors, counselors, para-professional and supporting personnel shall be employed in such numbers as the Central Education Agency finds to be necessary to establish and operate the regional day school programs for the deaf, and such numbers shall not be less than student-professional ratios known to be requisite for success in education of deaf children. Salaries of all personnel employed in the regional day school programs for the deaf shall be determined in accordance with policies established by the State Board of Education, but in no case shall such salaries be less than salaries paid for comparable positions in any school district comprising any part of the geographic area of the regional day school program for the deaf.

(t) To assure effective implementation of this Act the Central Education Agency shall upon the passage of this Act institute planning and research designed to accomplish the intent and objectives set forth herein including employment of the Director of Deaf Education and other personnel considered essential to meet the operational date specified for this Act.

(u) The regional day school programs for the deaf shall commence operation to the fullest extent possible on September 1, 1974.

[Acts 1969, 61st Leg., p. 2755, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., pps. 1485, 1486, ch. 405, § 7a to 9, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 1650, ch. 464, § 1, eff. May 27, 1971; Acts 1973, 63rd Leg., p. 733, ch. 317, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1591, ch. 574, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2. See, now, § 16-62.

**§ 11.101. Education of Deaf in Private Schools**

(a) The Central Education Agency may under the rules and regulations of the State Board of Education contract with private schools for the deaf to provide education and training for deaf children who are eligible for admission to the Texas School for the Deaf.

(b) Any contract authorized by this section shall provide for standards of education and training, and standards for buildings, equipment, and facilities at least equal to those provided by the Texas School for the Deaf.

(c) The amount paid under a contract authorized by this section on account of each eligible child shall not exceed the average cost per child under the program of countywide day schools for the deaf.

(d) The cost of this program shall be borne entirely by the state and shall be paid from the Foundation School Program. The total cost of this program shall be considered and included by the Foundation School Fund Budget Committee in estimating the funds needed for the Foundation School Program.

[Acts 1971, 62nd Leg., p. 1486, ch. 405, § 10, eff. May 26, 1971.]

**§ 11.11. Program for Non-English Speaking Children**

(a) The Central Education Agency shall develop a special program for non-English speaking children.

(b) The purpose of the program shall be to prepare such children for entry in the first grade of the Texas public schools by providing them with a command of essential English words which will afford them a better opportunity to complete successfully the work assigned them.

(c) The program for non-English speaking children shall cover a period of not to exceed four and one-half months.

(d) Any non-English speaking child who is at least five years of age and who will be eligible to enter the first grade in the ensuing school year may be enrolled.

(e) The Central Education Agency shall establish the academic requirements for teachers who teach in this program and issue certificates to those who meet such standards.

(f) The cost of operating this program shall be borne by the state and each participating district on

the same percentage basis applicable to financing the Foundation School Program within the district. The state's share of the cost of the program shall include a monthly salary not to exceed one-half the prevailing minimum salary schedule with increments as prescribed for classroom teachers in Subchapter D, Chapter 16 of this code,<sup>1</sup> as well as a maintenance and operational allotment of \$50 per month for each teacher. The state's share of the cost shall be paid from the foundation school program fund, and shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for Foundation School Program purposes.

(g) This program shall not be set up in any school district, or combination of school districts, unless at least 15 children qualify. The extent to which any school district shall participate in the foundation school program fund over and above the first unit shall be based on an average daily attendance of 20 eligible pupils. No state funds provided for in this section shall be used by the school district for any purpose other than for the non-English speaking program.

[Acts 1969, 61st Leg., p. 2756, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1487, ch. 405, § 11, eff. May 26, 1971.]

<sup>1</sup> Section 16.301 et seq.

#### § 11.12. Involvement With School Bus Regulations

The Central Education Agency and the State Board of Control, by and with the advice of the director of the Department of Public Safety, shall have joint and complete responsibility to adopt and enforce regulations governing the design, color, lighting and other equipment, construction, and operation of all school buses for the transportation of school children when owned and operated by any school district or privately owned and operated under contract with any school district in this state, and the regulations shall by reference be made a part of any such contract with a school district. The State Board of Control shall coordinate and correlate all specification data, finalize and issue the specification so adopted as provided for by Section 10, Chapter 304, Acts of the 55th Legislature, 1955 (Article 664-3, Vernon's Texas Civil Statutes). In the regulations, emphasis shall be placed on safety features and long-range, maintenance-free factors, and requiring that all school buses shall be purchased on competitive bids as provided by Section 3, Article V, Chapter 334, Acts of the 51st Legislature, 1949 (Article 634(B), Vernon's Texas Civil Statutes<sup>1</sup>). Every school district, its officers, employees, and every person employed under contract by a school district shall be subject to these regulations. The State Board of Control shall purchase equipment to conform to these standards.

[Acts 1969, 61st Leg., p. 2757, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Repealed; see, now, § 21.164 et seq.

#### § 11.13. Appeals

(a) Persons having any matter of dispute among them arising under the school laws of Texas or any person aggrieved by the school laws of Texas or by actions or decisions of any board of trustees or board of education may appeal in writing to the commissioner of education, who, after due notice to the parties interested, shall hold a hearing and render a

decision without cost to the parties involved, but nothing contained in this section shall deprive any party of any legal remedy.

(b) The decisions of the commissioner of education shall be subject to review by the State Board of Education.

(c) Any person, county, or school district aggrieved by any action of the Central Education Agency may appeal to a district court in Travis County, Texas. Appeals shall be made by serving the commissioner of education with citation issued and served in the manner provided by law for civil suits. The petition shall state the action from which the appeal is taken, and if the appeal is from an order of the State Board of Education, shall also set out the order, or relevant portion thereof. Upon trial the court shall determine all issues of law and fact. [Acts 1969, 61st Leg., p. 2757, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 11.14. Right Denied to Close or Consolidate Any Public School District

(a) The provisions of this chapter shall not be construed to give the State Board of Education, the commissioner of education, the State Department of Education, or anyone whomsoever, the power to close, to consolidate, or cause by regulation or rule to be closed or consolidated, any public school district in this state.

(b) The provisions of this code regarding and applicable to the consolidating, annexing, or otherwise closing of school districts of this state shall govern in all such matters.

[Acts 1969, 61st Leg., p. 2757, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 11.15. Advisory Council for Language-Handicapped Children

(a) The Advisory Council for Language-Handicapped Children shall consist of 12 members appointed by the governor, each member to serve a term of two years from the date of his appointment. A member may be reappointed for more than one term.

(b) The governor shall designate the chairman of the council. A majority of the appointed members, at the call of the chair, shall organize and elect the other officers that the council deems necessary.

(c) A member of the council serves without compensation, but on presentation of a voucher signed by the chairman of the council and approved by the commissioner of education, is entitled to receive reimbursement for actual expenses incurred while traveling on official council business.

(d) A majority of the council is a quorum for the conduct of business.

(e) The duty of the council is to study the problems of language-handicapped children and to advise the commissioner and the Central Education Agency in the development of programs designed to diagnose and treat the problems of language-handicapped children.

(f) The council shall report to the 63rd Legislature its findings and recommendations concerning the establishment of statewide diagnostic and treatment facilities for language-handicapped children.

(g) The governor shall appoint the members of the council as soon after the effective date of this act as possible. Because of the diverse nature of the problem of language-handicapped children, the governor is hereby encouraged by the legislature to make some appointments from the fields of psychology, medicine, and education.

(h) The Central Education Agency shall:

(1) develop programs, with the advice of the council, designed to diagnose and treat the problems of language-handicapped children; that is, a child who is deficient in the acquisition of language skills due to language disability where no other handicapping condition exists;

(2) establish, with the advice of the council, at least three regional experimental diagnostic facilities;

(3) develop rules, regulations, and guidelines governing the operation of the experimental diagnostic facilities;

(4) make the necessary agreements and contacts to establish the regional diagnostic facilities;

(5) actively seek the advice and cooperation of all appropriate public agencies and private institutions in the development of a program of diagnosis and treatment of language-handicapped children;

(6) seek and may accept grants from public and private sources to finance research and to develop a program designed to diagnose and treat language-handicapped children; and

(7) provide necessary staff, offices, and facilities for the council to conduct its business.

(i) The commissioner of education shall transmit to the 62nd Legislature an interim report on the status of the research into the problem of diagnosing and treating language-handicapped children. He shall include in his report an itemized estimate of the money required to conclude the research project satisfactorily by August 31, 1972.

(j) The council ceases to exist at midnight August 31, 1972.

[Acts 1969, 61st Leg., p. 2757, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1487, ch. 405, § 12, eff. May 26, 1971.]

**§ 11.16. Educational Program for Deaf Adults**

(a) The Central Education Agency shall establish and develop a State program for the education of deaf adults. The purpose of the program is to provide primary and secondary educational opportunities to adults whose hearing loss is severe enough to prevent use of the spoken method of communication and whose handicap has interfered with the attainment of a level of educational advancement otherwise potentially achievable.

(b) In the program the agency shall include:

(1) criteria and standards consistent with the purposes of this Act for determining the degree of hearing loss which makes a person eligible for education under this Act;

(2) criteria and standards for determining teachers' qualifications, curriculum, equipment, and classroom facilities which must be provided by a school district to qualify it for State assistance under this Act.

(c) The agency shall make, publish, and distribute rules under which school districts may apply for, qualify for, and receive State assistance for the administration of educational programs for deaf adults.

(d) Any school district may establish an educational program for deaf adults. To qualify for State assistance, a district must comply with the rules and standards of the Central Education Agency and must have at least 10 eligible deaf adult enrollees.

(e) Subject to legislative appropriation of money from the general revenue fund, the available school fund, the minimum foundation program fund, or any other available fund, the Central Education Agency shall allocate to each qualifying school district the sum of Two Hundred Fifty Dollars (\$250) per year for each student enrolled in the district's educational program for deaf adults.

[Acts 1971, 62nd Leg., p. 1644, ch. 460, § 1, eff. May 27, 1971.]

**§ 11.17. Bilingual Education Training Institutes**

[Text as added by Acts 1973, 63rd Leg., p. 863, ch. 392, § 2]

(a) The Central Education Agency shall conduct bilingual education training institutes.

(b) The agency shall make rules and regulations governing the conduct of and participation in the institutes.

(c) Professional and paraprofessional public school personnel who participate in the bilingual education training institutes shall be reimbursed for expenses incurred as a result of their participation in accordance with rules and regulations adopted by the agency.

[Acts 1973, 63rd Leg., p. 863, ch. 392, § 2, eff. Aug. 27, 1973.]

For text as added by Acts 1973, 63rd Leg., p. 1760, ch. 642, § 1, see section 11.17, post.

**§ 11.17. Advisory Council on Early Childhood Education**

[Text as added by Acts 1973, 63rd Leg., p. 1760, ch. 642, § 1]

(a) The Advisory Council on Early Childhood Education is created and shall assist the State Board of Education in formulating minimum standards for quality educational experiences in all public programs at the kindergarten grade level.

(b) The council is composed of 24 members appointed by the governor;

(1) one specialist from the State Department of Education from the kindergarten area;

(2) one specialist from Vocational Homemaking Education in the State Department of Education;

(3) one specialist in early childhood education from the faculty of a college or university department of education;

(4) one specialist in child development from the faculty of a college or university department of home economics;

(5) one specialist from the State Department of Public Welfare in early childhood development;

- (6) one representative of the Texas Association for the Education of Young Children;
- (7) one certified kindergarten teacher;
- (8) one nursery school teacher;
- (9) one representative of the Texas-Elementary-Kindergarten-Nursery Educators Association;
- (10) one director of a private nursery school;
- (11) one director of a day care facility;
- (12) one child psychologist;
- (13) one pediatrician;
- (14) one representative of the State Department of Health;
- (15) one representative of the State Department of Mental Health and Mental Retardation;
- (16) one representative of the Texas Elementary Principals and Supervisors Association;
- (17) one representative of the Texas State Teachers Association;
- (18) one representative from the Texas Association of Childhood Education;
- (19) one representative of the Texas Classroom Teachers Association;
- (20) one optometrist;
- (21) one representative from Vocational Homemaking Teachers Association of Texas;
- (22) one ophthalmologist;
- (23) one child psychiatrist; and
- (24) one parent of a child enrolled in a prekindergarten or kindergarten grade level program at the time of appointment.

(c) All appointments shall be for terms of two years, but membership of a representative of a specific agency or group shall terminate if the representative terminates his association with the agency or group. No person may be appointed to serve on the commission for more than two full terms. Vacancies shall be filled for the unexpired portion of the term, and an appointment for a portion of a term shall not disqualify the appointee for appointment for two additional full terms. If a member is absent from any four regularly scheduled meetings in any calendar year, his membership on the council shall terminate, and the chairman of the council shall notify the governor that the vacancy exists and the governor shall make a new appointment within 30 days.

(d) The council by majority vote of all its members shall elect a chairman from its membership. The council shall meet regularly with a minimum of six meetings each year. Additional meetings may be held at the call of the chairman. Members of the council serve without compensation, but are entitled to reimbursement for necessary and actual travel expenses incurred in the performance of their duties.

(e) The Central Education Agency, with the advice of the council, shall:

- (1) develop minimum standards for kindergarten education;
- (2) formulate minimum standards for the certification of teachers at the kindergarten grade level including:

(A) issuance of a kindergarten teaching certificate upon the completion of the bache-

lor's degree in child development through home economics or early childhood education departments from an accredited college or university which requires a multidisciplinary preparation and includes student teaching or one year of teaching experience;

(B) issuance of a preliminary teaching certificate upon the completion of the associate of arts degree in child development from an accredited junior college or other institution authorized to issue such degree;

(C) issuance of an emergency teaching certificate for those who do not qualify under Paragraph (A) or (B) of this subdivision but present evidence of commitment to a definite approved plan of study which upon completion would result in a regular certification;

(D) issuance of a paraprofessional teaching certificate for those who have completed training through a Home Economics Gainful Employment Program at a high school or through other programs approved by the State Board of Education;

(E) develop the curriculum and course of studies for the kindergarten grade level, to be revised each year as deemed necessary.

(f) The Central Education Agency, with the advice of the council, shall develop standards for the certification of professional and paraprofessional personnel and for the accreditation of public kindergartens.

(g) Not less than six months prior to each regular session of the legislature the Commissioner of Education shall recommend to the Governor desirable programs for public kindergartens and the administrative and legislative changes necessary to accomplish them.

[Acts 1973, 63rd Leg., p. 1760, ch. 642, § 1, eff. June 16, 1973.]

*For text as added by Acts 1973, 63rd Leg., p. 863, ch. 392, § 2, see section 11.17, ante.*

### § 11.18. Adult Education

(a) As used in this section, the following words and phrases shall have the indicated meanings:

(1) "Adult education" means services and instruction provided by public local education agencies below the college credit level for adults.

(2) "Adult" means any individual who is over the age of compulsory school attendance as set forth in Section 21.032 of this code.

(b) The Central Education Agency shall:

(1) manage this program with adequate staffing to develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for education and training of adults;

(2) develop, implement, and regulate a comprehensive statewide program for community level education services to meet the special needs of adults;

(3) develop the mechanism and guidelines for coordination of comprehensive adult education and related skill training services for adults with other agencies, both public and private, in

planning, developing, and implementing related programs;

(4) administer all state and federal funds for adult education and related skill training in Texas;

(5) prescribe and administer standards and accrediting policies for adult education;

(6) prescribe and administer rules and regulations for teacher certification for adult education; and

(7) accept and administer grants, gifts, services, and funds from available sources for use in adult education.

(c) Adult education programs shall be provided by public school districts, public junior colleges, and public universities approved in accordance with state statute and the regulations and standards formulated by the Central Education Agency. The programs shall be designed to meet the education and training needs of adults to the extent possible within available public and private resources. Bilingual education may be the method of instruction for students who do not function satisfactorily in English whenever it is appropriate for their optimum development.

(d) The State Board of Education may establish or designate an adult education advisory committee composed of no more than 21 members representing public and private nonprofit education, business, labor, minority groups, and the general public for the purpose of advising the board on needs, priorities, and standards of adult education programs conducted in accordance with this section of the Texas Education Code.

(e) Funds shall be appropriated to implement statewide adult basic education, high school equivalency, and high school credit programs to eliminate illiteracy in Texas and to implement and support a statewide program to meet the total range of adult needs for adult education and related skill training. An additional sum of money may be appropriated for the purpose of skill training in direct support of industrial expansion and start-up, in those locations, industries, and occupations designated by the Texas Industrial Commission, when such training is also in support of the basic purposes of this section.

[Acts 1973, 63rd Leg., p. 208, ch. 93, § 1, eff. Aug. 27, 1973.]

§ 11.19. [Blank]

§ 11.20. Pilot Programs for Physical Evaluations of School Children

(a) The Central Education Agency shall plan, institute, and supervise pilot programs in various school districts of this state for the purpose of screening children for health defects or problems.

(b) In each district selected for a pilot program, children shall be examined or evaluated in the manner prescribed by the Central Education Agency and by nurses or other allied health personnel specifically authorized to do so by the agency.

(c) Prior notice of the examination shall be given to the parents or guardian of each child, and no child shall be examined or evaluated if his parents or guardian object because of religious convictions.

(d) Whenever an abnormal health condition or problem is found in any child, the school nurse shall:

(1) advise the child's parent or guardian;

(2) suggest what action should be taken;

(3) if necessary, assist the family in obtaining access to appropriate health, rehabilitation, or treatment services; and

(4) review the case as necessary to determine that corrective action is taken to the extent possible.

(e) The agency shall require a record to be kept of each examination and actions taken pursuant to each examination. The record shall be confidential and shall be kept separate from the other records of the child. The records may be used for statistical purposes as long as the identity of each child is kept confidential.

(f) The agency shall require periodic reports from each district participating in the program for the purpose of evaluating the results of the program. The agency shall report its findings and recommendations to the legislature biennially during the first month of the regular session.

(g) The legislature shall appropriate money to finance the cost of the program, including planning, compensation for personal services, and necessary equipment and supplies.

[Acts 1973, 63rd Leg., p. 1576, ch. 567, § 1, eff. Aug. 27, 1973.]

SUBCHAPTER B. STATE BOARD OF EDUCATION

§ 11.21. Composition of Board

The State Board of Education is composed of one member elected from each congressional district established by law.

[Acts 1969, 61st Leg., p. 2759, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., 1st C.S. p. 25, ch. 5, § 1, eff. June 15, 1971.]

§ 11.22. Membership

(a) Members of the State Board of Education shall be elected at biennial general elections held in compliance with the general election laws of this state, to the board offices which will become vacant on December 31 of that year.

(b) No person shall be eligible for election to or serve on the board if he holds an office with the State of Texas or any political subdivision thereof, or holds employment with or receives any compensation for services from the state or any political subdivision thereof (except retirement benefits paid by the State of Texas or the federal government), or engages in organized public educational activity.

(c) No person shall be elected from or serve in a district who is not a bona fide resident thereof with five years' continuous residence prior to his election. No person shall be eligible for election or appointment to or service on the board unless he is a citizen of the United States, a qualified voter of his district, and is 30 years of age or older.

(d) The total amount authorized to be expended furthering or opposing the candidacy of any person for membership on the State Board of Education shall not exceed \$1,500.

(e) Candidates shall be nominated and elected in the manner provided in the Texas Election Code for nomination and election of district officers generally, except as otherwise provided in the Election Code or in this code.

(f) Repealed by Acts 1973, 63rd Leg., p. 90, ch. 51, § 19, eff. Aug. 27, 1973.

(g) It shall be unlawful for any person, group of persons, organization, or corporation engaged in manufacturing, shipping, selling, storing, advertising textbooks—or in any other manner connected with the textbook business—to make a financial contribution to, or take part in, directly or indirectly, the campaign of any person seeking election to the State Board of Education. It shall likewise be unlawful for anyone interested in selling bonds of any type whatsoever to make a financial contribution to or take part in, directly or indirectly, the campaign of any person seeking election to the board. Anyone convicted of violating the provisions of this subsection shall be punished as prescribed by the penal laws of this state.

(h) At the general election in 1972, and at each general election thereafter immediately following a decennial reapportionment of congressional districts, one member shall be elected to the board from each congressional district. Except as provided in Subsection (i) of this section, members of the board serve staggered terms of six years with the terms of one-third of the members expiring on December 31 of each even-numbered year.

(i) One-third of the members of the board elected in 1972 and at each general election following a decennial reapportionment of congressional districts shall serve for terms of two years, one-third for four years, and one-third for six years. Members shall draw lots to determine which shall serve for terms of two, four, and six years. If the total number of members divided by three results in a remainder of one, one additional six-year term shall be filled by lot. If the total number of members divided by three results in a remainder of two, one additional six-year term and one additional four-year term shall be filled by lot.

(j) Each member of the board shall take the official oath of office, and shall be bonded in the amount of \$10,000, in the manner prescribed in Chapter 383, Acts of the 56th Legislature, Regular Session, 1959 (Article 6003b, Vernon's Texas Civil Statutes).

(k) In case of resignation or death of a board member, or in case a position on the board otherwise becomes vacant, the board shall fill such vacancy as soon as possible by appointment of a qualified person from the affected district. The appointee shall hold office only until his successor is duly elected for the remainder of the unexpired term at the next general election and has qualified by taking the required oath and filing the required bond or until expiration of the term of office to which he has been appointed, whichever occurs first.

(l) A vacancy that occurs at a time when it is impossible to place the name of a candidate for the unexpired term on the general election ballot shall be filled by appointment, as specified in Subsection (k) of this section.

(m) Members of the board shall receive no salary but shall be reimbursed for all expenses incurred in

attending meetings of the board or incident to any judicial action taken because of appeal from a board order.

[Acts 1969, 61st Leg., p. 2759, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., 1st C.S. p. 25, ch. 5, § 2, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 89, ch. 51, §§ 16, 17, eff. Aug. 27, 1973.]

#### § 11.23. Meetings and Organization

(a) The board shall hold regular meetings in Austin, Texas, on the second Saturday in January, March, May, July, September, and November. It may hold other meetings as scheduled by its formal sessions or as may be called by the chairman.

(b) At its regular January meeting of each year following general election and qualification of new members, the State Board of Education shall organize, adopt rules of procedure, and elect a chairman, vice chairman, and secretary.

(c) No meeting of the State Board of Education shall be held unless attended by 14 members or more, and 14 members shall constitute a quorum for transacting all business. When the board is reduced below 14 members, vacancies may be filled by a majority vote of the remaining members.

[Acts 1969, 61st Leg., p. 2760, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1581, ch. 428, § 1, eff. May 26, 1971.]

#### § 11.24. General Powers and Duties

(a) The State Board of Education is the policy-forming and planning body for the public school system of the state. It shall also be the State Board for Vocational Education and as such, the board shall have all the powers and duties conferred on it by the various statutes relating to the State Board for Vocational Education.

(b) As one part of the Central Education Agency, the State Board of Education shall have specific responsibility for adopting policies, enacting regulations, and establishing general rules for carrying out the duties placed on it or the Central Education Agency by the legislature.

[Acts 1969, 61st Leg., p. 2760, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 11.25. Powers and Duties Related to Commissioner of Education

(a) The state commissioner of education shall be the executive officer through whom the State Board of Education shall carry out its policies and enforce its rules and regulations.

(b) The State Board of Education shall have power to pass on appeals from decisions made by the commissioner in applying such rules and regulations.

(c) The State Board of Education shall appoint, by and with the consent of the Texas Senate and in conformity with the requirements of Section 11.51 of this code, the state commissioner of education to serve for a period of four years, beginning June 1 and ending May 31, and may reappoint him for successive terms of four years at a salary to be set by the board.

(d) The board shall have power to remove the commissioner for conviction of a felony, or of any crime involving moral turpitude, or for wilful and continuous disregard of the board's directions on matters vital to the operation of the Central Education Agency and the public school system.

(e) When a vacancy occurs by reason of resignation, death, or removal, the board shall appoint a new commissioner for the unexpired term or an acting commissioner to serve at the board's discretion for a total consecutive term of not more than one year.

(f) On recommendation of the commissioner of education, the State Board of Education may authorize the commissioner to appoint as many official commissions composed of citizens of the state as are necessary to advise the commissioner of education in the discharge of his duties. A member of such a commission shall not receive any pay for his services on a commission other than reimbursement for actual expenses incurred. Necessary expenses for the operation of such commissions shall be included in the appropriate operating budget of the Central Education Agency and shall be subject to the same budget controls applied to all other items in the budget.

[Acts 1969, 61st Leg., p. 2761, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 11.26. Powers and Duties Related to Educational Needs of the State**

(a) The State Board of Education shall review periodically the educational needs of the state, adopt or promote plans for meeting these needs, and evaluate the achievements of the educational program. With the advice and assistance of the state commissioner of education, the State Board of Education shall

- (1) formulate and present to the governor and Legislative Budget Board the proposed budget or budgets for operating the Foundation School Program, the Central Education Agency, and the other programs for which it has responsibility;
- (2) adopt operating budgets on the basis of appropriation by the legislature;
- (3) establish procedures for budgetary control, expending, auditing, and reporting on expenditures within the budgets adopted;
- (4) make to the legislature biennial reports covering all the activities and expenditures of the Central Education Agency;
- (5) establish regulations for the accreditation of schools;
- (6) execute contracts for the purchase of instructional aids, including textbooks, within the limits of authority granted by the legislature;
- (7) execute contracts for the investment of the permanent school fund, within the limits of authority granted by Chapter 15<sup>1</sup> of this code;
- (8) prescribe rules and regulations for certification of teachers and for granting certificates for teaching in the public schools of this state, in accordance with Chapter 13 of this code;<sup>2</sup> and
- (9) consider the athletic necessities and activities of the public schools of Texas and in advance of each regular session of the legislature specifically report to the governor of Texas the proper and lawful division of time and money to be devoted to athletics, holidays, legal and otherwise, and to educational purposes.

(b) The State Board of Education shall not adopt any policy, rule, regulation, or other plan which

would require any school district within the state, as a prerequisite for accreditation or other approval, to hire any supervisor or any guidance counselor.

(c) All rules promulgated by the State Board of Education concerning the qualifications of personnel employed to fill the positions classified by the Central Education Agency shall contain the provisions stating that when specifically requested by a local board, persons holding a degree and a permanent teaching certificate, and already employed to fill the positions for which new qualifications are set shall not be disqualified from holding the positions for failure to meet the new qualifications.

[Acts 1969, 61st Leg., p. 2761, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2400, ch. 753, § 1, eff. June 8, 1971.]

<sup>1</sup> Section 15.01 et seq.  
<sup>2</sup> Section 13.01 et seq.

**§ 11.27. Providing for Deaf and Blind or Totally Blind and Nonspeaking Persons**

(a) For the purposes of this section, unless the context otherwise requires,

(1) "totally deaf and blind person" means a person having such defects of hearing and sight that in the opinion of the board he may not be cared for, treated, or educated in the manner provided elsewhere in this code for the deaf or blind; and

(2) "totally blind and nonspeaking person" means a person having such defects of sight and speech that in the determination of the board he may not be cared for, treated, or educated in the manner provided elsewhere in this code for the blind or nonspeaking.

(b) The State Board of Education may provide for the maintenance, care, and education of persons under the age of 21 years who are totally deaf and blind or totally blind and nonspeaking.

(c) The board may accept such persons on application of the parent or guardian and may require reimbursement for the cost of their maintenance, care, and education as is provided by law for other deaf and blind, or blind and nonspeaking, persons.

(d) The board may negotiate and enter into contracts with public or private institutions inside or outside the State of Texas which are equipped to provide the specialized facilities and personnel necessary to care for and educate persons who are totally deaf and blind, or totally blind and nonspeaking; it may also provide maintenance, the necessary attendants, and transportation to and from such institutions for such persons. The costs of these services may be paid from appropriations made to the Central Education Agency for the care of persons who are totally deaf and blind.

[Acts 1969, 61st Leg., p. 2762, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 11.28. Powers Related to Independent School Districts**

(a) The power of the State Board of Education to create and establish independent school districts has been abolished, but the State Board of Education shall continue to exercise the powers as provided in this section in those independent school districts which were created by the board under its former authority.

(b) It shall grant to such districts the right to share in the state per capita apportionment and such other privileges as are granted to independent and common school districts.

(c) The state commissioner of education shall appoint for each district a board of three trustees, who shall not be required to be residents of the district, except that for each military reservation independent school district the trustees shall be selected from a list of civilians who are qualified under the general school laws of Texas and who live or are employed on the military reservation. The list shall be furnished by the commanding officer of the military reservation to the commissioner of education. The trustees so appointed shall hold office for two years and until their successors are appointed and qualified.

(d) Each year the board of trustees shall take and certify the census of eligible children within the scholastic ages, and the children entitled to attend the reservation schools thus established shall be those of the officers, soldiers, and civilian employees residing or employed on the reservation.

(e) The board of trustees shall have the authority of transferring any school children who cannot be provided for by the district of their residence to any public school district maintaining adequate facilities and standards for elementary, junior, or senior high schools.

(f) The State Board of Education may make such special regulations and orders for the government of the district as it may deem expedient, but the laws pertaining to independent school districts where the district is not otherwise ordered, shall govern such district.

(g) On the written request signed by a majority of the board of trustees of the district, the State Board of Education may abolish the district, in which event the State Board of Education shall give written notice to the board of trustees of the district and to the board of county school trustees or county board of education of the county in which the district is located. The county governing board shall be required to add the territory of the abolished district to a school district contiguous to the territory and to add the school census taken for the district prior to its abolishment to the scholastic census of the district to which the territory is added.

(h) Any military reservation territory which is subject to the same post or base command as a military reservation used to house dependents of military and civilian personnel and which wholly contains an independent school district, whether or not such reservations are contiguous, may be annexed to that reservation independent school district by the State Board of Education pursuant to a petition by that post or base commander.

(i) When any military reservation territory has been annexed to an independent school district of the same post or base command under Subsection (h) of this section, and the territory is no longer used to house dependents of military and civilian personnel, the State Board of Education, on petition of the post or base command, or on petition of a majority of the trustees of the school district from which the territory was originally detached, shall be authorized to detach such territory from the military reservation constituting an independent school district and to

annex it to the school district from which it was originally detached.

[Acts 1969, 61st Leg., p. 2762, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 11.29. Adoption of Budget for the Central Education Agency

(a) The State Board of Education shall adopt annually a budget for the operation of the Central Education Agency. The budget shall be in accordance with the amounts appropriated by the general appropriations act and shall provide funds for the administration and operation of the Central Education Agency and any other necessary expense.

(b) Expenses eligible for payment in whole or in part from federal and special funds shall be designated in the budget.

(c) Expense items budgeted which are not eligible for payment from federal or special funds shall be paid from the foundation school program fund.

(d) The State Board of Education shall budget annually from the foundation school program fund for the operation of the Central Education Agency an amount not to exceed four-tenths of one percent of the total cost of the Foundation School Program as estimated for purposes of the foundation School Program Act by the board at its March meeting immediately prior to the adoption of the budget at the July meeting.

(e) The budget cost of operating the Central Education Agency which is paid from the foundation school program fund shall be included in the estimated cost of the Foundation School Program which is computed by the State Board of Education in March of each year for the determination of the local fund assignment to be charged to each school district.

(f) On or before August 15 of each year, a copy of the approved operating budget for the Central Education Agency showing total funds budgeted by sources of funds shall be filed with the state comptroller of public accounts. Thereafter, vouchers submitted by the state commissioner of education shall be paid from the appropriate fund.

[Acts 1969, 61st Leg., p. 2763, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 11.30. Authority to Enter Into Contracts for Grants

For the maintenance and improvement of state educational programs and activities in the public schools, the State Board of Education may enter into contracts for grants from both public and private organizations and may expend such funds under the terms and for the specific purposes contracted.

[Acts 1969, 61st Leg., p. 2764, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 11.31. Teacher-Training Programs

(a) The State Board of Education shall develop and publicize a program specifically designed to encourage and facilitate the entry into public-school teaching and into teacher-training programs of a corps of intelligent, mature, and concerned persons who have received bachelor's degrees from accredited institutions of higher education.

(b) The State Board of Education and the institutions of higher learning in this state that are ap-

proved for teacher education shall cooperate to develop procedures for the individual evaluation and appraisal of the training and training needs of persons applying for teacher certification who have possessed a bachelor's degree from an accredited institution of higher learning for a period of three years or longer and who are eligible under the laws of Texas to be certified, and to provide to these persons teacher-training programs that are appropriate to their needs and that can be completed in a reasonable time.

(c) The president or chancellor of each college or university in this state approved for teacher training shall appoint a three-member evaluation team to perform the individual evaluation and determine the individual training needs referred to in Subsection (b) of this section. The evaluation team shall be comprised of two members of the faculty of the department or school of education and

(1) one member from the school or college of arts and sciences if the individual is applying for evaluation for elementary certification; or

(2) one member from the teaching field of the individual if the applicant is applying for evaluation for secondary certification.

(d) More than one team as described in Subsection (c) of this section may be appointed at an institution when needed.

(e) When an applicant meeting the requirements in Subsection (b) of this section seeks to become certified to teach in the public schools of Texas, he shall present his transcript and any information covering any work experience or additional qualifications to an institution of higher learning approved for teacher education. The institution's evaluation team shall evaluate the applicant's transcript and work experience and, when practicable, interview the applicant to determine any deficiencies in either professional or content preparation, in the area of teaching specialization chosen by the applicant. The evaluation team shall give due consideration to the applicant's work experience, as well as to his academic record, and to any other evidence bearing upon his qualification as a teacher. The evaluation team shall then recommend what additional course work or other preparation is needed by the applicant to qualify for certification under standards established by the State Board of Education. While the applicant is pursuing the study and preparation recommended by the evaluation team, he will remain under its general guidance. His training may be reevaluated by the team when necessary, as when any teaching experience is acquired by the applicant either in student teaching or under emergency permit. When the team finds the applicant has satisfactorily met the requirements for certification, the team shall recommend him for a provisional certificate.

(f) The State Board of Education, with the advice and assistance of the state commissioner of education, shall develop a pattern of minimum standards for the certification of persons under this section. The pattern shall recognize the role and responsibility of the evaluation teams. As far as the training of persons under this section is concerned, the board shall allow the waiver of any current requirements for the provisional certificate not stipulated or implied by the standards developed for the guidance of

institutions for this particular program. However, nothing in this section shall be construed as permitting more requirements of an applicant under this section than would be made in an undergraduate program of teacher preparation; to the contrary, the legislative intent of this section is that, in recognition of the maturity, experience, and level of achievement of applicants in this program, course requirements would more likely be reduced, compressed, or combined, and would be more freely interchangeable with similar courses.

(g) The Central Education Agency is hereby authorized and directed to prepare, or have prepared, publicity materials, and to make these materials available for use to television and radio stations, newspapers and other periodicals, and any other appropriate communications media, to encourage qualified persons to enter the teaching profession and to publicize the training program directed in this section, as well as other teacher-training programs. The Central Education Agency is hereby authorized to use for this purpose any funds that have been or may be appropriated to it, and to accept and spend for this purpose any gifts or donations of funds made for this purpose.

(h) When the commissioner of education shall so direct, in the case of applicants seeking to enter this program to qualify to teach in trade or industrial courses, the requirement herein for a bachelor's degree may be waived.

(i) The State Board of Education, with the advice and assistance of the state commissioner of education, is hereby authorized to establish such rules and regulations as are not inconsistent with the provisions of this section and which may be necessary to implement and carry out the legislative policy expressed herein.

[Acts 1969, 61st Leg., p. 2764, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 11.311. Student Teacher Centers

(a) To provide college students facilities and supervision for student teaching experience required by law as a prerequisite to the issuance of a valid Texas teaching certificate, it is necessary that joint responsibility among the colleges or universities approved for teacher education by the State Board of Education of this state, the Texas public school districts, and the State of Texas be hereby established.

(b) The Central Education Agency, with the assistance of colleges, universities, and public school personnel, shall establish standards for approval of public school districts to serve as Student Teacher Centers, and define the cooperative relationship between the college or university and the public school which serves the student teaching program.

(c) The approved public school district serving as a student teacher center and the college or university using its facilities shall jointly approve or select the supervising teachers, employees of the district, to serve in the program and adopt an agreed continuing in-service improvement program for supervising teachers.

(d) There shall be paid to the public school district serving as a student teacher center the sum of \$200 for each supervising teacher, to be an additional increment for such additional services to the annual

salary of each such serving supervising teacher. In addition there shall be paid to the district the sum of \$50 per each supervising teacher unable to assist in meeting the costs incurred in providing facilities for student teaching. This total, \$250 per supervising teacher, shall be paid from the Minimum Foundation Program Fund; this cost shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for Foundation School Program purposes. The total number of supervising teachers to receive the additional increment herein provided shall never exceed 70 percent of the total number of student teachers enrolled in the practice teaching program.

[Acts 1971, 62nd Leg., p. 1488, ch. 405, § 13, eff. May 26, 1971.]

### § 11.32. Regional Education Media Centers

(a) The State Board of Education shall provide, by rules and regulations, for the establishment and operation of Regional Education Media Centers to furnish participating school districts with education media materials, equipment and maintenance, and educational services.

(b) Centers approved by the Central Education Agency as meeting the Board of Education requirements are established for the purpose of developing, providing and making available to participating school districts, among other education media services, the following:

(1) lending library service for educational motion picture films, 16 mm and 8 mm or improvements thereof, with such processing and servicing of films as is needed to maintain the library;

(2) lending library service for 35 mm slides, or improvements thereof, filmstrips, and disc recordings;

(3) comprehensive lending library collection of programmed instruction materials for both remedial and enrichment purposes;

(4) educational magnetic tape duplicating service for both audio and visual tapes, with the agency central duplicating faculty servicing the regional centers for program materials;

(5) overhead and other projection transparency duplicating service to provide visuals from prepared master copies; and

(6) professional and other services to assist schools in effective and efficient utilization of all center materials and services.

(c) Regional centers shall be located throughout the state so that each school district has the opportunity to be served and to participate in an approved center, on a voluntary basis. No center shall be approved unless it serves an area having 50,000 or more eligible scholastics in average daily attendance for the next preceding school year, except that the Central Education Agency may make an exception for sparsely populated areas.

(d) A Regional Education Media Center is an area center, composed of one or more Texas school districts, that is approved to house, circulate, and service educational media for the public schools of the participating districts.

(e) Each center shall be governed by a five- or seven-member board. The board size shall be determined locally and recommended in the initial appli-

cation for center approval. The State Board of Education shall adopt uniform rules and regulations to provide for the local selection, appointment, and continuity of membership for regional center boards. Vacancies shall be filled by appointment by the remaining members of the regional board for the unexpired term. All members shall serve without compensation.

(f) The Regional Media Board is authorized to employ an executive director for its respective center and such other personnel, professional and clerical, as it deems necessary to carry out the functions of the center, and to do and perform all things which it deems proper for the successful operation thereof, and to pay for all operating expenses by warrants drawn on proper funds available for such purpose.

(g) Any school district which is a participant member of a Regional Education Media Center may elect to withdraw its membership in the center for a succeeding scholastic year, electing not to support nor to receive its services for any succeeding year. Title to and all educational media and property purchased by the center shall remain with and in the center.

(h) The Central Education Agency, through its audit and accreditation divisions, shall review for purposes of continuity and standardization the services of the centers.

(i) The cost incident to setting up the centers, their operation, and the purchase of education media supplies and equipment shall be borne by the state and each participating district to the extent and in the manner provided in this section.

(j) The state shall allot and pay to each approved center annually an amount determined on the basis of not to exceed \$1 per scholastic in average daily attendance for the next preceding school year in the district or districts that are participants in an approved center. The funds or amount provided by the state shall be used only to purchase educational media or equipment for the center which have had prior approval of its Regional Media Board and the Central Education Agency through its budgetary system.

(k) School districts as participant members in the center shall provide and pay to the proper center a proportionate amount determined on its ADA for the next preceding school year matching the amount provided by the state. The matching funds provided by the participant districts, including any donated or other local-source funds, may be used to pay for costs of administration of and/or servicing by the center and to purchase supplemental educational media. A center shall not enter into obligations which shall exceed funds available and/or reasonably anticipated as receivable for the current school year.

(l) Annually, pursuant to such regulations and procedure as may be prescribed by the agency, the governing board of each center shall determine the rate per pupil based on ADA the next preceding school year, not to exceed the \$1 limit prescribed in this section, which shall constitute the basis for determination of total amount to be transmitted by participant districts to the center and as matching funds from the state's contribution to this program.

(m) The state's share of the cost in the Regional Education Media Centers program herein authorized

shall be paid from the minimum foundation school program fund, and this cost will be considered by the Foundation Program Committee in estimating the funds needed for foundation program purposes. Nothing in this section shall be construed to prohibit a center from receiving and utilizing matching funds in any amount for which it may be eligible from federal sources.

[Acts 1969, 61st Leg., p. 2766, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 11.33. Regional Education Service Centers**

(a) The State Board of Education may provide for the establishment and a procedure for the operation of Regional Education Service Centers by rules and regulations adopted under this section and the provisions of Section 11.32, to provide educational services to the school districts and to coordinate educational planning in the region.

(b) The governing board of each Regional Education Service Center, under rules and regulations of the State Board of Education, may enter into contracts for grants from both public and private organizations and to expend such funds for the specific purposes in accordance with the terms of the contract with the contracting agency.

(c) Basic costs for the provision of regional education services to school districts and coordination of educational planning in the region and for administrative costs necessary to support these services shall be paid from the Foundation School Program under a formula developed by the state commissioner of education and approved by the State Board of Education. Such allotment amounts here authorized to be granted by the State Board of Education shall not exceed in any year a sum equal to \$2 multiplied by the average daily attendance in the public schools of Texas as determined for the next preceding school year. This subsection shall be effective when cited in the General Appropriation Act.

(d) A program of financial assistance for computer services to school districts of the state through Regional Education Service Centers shall be developed by the State Board of Education to encourage a planned statewide network or system of computer services designed to meet public school educational needs, current and future. Toward achievement of maximum efficiency and to insure a practicable uniformity in services, the State Board of Education, by rules and regulations, shall adopt eligibility requirements for data processing computer services to receive the state financial assistance authorized herein.

(e) Only computer services that are provided by or through a Regional Education Service Center to make available computer services required to meet the needs of the school districts of one or more Education Service Center regions shall be eligible for financial assistance hereunder.

(f) The Central Education Agency annually shall approve a state assistance allotment for computer services to be paid to eligible Regional Education Service Centers that qualify, and in an amount to be determined under rules and regulations adopted by the State Board of Education for that purpose; provided that the allotment amounts here authorized to be granted by the State Board of Education shall not exceed in any year a sum equal to \$1 multiplied by the average daily attendance in the public schools

of Texas as determined for the next preceding school year.

(g) The state's share of the cost of this program authorized by Subsections (d), (e), and (f) of this section shall be paid from the Foundation School Fund, and this cost shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for Foundation School Program purposes.

[Acts 1969, 61st Leg., p. 2767, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1488, ch. 405, § 14, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 2053, ch. 631, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 88, ch. 51, § 13, eff. Aug. 27, 1973.]

**§ 11.34. Authority to Serve Also as the State Board for Vocational Education**

The State Board of Education is also the State Board for Vocational Education. As such it shall have the powers and perform the duties assigned in this code and the laws relating to the State Board for Vocational Education.

[Acts 1969, 61st Leg., p. 2768, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 11.35. High School Equivalency Examinations**

The State Board of Education shall provide for the administration of high school equivalency examinations. Any person over the age of 17 who does not have a high school diploma may take the examination in accordance with the rules and regulations promulgated by the board.

[Acts 1971, 62nd Leg., p. 2490, ch. 812, § 1, eff. June 8, 1971.]

[Sections 11.36 to 11.40 reserved for expansion]

SUBCHAPTER C. THE STATE BOARD OF VOCATIONAL EDUCATION

**§ 11.41. Composition and Executive Officer**

(a) The State Board of Vocational Education is a unit of the Central Education Agency and is composed of those persons who are members of the State Board of Education as set forth in Section 11.22 of this code.

(b) The state commissioner of education shall be the executive officer through whom the state board for vocational education shall carry out its policies and enforce its rules and regulations.

[Acts 1969, 61st Leg., p. 2768, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 11.42. Vocational Rehabilitation Division of the Central Agency**

(a) The vocational rehabilitation division of the Central Education Agency is designated and authorized to provide for the rehabilitation of severely physically disabled Texas citizens, except those who are visually handicapped as defined by laws relating to the State Commission for the Blind; provided that nothing herein contained shall affect or repeal the crippled children's restoration service authorized by Chapter 216, Acts of the 49th Legislature, 1945 (Article 4419c, Vernon's Texas Civil Statutes), administered by the crippled children's division of the State Department of Health, so far as that authority is consistent with laws relating to the State Commission for the Blind.

(b) Other functions and duties now or hereafter assigned to the supervision of the State Board for Vocational Education shall be carried out by appropriate divisions in the State Department of Education.

[Acts 1969, 61st Leg., p. 2768, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 11.43. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(1), eff. May 26, 1971**

Section 11.43 provided for cooperation with the congressional act promoting vocational rehabilitation, and was derived from:

Acts 1929, 41st Leg., 1st C.S., p. 57, ch. 23.

Acts 1933, 43rd Leg., 1st C.S., p. 274, ch. 99, § 1.

Acts 1969, 61st Leg., p. 103, ch. 40, § 16.

Civil Statutes, Art. 2675-1.

See, now, section 30.43.

[Sections 11.44 to 11.50 reserved for expansion]

**SUBCHAPTER D. STATE COMMISSIONER OF EDUCATION**

**§ 11.51. Selection and Qualifications**

(a) The Office of State Commissioner of Education is a unit of the Central Education Agency and shall be filled in accordance with the provisions of Section 11.25 of this code.

(b) The state commissioner of education shall be a person of broad and professional educational experience, with special and recognized abilities of the highest order in organization, direction, and coordination of education systems and programs, and in administration and management of public schools and public education generally. The commissioner of education shall be a citizen of the United States and shall have been a resident of the State of Texas for a period of not less than five years immediately preceding his appointment. He shall possess good moral character, be eligible for the highest school administrator's certificate currently issued by the State Department of Education, and shall have at least a master's degree from a recognized institution of higher learning. He shall take the oath of office required of other state officials.

(c) The commissioner shall execute his official bond in a sum not to exceed \$50,000, conditioned on the faithful performance of his duties as required by the laws of Texas and the rules and regulations imposed by the State Board of Education, and pursuant to the provisions of Chapter 383, Acts of the 56th Legislature, Regular Session, 1959 (Article 6003b, Vernon's Texas Civil Statutes).

[Acts 1969, 61st Leg., p. 2769, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 11.52. Powers and Duties**

(a) The commissioner of education shall serve as executive officer of the Central Education Agency and as executive secretary of the State Board of Education and of the State Board for Vocational Education.

(b) The commissioner of education shall be responsible for promoting efficiency and improvement in the public school system of the state and shall have the powers necessary to carry out the duties and responsibilities placed upon him by the legislature and by the State Board of Education.

(c) The commissioner of education shall recommend to the State Board of Education such policies,

rules, and regulations as he considers necessary to promote educational progress and shall supply the State Board of Education with all necessary or pertinent information to guide it in its deliberations.

(d) The commissioner of education shall prescribe uniform systems of forms, reports, and records necessary to secure needed information from county school officers and local school districts.

(e) The commissioner of education shall require of county judges, county and district school superintendents, county and school district treasurers or depositories, and other school officers and teachers such school reports relating to school funds and other school affairs as he may deem proper for collecting information and advancing the interests of the public schools. He shall furnish the necessary blanks, forms, and instructions for this purpose.

(f) The commissioner of education may delegate ministerial and executive functions to members of the State Department of Education and may employ division heads and all other employees and clerks to perform the duties of the Central Education Agency as may be authorized by appropriations therefor.

(g) The commissioner of education shall issue teaching certificates to public school teachers and administrators in compliance with the provisions of Chapter 13 of this code.<sup>1</sup>

(h) The commissioner of education is authorized to issue vouchers for the expenditures of the Central Education Agency according to the rules and regulations prescribed by the State Board of Education.

(i) The commissioner of education shall examine and approve all accounts to be paid out of the school funds by the state treasurer, and upon such approval, the comptroller of public accounts shall be authorized to draw his warrant.

(j) The commissioner of education shall observe and execute the mandates, prohibitions, and regulations established by law or by the State Board of Education in accordance with law.

(k) The commissioner of education shall have printed for general distribution as many copies of the school laws as the State Board of Education may determine.

(l) The commissioner of education shall advise and counsel the school officers of the counties, cities, towns, and school districts on the best methods of conducting the public schools. He may issue instructions and opinions regarding rules and regulations which shall be binding for observance on all officers and teachers.

(m) The commissioner shall inform himself about the educational progress of the different parts of this state and of other states. Insofar as he may be able, he shall visit different sections of this state, address teachers' institutes, associations, and other educational gatherings, instruct teachers, and promote all aspects of education. The legislature shall make adequate appropriations for the commissioner's necessary travel expenses, or those of his representative, when in service of the state.

(n) The commissioner shall, one month before the meeting of each regular session of the legislature, and 10 days prior to any special session thereof, at which, under the governor's proclamation convening the same, any legislation may be had respecting the public schools, make a full report to the State Board

of Education on the condition of all the public schools. This report shall

(1) give all the information called for by the board and such other matters as the commissioner shall deem important; and

(2) be presented by the governor to the legislature, and 2,000 copies of it shall be printed in pamphlet form for use of the legislature and for distribution to the various school officers and libraries in this state and in other states and territories of the United States and Canada, and to the United States Office of Education in Washington.

[Acts 1969, 61st Leg., p. 2769, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 13.01 et seq.

[Sections 11.53 to 11.60 reserved for expansion]

SUBCHAPTER E. THE STATE DEPARTMENT OF EDUCATION

§ 11.61. Composition

The State Department of Education shall constitute the professional, technical, and clerical staff of the Central Education Agency.

[Acts 1969, 61st Leg., p. 2771, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 11.62. Organization and Regulations

(a) The State Department of Education shall be organized into divisions and subdivisions established by the commissioner of education subject to the approval of the State Board of Education.

(b) Directors of the major divisions of the State Department of Education, and all of its other employees, shall be appointed by the commissioner of education pursuant to general rules and regulations adopted by the State Board of Education.

(c) The rules and regulations pertaining to personnel administration shall include a comprehensive classification plan, including an appropriate title for each position, a description of duties and responsibilities, and the minimum requirements of training, experience, and other qualifications essential for adequate performance of the work. These rules and regulations shall likewise provide tenure safeguards, leave and retirement provisions, and establish hearing procedures.

[Acts 1969, 61st Leg., p. 2771, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 11.63. Functions

(a) The State Department of Education shall

(1) carry out the mandates, prohibitions, and regulations for which it is made responsible whether by statute, the State Board of Education, the State Board for Vocational Education, or the commissioner of education;

(2) make free and full use of advisory committees and commissions composed of professional educators and/or other citizens of the state; and

(3) seek to assist local school districts in developing effective and improved programs of education through research and experimentation, consultation, conferences, and evaluation, but shall have no power over local school dis-

tricts except those specifically granted by statute.

(b) The budgets and fiscal reports filed with the Central Education Agency shall be reviewed and analyzed by the staff of the State Department of Education to determine whether or not all legal requirements have been met and to collect fiscal data needed in preparing school fiscal reports for the governor and legislature. The Central Education Agency may drop from the list of accredited schools any school district which fails to comply with the laws or the rules and regulations of the State Board of Education applicable to preparation and adoption of the local budget and/or fiscal accounting system of public school districts.

[Acts 1969, 61st Leg., p. 2771, ch. 889, § 1, eff. Sept. 1, 1969.]

CHAPTER 12. TEXTBOOKS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 12.01. Free Textbooks

(a) Textbooks adopted by the State Board of Education for use in the public schools of Texas shall be furnished, under the plan as set out in this chapter, without cost to the pupils attending such schools.

(b) The adoption, purchase, distribution, and free use of such state-owned textbooks shall be carried out in accordance with the provisions of this chapter. [Acts 1969, 61st Leg., p. 2773, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 12.02. Textbook Fund

(a) The state textbook fund shall consist of the fund set aside by the State Board of Education from the available school fund as provided below, together with all funds accruing from the sale of disused books, all money derived from the purchase of books from boards of school trustees by private individuals or by other schools, and all amounts lawfully paid into the fund from any other source.

(b) The State Board of Education shall annually, at a meeting designated by them, set apart out of the available school fund of the state an amount sufficient to purchase and distribute the necessary school books for the use of the pupils of this state for the scholastic year ensuing.

(c) Funds transferred to the textbook fund shall remain permanently in this fund until expended and shall not lapse to the state at the close of the fiscal year.

(d) The transfer of funds set apart to the textbook fund shall be determined by the State Board of Education on the basis of a report of the commissioner of education submitted on July 1 of each year, stating:

(1) the amount of the textbook fund which is then unexpended; and

(2) his estimate as to the funds necessary for the purchase and distribution and other necessary expenses of textbooks for the school session of the following year.

(e) On the basis of the information furnished, the state board shall have the power to set apart from the available school fund the estimated amount needed with 25 percent additional, this additional sum to be used to meet emergencies or necessities caused by unusual increase in scholastic attendance or by unusual and unforeseen expenses and school conditions.

(f) All necessary expenses incurred by the operation of this law or incident to the enforcement of this law shall be paid from the state textbook fund provided for in this chapter on bills approved by the commissioner of education.

[Acts 1969, 61st Leg., p. 2773, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 12.03. Textbooks for the Blind and Visually Handicapped

(a) The State Board of Education is authorized to acquire, purchase, and contract for, with or without bids, subject to rules and regulations adopted by the board, free textbooks recommended as suitable and usable as textbooks for the education of the blind and visually handicapped scholastics in the public school systems of this state in grades one to twelve inclusive. The board may also enter into agreements providing for the acceptance, requisition, and distribution of books and instructional aids pursuant to Public Law 922, 84th Congress, or as amended,<sup>1</sup> for use by students enrolled in public or private non-profit schools. The agreements may include the purchase of textbooks for blind and visually handi-

capped students attending private, non-profit schools if no state funds except for administrative cost are involved.

(b) For purposes of this section, a blind and/or visually handicapped scholastic means and includes any pupil whose visual acuity is impaired to the extent that he is unable to read the print in regularly adopted textbooks used in the subject class.

(c) For purposes of this section, "textbook" means and includes books in Braille, large type or any other medium or any apparatus which conveys information to the scholastic or otherwise contributes to the learning process.

(d) All textbooks for the blind and visually handicapped available and submitted on invitation shall be examined by the State Textbook Committee for its recommendation as to their suitability and usability as textbooks for the blind and visually handicapped in the public school systems.

(e) Textbooks for the blind and visually handicapped and teacher copies requisitioned and purchased by the board pursuant to contract signed by the chairman thereof and the costs of administration thereof shall be paid out of the textbook fund of this state as are textbooks for pupils of normal vision.

(f) Textbooks for the blind and visually handicapped may be obtained and distributed by the Central Education Agency pursuant to rules and regulations adopted by the State Board of Education as it may act on recommendations of the State Textbook Committee and commissioner of education.

(g) All textbooks acquired by the provisions of this section shall be the property of the State of Texas, to be controlled, distributed, and disposed of pursuant to board regulations.

[Acts 1969, 61st Leg., p. 2773, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 1189, ch. 436, § 1, eff. June 14, 1973.]

<sup>1</sup> 20 U.S.C.A. §§ 101, 102.

### § 12.04. Textbooks for Children Enrolled in Kindergarten Classes

[Text as added by Acts 1971, 62nd Leg., p. 1396, ch. 377, § 1]

(a) The State Board of Education may acquire, purchase, and contract for, with or without bids, subject to rules and regulations adopted by the board, free textbooks recommended as suitable by the State Textbook Committee in accordance with guidelines established by the Central Education Agency for the education of children enrolled in kindergarten classes in the public school systems of this State.

(b) For purposes of this section, "textbooks" means books and any apparatus, including three-dimensional manipulative materials, which convey information to the scholastic or otherwise contribute to the learning process. The Central Education Agency shall establish guidelines clearly delimiting the types of material most effectively used in helping kindergarten children learn and most appropriately delimiting the definition of the term "textbooks" for the purposes of this section.

(c) All textbooks for kindergarten children available and submitted on invitation shall be examined by the State Textbook Committee in accordance with the guidelines established by the Central Education

Agency for its recommendation as to their suitability for use in the public school systems.

(d) Textbooks for kindergarten children and teacher copies requisitioned and purchased by the board pursuant to contract signed by the chairman and all administrative costs shall be paid out of the textbook fund of this State.

(e) Textbooks for kindergarten children may be obtained and distributed by the Central Education Agency pursuant to rules and regulations adopted by the State Board of Education as it may act on recommendations of the State Textbook Committee and the Commissioner of Education.

(f) All textbooks acquired by the provisions of this section shall be the property of the State of Texas, to be controlled, distributed, and disposed of pursuant to board regulations.

(g) Each school district may elect to receive an allotment of \$400 at the time each new kindergarten classroom is established by the district in lieu of textbooks procured under the provisions of this section. The option shall be open only at the time each classroom is initiated, and thereafter textbooks shall be procured in the usual manner. If the school district elects to receive the \$400 allotment, it shall use the funds only for the purpose of purchasing teaching materials for the kindergarten class which meet the standards and guidelines established by the Texas Education Agency.

[Acts 1971, 62nd Leg., p. 1396, ch. 377, § 1, eff. May 26, 1971.]

*For text as added by Acts 1973, 63rd Leg., p. 803, ch. 392, § 3, see § 12.04, post.*

**§ 12.04. Bilingual Education Textbooks**

*[Text as added by Acts 1973, 63rd Leg., p. 863, ch. 392, § 3]*

(a) The State Board of Education shall acquire, purchase, and contract for, with bids, subject to rules and regulations adopted by the board, free textbooks and supporting media for use in bilingual education programs conducted in the public school systems of this state.

(b) The textbooks and supporting media shall be paid for out of the textbook fund and shall be the property of the State of Texas, to be controlled, distributed, and disposed of pursuant to board regulations.

[Acts 1973, 63rd Leg., p. 803, ch. 392, § 3, eff. Aug. 27, 1973.]

*For text as added by Acts 1971, 62nd Leg., p. 1396, ch. 377, § 1, see § 12.04, ante.*

[Sections 12.05 to 12.10 reserved for expansion]

**SUBCHAPTER B. STATE ADOPTION, PURCHASE, ACQUISITION, AND CUSTODY**

**§ 12.11. State Textbook Committee**

(a) The commissioner of education, annually at the meeting of the State Board of Education held on the first Monday in May, shall recommend the names of 15 persons, no two of whom shall live in the same congressional district, for appointment to the textbook committee for a one-year term.

(b) Each of the persons so named shall be an experienced and active educator engaged in teaching in the public schools of Texas. At least a majority of the members of the committee shall be classroom teachers, and all members shall be appointed because of unusual backgrounds of training and recognized ability as teachers in the subject fields for which adoptions are to be made during the year of appointment.

(c) No person who has acted as an agent for any author or textbook publishing house or who has been an author or associate author of any textbook published by any publishing house, or who owns stock in any publishing house, or who has been or is directly or indirectly connected with any textbook publishing house, shall be eligible for appointment to the State Textbook Committee.

(d) The State Board of Education shall approve or reject the nominations; and if any name is rejected, the commissioner of education shall nominate others until 15 persons have been selected, no two of whom shall live in the same congressional district, who shall be named by the State Board of Education to membership on the textbook committee.

(e) It shall be the duty of the textbook committee to recommend to the commissioner of education a complete list of textbooks which it approves for adoption at the various grade levels and in the various school subjects. The committee shall examine carefully all books submitted for adoption and shall prepare and publish for free distribution a list of its recommendations to the state commissioner.

(f) The textbook committee shall hold its meetings where and when the State Board of Education shall determine; its members shall receive no salary but shall be reimbursed for all expenses incurred in attending meetings and/or appeals involving the committee.

[Acts 1969, 61st Leg., p. 2774, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.12. Recommendations by State Commissioner of Education**

(a) The commissioner of education may remove books from the list recommended by the State Textbook Committee, but he shall not place on the list any book not recommended by the committee, nor shall he reduce to a single adoption any list for a specific grade or subject in which multiple adoption is recommended by the committee.

(b) The commissioner of education, pursuant to the provisions in Subsection (a) of this section, shall submit to the State Board of Education the list recommended by the State Textbook Committee.

[Acts 1969, 61st Leg., p. 2775, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.13. Adoption by State Board of Education**

The State Board of Education may remove books from the list submitted by the commissioner of education, but the board shall not place on the list any book not recommended by the commissioner of education, nor shall the board reduce to a single adoption any list for a specific grade or subject in which multiple adoption is recommended by the commissioner of education.

[Acts 1969, 61st Leg., p. 2775, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 12.14. Multiple List for Elementary Grades

(a) The State Board of Education shall select and adopt a multiple list of textbooks for use in the elementary grades of the public schools of Texas.

(b) The multiple list shall consist of not less than three nor more than five textbooks on the following subjects: spelling, reading (basal and supplementary), English language and grammar, geography, arithmetic, physiology-hygiene, civil government, driver education and safety, vocal music, elementary science, history of the United States (in which the Confederacy shall be fairly represented), history of Texas, agriculture, a system of writing books, and a system of drawing books.

(c) The board may also select and adopt textbooks for any additional subjects approved by the State Department of Education for teaching in the elementary schools, including but not limited to the foreign languages of German, Bohemian, Spanish, French, Latin, or Greek.

(d) The board may, if deemed necessary, adopt as textbooks a geography of Texas and a civil government of Texas.

(e) No book adopted shall contain anything of a partisan or sectarian character.

[Acts 1969, 61st Leg., p. 2775, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 12.15. Multiple List for High Schools

(a) The State Board of Education shall adopt a multiple list of books for use in the high schools of Texas.

(b) The multiple list shall include not fewer than three nor more than five textbooks on the following subjects: algebra, plane geometry, solid geometry, general science, biology, physics, chemistry, a one-year world history, American history, homemaking, physical geography, driver education and safety, vocal music, English composition, literature (including American literature and English literature), shop courses, physiology, agriculture, civil government, commercial arithmetic, bookkeeping, typewriting, shorthand, journalism, and the Latin, Spanish, German, Czech, and French languages.

(c) Free textbooks may also be adopted and provided for any additional courses or subjects approved by the Central Education Agency and accredited by the state accrediting committee.

[Acts 1969, 61st Leg., p. 2775, ch. 889, § 1, eff. Sept. 1, 1973; Acts 1973, 63rd Leg., p. 1254, ch. 456, § 1, eff. June 14, 1973.]

#### § 12.16. Other Provisions

(a) In the event as many as three suitable textbooks are not offered for adoption on any one subject, the board may select fewer than three textbooks.

(b) Specific rules as to the manner of selection for all books on the multiple lists provided for in this section shall be made by the State Board of Education.

(c) Textbooks adopted in accordance with the provisions of this section are adoptions for every public school in this state and no public school in the state shall use any textbook unless it has previously been approved and adopted by the State Board of Education. The board shall prescribe rules under which

such textbooks adopted and approved shall be introduced or used by or in the public schools of the state.

(d) Textbooks on physiology and hygiene shall contain at least one chapter on the effect of alcohol and narcotics.

[Acts 1969, 61st Leg., p. 2776, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 12.17. Public Notice of Adoptions to be Made

(a) When textbooks are to be selected and adopted under the provisions of this code, or where a contract for a textbook then in use is about to expire, two months in advance of the meeting of the State Board of Education at which the adoptions may be made, the chairman of the State Board of Education shall give public notice—

(1) by having printed in the public press a notice to the effect that the meeting will be held and that adoptions will be made; and

(2) by sending written notices to all persons, firms, or corporations in whose behalf the notices shall have been requested.

(b) The notices required by Subsection (a) of this section shall contain:

(1) the time and place of the meeting of the State Board of Education at which the adoptions may be made;

(2) the subjects on which textbooks may be adopted;

(3) the last date on which sample copies of books offered for textbook adoption may be submitted;

(4) the amount of cash deposit required;

(5) the time to be allowed for signing contract and filing bond after the award is made; and

(6) a statement that formal proposals will be received on the date of the meeting.

[Acts 1969, 61st Leg., p. 2776, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 12.18. Filing of Bids and Sample Copies

(a) At least 30 days prior to the date of the meeting of the State Board of Education at which adoptions are to be made, sample copies of each book on which a bid will be submitted shall be filed with the commissioner of education.

(b) Every person, firm, or corporation desiring to submit a bid on a book for adoption shall make the bid, by filing with the commissioner of education five copies of each book offered for consideration, and such additional copies as thereafter may be requested by the commissioner. Publisher's price information as required in this section and as may be requested on regular and special editions shall be printed, stamped, or pasted in each copy of each book filed with the commissioner of education.

(c) The bid shall state the prices at which the book is offered to Texas, f. o. b. the publisher's Texas depository and the terms and conditions upon which the book will be furnished. The terms and conditions shall not be in conflict with other provisions of this chapter.

(d) The bids shall be submitted in two forms, one in which is stated the allowance made for books then in use and the property of the state when offered in

exchange for the new books to be adopted under this code; the other without stating the allowance for presently owned books, which would remain the property of the state. The allowance and condition for exchange, if agreed to and accepted by the state, shall be enforced only during the two scholastic years following a change in books.

(e) Information which shall also be printed, stamped, or pasted in each copy of each book filed with the commissioner of education shall be:

(1) a statement of the price at which the book or special editions are sold in other places under state or county adoptions, and the minimum quantities in which it will be sold at such prices;

(2) a statement of the publisher's catalogue price of the book or special editions, together with trade discounts and the conditions under which, and the purchasers to whom, such discounts are allowed, and the place of delivery; and

(3) a statement of the minimum wholesale price at which the book or special editions are sold f. o. b. the shipping point of the publisher and the name of the shipping point.

[Acts 1969, 61st Leg., p. 2777, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.19. Deposits With the Treasurer of the State**

(a) In compliance with the published notice of adoptions to be made, each person, firm, or corporation submitting a bid or bids on a book or books for adoption shall deposit with the treasurer of the State of Texas such sum of money as the State Board of Education may require, but not less than \$500 nor more than \$2,500 according to the value of the books each bidder may propose to supply.

(b) Such deposits shall be returned to the unsuccessful bidders on certificate of the commissioner of education that no contract has been awarded on the bid for which the sum was deposited.

(c) When any successful bidder has been awarded a contract and has filed his bond and contract with the State Board of Education and they have been approved, the State Board of Education shall make an order on the treasurer of the state reciting such facts, and the treasurer shall return the deposit of such bidder to him.

(d) If any successful bidder fails to make and execute the contract and bond as provided in this subchapter, the deposit made by the successful bidder shall be forfeited to the state absolutely and the treasurer shall place the deposit of the bidder in the state treasury to the credit of the available school fund, and the State Board of Education may readvertise for other bids to supply the book or books.

[Acts 1969, 61st Leg., p. 2777, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.20. Affidavit of Eligibility and Agency**

(a) Each person, firm, or corporation submitting a bid on any book or books for adoption shall file with the commissioner of education on the day that the State Board of Education meets or within the last five days just preceding the date on which the board meets, an affidavit executed by the individual bidder or a member of the firm or the president and secretary of the corporation bidding, setting forth all of the facts with reference to the eligibility of the bidder to make a proposal.

(b) Each affidavit filed must contain the following:

(1) the names of all persons employed to act for the bidder, directly or indirectly, in any way whatsoever in securing the contract or in the preparation of the bid or bids and supporting documents, together with the addresses of such individuals and the capacity in which each served;

(2) the names of any persons who may have at any time during the preceding year received, either directly or indirectly, any money or other thing of value from the bidder by way of emolument for services rendered in this state, either directly or indirectly, in securing or attempting to secure contracts for the sale of books of the publisher or in promoting the sale of such books to the State of Texas;

(3) a statement that no member of the State Board of Education or of the State Textbook Committee is in any way interested, directly or indirectly, in the individual, firm, or corporation bidding; and

(4) a statement that the antitrust affidavits and other materials required by Section 12.22 of this code have been filed.

(c) In the event any publisher, after filing the affidavit, shall employ an attorney or other representative to assist in securing the award of a contract by the State Board of Education, he shall disclose such employment to the board by filing a supplementary affidavit before any contract in which he is interested shall be awarded.

(d) A publisher who cannot or does not comply with the provisions of this section shall not be eligible to bid.

[Acts 1969, 61st Leg., p. 2778, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.21. Affidavit as Warranty**

The statements made in all affidavits filed by a publisher shall be considered warranties and, if found to be untrue, shall subject the contract to forfeiture and authorize a recovery on the bond to the full amount thereof, as liquidated damages, unless it is shown that such misstatement or nondisclosure of fact was unintentional or an oversight on the part of the publisher.

[Acts 1969, 61st Leg., p. 2778, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.22. Antitrust Regulations**

(a) No book or books shall be purchased from any person, firm, or corporation who is a member of or connected with any trust.

(b) The affidavits (as shall be applicable to the bidder) which the State Board of Education shall require all persons, firms, and corporations bidding for a contract to file with the board, on or before the date selected by the board for receiving sealed bids for textbook adoptions, and in order to carry out the requirement of Subsection (a) of this section, are as follows:

(1) Each person, firm, or corporation shall file a sworn affidavit that said person, firm, or corporation is not a trust and is not connected either directly or indirectly with a trust.

(2) Each person, firm, or corporation shall file a sworn affidavit stating whether the person, firm, or corporation is interested, or whether the person, firm, or any member thereof, or any individual stockholder of such corporation is interested or acting as a director, trustee, or stockholder, either directly or indirectly or through a third party, or in any manner in any other textbook publishing house. This statement shall be sworn to by the person, a member of such firm, or the president, secretary, and each of the directors of a corporation.

(3) Each firm bidding for a contract supplying books shall present a sworn statement signed by all its members, showing the names of all members of the firm, and stating whether any other person, firm, or corporation has any financial interest in the firm, and also whether any individual members of the firm have any financial interest in any other textbook publishing firm or corporation or textbook publishers.

(c) The State Board of Education shall also require the corporations, persons, or firms to file attested copies of all written agreements entered into and existing between them and others engaged in the textbook publishing business.

[Acts 1969, 61st Leg., p. 2778, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 12.23. Consideration of Bids

(a) The State Board of Education shall meet at the time and place mentioned in the public notice of adoptions to be made, as specified in Section 12.17 of this code. The board shall then and there open and examine the sealed proposals received.

(b) No bid shall be considered from, and no contract shall be made with, any publisher who has failed to establish his eligibility in compliance with the terms of Section 12.20 of this code;

(c) No bid shall be considered and no book or books shall be purchased from any person, firm, or corporation who is a member of or connected with any trust, or if, in the opinion of the State Board of Education, the affidavit, written agreements, or other facts presented in compliance with the terms of Section 12.22 of this code are violations of the anti-trust laws of the State of Texas or opposed to public policy.

(d) No person, not the author or publisher or the bona fide permanent and regular employee of the publisher, shall appear before the State Board of Education in behalf of any book submitted to the board for adoption or seek to influence the members thereof.

[Acts 1969, 61st Leg., p. 2779, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 12.24. Selection and Adoption

(a) The State Board of Education shall make a full and complete investigation of all books and accompanying bids. The textbooks shall be selected and adopted after a careful examination and consideration of all books presented.

(b) The books selected and adopted shall be those which in the opinion of the board are most acceptable for use in the schools. Quality, mechanical construction, paper, print, price, authorship, literary merit, and other relevant matters shall be given such

weight in making the decisions as the board may deem advisable.

(c) No textbook shall be adopted until it has been read carefully and examined by at least a majority of the State Textbook Committee.

(d) The State Board of Education shall proceed without delay to adopt for use in the public schools of this state textbooks on all branches authorized by this chapter; but if the bids submitted are not satisfactory, the board may postpone the selection of the books or a part of them to such time as the board may select, and after readvertising, new bids may be received and acted on by the board in the same manner as original bids.

(e) If no texts on any prescribed subject are submitted by any particular publisher or publishers that meet the requirements of the schools, as may be determined by the board, then it shall be the duty of the board to instruct the commissioner of education to investigate the book market for the purpose of securing bids with a view of providing at the most reasonable price or prices possible, the best available texts on subjects that are to be adopted by the board for the schools of Texas.

[Acts 1969, 61st Leg., p. 2779, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 12.25. Maximum Price

The maximum price which the State Board of Education shall contract to pay, f. o. b. the Texas depository of the publisher, for any books to be used in the public schools of this state shall not exceed the minimum price at which the publisher sells the book in wholesale quantities, f. o. b. the publisher's publishing house, after all discounts have been deducted. Any contract made for the purchase of books for use in the public schools of Texas at a higher price than the maximum price fixed by the preceding sentence of this section shall be void.

[Acts 1969, 61st Leg., p. 2780, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 12.26. Bond

(a) The bidder to whom any contract may have been awarded shall execute a good and sufficient bond payable to the State of Texas. The bond shall be in an amount which the State Board of Education deems advisable but not less than \$2,500 for each textbook adopted by the State Board of Education for use in the public schools of the state. The bond shall be approved by the State Board of Education and shall be conditioned that the contractor shall faithfully perform all the conditions of the contract.

(b) For the purpose of securing satisfactory bond a series of pamphlet writing books shall be considered as one textbook, a series of pamphlet drawing books shall be considered as one textbook, and a series of band, chorus, or orchestra pamphlet-type books shall be considered as one textbook.

(c) The bond shall not be exhausted by a single recovery thereon, but may be sued on from time to time until the full amount is recovered.

(d) The State Board of Education may, at any time, on 20 days' notice, require a new bond to be given and in the event the contractor shall fail to furnish new bond, the contract of the contractor may at the option of the State Board of Education, be forfeited.

[Acts 1969, 61st Leg., p. 2780, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.27. Preparation and Execution of Contract and Bond**

(a) The contract and bond shall be prepared by the attorney general, and be payable in Travis County, Texas, and shall be deposited in the office of the secretary of state.

(b) Each contract shall be duly signed by the publishing house or its authorized officers and agents; and if it is found to be in accordance with all the provisions of this chapter, and if the bond required by this chapter is presented and duly approved, the State Board of Education shall approve the contract and order it to be signed on behalf of the board by the chairman.

(c) All contracts shall be made in duplicate, one copy to remain in custody of the secretary of state and be copied or appear reproduced in full in the minutes of the meeting of the State Board of Education in a well-bound book, and the other copy to be delivered to the company or its agent.

[Acts 1969, 61st Leg., p. 2780, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.28. Provisions for Updating Books**

(a) Every contract shall contain a provision that the State Board of Education may, during the life of the contract, on giving one year's previous notice to the publishers of the book or books, order the changes, amendments, and additions to the book or books so selected and adopted as in the discretion of the board shall keep them up-to-date and abreast of the times. Such revisions shall not be made more often than at two-year intervals.

(b) If in the judgment of the State Board of Education changes or revisions make it impractical for the revised books to be used in the same class with the old books, the publishers shall be required to give the same exchange terms as were given when the books were first adopted, and the exchange period shall extend two years from the time the revised books are first put into use in the schools.

(c) Nothing in this section shall be construed to give the State Board of Education power or authority to abandon any book or books originally contracted for.

[Acts 1969, 61st Leg., p. 2781, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.29. Other Contract Provisions**

(a) The State Board of Education shall specify the duration of time of all adoption contracts, which shall be for a period the board may determine but not to exceed six years.

(b) The right to exclusive use of new books during the first three years of the term of any contract shall be waived by the contracting publishers to provide for the gradual introduction of new books.

(c) No contract shall ever be made that binds the state to buy a specific number of a specific quantity of textbooks, but all contracts shall be for such books as the state may need.

(d) Each contract shall provide or be construed to authorize that any book adopted in the contract by the State Board of Education may be sold by the

publisher designated depository to any person, or to private and/or parochial schools, or state institutions of this state at the same rate and discount as those granted to the state, provided advance payment accompanies the purchase.

(e) Each contract shall contain a clause to the effect that, if the contract is cancelled by reason of fraud, collusion, or material breach, the full amount of the bond given by the contractor shall be considered as liquidated damages to be recovered out of the bond by the state at the suit of the attorney general.

[Acts 1969, 61st Leg., p. 2781, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.30. Announcement of Adoption**

(a) As soon as the State Board of Education has entered into the contract for the furnishing of books for the public schools of this state under the provisions of this chapter, it shall be the duty of the board to issue its proclamations of such facts to the people of the state.

(b) As soon as practical after the adoption of the textbooks provided for in this chapter, the commissioner of education shall address to the county superintendents and to the presidents of the school boards in independent school districts and to the presidents of school boards in common school districts having 300 or more scholastic population a circular letter which shall contain a list of all the books and such other information as he may deem advisable.

[Acts 1969, 61st Leg., p. 2781, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.31. Central Depositories**

(a) All parties with whom existing book contracts have been or hereafter may be made shall establish or designate a depository in some city of this State approved by the State Board of Education as the shipping point for depositories, where a stock of their goods to supply all immediate demands shall be kept. All contractors not maintaining their own separate or individual depository shall designate and/or maintain a joint agency or depository in a city of this State approved by the State Board as the shipping point for depositories. At such approved depository each contractor joining in such joint depository shall keep on hand a sufficient stock of books to supply the schools of the State.

(b) The designation of any depository(ies) for purposes as required in above subsection (a), and/or any change thereof shall be subject to the approval of the State Board of Education.

[Acts 1969, 61st Leg., p. 2782, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2427, ch. 775, § 1, eff. Aug. 30, 1971.]

**§ 12.32. Enforcement of Contracts**

(a) Any person, firm, or corporation with whom a contract has been entered into under the provisions of this chapter, shall designate the secretary of state of Texas as its agent, on whom citation shall be served, and all other writs and processes, in the event any suit shall be brought against the person, firm, or corporation.

(b) The commissioner of education shall carefully label and file away the copies of books adopted as furnished for examination to the State Board of

Education; the copies shall be securely kept and the standard of quality and mechanical excellence of the books so furnished under contract shall be maintained during the continuance of the contract.

(c) Complaints regarding textbook service or quality shall be made both to the commissioner of education and to the state depository designated by the contractor of the books. In the event a complaint does not receive reasonable prompt attention, the complaint shall be taken to the county judge, who shall report the fact to the attorney general. The attorney general shall bring suit on account of the failure in the name of the State of Texas in a district court of Travis County, and shall recover on the bond given by the contractor for the full value of the books not furnished as required, and an additional sum of \$100. Each day of failure to furnish the books shall constitute a separate offense. The amounts so recovered shall be placed to the credit of the state textbook fund.

[Acts 1969, 61st Leg., p. 2782, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 12.33. Cancellation of Contracts

(a) Any contract entered into under the provisions of this chapter may be cancelled by the state in a suit instituted by the attorney general for fraud, or collusion, or material breach of the contract on the part of either party to the contract or any member of the State Board of Education or any person, firm, or corporation, or their agents making the bond or contract.

(b) For the cancellation of any such contract the attorney general is authorized to bring suit in the proper court of Travis County.

(c) In case of the cancellation of any contract as provided for, the damages shall be fixed at not less than the amount of the bond, to be recovered as liquidated damages in the same suit canceling contract. Because of the difficulty of determining the damages that might accrue by reason of fraud, collusion, or material breach, and cancellation of a contract, the full amount of the bond given by the contractor shall be considered as liquidated damages to be recovered by the state at the suit of the attorney general.

(d) In the event it is established that any antitrust regulation as specified in Section 12.22 of this code has been violated, the violation shall be held to be fraud and collusion, and the attorney general shall bring suit on the bond of that person, firm, or corporation, and on proof of violation shall recover the liquidated damages as provided for in this section.

[Acts 1969, 61st Leg., p. 2782, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 12.34. Continuing or Discontinuing Textbooks

(a) It shall be the duty of the State Board of Education to meet annually on the second Monday in November and at such other times as it may deem necessary for the purpose of considering the advisability of continuing or discontinuing, at the expiration of each current contract, any or all of the state-adopted textbooks in use in the public schools of Texas and for making such adoptions as are provided for in this chapter.

(b) Adoptions for the total number of different texts shall be so arranged that contracts on not more than one-sixth of the total number of different basal subjects shall expire in any one year or shall be changed in any one year. The series of pamphlet books referred to in Section 12.26(b) of this code shall each be considered as one book.

(c) Before making any change in the adopted series, the board shall, on thorough investigation, satisfy itself that a change is necessary for the best interest of the school children and that such change is consistent with financial economy.

(d) Before the board shall determine to displace any book on which the contract is expiring, it shall, before making a new contract for a new text, ascertain through the office of the commissioner of education the number of usable books of the kind on which the contract has expired or is about to expire, there are on hand, and also the estimated number of books that would be required to supply the needs of the schools of the state using the books for the first, second, and third years immediately succeeding the expiration of the contract on the books. The purpose of furnishing such an estimate of the number of books needed shall be to give the textbook publishers only an approximation as to the possible quantity of books which the state may need, but the state shall not be bound to any specific quantity.

(e) At the time the commissioner of education undertakes to secure a statement of the number of usable books on hand, as provided above, he shall also secure from the superintendents of independent school districts and of common school districts having 300 or more scholastic population and from county superintendents an expression as to whether or not they believe the existing text should be readopted or a new text adopted, and such information shall be for the use of the State Board of Education, but the board shall not be bound to readopt the old text or to adopt a new text by reason of such expression of preference by the superintendents.

(f) The board shall then secure from the publisher of the book on which the contract has expired or is about to expire a bid or offer for the furnishing of such textbooks to meet the actual necessities of the schools of the state during the first-, second-, and/or third-year period, allowing the state, however, a margin of 25 percent over, or 25 percent under, the estimated number to be required.

(g) If, upon consideration of the cost of the books required to supply such needs for such a period, it appears to the board that it will be economical to do so, it may make a contract with such publishers to furnish such books during said first-, second-, and/or third-year period with a view to using up the entire supply of such books on hand instead of wasting the same at the expiration of the original contract. At the expiration of the period, the board shall then make a contract for a textbook on the subject.

(h) Unless new textbooks better suited to the requirements of the schools are offered to supplant existing textbooks at a price and in quality satisfactory to the board, the board shall renew the existing contracts for such period as may be deemed advisable not to exceed a period of six years.

(i) Whenever the contractor supplying any book agrees to renew the contract on the same terms for a period of not less than two years nor more than six

years, the members of the State Board of Education shall give preference to the offer of the company holding the contract if they shall thereby secure as good or better books at a lower price than by making a different contract.

(j) It shall always be lawful for the board to renew a contract on such terms that in its judgment may be for the best interest of the state.

[Acts 1969, 61st Leg., p. 2784, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.35. Purchase and Distribution**

(a) The purchase and distribution of free textbooks for the state shall be under the management of the commissioner of education, subject to the approval of the State Board of Education.

(b) One copy of each textbook used in the work taught by the teacher shall be issued by the school trustees, or their representatives, to each teacher as a desk copy. These books shall be returned to the trustees or their representatives at the close of the session.

(c) Books purchased in accordance with the terms of this chapter shall be delivered to the school districts f. o. b. the Texas depository of the publisher and shall be shipped by freight, parcel post, or express, as may be set out in the requisition.

(d) If it is necessary for the publisher or the depository to prepay any shipping charge, it shall be repaid by the state, in the same manner that the books are paid for, and in addition to the bill for books.

(e) The State Department of Education may direct the route by which books shall be shipped.

(f) Bills for textbooks purchased by the state on requisitions as provided for in this chapter shall be paid by warrants on the state treasury made by the state comptroller of public accounts on receipt of bills approved by the commissioner of education. The payment shall be made within 90 days from date of delivery, and if payment is delayed thereafter, a six percent per annum shall be added until date of payment.

(g) Any person, school not controlled by the state, state institution, or dealer in any county in the state may order books from the state depository designated by the publisher, and the books so ordered shall be furnished at the same rate and discount as are granted to the state, but in that case the designated depository may require that the price of books so ordered shall be paid in advance.

[Acts 1969, 61st Leg., p. 2784, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 12.36 to 12.60 reserved for expansion]

SUBCHAPTER C. LOCAL OPERATIONS

**§ 12.61. Requisitions**

(a) On the first school day of April each teacher shall report the maximum attendance of each of his grade levels taught, to the school principal or superintendent, if any, or to the county superintendent.

(b) Within one week subsequent to the first school day in April compiled reports as to the maximum attendance for the school shall be made by the principal to the superintendent or, if there is no

district superintendent, the report shall be made to the county superintendent having jurisdiction of the district.

(c) Each superintendent of an independent school district, and each principal of a school district classified as common having a scholastic population of 300 or more and electing to have its books requisitioned and distributed directly to the district, shall compile maximum attendance reports and make such reports to the commissioner of education.

(d) Each county superintendent shall compile reports of the schools classified as common and under his jurisdiction (except for those electing to requisition directly as provided in Subsection (c) of this section), and make a report to the commissioner of education.

(e) Books needed as reported in Subsection (d) of this section shall be requisitioned and distributed entirely through the office of the county superintendent. However, any school district classified as common with a scholastic population of 300 or more may elect to have its books requisitioned and distributed in the same manner as are those for independent school districts. The duties of the county superintendent with reference to the care and distribution of textbooks shall be subject to the approval of the county school board and the commissioner of education.

(f) Reports as to the maximum attendance of each school shall be made to the commissioner of education as prescribed in Subsections (c) and (d) of this section not later than April 25 of each year. Blank forms for such reports and for the requisition of textbooks shall be prepared and furnished by the State Department of Education.

(g) Requisition for textbooks for a subsequent session shall be based on the reports of the maximum number of scholastics in attendance during the preceding school session, plus an additional 10 percent, except as otherwise provided. Requisitions shall be made through the commissioner of education and furnished by him to the state depository designated by contractors of books not later than June 1 of each year; but in cases of unforeseen emergency the designated state depository shall fill orders for books on requisition approved by the State Department of Education.

(h) Requisitions for textbooks shall be delivered to the county superintendent by each principal or superintendent of those school districts whose books are requisitioned and distributed through the county superintendent.

(i) Requisitions for supplementary readers and other textbooks may be made at convenient times during the session and should be made within one month in advance of the time the books will be needed.

[Acts 1969, 61st Leg., p. 2785, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 12.62. Local Adoptions**

(a) No public school in the state shall use any textbook unless it has been previously adopted and approved by the State Board of Education.

(b) In each subject of the elementary and high school grades, one or more of the several textbooks of each multiple list adopted may be selected by local school officials; but all of the schools in any

one district, or all districts under the supervision of any one county school system (county school board and/or superintendent) must select the same book or books for all of the schools within the system.

(c) Once textbooks are selected from the multiple lists, they shall be continued in use in that school system for the entire period of the adoption or for a minimum period of not less than five years.

(d) Supplementary readers for pre-primer, primer, first, second, and third grades shall be distributed on a quota of not more than 300 percent of the enrollment for each of the grades to which the book is assigned.

(e) Supplementary readers for the fourth through the eighth grades shall be distributed on a quota basis not in excess of 200 percent of the grade enrollment to which the books are assigned.

(f) Agriculture and homemaking textbooks for grades 9 through 12 shall be distributed on a quota basis not in excess of 220 percent of the subject enrollment.

(g) All other books not specified in this section shall be supplied on the basis of one book for each pupil enrolled in the subject for which the book is adopted and not to exceed the total enrollment for the subject plus the teachers' copies.

[Acts 1969, 61st Leg., p. 2786, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 12.63. Title, Custody, and Disposition

(a) After purchase according to the provisions of this chapter, all textbooks are and shall remain the property of the State of Texas.

(b) Specific rules as to the requisition, distribution, care, use, and disposal of books may be made by the commissioner of education, subject to the approval of the State Board of Education. Such rules shall not conflict with the provisions of this code.

(c) Textbooks shall be subject to inspection by any agent or inspector authorized by those having charge of the local textbook service or authorized by the commissioner of education subject to approval of the State Board of Education.

(d) The commissioner of education with the approval of the State Board of Education may provide for the disposition of those textbooks which are no longer in fit condition to be used for instruction purposes, or for the disposition of discarded books remaining the property of the state. In case of the disuse of books in fair condition, inspectors of the State Department of Education may require continuance of their use.

(e) The school trustees of each district shall be designated as the legal custodians of the books and shall have the power to make such arrangements for the distribution of books to the pupils as they may deem most effective and economical.

[Acts 1969, 61st Leg., p. 2786, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 12.64. Bond

(a) One or more members or employees of each district board of trustees shall enter into bond in the sum of 15 percent of the value of the books consigned to the district by the state, payable in Austin, Texas, to the governor of the state, or his successors in office. All money accruing from the forfeiture of

the bonds shall be deposited by the governor to the credit of the state textbook fund.

(b) The bond shall be approved by the county judge of the county in which the school is situated and by the commissioner of education; deposited with the commissioner; and conditioned on the faithful discharge by the member or employee of his duties under his employment and under this section and on his faithfully accounting for all books coming into his possession and for all money received from the sale thereof.

[Acts 1969, 61st Leg., p. 2786, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 12.65. Distribution; Handling

(a) The district school trustees may delegate, under such terms as they deem best, to their employees power to requisition and distribute books and to manage books, but such delegations of authority shall not be at variance with the provisions of this code or with the rules for free textbooks formulated by the commissioner of education and approved by the State Board of Education.

(b) All books shall have on one inside cover a printed label stating that the book is the property of the state. Schools shall number all books, placing the number on the printed label. Teachers shall keep a record of the number of all books issued to each pupil. Books must be covered by the pupil under the direction of the teacher. Books must be returned to the teacher at the close of the session or when the pupil withdraws from school.

(c) Each pupil, or his parent or guardian, shall be responsible to the teacher for all books not returned by the pupil, and any pupil failing to return all books shall forfeit his right to free textbooks until the books previously issued but not returned are paid for by the parent or guardian.

(d) Teachers and school officers must make such reports as to the use, care, and condition of free textbooks as may be required by the local trustees or by the State Department of Education. The salary for any month of any teacher or employee who neglects to make the report at the proper time may be withheld until each report is received in a condition satisfactory in form and content.

(e) No teacher or employee of the school engaged in the distribution of textbooks under this code as the agent or employee of the state, or of any county or district in the state, shall, in connection with this distribution, sell or distribute, or in any way handle, any kind of school furniture or supplies, such as desks, stoves, blackboards, crayons, erasers, pens, ink, pencils, tablets, etc.

(f) Local boards of trustees shall make provision for the fumigation of books before the reissue of the books. Covers of all books shall be removed before reissue, and the pupils to whom the books are issued shall replace covers under the direction of the teacher.

[Acts 1969, 61st Leg., p. 2787, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 12.66. Sale of Books

The local boards of school trustees may sell books to pupils or parents attending the public schools of this state, at the state contract price. All money accruing from sales of textbooks by boards of school

trustees shall be forwarded to the commissioner of education as directed, and deposited in the state textbook fund.

[Acts 1969, 61st Leg., p. 2787, ch. 889, § 1, eff. Sept. 1, 1969.]

**CHAPTER 13. TEACHERS**

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*Chapter 13 of the Education Code, formerly entitled "Certification of Teachers" and consisting of Sections 13.01 to 13.16, was amended by Acts 1971, 62nd Leg., p. 1468, ch. 405, § 2, effective May 26, 1971, to consist of Subchapters A to D and Z containing Sections 13.001 to 13.904. The provisions of former Sections 13.01 to 13.16 were incorporated by such Act as Sections 13.031 to 13.046 of Subchapter B.*

*The provisions of former Subchapter G of Chapter 21 of the Code, consisting of Sections 21.201 to 21.216, were transferred to Chapter 13 as Subchapter C consisting of Sections 13.101 to 13.116, by Acts 1971, 62nd Leg., p. 1474, ch. 405, §§ 2, 54(1).*

*Acts 1971, 62nd Leg., p. 1449, ch. 405, which by sections 1 to 53 incorporated the provisions of certain acts passed during the regular and second called sessions of the 61st Legislature into the Code, and which by section 54 repealed the acts so incorporated, provided in sections 55 and 56:*

*"Sec. 55. Nothing in this Act is intended to make any change in the substantive law, but this Act is merely intended to be a recodification of the present law.*

*"Sec. 56. If any other Act passed at the same session of the Legislature conflicts with any provision of this Act, the other Act prevails."*

**SUBCHAPTER A. SCOPE OF CHAPTER;  
GENERAL PROVISIONS**

**§ 13.001. Scope of Chapter**

The provisions of this chapter apply to the teachers of the public schools of the state and, as indicated by the context, to the auxiliary employees of the public schools. However, this chapter is not exclusive, and its provisions shall be construed as necessary along with other provisions of this code applicable to teachers and auxiliary employees.

[Acts 1971, 62nd Leg., p. 1468, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.002. Salaries**

Salaries of teachers and other personnel are governed by Subchapter D, Chapter 16 of this code.<sup>1</sup>

[Acts 1971, 62nd Leg., p. 1468, ch. 405, § 2, eff. May 26, 1971.]

<sup>1</sup> Section 16.301 et seq.

**§ 13.003. Retirement**

Retirement of teachers and other personnel is governed by Chapter 3 of this code.<sup>1</sup>

[Acts 1971, 62nd Leg., p. 1468, ch. 405, § 2, eff. May 26, 1971.]

<sup>1</sup> Section 3.01 et seq.

[Sections 13.004 to 13.030 reserved for expansion]

## SUBCHAPTER B. CERTIFICATION OF TEACHERS

## § 13.031. State Board of Examiners for Teacher Education

(a) The state commissioner of education shall be authorized to appoint a board of examiners for teacher education consisting of not less than three competent teachers, living in the state, to serve during his pleasure, and he may increase or decrease the number as varying conditions may make necessary.

(b) It shall be the additive and cumulative duty of every person who is a state employee, teacher, professor, or officer of any of the state institutions of higher learning, and drawing a state warrant for salary as such, to serve as an ex officio member of the board of examiners for teacher education when called upon by the state commissioner of education for the performance of such ex officio duties.

[Acts 1969, 61st Leg., p. 2788, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1468, ch. 405, § 2, eff. May 26, 1971.]

## § 13.032. Rules and Regulations

(a) The State Board of Education, with the advice and assistance of the state commissioner of education, is authorized to establish such rules and regulations as are not inconsistent with the provisions of this chapter and which may be necessary to administer the responsibilities vested under the terms of this chapter concerning the issuance of certificates and the standards and procedures for the approval of colleges and universities offering programs of teacher education.

(b) In order to secure professional advice for his recommendations to the State Board of Education, the state commissioner of education shall consider recommendations of the board of examiners for teacher education in all matters covered by this chapter.

[Acts 1969, 61st Leg., p. 2788, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1468, ch. 405, § 2, eff. May 26, 1971.]

## § 13.033. Filing of Application and Payment of Fees

(a) Any person eligible to obtain a teacher certificate of any kind or classification provided for in this chapter shall make application to the state commissioner of education, stating the class of certificate or certificates desired, and shall present to the commissioner such proof as this and other teacher certification laws require concerning his qualifications and fitness for the class of certificate requested.

(b) No applicant shall receive a teacher certificate of any class or kind, except as otherwise provided in this chapter, without first depositing with the state commissioner of education the application fee prescribed to be paid under the provisions of this chapter for the particular type or class of certificate requested.

(c) All application fees collected under the provisions of the teacher certification laws shall be used to cover the expenses of inspection and identification of approved college or university teacher education programs and of recording and issuing certificates.

[Acts 1969, 61st Leg., p. 2788, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1468, ch. 405, § 2, eff. May 26, 1971.]

## § 13.034. Qualifications

(a) No person shall receive a certificate authorizing his employment in the public schools of Texas without showing to the satisfaction of the state commissioner of education that he:

(1) is a person of good moral character, evidenced by written statements of three good and well-known citizens, or such proof as the commissioner may require of his moral qualifications;

(2) will support and defend the constitutions of the United States and the State of Texas;

(3) has secured credit from a college or university in this state in a course or courses (government or political science) which give special emphasis on the Texas Constitution and has secured credit from a college or university in a course or courses (government or political science) which give special emphasis on the United States Constitution, or shall have passed examination(s) administered under the direction of the Central Education Agency, in the one or both, as the situation demands; and

(4) has ability to speak and understand the English language sufficiently to use it easily and readily in conversation and teaching.

(b) No certificate shall be granted to a person under 18 years of age.

[Acts 1969, 61st Leg., p. 2789, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1469, ch. 405, § 2, eff. May 26, 1971.]

## § 13.035. Classes of Certificates

Teacher certificates authorizing the holders thereof to contract to teach, or to be employed in professional teaching service positions in the public schools of this state, shall be of two classes, designated as provisional certificates and professional certificates.

[Acts 1969, 61st Leg., p. 2789, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1469, ch. 405, § 2, eff. May 26, 1971.]

## § 13.036. Provisional Certificate

(a) The provisional certificate shall be issued to each applicant who has acquired, or shall acquire, a bachelor's degree conferred by a college or university approved for teacher education by the State Board of Education of Texas, and who is otherwise eligible to teach in the public schools of this state.

(b) Vocational teachers in trade and industrial courses shall not be required to have a bachelor's degree as a predicate to the issuance of a provisional certificate to them, but must in lieu of the bachelor's degree requirement have work experience to the extent that shall be established in the state plan for vocational education.

(c) A special teacher designated as a school nurse shall not be required to have a bachelor's degree as a predicate to the issuance of a provisional certificate, but must in lieu thereof have been certified as a registered nurse under the laws of this state.

(d) An application fee of \$2 shall be paid by each applicant for the certificate provided for herein.

[Acts 1969, 61st Leg., p. 2789, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1469, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.037. Professional Certificate**

(a) The professional certificate shall be issued to each applicant who has acquired a bachelor's degree conferred by a college or university approved for teacher education by the State Board of Education; who has satisfactorily completed at least 30 additional graduate-level hours, that shall be completed in accordance with an approved college plan of graduate teacher education designed for the purpose of qualifying the applicant to serve in the area or areas of specialization to appear on his certificate, in a college or university which has an approved graduate program of teacher education; and who has at least three years of teaching experience.

(b) The State Board of Education acting on recommendation of the state commissioner of education shall define by regulations what constitutes a year of teaching experience for purposes of this section.

(c) An application fee of \$3 shall be paid by each applicant for the certificate provided for in this section.

[Acts 1969, 61st Leg., p. 2790, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1470, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.038. Duration of Certificate**

Either a provisional or professional certificate shall be permanent and valid for life, unless cancelled by lawful authority.

[Acts 1969, 61st Leg., p. 2790, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1470, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.039. Certificate Areas of Specialization**

(a) The provisional and professional certificates shall show clearly that the holders thereof may teach or perform duties in professional service positions in one or more of the specialization areas in which the applicant shall have completed the college or university teacher education program approved for such area(s).

(b) The specialization areas shall be in:

(1) the elementary schools, including kindergartens, grades 1 to 8 inclusive, and in grade 9 in junior high school;

(2) junior high schools, including grades 6 to 10 inclusive;

(3) high schools, including grades 7 to 12 inclusive;

(4) in a special subject for all grades; and

(5) in a professional service position or area as provided in the foundation school program law.

(c) The specialization area or areas designated above (which are to appear on the face of the certificate issued to an eligible applicant) shall be based upon the satisfactory completion by the applicant of a college or university teacher education program approved in one or more of the above five areas of specialization by the State Board of Education as recommended by the state commissioner of education.

[Acts 1969, 61st Leg., p. 2790, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1470, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.040. Emergency Teaching Permits**

An emergency permit to teach, valid for not more than one scholastic year, may be issued under regulations adopted by the State Board of Education upon recommendation of the state commissioner of education. An application fee of \$1 shall be paid by an applicant for the permit authorized herein, and for each necessary renewal thereof.

[Acts 1969, 61st Leg., p. 2790, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1470, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.041. Transition Certificates**

(a) "Permanent," as used throughout this section, shall mean valid for life unless cancelled by lawful authority.

(b) All persons enrolled in a college approved for teacher education and preparing for the teaching profession and all persons or teachers qualified for teacher certification or certified to teach in the public schools of this state prior to September 1, 1955, are safeguarded and protected in their right or privilege to pursue and continue in the teaching profession or training. Such persons as are eligible therefor shall receive, on application, the certificate or certificates authorized in Subsections (c), (d), (e), (f), (g), (h), and (j) of this section.

(c) A non-degree teacher who, on September 1, 1955, held a valid permanent teacher certificate issued upon prior certification laws of this state, and who is employed as a teacher in any scholastic year, on application, shall be issued a provisional certificate marked permanent.

(d) A non-degree teacher who, on September 1, 1955, held a valid temporary certificate issued under prior certification laws of this state, and who is employed as a teacher in any scholastic year thereafter, on application, shall be issued a provisional certificate marked temporary. This certificate shall be good for the remaining years of validity of his previous temporary certificate, but on expiration may be revived and continued by complying with the certification laws in effect at the time the temporary certificate was issued. Upon the holder's completion of the requirements entitling him to a permanent certificate, as prescribed by law pursuant to which his temporary certificate was issued, the provisional certificate shall be marked permanent.

(e) Any person who, prior to September 1, 1955, had established his eligibility for any teacher certificate under the then-existing certification laws of this state may apply for and receive the state certificate to which he was entitled under such laws on payment of the fees prescribed. On application, such person may also receive the class of certificate to which the provisions of this chapter entitle him.

(f) Any teacher who has a bachelor's degree, holds a valid Texas teacher certificate, has five years or more of teaching experience, and is employed as a teacher in any scholastic year following September 1, 1955, shall, on application, be issued a professional certificate. Such a teacher may, however, substitute six semester hours of college credit earned in a college or university approved for teacher education,

and acquired after the conferring of his bachelor's degree for a year of teaching experience, but no more than three years (a total of 18 semester hours) of college credit may be substituted in order to qualify for a professional certificate.

(g) Any teacher who has a bachelor's degree, holds a valid Texas teacher certificate, but has less than five years of teaching experience (and cannot meet the requirements in Subsection (f) of this section for college credit in lieu of teaching experience), and who is employed as a teacher in any scholastic year following September 1, 1955, shall, on application, be issued a provisional certificate marked "permanent."

(h) Any teacher who has a master's degree, holds a valid Texas teacher certificate, and is employed as a teacher in any scholastic year following September 1, 1955, shall, on application, be issued a professional certificate.

(i) Any person who, prior to September 1, 1955, was enrolled in a program leading to a bachelor's degree in a college or university approved for teacher education may continue to pursue the program established or altered by the college. On completion of the program and acquisition of the bachelor's degree, he shall be issued, on application and payment of fee prescribed therefor, the kind of certificate for which such preparation entitled him under the previous certification law when his college program was begun.

(j) Any person who held a valid permanent teaching certificate prior to September 1, 1955, shall, on application, be issued a professional certificate. If any part of this chapter is in conflict with this subsection, then this subsection shall control.

(k) There shall be no fee charged for the issuance of either class of new transitional certificates authorized under this section.

(l) The new classes of transitional certificates authorized to be issued under this section shall have designated on their face the area(s) of specialization corresponding to those specializations authorized by the applicable provisions of the previous certification laws.

[Acts 1969, 61st Leg., p. 2791, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1470, ch. 405, § 2, eff. May 26, 1971.]

#### § 13.042. Issuance of Certificates to Applicants With Credentials From Other States

(a) The commissioner shall issue an appropriate Texas teacher certificate to and upon request of a person holding a valid teaching certificate from another state who desires to teach in Texas, provided the college or university in which the teacher completed the requirements for his certificate is accredited by a recognized accrediting agency as an approved teacher training institution.

(b) An out-of-state applicant shall take all required courses in Texas history that a Texas teacher certificate requires and shall complete the courses within 12 months of the issuance of the certificate; otherwise, the certificate will be revoked.

[Acts 1969, 61st Leg., p. 2792, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1472, ch. 405, § 2, eff. May 26,

1971; Acts 1973, 63rd Leg., p. 84, ch. 51, § 5, eff. Aug. 27, 1973.]

#### § 13.043. Certificates for Teaching in the Texas School for the Deaf or the Texas School for the Blind

(a) A provisional certificate to teach the deaf or blind shall be issued, on application and payment of fees, to any person who is 18 years of age; has satisfactorily completed a four-year course of study in an accredited college, professional or technical school, or a university or college approved for teacher education; and has graduated with a degree including 10 semester hours of education (with not less than five of these covering principles and methods of teaching the type of handicapped children he is being certified to teach).

(b) Applicants for certificates to teach industrial and special subjects may substitute four years of trade or professional experience or successful teaching experience for college work, but the certificates issued for these industrial and special subjects shall authorize the holder to teach only such subjects in the Texas School for the Deaf or the Texas School for the Blind.

(c) Any teacher, who prior to 1935 had five years of successful teaching experience of particular types of handicapped children or of industrial and special subjects in the School for the Deaf or the School for the Blind, shall be granted a permanent provisional certificate entitling him to teach those types of children or subjects in the Texas School for the Deaf or the Texas School for the Blind.

(d) Any person now holding a valid teacher certificate, or who may hereafter be granted a certificate, may be deemed qualified to teach in the Texas School for the Deaf or the Texas School for the Blind.

[Acts 1969, 61st Leg., p. 2793, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1472, ch. 405, § 2, eff. May 26, 1971.]

#### § 13.044. Alien Teachers

(a) No certificate of any type shall be issued to an alien unless proper evidence is produced showing his intention to become a naturalized citizen of the United States of America.

(b) It shall be unlawful for any board of trustees of any public school district of this state to contract with any person who is an alien to teach, unless the person has declared his intention to become a citizen of the United States. Except as provided in Subsection (c) of this section, any contract in violation of this provision shall be void and of no effect.

(c) If a like privilege is currently granted by any nation to any teacher designated by the governing body of a school district in this state, Subsection (b) of this section shall not apply to any alien teacher, a subject of that nation, who has been regularly designated by proper authority to serve as an exchange teacher in the United States and to teach in the public schools of Texas for not more than one year.

[Acts 1969, 61st Leg., p. 2793, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1473, ch. 405, § 2, eff. May 26, 1971.]

§ 13.045. Presentation and Recording of Certificates

(a) The county superintendent shall keep a record of all certificates held by persons teaching in the public schools of all common school districts, rural high school districts, and independent school districts having less than 150 scholastics (according to the last scholastic census approved by the Central Education Agency) and administered by the laws applicable to common school districts under the jurisdiction of his county.

(b) Any person who desires to teach in a public school of a district as above designated shall present his certificate for record before his contract with the board of trustees of the district shall become binding.

(c) Any person who desires to teach in a public school of an independent school district having 150 or more scholastics or in an independent school district having less than 150 scholastics but which has elected not to be governed by laws applicable to common school districts shall present his certificate for filing with the employing district before his contract with the board of trustees of the district shall become binding.

(d) A teacher or superintendent who does not hold a valid certificate or emergency permit shall not be paid for teaching or work done before the effective date of issuance of a valid certificate or permit. [Acts 1969, 61st Leg., p. 2793, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1473, ch. 405, § 2, eff. May 26, 1971.]

§ 13.046. Cancellation of Certificates

(a) Any teacher's certificate issued under the provisions of this code or under any previous statute relating to the certification of teachers may be cancelled by the state commissioner of education under any one or more of the following circumstances:

(1) on satisfactory evidence that the holder is conducting his school or his teaching activities in violation of the laws of this state;

(2) on satisfactory evidence that the holder is a person unworthy to instruct the youth of this state; or

(3) on complaint made by the board of trustees that the holder of a certificate after entering into a written contract with the board of trustees of the district has without good cause and without the consent of the trustees abandoned the contract.

(b) Before any certificate shall be cancelled the holder shall be notified and shall have an opportunity to be heard. Any person whose certificate is cancelled by the state commissioner of education shall have the right of appeal to the State Board of Education.

(c) The state commissioner of education shall have the authority, upon the presentation of satisfactory evidence, to reinstate any teacher's certificate cancelled under the provisions of this section. On a refusal of the commissioner so to reinstate a certificate, the applicant shall have the right of appeal to the State Board of Education.

[Acts 1969, 61st Leg., p. 2794, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1474, ch. 405, § 2, eff. May 26, 1971.]

[Sections 13.047 to 13.100 reserved for expansion]

SUBCHAPTER C. TEACHERS' EMPLOYMENT CONTRACTS

§ 13.101. Probationary or Continuing Contract

Each teacher hereafter employed by any school district in this state shall be employed under, and shall receive from such district, a contract that is either a "probationary contract" or a "continuing contract" in accordance with the provisions of this subchapter if the school board chooses to offer such teacher a "probationary contract" or a "continuing contract." All such contracts shall be in writing, in such form as may be promulgated by or approved by the commissioner of education, and shall embody the terms and conditions of employment hereinafter set forth, and such other provisions not inconsistent with this subchapter as may be appropriate.

[Acts 1969, 61st Leg., p. 2925, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1474, ch. 405, §§ 2, 54(1).]

§ 13.102. Probationary Contract

Any person who is employed as a teacher by any school district for the first time, or who has not been employed by such district for three consecutive school years subsequent to August 28, 1967, shall be employed under a "probationary contract," which shall be for a fixed term as therein stated; provided, that no such contract shall be for a term exceeding three school years beginning on September 1 next ensuing from the making of such contract; and provided further that no such contract shall be made which extends the probationary contract period beyond the end of the third consecutive school year of such teacher's employment by the school district, unless the board of trustees determines and recites that it is in doubt whether the particular teacher should be given a continuing contract, in which event a probationary contract may be made with such teacher for a term ending with the fourth consecutive school year of such teacher's employment with the school district, at which time the employment of such teacher by such school district shall be terminated, or such teacher shall be employed under a continuing contract as hereinafter provided.

[Acts 1969, 61st Leg., p. 2925, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1474, ch. 405, §§ 2, 54(1).]

§ 13.103. Probationary Contract: Termination

The board of trustees of any school district may terminate the employment of any teacher holding a probationary contract at the end of the contract period, if in their judgment the best interests of the school district will be served thereby; provided, that notice of intention to terminate the employment shall be given by the board of trustees to the teacher on or before April 1, preceding the end of the employment term fixed in the contract. In event of failure to give such notice of intention to terminate within the time above specified, the board of trustees shall thereby elect to employ such probationary teacher in the same capacity, and under probationary contract status for the succeeding school year if the teacher has been employed by such district for less than three successive school years, or in a continuing contract position if such teacher has been employed during three consecutive school years.

[Acts 1969, 61st Leg., p. 2925, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1475, ch. 405, §§ 2, 54(1).]

#### § 13.104. Hearing

In event a teacher holding a probationary contract is notified of the intention of the board of trustees to terminate his employment at the end of his current contract period, he shall have a right upon written request to a hearing before the board of trustees, and at such hearing, the teacher shall be given the reasons for termination of his employment. After such hearing, the board of trustees may confirm or revoke its previous action of termination; but in any event, the decision of the board of trustees shall be final and non-appealable.

[Acts 1969, 61st Leg., p. 2925, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1475, ch. 405, §§ 2, 54(1).]

#### § 13.105. Probationary Contract: Exception

The requirement to serve a probationary period shall not apply to any teacher who previously completed a probationary period under a contract with the school district where employed before September 1, 1967, and who was then considered to be on a permanent contract status as defined by the school district.

[Acts 1969, 61st Leg., p. 2926, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1475, ch. 405, §§ 2, 54(1).]

#### § 13.106. Continuing Contract

Any teacher employed by a school district who is performing his third, or where permitted fourth, consecutive year of service with the district under probationary contract, and who is elected to employment by the board of trustees of such district for the succeeding year, shall be notified in writing of his election to continuing contract status with such district, and such teacher shall within 30 days after such notification file with the board of trustees of the employing school district notification in writing of his acceptance of the continuing contract, beginning with the school year following the conclusion of his period of probationary contract employment. Failure of the teacher to accept the contract within such 30 day period shall be considered a refusal on the part of the teacher to accept the contract.

[Acts 1969, 61st Leg., p. 2926, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1475, ch. 405, §§ 2, 54(1).]

#### § 13.107. Status Under Continuing Contract

Each teacher with whom a continuing contract has been made as herein provided shall be entitled to continue in his position or a position with the school district, at a salary authorized by the board of trustees of said district complying with the minimum salary provisions of the foundation aid law, for future school years without the necessity for annual nomination or reappointment, until such time as the person:

- (1) resigns, or retires under the teacher retirement system;
- (2) is released from employment by the school district at the end of a school year because of necessary reduction of personnel as herein defined;
- (3) is discharged for lawful cause, as defined in Section 13.109 of this code and in accordance with the procedures hereinafter provided;

(4) is dismissed at the end of a school year for any reason as set out in Section 13.110 of this code and pursuant to the procedures hereinafter provided in such cases; or

(5) is returned to probationary status, as authorized in Section 13.110 of this code.

[Acts 1969, 61st Leg., p. 2926, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1475, ch. 405, §§ 2, 54(1).]

#### § 13.108. Administrative Personnel

The board of trustees may grant to a person who has served as superintendent, principal, supervisor, or other person employed in any administrative position for which certification is required, at the completion of his service in such capacity, a continuing contract to serve as a teacher, and the period of service in such other capacity shall be construed as contract service as a teacher within the meaning of this subchapter.

[Acts 1969, 61st Leg., p. 2926, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1476, ch. 405, §§ 2, 54(1).]

#### § 13.109. Discharge During Year

Any teacher, whether employed under a probationary contract or a continuing contract, may be discharged during the school year for one or more of the following reasons, which shall constitute lawful cause for discharge:

- (1) immorality;
- (2) conviction of any felony or other crime involving moral turpitude;
- (3) drunkenness;
- (4) repeated failure to comply with official directives and established school board policy;
- (5) physical or mental incapacity preventing performance of the contract of employment; and
- (6) repeated and continuing neglect of duties.

[Acts 1969, 61st Leg., p. 2927, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1476, ch. 405, §§ 2, 54(1).]

#### § 13.110. Release at End of Year

Any teacher employed under a continuing contract may be released at the end of any school year and his employment with the school district terminated at that time, or he may be returned to probationary contract employment for not exceeding the three succeeding school years, upon notice and hearing (if requested) as hereinafter provided, for any reason enumerated in Section 13.109 of this code or for any of the following additional reasons:

- (1) inefficiency or incompetency in performance of duties;
- (2) failure to comply with such reasonable requirements as the board of trustees of the employing school district may prescribe for achieving professional improvement and growth;
- (3) willful failure to pay debts;
- (4) habitual use of addictive drugs or hallucinogens;
- (5) excessive use of alcoholic beverages;
- (6) necessary reduction of personnel by the school district (such reductions shall be made in the reverse order of seniority in the specific teaching fields); or

(7) for good cause as determined by the local school board, good cause being the failure of a teacher to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts throughout Texas.

[Acts 1969, 61st Leg., p. 2927, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1476, ch. 405, §§ 2, 54(1).]

**§ 13.111. Notice**

(a) Before any teacher shall be discharged during the year for any of the causes mentioned in Section 13.109 of this code, or before any probationary contract teacher shall be dismissed at the end of a school year before the end of the term fixed in his contract, or before any teacher holding a continuing contract shall be dismissed or returned to probationary contract status at the end of a school year for any of the reasons mentioned in Section 13.110 of this code, he shall be notified in writing by the board of trustees or under its direction of the proposed action and of the grounds assigned therefor.

(b) In the event the grounds for the proposed action relate to the inability or failure of the teacher to perform his assigned duties, the action shall be based upon the written recommendation by the superintendent of schools, filed with the board of trustees. Any teacher so discharged or dismissed or returned to probationary contract status shall be entitled, as a matter of right, to a copy of each and every evaluation report, or any other memorandum in writing which has been made touching or concerning the fitness or conduct of such teacher, by requesting in writing a copy of the same.

[Acts 1969, 61st Leg., p. 2927, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1477, ch. 405, §§ 2, 54(1).]

**§ 13.112. Hearing**

(a) If, upon written notification of the proposed action, the teacher desires to contest the same, he shall notify the board of trustees in writing within 10 days after the date of receipt by him of the official notice above prescribed, of his desire to be heard, and he shall be given a public hearing if he wishes or if the board of trustees determines that a public hearing is necessary in the public interest.

(b) Upon any charges based upon grounds of inefficiency, or inability or failure of the teacher to perform his assigned duties, the board of trustees may in its discretion establish a committee of classroom teachers and administrators, and the teacher may request a hearing before this committee prior to hearing of the matter by the board of trustees.

(c) Within 10 days after request for hearing made by the teacher, the board of trustees shall fix a time and place of hearing, which shall be held before the proposed action shall be effective. Such hearing shall be public unless the teacher requests in writing that it be private.

(d) At such hearing, the teacher may employ counsel, if desired, and shall have the right to hear the evidence upon which the charges are based, to cross-examine all adverse witnesses, and to present evidence in opposition thereto, or in extenuation.

[Acts 1969, 61st Leg., p. 2928, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1477, ch. 405, §§ 2, 54(1).]

**§ 13.113. Suspension Without Pay**

If the proposed action be discharge of the teacher for any of the reasons set forth in Section 13.109 of this code, the teacher may be suspended without pay by order of the board of trustees, or by the superintendent of schools if such power has been delegated to him by express regulation previously adopted by the board of trustees, but in such event the hearing shall not be delayed for more than 15 days after request for hearing, unless by written consent of the teacher.

[Acts 1969, 61st Leg., p. 2928, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1477, ch. 405, §§ 2, 54(1).]

**§ 13.114. Decision of Board**

If the teacher upon notification of any such proposed action fails to request a hearing within 10 days thereafter, or after a hearing as hereinabove provided, the board of trustees shall take such action and shall enter such order as it deems lawful and appropriate. If the teacher is reinstated, he shall immediately be paid any compensation withheld during any period of suspension without pay. No order adverse to the teacher shall be entered except upon majority vote of the full membership of the board of trustees.

[Acts 1969, 61st Leg., p. 2928, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1477, ch. 405, §§ 2, 54(1).]

**§ 13.115. Appeals**

(a) If the board of trustees shall order the teacher discharged during the school year under Section 13.109 of this code, the teacher shall have the right to appeal such action to the commissioner of education, for review by him, provided notice of such appeal is filed with the board of trustees and a copy thereof mailed to the commissioner within 15 days after written notice of the action taken by the board of trustees shall be given to the teacher; or, the teacher may challenge the legality of such action by suit brought in the district court of any county in which such school district lies within 30 days after such notice of the action taken by the board of trustees has been given to the teacher.

(b) If the board of trustees shall order the continuing contract status of any teacher holding such a contract abrogated at the end of any school year and such teacher returned to probationary contract status, or if the board of trustees shall order that any teacher holding a continuing contract be dismissed at the end of the school year, or that any teacher holding a probationary contract shall be dismissed at the end of a school year before the end of the employment period covered by such probationary contract, the teacher affected by such order, after filing notice of appeal with the board of trustees, may appeal to the commissioner of education by mailing a copy of the notice of appeal to the commissioner within 15 days after written notice of the action taken by the board of trustees has been given to the teacher.

(c) Either party to an appeal to the commissioner shall have the right to appeal from his decision to the State Board of Education, according to the procedures prescribed by the State Board of Education. The decision of the State Board of Education shall be final on all questions of fact, but shall be subject to appeal to the district court of any county in which

such school district or portion thereof lies, if the decision of the state board:

(1) is not supported in the record by substantial evidence;

(2) is arbitrary or capricious; or

(3) is in error in the application of existing law to the facts of the case.

(d) Trial procedure in the district court shall be the same as that accorded other civil cases on the docket of said court, with the decision of the trial court to be subject to the same rights of appeal under the Texas Rules of Civil Procedure as is accorded other civil cases so tried.

[Acts 1969, 61st Leg., p. 2928, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1478, ch. 405, §§ 2, 54(1).]

### § 13.116. Resignations

(a) Any teacher holding a continuing contract with any school district, or holding a probationary contract with an unexpired term continuing through the ensuing school year, may relinquish the position and leave the employment of the district at the end of any school year without penalty by written resignation addressed to and filed with the board of trustees prior to August 1, preceding the end of the school year that the resignation is to be effective. A written resignation mailed by prepaid certified or registered mail to the superintendent of schools of the district at the post office address of the district shall be considered filed at time of mailing.

(b) Any teacher holding a continuing contract or such unfulfilled probationary contract may resign, with the consent of the board of trustees of the employing school district, at any other time mutually agreeable.

(c) A teacher holding a probationary contract or a continuing contract obligating the employing district to employ such person for the ensuing school year, who fails to resign within the time and in the manner allowed under Subsections (a) and (b) of this section, and who fails to perform such contract, shall be ineligible for employment by any other Texas school district during the ensuing school year covered by such contract, and his teaching certificate shall be suspended for that school year only.

[Acts 1969, 61st Leg., p. 2929, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1478, ch. 405, §§ 2, 54(1).]

[Sections 13.117 to 13.200 reserved for expansion]

## SUBCHAPTER D. TEACHERS' PROFESSIONAL PRACTICES

### § 13.201. Responsibilities of the Teaching Profession

Teaching is hereby declared to be and is recognized as a profession. The members of such profession shall accept responsibilities in development and promotion of high standards of ethics, conduct, and professional performance and practices of persons engaged in the practice of such profession in this state.

[Acts 1971, 62nd Leg., p. 1479, ch. 405, § 2, eff. May 26, 1971.]

### § 13.202. Definitions

In this subchapter:

(1) "Teacher" means a superintendent, principal, supervisor, classroom teacher, counselor, or other professional employee who is required to hold a valid certificate or teaching permit.

(2) "Commission" means the Teachers' Professional Practices Commission established by this subchapter.

(3) "Code of ethics and standard practices" means the rules, regulations and standards of conduct which have been adopted and promulgated by the commission pursuant to Section 13.210 of this code.

[Acts 1971, 62nd Leg., p. 1479, ch. 405, § 2, eff. May 26, 1971.]

### § 13.203. Professional Practices Commission

There is hereby created a Teachers' Professional Practices Commission consisting of 15 members selected from the several professional groups, as follows:

- 3 elementary classroom teachers
- 3 secondary classroom teachers
- 2 counselors
- 1 elementary principal
- 1 secondary principal
- 1 supervisor
- 1 superintendent (1,000 or more teachers)
- 1 superintendent (fewer than 1,000 teachers)
- 1 junior college teacher
- 1 senior college teacher (engaged in teacher education)

[Acts 1971, 62nd Leg., p. 1479, ch. 405, § 2, eff. May 26, 1971.]

### § 13.204. Qualifications of Members

To be eligible for membership on the commission, a person must be actively engaged in teaching, fully certified for the position he holds, and must have at least five years' teaching experience in Texas, including the two years immediately preceding nomination and appointment.

[Acts 1971, 62nd Leg., p. 1479, ch. 405, § 2, eff. May 26, 1971.]

### § 13.205. Appointment

The members of the commission shall be appointed by the governor, subject to confirmation by the senate. The governor shall request appropriate statewide professional organizations of teachers and/or school administrators to submit a list of three qualified nominees for vacancies within their respective professional groups on the commission; such nominations shall be advisory.

[Acts 1971, 62nd Leg., p. 1479, ch. 405, § 2, eff. May 26, 1971.]

### § 13.206. Terms of Office

One-third of the members of the commission first appointed shall be selected to serve for a term of one year; one-third to serve for a term of two years; and the remaining one-third for a term of three years; and members appointed for succeeding terms shall serve for terms of three years. No person shall serve for more than two consecutive terms as a member of the commission.

[Acts 1971, 62nd Leg., p. 1480, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.207. Expenses**

Members of the commission shall serve without pay, but shall be reimbursed for their actual and reasonable traveling expenses in attendance on commission meetings, and in attending meetings of committees of such commission.

[Acts 1971, 62nd Leg., p. 1480, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.208. Officers; Meetings; Rules**

The commission shall annually select a chairman, vice chairman, and secretary. The commission shall meet not less than three times each year in Austin at a place, time, and hour determined by the commission (at least 10 days' notice in writing by chairman shall constitute proper notice). A majority shall constitute a quorum, and a majority of such quorum shall have authority to act upon any matter properly before the commission. The commission shall adopt its own rules of order and procedure not inconsistent with this subchapter and shall hold meetings pursuant to the provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 1480, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.209. Privileged Status of Members**

Members of the commission shall be privileged in their utterances while acting in good faith in the course of their duties.

[Acts 1971, 62nd Leg., p. 1480, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.210. Adoption of Code of Ethics and Standard Practices**

(a) After public hearings at which associations and individuals representing the teaching profession and other interested persons shall have full opportunity to submit and request adoption of all or part of the provisions of unofficial codes of ethics that have been adopted by state and national associations of members of the teaching profession, and to support, oppose, or request amendments to proposals, the commission shall develop and adopt a "code of ethics and standard practices" which shall regulate and govern the conduct of members of the profession.

(b) The code of ethics and standard practices adopted by the commission shall include standards of professional teaching practices and professional performance, and standards of ethical conduct of members of the teaching profession toward other members of the profession, parents, students, and the community.

(c) The professional standards developed by the commission shall be submitted by the Texas Education Agency to all active certificated professional personnel in a referendum to determine approval or disapproval of each individual standard and the commission shall have available the results of the referendum and give them consideration before finally adopting the standards.

(d) The commission shall likewise have power to revise or adopt amendments to the code of ethics and standard practices.

(e) The code of ethics and standard practices originally adopted by the commission, and in like manner

any amendment thereto or revision thereof, shall become effective on the first day of September following the expiration of 90 days after the full text of the professional standards so adopted by the commission or the amendment or revision so adopted shall have been filed with the Commissioner of Education of the State of Texas. No professional standards disapproved in the referendum vote shall be adopted.

(f) It shall be the duty of the commissioner of education on request of any member of the profession, licensed in this state, to furnish him a copy of the code of ethics and standard practices, together with amendments then in effect.

[Acts 1971, 62nd Leg., p. 1480, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.211. Unprofessional Practice**

A violation of any rule or provision of the code of ethics and standard practices adopted in conformity with this subchapter shall be deemed to be "unprofessional practice," which shall constitute grounds for suspension or revocation of the teaching certificate of the member, which grounds shall be additional to those specified in Section 13.046 of this code; or the member may be warned or reprimanded for such violation, if in the judgment of the commissioner of education the violation is not of sufficient gravity to require suspension or revocation of the teaching certificate.

[Acts 1971, 62nd Leg., p. 1481, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.212. Advisory Function of Commission**

The commission shall act in an advisory capacity to the state commissioner of education and to the State Board of Education in matters of interpretation and enforcement of the code of ethics and standard practices.

[Acts 1971, 62nd Leg., p. 1481, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.213. Complaint, Notice, Hearing, Recommendations**

(a) The commission shall be authorized to receive written complaints from any certified teacher of alleged violation by any member of the profession of any rule or provision of the code of ethics and standard practices, and may hear the matter en banc, or may refer the matter to a committee of the commission, composed of three of its members, for hearing, as it may order.

(b) Upon receipt of a complaint, the commission shall give to the member against whom the complaint is made at least 15 days' notice of the nature of the complaint, and the time and place at which the commission, or a panel thereof, will hear the matter, such notice to be given by registered mail addressed to the member.

(c) At any hearing before the commission, or before a panel of the commission, the member complained of shall be entitled to produce witnesses in his behalf, and shall have a right to be represented by counsel. After hearing (which shall be private unless the party affected requests a public hearing), the commission, or the hearing panel, shall make findings and recommendations whether the complaint shall be dismissed or whether the complaint shall be heard by the commissioner of education.

(d) The commission or panel thereof hearing the matter shall file its recommendations with the commissioner of education and shall also file with him a transcript of any evidence presented before it.

[Acts 1971, 62nd Leg., p. 1481, ch. 405, § 2, eff. May 26, 1971.]

#### § 13.214. Action of Commissioner on Complaints

(a) In cases wherein the commission, or the panel thereof hearing the matter, has recommended dismissal of the complaint, the commissioner of education may dismiss the complaint without further hearing. No appeal shall lie from the action of the commissioner of education in dismissing a complaint hereunder.

(b) In cases where the commission, or the panel thereof hearing the matter, shall recommend suspension or revocation of the certificate of any member, the commissioner of education may dismiss the complaint on the basis of the record certified to him, or may set the matter for hearing and disposition by the commissioner of education; and from his final decision in the matter, after hearing, appeal shall lie to the State Board of Education. The party charged by the complaint may appeal the decision of the State Board of Education to the district court of the county of his residence. The trial on appeal in the district court shall be conducted de novo.

(c) Nothing in this section contained is intended to bind the commissioner of education to adopt the findings and recommendations of the commission, or any panel thereof.

(d) The commissioner of education shall have power to adopt rules of procedure (subject to approval of the State Board of Education) for the conduct of hearings before him pursuant to this subchapter. [Acts 1971, 62nd Leg., p. 1481, ch. 405, § 2, eff. May 26, 1971.]

#### § 13.215. Appeals

In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this subchapter, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 1482, ch. 405, § 2, eff. May 26, 1971.]

#### § 13.216. Strikes, Etc.

Any certified teacher who violates the provisions of Chapter 135, Acts of the 50th Legislature, 1947 (Article 5154c, Vernon's Texas Civil Statutes), shall be suspended by the commissioner of education.

[Acts 1971, 62nd Leg., p. 1482, ch. 405, § 2, eff. May 26, 1971.]

#### § 13.217. Right to Join or Not to Join Professional Association

Nothing in this subchapter shall abridge the right of any certified teacher to join any professional association or organization, or to refuse to join any professional association or organization.

[Acts 1971, 62nd Leg., p. 1482, ch. 405, § 2, eff. May 26, 1971.]

#### § 13.218. Local Authority

Nothing in this subchapter shall abridge the right of any duly elected board of trustees of any independent school district to hire or dismiss any teacher, nor shall a board be prohibited from establishing any standard of conduct to be expected of any teacher. Provided, however, the superintendent or other person designated by the school board shall notify the commission of any teacher dismissed for the violation of the code of ethics and standard practices established by a school board.

[Acts 1971, 62nd Leg., p. 1482, ch. 405, § 2, eff. May 26, 1971.]

[Sections 13.219 to 13.900 reserved for expansion]

### SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

#### § 13.901. Employment Consultation With Teachers

The board of trustees of each independent school district, rural high school district, and common school district, and their administrative personnel, may consult with teachers with respect to matters of educational policy and conditions of employment; and such boards of trustees may adopt and make reasonable rules, regulations and agreements to provide for such consultation. This section shall not limit or affect the power of said trustees to manage and govern said schools.

[Acts 1971, 62nd Leg., p. 1483, ch. 405, § 2, eff. May 26, 1971.]

#### § 13.902. Planning and Preparation Time

(a) Public schools shall be taught for not less than seven hours each day including intermissions and recesses. Each teacher actively engaged in the instruction of children shall have at least one period of not less than 45 minutes within the scheduled school day for planning and preparation.

(b) The implementation of the provisions of this section shall not result in a lengthened school day.

[Acts 1971, 62nd Leg., p. 1483, ch. 405, § 2, eff. May 26, 1971.]

#### § 13.903. Uniform Retirement Age

The board of trustees of each public school district in Texas shall have full authority to establish a uniform retirement age for its professional and supportive personnel and notwithstanding any provision to the contrary. No district shall be required to retain any person in its employment after he reaches such prescribed age.

[Acts 1971, 62nd Leg., p. 1483, ch. 405, § 2, eff. May 26, 1971.]

#### § 13.904. Minimum Sick Leave Program

(a) A state minimum sick leave program consisting of five days per year sick leave with no limit on

accumulation and transferable among districts shall be provided for every teacher regularly employed in the public free schools of Texas. Local school districts may provide additional sick leave beyond this minimum.

(b) Each district shall file, immediately after the regular term of the school year has been completed, a report with the Central Education Agency setting out the total number of days of sick leave utilized by teachers and other professional personnel, excepting excess units, approved and listed for foundation school program benefits. The Central Education Agency, each current scholastic year, shall calculate the cost of providing approved sick leave for each person listed at the rate of \$15 per day and shall reimburse the participating local district on the basis of the percentage relationship between the state and the district in financing the cost of the foundation school program multiplied by the total approved sick leave expenditure for the year. Said reimbursement shall be paid from the Foundation Program Fund and this cost shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for foundation program purposes.

(c) Each district's local board of education shall establish a sick leave plan, and shall administer the program to assure compliance with the intent of the law that leave shall be approved only for illness of the teacher or because of a death in his or her immediate family.

(d) The Central Education Agency shall prescribe rules, regulations, and forms necessary to the administration of this minimum sick leave program and the auditing of the state allocations made therefor as part of the foundation school program.

[Acts 1971, 62nd Leg., p. 1483, ch. 405, § 2, eff. May 26, 1971.]

**§ 13.905. Leave of Absence for Temporary Disability**

(a) Each certified, full-time employee of a school district shall be expected to be given a leave of absence for temporary disability at any time the employee's condition interferes with the performance of regular duties. The contract and/or employment of the employee cannot be terminated by the school district while on a leave of absence for temporary disability. Temporary disability in this Act includes the condition of pregnancy.

(b) Requests for a leave of absence for temporary disability shall be made to the superintendent of the school district. The request shall be accompanied by a physician's statement confirming inability to work and shall state the date requested by the employee for the leave to begin and the probable date of return as certified by the physician.

(c) The governing board of a school district may adopt a policy providing for placing an employee on leave of absence for temporary disability if, in their judgment and in consultation with a physician who has performed a thorough medical examination of the employee, the employee's condition interferes with the performance of regular duties. Such a policy shall reserve to the employee the right to present to the governing board of a school district testimony and/or other information relevant to the employee's fitness to continue the performance of regular duties.

(d) The employee shall notify the superintendent of the desire to return to active duty at least thirty (30) days prior to the expected date of return. The notice shall be accompanied by a physician's statement indicating the employee's physical fitness for the resumption of regular duties.

(e) An employee returning to active duty after a leave of absence for temporary disability shall be entitled to an assignment at the school where the employee formerly taught, subject to the availability of an appropriate teaching position. In any event, the employee shall be placed on active duty no later than the beginning of the next term.

(f) The length of a leave of absence for temporary disability shall be granted by the superintendent as required by the individual employee. The governing board of a school district may establish a maximum length for a leave of absence for temporary disability, but in no event shall that maximum be set at less than 180 days.

[Acts 1973, 63rd Leg., p. 1276, ch. 470, § 1, eff. June 14, 1973.]

**CHAPTER 14. SCHOLASTIC CENSUS**

Section

14.01. Definition.

14.02. Census.

14.03 to 14.06. Repealed.

14.07. Duty of Superintendent.

14.08. Authority of State Commissioner.

14.09. Compensation for Census Reports.

**§ 14.01. Definition**

All children over six and under 18 years of age on September 1, the beginning of any scholastic year, shall be included in the scholastic census.

[Acts 1969, 61st Leg., p. 2794, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 14.02. Census**

A census of all children of scholastic age shall be taken by each school district of the state in January, 1970. The State Board of Education shall develop standards, regulations, and procedures for conducting a systematic census of all children of scholastic age resident in the several school districts of the state each five years beginning with 1970. Such rules and standards, regulations, and procedures shall provide for the appointment of a census trustee in each district of the state on the first day of each November or as soon thereafter as is practicable in the year immediately preceding the year in which the census is to be taken. The census trustee, between the first day of January and the first day of February after his appointment, shall take a census of all children of scholastic age who are residents in the school district on said first day of February.

[Acts 1969, 61st Leg., p. 2794, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1489, ch. 405, § 15, eff. May 26, 1971.]

**§§ 14.03 to 14.06. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(1), eff. May 26, 1971**

**§ 14.07. Duty of Superintendent**

The superintendent of schools in each school district of the state shall prepare an abstract copy of

the census under oath on a form prescribed and provided by the Central Education Agency showing such data, statistical and informational, concerning the census taken as may be requested by the agency. He shall, on or before May 1 following taking of the census, forward to the commissioner of education such abstract.

[Acts 1969, 61st Leg., p. 2797, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1489, ch. 405, § 16, eff. May 26, 1971.]

#### § 14.08. Authority of State Commissioner

The state commissioner of education shall have authority to investigate the census of any county and correct errors. In extreme cases where he believes gross errors have occurred or that fraud has been practiced, he may, with approval of the State Board of Education, reject any county roll and require the census of the county be retaken.

[Acts 1969, 61st Leg., p. 2797, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 14.09. Compensation for Census Reports

(a) Census trustees shall be compensated for their services on the basis of the number of children of scholastic age listed by them at the rate of:

- (1) 10 cents per capita in county districts;
- (2) 3 cents per capita in towns of 2,500 to 5,000 inhabitants; and
- (3) 2 cents per capita in towns of 5,000 or more inhabitants.

(b) The county superintendent shall receive one cent per capita for the scholastic population reported by him.

(c) Neither the census trustee nor the county superintendent shall be paid until the census of the county is accepted by the state commissioner of education.

(d) The trustee's compensation shall be forfeited if his work is rejected by the county superintendent and the census of the district ordered retaken.

(e) Both the trustee's and the county superintendent's compensation shall be forfeited if the census of the county is rejected by the state commissioner of education and the census is ordered to be retaken.

[Acts 1969, 61st Leg., p. 2798, ch. 889, § 1, eff. Sept. 1, 1969.]

### CHAPTER 15. STATE FUNDS FOR THE SUPPORT OF PUBLIC SCHOOLS

Section	
15.01.	Composition of the Public School Funds.
15.02.	Investment of Permanent School Fund.
15.03.	Sale or Exchange of United States Treasury Bonds and Securities and Municipal Bonds.
15.04.	Treatment of Premium and Discount.
15.05.	Prepayment of Certain Bonds Held by the Permanent School Fund.
15.06.	Default of School District Securities Held by the Permanent School Fund.
15.07.	Authorized Refunding of Defaulted School Bonds.
15.08.	Refunding Other Defaulted Obligations.
15.09.	Jurisdiction.
15.10.	Duties of the State Comptroller of Public Accounts.
15.11.	Duties of the State Treasurer.
15.12.	Use of Available School Fund.

1 West's Tex.Stats. & Codes—22

#### § 15.01. Composition of the Public School Funds

(a) The permanent school fund, which shall constitute a perpetual endowment for the public free schools of this state, shall consist of:

(1) all land appropriated for the public schools by the constitution and laws of Texas;

(2) all the unappropriated public domain remaining in Texas, including all land recovered by the state by suit or otherwise except pine forest land as defined in Section 12, Article 2613, Revised Civil Statutes of Texas, 1925, as amended;

(3) all proceeds from the authorized sale of permanent school fund land, or any portion thereof, surveyed or unsurveyed;

(4) all proceeds from the lawful sale of any other properties belonging to the permanent school fund;

(5) all investments (authorized in Section 15.02 of this code) of properties belonging to the permanent school fund; and

(6) all income from the mineral development of land constituting the permanent school fund, including income from mineral development of riverbeds and other submerged land.

(b) The available school fund, which shall be apportioned annually to the several counties of Texas according to the scholastic population of each, shall consist of:

(1) the interest and dividends arising from any securities or funds belonging to the permanent school fund;

(2) all interest derivable from the proceeds of the sale of land set apart for the permanent school fund;

(3) all money derived from the lease of land belonging to the permanent school fund;

(4) all revenue collected by the state from an annual state ad valorem tax of an amount not to exceed 35 cents on the \$100 valuation, exclusive of delinquencies and cost of collection;

(5) one-fourth of all revenue derived from all state occupation taxes, exclusive of delinquencies and cost of collection;

(6) \$1 dollar from each poll tax collected by the state, exclusive of cost of collection;

(7) one-fourth of revenue derived from state gasoline and special fuels excise taxes as provided by law; and

(8) all other appropriations to the available school fund as made or may be made by the legislature for public free school purposes.

(c) The term "scholastic population" in Subsection (b) of this section, and when and wherever found in the several laws governing the apportionment, distribution, and transfer of the state available school fund, is hereby defined to mean and include all pupils within scholastic age enrolled in average daily attendance the next preceding scholastic year in the public elementary and high school grades of school districts within or under the jurisdiction of a county of this state. The basis provided herein for the apportionment, distribution, and transfers of the state available school fund shall be applicable to such fund to be apportioned for the year beginning September 1, 1969, and annually thereafter.

[Acts 1969, 61st Leg., p. 2798, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1489, ch. 405, § 17, eff. May 26, 1971.]

<sup>1</sup> Repealed; see, now, § 88.111.

**§ 15.02. Investment of Permanent School Fund**

(a) In compliance with provisions of this section, the State Board of Education is authorized and empowered to invest the permanent school fund in the types of securities, which must be carefully examined by the State Board of Education and be found to be safe and proper investments for the fund as specified below:

(1) securities, bonds, or other obligations issued, insured, or guaranteed in any manner by the United States Government or any of its agencies; and in bonds issued by the State of Texas;

(2) obligations and pledges of The University of Texas;

(3) corporate bonds of United States corporations of at least "A" rating;

(4) bonds issued, assumed, or guaranteed by the Inter-American Development Bank, the International Bank of Reconstruction and Development (the World Bank), and the Asian Development Bank;

(5) bonds of counties, school districts, incorporated cities or towns, road precincts, drainage, irrigation, navigation, and levee districts in Texas, under the following rules and regulations:

(A) such securities, prior to their purchase, must have been diligently investigated by the attorney general of Texas both as to their form and as to their legal compliance with applicable laws;

(B) the attorney general's certificate of validity procured by the party offering such bonds, obligations, or pledges must accompany these securities when they are submitted for registration to the state comptroller, who must preserve the certificates;

(C) such securities shall be purchased under the provisions of Subsection (b) of this section;

(D) these public securities, if purchased, and when certified and registered as specified above, shall be incontestable unless issued fraudulently or in violation of a constitutional limitation, and the certificates of the attorney general shall be prima facie evidence of the validity of the bonds and coupons thereto; and

(E) after the issuing political subdivision of Texas has received the proceeds from the sales of such public securities, the issuing agency shall be estopped to deny their validity, and the same shall be held to be valid and binding obligations;

(6) preferred stocks and common stocks as to the State Board of Education may deem to be proper investments for the permanent school fund, under the following rules and regulations:

(A) in making all such investments the State Board of Education shall exercise the judgment and care under the circumstances then prevailing which men of ordinary pru-

dence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital;

(B) stocks eligible for purchase are restricted to stocks of companies incorporated within the United States which have paid dividends for five consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors;

(C) not more than one percent of the permanent school fund may be invested in stock issued by one corporation nor shall more than five percent of the voting stock of any one corporation be owned;

(D) at the discretion of the State Board of Education, corporate securities of the permanent school fund may be sold and the proceeds reinvested for the fund under the terms of this code; and

(7) notwithstanding any other law or provisions in this code, first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States,<sup>1</sup> as amended from time to time, or in any other first lien real estate mortgage securities guaranteed in whole or in part by the United States Government or any agency thereof.

(b) A 10-day option to purchase must be given to the State Board of Education when any bonds of a public school district of Texas are offered for sale. The State Board of Education must be given a like option to purchase any refunding securities issued in lieu of outstanding securities held for the account of the permanent school fund, which may be redeemed before maturity and which have been called for redemption.

(c) The authorized officer of the offering school district must notify the State Board of Education of all bids received for its offered bonds, either as first issue or as securities issued in lieu of outstanding bonds held for the account of the permanent school fund.

(d) Before the option to purchase or exchange is exercised, the offered school district bonds must be carefully examined by the State Board of Education and must be found to be safe and proper investment for the fund, and unless satisfied, the board may decline to purchase same. Such offered securities must fulfill the following requirements:

(1) No school district bonds nor other bonds designated in Subsection (a)(5) of this section, shall be purchased unless the annual interest rate is two and one-half percent or more;

(2) No bonds issued by any political subdivision designated in Subsection (a)(5) of this section, shall be purchased if the bond indebtedness, including the security so offered, of the issuing political subdivision exceeds seven percent of the assessed value of all taxable property therein; and

(3) If default is made in the payment of interest due on bonds designated in Subsection (a)(5) of this section, the State Board of Education, at any time prior to the payment of the overdue interest, may elect to treat the principal as also due, and the principal shall, at the option of the board, become due and payable as follows:

(A) Payment of both principal and interest in such cases shall be enforced in any manner provided by law; and

(B) The right to enforce such collection shall never be barred by any law or limitation.

(e) The commissioner of education shall have authority, subject to the approval of the State Board of Education to exercise the option provided for in this section and to exercise a waiver of purchase when the securities offered do not meet eligibility requirements. When and if the commissioner of education exercises the option given by law for the purchase of securities, such exercise shall prevent the sale of the securities to any other party until the State Board of Education, at its next meeting, has had opportunity either to approve or to disapprove such purchase.

(f) If the State Board of Education elects to exercise its option to purchase, it shall order purchase of securities at the price offered by the best bona fide bidder and shall notify and direct the state comptroller to purchase the securities as an investment for the permanent school fund.

(g) If the State Board of Education shall refuse or shall have refused to purchase all or any part of the bonds offered by any such political subdivision, or from the parties to whom the bonds were issued, the offering authority shall sell the bonds to the best bona fide bidder; but the State Board of Education may thereafter purchase such bonds or obligations, subject to the same restrictions provided governing the purchase of such from the political subdivision. When so purchased, such obligations shall be subject to all rights and powers provided by law governing the same when purchased by the State Board of Education from the issuing authority.

[Acts 1969, 61st Leg., p. 2799, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1490, ch. 405, § 18, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 1668, ch. 472, § 3, eff. Aug. 30, 1971.]

<sup>1</sup>12 U.S.C.A. § 1701 et seq.

### § 15.03. Sale or Exchange of United States Treasury Bonds and Securities, and Municipal Bonds

(a) The State Board of Education may authorize the sale or exchange of any United States Treasury bonds, notes, certificates of indebtedness, or other securities issued by the United States Treasury, and may authorize the sale of any municipal bonds issued by any county, city, precinct, district, or other political subdivision at any time held by the state treasurer for the account of the permanent school fund, in compliance with the following rules:

(1) None may be sold for a price less than the actual amount of money of the permanent school fund invested in it;

(2) None may be exchanged for a public security having a principal value less than the principal value of the security exchanged; and

(b) In making each and all of such sales the State Board of Education shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.

(c) When any obligations are sold or exchanged as provided in Subsection (a) of this section, the state treasurer shall make delivery of the obligations sold or exchanged in accordance with the directions of the State Board of Education.

[Acts 1969, 61st Leg., p. 2801, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 15.04. Treatment of Premium and Discount

(a) If the State Board of Education authorizes the payment of a premium out of the permanent school fund in the purchase of any bond, obligation, or pledge as an investment for that fund, then the principal of such securities and an amount of the interest first accruing thereon equal to the premium so paid shall be treated as principal in such investment, and when the first interest is collected, the amount of the premium shall be returned to the permanent school fund.

(b) If the State Board of Education authorizes the purchase of a public security at less than par, the discount received in the purchase shall be paid to the available school fund when the bonds, obligations, or pledges are paid off and discharged.

[Acts 1969, 61st Leg., p. 2802, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 15.05. Prepayment of Certain Bonds Held by the Permanent School Fund

(a) The State Board of Education may authorize the governing body of any school district or political subdivision in Texas to pay off and discharge, at any interest paying date whether the bonds are matured or not, all or any part of any outstanding bond indebtedness now owned or hereafter to be owned by the permanent school fund, under the rules and regulations of this section.

(b) The governing body of the respective political subdivision desiring to pay off and discharge any such bonded indebtedness owned by the fund shall make such desire known by direct application in writing to the State Board of Education, at least 30 days before any interest paying date on the bonds, describing the bonds or part thereof it desires to pay off and discharge. The application shall be accompanied by an affidavit stating that only such tax money as may be collected by virtue of tax levy made for the specific purpose of providing a sinking fund and paying interest on the particular bonds to be redeemed shall be expended in the redemption, taking up, or paying off the bonds.

(c) The State Board of Education upon receipt of such application and affidavit shall take action on them in such manner as it may deem best and notify the applicant whether the application is refused or granted in whole or in part.

(d) It shall be unlawful for any person on whom any duty rests in carrying out the provisions of this section to give or receive any commission, premium, or compensation for the performance of such duty.

(e) Only such tax money as had been collected by virtue of tax levies made for the specific purpose of providing a sinking fund and paying interest on the particular bonds to be redeemed shall be expended in the redemption, taking up, or paying off of such bonds as provided in this section, unless such bonds are being redeemed for the purpose of being refunded.

[Acts 1969, 61st Leg., p. 2802, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 15.06. Default of School District Securities Held by the Permanent School Fund**

(a) If interest and/or principal has not been paid for two years or more on any bonds issued by any school district (city controlled or otherwise) and held by the permanent school fund, the State Board of Education shall have the authority described in this section.

(b) The State Board of Education may compel any such school district to levy a tax sufficient to meet the interest and principal payments as then or later due.

(c) If any such district furnishes to the State Board of Education satisfactory proof that its taxing ability is insufficient, the State Board of Education may require the district to exhaust all legal remedies in collecting taxes then delinquent, and to levy a tax at the maximum lawful rate on the bona fide valuation of taxable property located in the district.

(d) Revenue collected by either method specified in Subsections (b) and (c) of this section shall be distributed proportionately to all owners of the defaulted securities and shall be in compliance with the following rules:

(1) The proportionate share for each owner will be based on the interest and principal requirements of the original security before authorized refunding; and

(2) Prior acceptance of refunding securities will not reduce an owner's proportionate share.

(e) As long as any such school district is delinquent in its payments of principal and/or interest on any of its bonds owned by the permanent school fund, the State Board of Education shall have the authority to specify the method of crediting payments to the state made by the district as to principal and interest.

(f) The comptroller of public accounts shall not issue any warrant from the foundation school fund to or for the benefit of any district which has been for as long as two years in default in the payment of principal or interest on any security owned by the permanent school fund unless and until the State Board of Education certifies that the district has satisfactorily complied with the appropriate provisions of this section, in which event the comptroller shall resume making payments to or for the benefit of the district, including the making of pretermitted payments.

[Acts 1969, 61st Leg., p. 2803, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 15.07. Authorized Refunding of Defaulted School Bonds**

(a) In compliance with the provisions of this section, the State Board of Education is authorized to revise, readjust, modify, refinance, or refund de-

faulted bonds issued by any school district in Texas and owned by either the permanent school fund or the available school fund.

(b) Application must be made to the State Board of Education by the district which issued the bonds and must show that:

(1) delinquent interest totals at least 50 percent of the principal amount of the bonds; and

(2) taxable valuation has decreased to such an extent that a full application of the proceeds of the voted authorized tax authorized to be levied on the \$100 taxable property valuation will not meet interest and principal annually maturing on the bonds.

(c) The State Board of Education may effect a refunding of the debt due and to become due only if the board finds that:

(1) the district is unable to pay the sums already matured and the sums contracted to be paid as they mature by paying annually to the State Board of Education the full proceeds of a 50-cent tax levy on the \$100 of all taxable valuation of property within the district;

(2) the taxable valuation of property in the district has decreased at least 75 percent since the bonds were issued and that the decrease was not caused by the district or any of its officials;

(3) the district for a period of at least five years before applying to the State Board of Education for refunding has levied a tax of 50 cents on the \$100 of taxable valuation of property in the district, and that despite such levies, the aggregate amount due the State Board of Education exceeds the aggregate amount due at the beginning of the period;

(4) no additional bonds of the district have been authorized and sold during the five-year period immediately preceding the application; and

(5) the district has in good faith endeavored to pay its debt in accordance with the contract evidenced by the bonds held for the account of the permanent school fund or the available school fund.

(d) If the conditions specified in Subsection (c) of this section are found to exist, the district shall, for the purposes of this section, be deemed to be insolvent, and the State Board of Education may exchange the bonds, interest coupons, and other evidences of indebtedness for new refunding bonds of the district issued in compliance with the following regulations:

(1) The principal amount of the refunding bonds shall not be less than the total amount of the bonds, matured interest coupons, accrued interest, and interest on delinquent interest then actually due to the permanent school fund and/or the available school fund;

(2) The rate of interest to be borne by the refunding bonds may be lower than that borne by the bonds to be refunded if in consideration of the interest reduction the district agrees to levy a tax each year for a period of 40 years at a rate sufficient to produce annually a sum equal to 90 percent of the amount that can be calculated by the levy of a tax at the rate of 50 cents on the \$100 of taxable valuation of property as

determined by the latest approved tax roll of the district, and in determining the rate of interest to be borne by the refunding bonds, the State Board of Education shall be governed by the following:

(A) The State Board of Education is authorized to require the rate to be such percent per annum as in its judgment will represent the maximum rate that can be paid by the district and still permit an orderly and certain retirement of the refunding bonds within 40 years from their date;

(B) The interest rate of refunding bonds to be received in exchange for bonds owned by the permanent school fund shall not be less than the minimum rate at which bonds may then be purchased as investments for the permanent school fund; and

(C) The rate of interest of refunding bonds to be received in exchange for bonds owned by the available school fund may be set by the State Board of Education at any rate which it deems feasible, and such refunding bonds may, at the discretion of the State Board of Education, be made non-interest bearing to such date as may be fixed by the board.

(e) No revision, readjustment, modification, refinancing, or refunding shall be made by the State Board of Education that will release or extinguish any debt or obligation then due and payable to the permanent school fund or to the available school fund.

(f) Except as otherwise provided or permitted by this section, the refunding of the bonds of school districts herein authorized shall be in compliance with the general provisions with regard to the refunding of school district bonds as specified in this code.

[Acts 1969, 61st Leg., p. 2803, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 15.08. Refunding Other Defaulted Obligations

(a) Defaulted obligations (other than bonds of school districts as provided in Section 15.07 of this code) due the available school fund may be refinanced or refunded with the approval of the State Board of Education in compliance with the provisions of this section.

(b) "Defaulted obligations," as used herein, shall include delinquent interest whether represented by coupons or not, interest on delinquent interest, and any other form of obligation due the available school fund.

(c) The obligor must make application to the State Board of Education and show:

(1) that the obligations due the available school fund have been in default in whole or in part for a continuous period of at least 15 years; and

(2) that the obligor is not in default in the payment of the principal of any bonds owned by the permanent school fund.

(d) If the State Board of Education finds that the above-specified requirements have been met, it may

approve a refinancing or the issuance of refunding bonds on the conditions:

(1) that the refunding bonds must mature serially in not exceeding 40 years from the date of issuance;

(2) that the principal amount of the refunding bonds shall be not less than the total amount of the obligations then in default and due the available school fund;

(3) that the refunding bonds shall bear interest at such rate or rates as may be determined by the State Board of Education to be for the best interest of the available school fund.

(e) The State Board of Education in its discretion is authorized to accept refunding bonds in lieu of either matured or unmatured bonds held for the benefit of the permanent school fund, provided that the rate of interest on the new refunding bonds is at least the same rate as that of the bonds being refunded.

(f) Refunding bonds issued with the approval or pursuant a refunding agreement with the State Board of Education in compliance with either this section or Section 15.07 shall, on the order of the State Board of Education, be exchanged by the state treasurer for the defaulted obligations they have been issued to refund.

[Acts 1969, 61st Leg., p. 2805, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 15.09. Jurisdiction

The district courts of Travis County shall have jurisdiction of any suit on bonds or obligations belonging to the permanent school fund, or purchased therewith, concurrent with that of any other court having jurisdiction in said case.

[Acts 1969, 61st Leg., p. 2806, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 15.10. Duties of the State Comptroller of Public Accounts

(a) On or before July 1 of each year, the comptroller of public accounts shall estimate the amount of the available school fund receivable from every source during the coming scholastic year and report this estimate to the State Board of Education.

(b) On or before the meeting of each regular session of the legislature, the comptroller of public accounts shall report to the legislature an estimate of the amount of the available school fund to be received for the succeeding two years, and the several sources from which the same accrues, and which may be subject to appropriation for the establishment and support of public schools.

(c) On or before the first working day of each month, the comptroller shall certify to the state commissioner of education the total amount of money collected from every source during the preceding month and on hand to the credit of the available school fund.

(d) On receipt of certificates issued to him by the commissioner of education, the comptroller shall draw his warrants on the state treasurer and in favor of the treasurer (depository) of the available school fund of each school district for the amounts stated in the certificates. All such warrants shall be registered and transmitted to the state treasurer.

[Acts 1969, 61st Leg., p. 2806, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 15.11. Duties of the State Treasurer**

(a) At least 30 days before each regular session of the legislature and 10 days before any special session at which there can be legislation respecting the public schools, the state treasurer shall report to the governor the condition of the permanent school fund and the available school fund, the amount of each and the manner of its disbursement.

(b) The treasurer shall provide the State Board of Education with the reports specified in Subsection (a) of this section, and with such additional reports as to those funds which the State Board of Education may request.

(c) The treasurer shall see to it that no portion of either the permanent school fund or the available school fund is used to pay any warrant drawn against any other fund.

(d) The treasurer shall receive and hold in a special deposit and keep account for all properties belonging to the available school fund. All warrants drawn on this fund by the comptroller of public accounts pursuant to certificate of the state commissioner of education must be registered by the state treasurer and then transmitted to the commissioner of education; and when properly endorsed shall be paid by the treasurer in the order of their presentation.

(e) On order of the State Board of Education, the treasurer shall exchange or accept refunding bonds in lieu of:

(1) either matured or unmatured bonds held for the benefit of the permanent school fund, which are being refunded under the terms of this chapter;

(2) defaulted obligations held for the benefit of the available school fund, provided that the refunding bonds are issued in compliance with Section 15.08 of this code;

(3) defaulted obligations of any school district of Texas held for the benefit of the permanent school fund or the available school fund, provided the refunding bonds are issued in compliance with Section 15.07 of this code;

(4) refunding bonds of any school district of Texas for school bonds not matured held by the state treasurer for the permanent school fund, when such new refunding bonds are issued by the school district in compliance with this code.

(f) The state treasurer shall be the custodian of all securities in which the school funds of the state have been or may hereafter be invested, and shall keep the securities in his custody until paid off, discharged, or otherwise disposed of by the proper authorities of the state, and on the proper installment of any interest or dividend, shall see that the proper credit is given, and the coupons on bonds, when paid, shall be properly separated therefrom and cancelled by the treasurer.

[Acts 1969, 61st Leg., p. 2806, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 15.12. Use of Available School Fund**

(a) All available public school funds of Texas shall be appropriated in each county for the education of its children.

(b) No part of the permanent school fund or the available school fund shall be appropriated or used for the support of any sectarian school.

[Acts 1969, 61st Leg., p. 2807, ch. 889, § 1, eff. Sept. 1, 1969.]

**CHAPTER 16. FOUNDATION SCHOOL PROGRAM**

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*Acts 1971, 62nd Leg., p. 1449, ch. 405, which by sections 1 to 53 incorporated the provisions of certain acts passed during the regular and second called sessions of the 61st Legislature into the Education Code, and which by section 54 repealed the acts so incorporated, provided in sections 55 and 56:*

*"Sec. 55. Nothing in this Act is intended to make any change in the substantive law, but this Act is merely intended to be a recodification of the present law.*

*"Sec. 56. If any other Act passed at the same session of the Legislature conflicts with any provision of this Act, the other Act prevails."*

## SUBCHAPTER A. GENERAL PROVISIONS

## § 16.01. Purpose

The purpose of the Foundation School Program is to guarantee to each child of school age in Texas the availability of a Minimum Foundation School Program for nine full months of the year and to establish the eligibility requirements for the public school districts of Texas in connection therewith.

[Acts 1969, 61st Leg., p. 2810, ch. 889, § 1, eff. Sept. 1, 1969.]

## § 16.02. Disposition of Money Appropriated

Appropriations enacted by the legislature for the promotion of the educational opportunities afforded by this state under this Foundational School Program shall be paid in accordance with the requirements and in the manner provided in this chapter. [Acts 1969, 61st Leg., p. 2810, ch. 889, § 1, eff. Sept. 1, 1969.]

## § 16.03. Status of Private and Parochial Schools

No provision of this chapter shall be interpreted inimically to the status previously enjoyed by the private or parochial schools operating in this state. [Acts 1969, 61st Leg., p. 2810, ch. 889, § 1, eff. Sept. 1, 1969.]

## § 16.04. Program Eligibility

(a) Beginning with the scholastic year 1973-1974, any child in this state over 5 and under 21 years of age at the beginning of the scholastic year, who has not yet graduated from high school shall be entitled to the benefits of the Basic Foundation School Program for the ensuing school year. Such eligible child shall be admitted tuition-free to the public school of the district in which he, his parents or legal guardian resides.

(b) Notwithstanding the provisions of Subsection (a) of this section, the program of preschool education shall be extended first to "educationally handicapped" children as preparation for the regular school program in which such children will participate in subsequent years. For purposes of this section, a child is "educationally handicapped" if he cannot speak, read, and comprehend the English language or if he is from a family whose income, according to standards promulgated by the State Board of Education, is at or below a subsistence level. The program shall include an appreciation for the cultural and familial traditions of the child's parents and also an awareness and appreciation of the broader world in which the child must live; assist the child in developing appropriate language skills; prepare the child to participate in the world of his peers and the broader cultural stream into which he will progressively move as he matures; begin the development of the mental and physical skills and cooperative attitudes needed for adequate performance in a school setting; and begin the development of his unique character and personality traits.

(c) The benefits of this program for preschool education may be extended on a first priority basis to "educationally handicapped" children on a full day program school year basis.

(d) Provided, however, for the school years beginning 1973-74, and through 1976-77 inclusive, a public school kindergarten program shall be offered on a one-half day basis for all other eligible children who become five (5) years of age on or before September 1 of the scholastic year. Such kindergarten program(s) shall be operated on a one-half day basis for Foundation School Program unit eligibility allotment purposes beginning the school year 1973-74. Provided further that any school district may choose to operate a full day program for the first half of the school year for one-half, approximately, of its kindergarten children and operate a full day program the latter half of such year for the remainder of its kindergarten children.

(e) Beginning with the school year 1977-1978 and thereafter, school districts may choose to operate kindergartens on a full day basis for Foundation School Program unit allotment eligibility purposes. Provided further that any school district may choose to operate a full day program for all its kindergarten children for one semester only.

(f) A scholastic is a student in average daily attendance within the age limits prescribed in this section.

[Acts 1971, 62nd Leg., p. 1507, ch. 405, § 29, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 1633, ch. 592, § 1, eff. June 15, 1973.]

[Sections 16.05 and 16.06 reserved for expansion]

SUBCHAPTER B. CLASSIFICATION OF PROFESSIONAL POSITIONS AND SERVICES

§ 16.07. Classification

To effectuate the Foundation School Program here guaranteed, school districts are authorized to utilize the following professional positions, or units, and services:

- (1) professional positions;
  - (A) classroom teachers;
  - (B) vocational teachers;
  - (C) special service teachers, among which shall be included librarians, school nurses, school physicians, visiting teachers, and itinerant teachers;
  - (D) teachers of exceptional children;
  - (E) supervisors and/or counselors;
  - (F) principals, part-time;
  - (G) principals, full-time;
  - (H) superintendents; and
- (2) services;
  - (A) current operating cost other than professional salaries and transportation; and
  - (B) transportation.

[Acts 1969, 61st Leg., p. 2810, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 16.08. Duties of Public School Principals

Public school principals, who shall hold valid administrative certificates, shall be responsible for:

- (a) assuming administrative responsibility and instructional leadership, under the supervision of the superintendent, for discipline, and the planning, operation, supervision, and evaluation of the educational program of the attendance area in which he is assigned;
- (b) submitting recommendations to the superintendent concerning assignment, evaluation, promotion, and dismissal of all personnel assigned to the attendance center; and
- (c) performing any other duties assigned by the superintendent pursuant to school board policy.
- (d) Nothing herein shall be construed as a limitation on the powers, responsibilities and obligations of the school board as now prescribed by law.

[Acts 1971, 62nd Leg., p. 81, ch. 44, § 1, eff. April 1, 1971.]

[Sections 16.09 and 16.10 reserved for expansion]

SUBCHAPTER C. PROFESSIONAL UNITS

§ 16.11. Professional Units—Allotment—General Rules

(a) The total number of professional units allotted to each district shall be the sum of the professional units, hereinafter prescribed, for classroom teachers, vocational teachers, special service teachers, teachers of exceptional children, supervisors and/or counselors, full-time and/or part-time principals, and superintendents.

(b) Such professional unit allotments shall be contingent upon the employment of qualified personnel and upon the payment of not less than the minimum salary as prescribed in this chapter.

(c) No district will be required to employ professional personnel for the full number of professional units for which it is eligible, but where a fewer number are employed, grants shall be based upon the number actually employed during the current school year; and

(d) All personnel allotted under the Foundation School Program shall be allocated to school districts on the basis of current average daily attendance without regard to race, creed, or color of students.

(e) In addition to the method of allocating professional units under the Minimum Foundation Program on the basis of current average daily attendance, any school district may choose to utilize the preceding year's average daily attendance to establish the basis for allocation of professional units in compliance with the formulas in this chapter.

(f) Where a school district is consolidated or contracted with another district, or annexed in whole or part to another district or districts, or where the number of grades taught has been reduced, or where the scholastics are transferred to another district, or where there is an annual fluctuation in the attendance in the district, or where for any reason there is a marked increase or decrease in the attendance of any school district, adjustments in professional allotments shall be made by the state commissioner of education subject to the applicable rules and regulations of the State Board of Education.

(g) Attendance in grades not classified to be taught by the county school board shall not be included in determining professional unit eligibility.

(h) Attendance of non-resident scholastics whose grades are taught in their home districts shall not count for teacher eligibility, unless the transfer of such scholastics has been approved by the county school board and the state commissioner of education.

(i) Any school district which is not dormant as defined in Section 16.80 of this code may, with approval of the boards of trustees of the districts concerned, the county school superintendent, and the state commissioner of education, contract for a period of one year to transfer its entire scholastic enrollment, both white and colored, to a contiguous district. The scholastic census rolls of both districts shall be combined, the per capita apportionment paid directly to the receiving district, and the combined average daily attendance used in determining the number of professional units for which the receiving district shall be eligible.

(j) Any school district containing 100 square miles or more and having fewer than one pupil per square mile, and which operates and maintains a four-year accredited high school, may be allotted by the state commissioner of education the number of professional units determinable as earned by the application of a sparse-area formula approved by the State Board of Education. The state commissioner of education shall consider in making such allotments the density and distribution of population in the district, road conditions, and the proximity of the school to another four-year accredited high school.

(k) In determining the number of professional units allotted to each school district in the foundation school program, the attendance of orphan, dependents, or neglected children who are wards of the state shall be considered eligible average daily attendance in the receiving school district or districts to which these children are transferred after approval by the county school board and the state commissioner of education.

[Acts 1969, 61st Leg., p. 2810, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1510, ch. 405, § 34, eff. May 26, 1971.]

#### § 16.12. Professional Units—Allotment Formulas

Subject to the general rules set out in Section 16.11 of this code, the number of professional units for each district shall be determined as prescribed in the succeeding sections of this subchapter.

[Acts 1969, 61st Leg., p. 2812, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 16.13. Classroom Teacher Units

Classroom teacher professional units for each school district shall be determined, and teachers allotted in the following manner:

(1) to school districts having fewer than 15 pupils in average daily attendance, no classroom teacher unit, except that in cases of extreme hardship, such districts may be allotted on a year-to-year basis one classroom teacher unit if so recommended by the county school board and approved by the state commissioner of education;

(2) to school districts having from 15 to 25 pupils, inclusive, in average daily attendance, one classroom teacher unit;

(3) to school districts having from 26 to 109 pupils, inclusive, in average daily attendance, two classroom teacher units for the first 26 pupils and one classroom teacher unit for each additional 21 pupils (no credit to be given for fractions);

(4) to school districts having from 110 to 156 pupils, inclusive, in average daily attendance, six classroom teacher units;

(5) to school districts having from 157 to 444 pupils, inclusive, in average daily attendance, one classroom teacher unit for each 24 pupils, or fractional part thereof in excess of one-half;

(6) to school districts having from 445 pupils to 487 pupils, inclusive, in average daily attendance, 19 classroom teacher units; and

(7) to school districts having from 488 or more pupils in average daily attendance, one classroom teacher unit for each 25 pupils, or fractional part thereof in excess of one-half.

[Acts 1969, 61st Leg., p. 2812, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1506, ch. 405, § 27, eff. May 26, 1971.]

#### § 16.14. Vocational Teacher Units

(a) Vocational teacher professional units, vocational supervisor professional units, and vocational counselor professional units for each school district shall be determined and allotted as prescribed by this section.

(b) Each school district having a four-year accredited high school shall be eligible, under rules and regulations of the State Board of Education, for two vocational teacher units to teach one or more vocational programs provided there is a need thereof, and provided the programs shall have been approved by the commissioner of education.

(c) Additional vocational teacher units for four-year accredited high schools may be allotted according to needs determined by a survey of the community and approved by the commissioner of education.

(d) A district having an accredited high school which qualifies, according to the rules and regulations of the State Board of Education, for less than one vocational teacher unit, may be allotted by the commissioner of education a fractional part of a vocational teacher professional unit. A fractional part of a vocational teacher professional unit shall entitle a district to employ a part-time vocational teacher or assign a classroom teacher to serve as part-time vocational teacher.

(e) Each school district having a four-year accredited high school shall be eligible, under rules and regulations as approved by the State Board of Education, for such specialized vocational supervisor units and vocational counselor units as there is a need thereof, and in the number determined by application of formulas adopted by the State Board of Education and subject to approval by the commissioner of education.

(f) Vocational professional unit allotments, except classroom teachers who also served as part-time vocational teachers, shall be made in addition to other professional unit allotments. Vocational teacher units shall be included in determining the total current operating cost for each district. In addition to this allowance, there shall be an additional allocation of \$400 for each vocational teacher unit.

(g) School districts which, because of limited enrollments, tax resources, or facilities are unable to offer appropriate vocational education in all occupational areas needed may enter into contracts with post-secondary public institutions, as defined by the State Board of Education, to provide for such appropriate vocational education instruction provided the instructors and instructional materials and equipment utilized meet secondary school program requirements.

(h) Such contracts shall be executed pursuant to rules and regulations of the State Board for Vocational Education (State Board of Education) and the cost to the state shall not exceed the cost that would result if said programs were operated by the respective school districts entering into such contracts.

[Acts 1969, 61st Leg., p. 2812, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1511, ch. 405, § 35, eff. May 26, 1971.]

**§ 16.15. Special Service Teacher Units**

(a) Special service teacher professional units for each school district, which may be separate for whites and Negroes, shall be based upon the number of approved classroom teacher units, and shall be determined and teachers allotted, in addition to other professional unit allotments, in the manner prescribed by this section.

(b) Districts which have 20 or more approved classroom teacher units shall be eligible for one special service teacher unit for each 20 classroom teacher units, no credit to be given for fractions.

(c) Districts not eligible for a full special service teacher unit may enter by vote of their respective boards of trustees, into one cooperative agreement to provide special service teachers, as prescribed in subsection (b) of this section, to be recommended and supervised by the county school superintendent, and employed by the county school board. The state commissioner of education shall, upon the county superintendent's certification of such agreement, allot to each district party thereto a fractional part of a special service teacher unit, said fraction to be not greater than the number of approved classroom teacher units for that district divided by 20.

(d) School districts may choose from the five types of special service teacher units listed in Section 16.07(1)(C) of this code the number of each classification that it desires, to the extent of total eligibility for such units, but the allocation of special service teacher units shall not preclude the assignment of classroom teachers to special service duties. The state commissioner of education shall establish qualifications for special service teachers which shall be subject to regulations made by the State Board of Education.

[Acts 1969, 61st Leg., p. 2813, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 16.16. Comprehensive Special Education Program for Exceptional Children**

(a) It is the intention of this section to provide for a comprehensive special education program for exceptional children in Texas.

(b) As used in this section:

(1) "Exceptional children" means children between the ages of 3 and 21, inclusive, with educational handicaps (physical, retarded, emotionally disturbed, and/or children with language and/or learning disabilities) as hereinafter more specifically defined; autistic children; and children leaving and not attending public school for a time because of pregnancy—which disabilities render regular services and classes of the public schools inconsistent with their educational needs.

(2) "Physically handicapped children" means children of educable mind whose body functions or members are so impaired from any cause that they cannot be adequately or safely educated in the regular classes of the public schools without the provision of special services.

(3) "Mentally retarded children" means children whose mental capacity is such that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

(4) "Emotionally disturbed children" means children whose emotional condition is medically and/or psychologically determined to be such that they cannot be adequately and safely educated in the regular classes of the public schools without the provision of special services.

(5) "Language and/or learning disabled children" means children who are so deficient in the acquisition of language and/or learning skills including, but not limited to, the ability to reason, think, speak, read, write, spell, or to make mathematical calculations, as identified by educational and/or psychological and/or medical diagnosis that they must be provided special services for educational progress. The term "language and/or learning disabled children" shall also apply to children diagnosed as having specific developmental dyslexia.

(6) "Special services" required for the instruction of or program for exceptional children means special teaching in the public school curriculum within and/or without the regular classroom; corrective teaching, such as lipreading, speech correction, sight conservation, corrective health habits; transportation, special seats, books, instructional media and supplies; professional counseling with students and parents; supervision of professional services and pupil evaluation services; established teaching techniques for children with language and/or learning disabilities.

(c) Under rules, regulations and/or formulae adopted by the State Board of Education subject to the provisions of this section, exceptional children teacher units, in addition to other professional and paraprofessional unit allotments herein authorized, shall be allotted to any eligible school district in the number determinable thereunder. Exceptional children teacher units for pupils who are both severely physically handicapped and mentally retarded shall be allocated on a separate formula from other type units.

(d) Professional personnel for the operation and maintenance of a program of special education shall be:

- (1) exceptional children teachers;
- (2) special education supervisors;
- (3) special education counselors;
- (4) special service teachers, such as itinerant teachers of the homebound and visiting teachers, whose duties may or may not be performed in whole or in part on the campus of any school; and

(5) psychologists and other pupil evaluation specialists. The minimum salary for such specialist to be used in computing salary allotment for purposes of this section shall be established by the commissioner of education.

(e) Paraprofessional personnel for the operation and maintenance of a program of special education shall consist of persons engaged as teacher aides, who may or may not hold a teacher certificate. The qualifications and minimum salary levels of paraprofessional personnel for salary allotment purposes of this section shall be established by the commissioner of education.

(f) Quantitative bases for the allotment of all special education unit personnel under Subsection (c) of this section shall be established by the commissioner of education under rules adopted by the State Board of Education. Any school district, at its expense, may employ any special education personnel in excess of its state allotment, may supplement the minimum salary allotted by the state for any special education personnel, and any district is authorized at local expense to pay for all or part of further or continuing training or education of its special education personnel.

(g) Special education unit personnel may be employed and/or utilized on a full-time, part-time, or upon a consultative basis, or may be allotted by the commissioner of education, pursuant to cooperative districts' agreement, jointly to serve two or more school districts. Two or more school districts may operate jointly their special education program and any school district may contract where feasible with any other school district for all or any part of the program of special education for the children of either district, under rules and regulations established by the commissioner of education.

(h) To each school district operating an approved special education program there shall also be allotted a special service allowance in an amount to be determined by the commissioner of education for pupil evaluation, special seats, books, instructional media and other supplies required for quality instruction.

(i) To each school district operating an approved special education program, there shall be allotted also a transportation allowance for transporting of children in special education programs who are unable to attend the special education program for exceptional children in public school unless such special transportation is provided. The annual transportation allotment shall be \$150 per exceptional child pupil receiving such transportation. Such allocated transportation funds shall be used only for transportation purposes for children who are enrolled in a program of special education or who are eligible for such enrollment.

(j) The minimum monthly base pay and increments for teaching experience for an exceptional children teacher or a special service teacher conducting a 9, 10, 11, or 12 months special education program approved by the commissioner of education shall be the same as that of a classroom teacher as provided in the Foundation Program Act; provided that special education teachers shall have qualifications approved by the commissioner of education. The annual salary of special education teachers shall be the monthly base salary, plus increments, multiplied by 9, 10, 11, or 12, as applicable.

(k) The minimum monthly base pay and increments for teaching experience for special education counselors and supervisors engaged in a 9, 10, 11, or 12 months special education program approved by the commissioner of education shall be the same as that of a counselor and/or supervisor as provided in the Foundation Program Act; provided that such counselors and supervisors shall have qualifications approved by the commissioner of education. The annual salary of special education counselors and supervisors shall be the monthly base salary, plus increments, multiplied by 9, 10, 11, or 12, as applicable.

(l) The salary costs of special education teacher units, other professional and paraprofessional units authorized in Subsections (c), (d), and (e) of this section, operating costs as provided in Subsection (h), and transportation costs as provided in Subsection (i), computed as other costs of the Foundation School Program Act for local fund assignment purposes thereof, shall be paid from the Foundation Program School Fund. Provided further, that any school district may supplement any part of the comprehensive special education program it operates or participates in with funds or sources available to it from local source, public and/or private.

(m) Under rules and regulations of the State Board of Education, eligible school districts may contract with nonprofit community mental health and/or mental retardation centers, public or private, or any other nonprofit organization, institution, or agency approved by the State Board of Education, for the provision of services to exceptional children as defined by this section, who reside with their parents or guardians.

(n) Special education program units shall be included in determining the total current operating cost for each district.

(o) The Foundation School Fund Budget Committee shall compute all amounts required for comprehensive special education program purposes to be included in the amounts to be placed in the Foundation School Fund for the ensuing biennium at the same time that certifications are made for other Foundation School Fund purposes.

[Acts 1969, 61st Leg., p. 2813, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1491, ch. 405, § 19, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 681, ch. 287, § 1, eff. June 11, 1973.]

#### § 16.17. Supervisor and/or Counselor Units

(a) The state commissioner of education shall establish, subject to regulations by the State Board of Education, qualifications for supervisors and counselors. Supervisor and/or counselor professional units for each school district, which may be separate for whites and Negroes, shall be determined and supervisor and/or counselor units allotted, in addition to other professional unit allotments, as prescribed by this section.

(b) The basic allotment shall be one supervisor or counselor unit for the first 40 classroom teacher units and one supervisor or counselor unit for each additional 50 classroom teacher units, or major fractional part thereof. If a district is eligible for one such unit, the district may employ for such unit either a supervisor or a counselor, but not both. If a district is eligible for two or more such units, the district may employ supervisors only, counselors only, or a combination of the two to the extent of total eligibility.

(c) Districts having fewer than 40 classroom teacher units may enter, by vote of their respective governing boards, into one cooperative agreement to provide supervisors and/or counselors to be recommended and supervised by the county superintendent and employed by the county school board. Under such agreements the combined classroom teacher units of the cooperating districts shall be used in calculating eligibility for supervisor and/or counselor units, but if the county employs a supervisor from

the county administrative funds, 40 classroom teacher units shall be deducted from the combined total. The state commissioner of education shall, upon the county superintendent's certification of such agreement, allot to each district party to such agreement a fractional part of a supervisor or counselor unit, said fraction to be not greater than the number of approved classroom teacher units for that district divided by 40.

[Acts 1969, 61st Leg., p. 2815, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 16.18. Principal Units**

(a) Principal units shall be of two types: full-time principal units and part-time principal units. A part-time principal unit shall entitle a district to assign a classroom teacher to serve as a part-time principal and to receive an additional salary allowance as hereinafter provided in this chapter.

(b) The principal unit allotment as hereinafter provided shall be based upon the number of approved classroom teacher units and shall be made in addition to other professional unit allotments. Principal units for each school district, which may be separate for whites and Negroes, shall be determined and allotted as prescribed in this section.

(c) No district having fewer than three approved classroom teacher units shall be eligible for a principal allotment.

(d) To districts having from three to 19 classroom teacher units and not having an accredited four-year high school, one part-time principal unit shall be allotted.

(e) To districts having from nine to 19 classroom teacher units and having a four-year accredited high school, two part-time principal units shall be allotted. Additional part-time principal units shall be allotted, if necessary, to the extent that at least one part-time principal will be available for each campus on which a school with more than two classroom teachers is operated in the district.

(f) To districts having 20 or more approved classroom teacher units there shall be allotted one full-time principal unit for the first 20 classroom teacher units and one full-time principal unit for each additional 30 classroom teacher units, but fractions shall not be considered in computing principal allotments.

(g) Part-time principal units, in addition to full-time principal unit allowances provided above, shall be allowed as follows: one from the first 20 classroom teachers, and one from each additional 30 classroom teachers. Service as part-time principal shall be in addition to part-time classroom duties. Those so designated shall receive an additional allowance as hereinafter provided in this chapter. Additional part-time principal units shall be allotted, if necessary, to the extent that at least one full-time or part-time principal will be available for each campus on which a school with more than two classroom teachers is operated in the district.

[Acts 1969, 61st Leg., p. 2815, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 16.19. Superintendent Unit**

Superintendents shall serve the entire school district. Allotments for superintendent units as provided for herein shall be made in addition to other professional unit allotments. Superintendent units

for each district shall be determined and allotted in the following manner: A district having one or more four-year accredited high schools shall be eligible for one superintendent allotment. A district which does not have a four-year accredited high school shall not be eligible for a superintendent allotment.

[Acts 1969, 61st Leg., p. 2816, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 16.20. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(1), eff. May 26, 1971**

**§ 16.21. Allocation of Units in Certain Districts**

Notwithstanding the provisions of Sections 16.11 and 16.13 of this code, the number of professional units allocated to school districts which operate and have operated for at least three consecutive years a four-year accredited high school and have an average daily attendance range between 84 and 156 pupils for the immediate preceding year shall be based on the following formula: a school district having 84 to 106 pupils, inclusive, in average daily attendance shall be allotted six classroom teacher units and a superintendent unit. A school district having 107 to 156 pupils, inclusive, shall be allotted seven classroom teacher units and a superintendent unit.

[Acts 1969, 61st Leg., p. 2816, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1512, ch. 405, § 36, eff. May 26, 1971.]

**§ 16.22. Administration—Office Assignments**

For utilization of classroom teacher unit allotment purposes, the Central Education Agency shall regard and recognize as classroom teacher(s) within the definition of "teacher" as described in the Texas State Public Education Compensation Plan, teacher certificated personnel employed or assigned by any school district to teach, as classroom teachers, and/or to perform administration-office assignments or tasks.

[Acts 1971, 62nd Leg., p. 3362, ch. 1024, art. 2, § 44, eff. Sept. 1, 1971.]

[Sections 16.23 to 16.300 reserved for expansion]

SUBCHAPTER D. SALARIES

**§ 16.301. Minimum Salary Rules**

(a) The board of trustees of each and every school district in the State of Texas shall pay their teachers upon a salary schedule providing a minimum beginning base salary, plus increments above the minimum for additional experience in teaching as hereinafter prescribed. The salaries fixed herein shall be regarded as minimum salaries only and each district may supplement such salaries.

(b) All teachers and administrators shall have a valid Texas certificate. Salary increments for college training shall be based upon training received at a college recognized by the commissioner of education for the preparation of teachers.

(c) Payment of at least the minimum salary schedule provided herein shall be a condition precedent: (1) to a school's participation in the Foundation School Fund; and (2) to its name being

placed or continued upon the official list of affiliated or accredited schools. The annual salaries as provided herein may be paid in 12 equal payments at the discretion of the local school boards.

(d) The salary of each professional position shall be determined as provided by this subchapter.

[Acts 1971, 62nd Leg., p. 1497, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.302. Classroom Teachers: 1969-1970**

(a) For the 1969-1970 school year, the annual salary of classroom teachers shall be the monthly base salary, plus increments, multiplied by nine. For the 1970-1971 school year, the annual salary of classroom teachers shall be the monthly base salary plus increments multiplied by 10.

(b) Classroom teachers shall be paid for the school year 1969-1970 on the basis of the following salary schedules:

SALARY SCHEDULE 1969-1970  
YEARS OF TEACHING EXPERIENCE

Teacher, B.A.					9 or		
Salary	0-1	2-3	4-5	6-8	More		
Month	600	630	662	695	730		
Teacher, M.A.						16 or	
Salary	0-3	4-5	6-7	8-10	11-13	14-15	More
Month	660	695	730	767	805	845	866

(c) The above schedule reduced by \$7 per month at each step shall apply to all teaching positions and special service positions authorized under the Minimum Foundation Program, with the provision that all teaching positions authorized for more than nine months shall receive the monthly salary multiplied by the number of months allowed.

(d) Non-degree teachers shall receive .80 of the monthly salary for B.A. degree teachers multiplied by the number of months allowed for the position in which they are employed.

(e) Salaries for the following positions shall be based on the monthly salaries for teachers with the same experience and degree and shall be computed as indicated below:

- (1) Supervisors and counselors shall receive 1.06 of the monthly teacher salary multiplied by 10.
- (2) Head teachers shall receive 1.08 of the monthly teacher salary multiplied by 9.
- (3) Part-time principals shall receive 1.15 of the monthly teacher salary multiplied by 9½.
- (4) Full-time principals shall receive 1.20 of the monthly teacher salary multiplied by 11.
- (5) Superintendents in districts with 600 ADA or less shall receive 1.25 of the monthly teacher salary multiplied by 12. Superintendents in districts with 601-5,000 ADA shall receive 1.50 of the monthly teacher salary multiplied by 12. Superintendents in districts with 5,001 or more ADA shall receive 1.75 of the monthly salary multiplied by 12.

[Acts 1971, 62nd Leg., p. 1497, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.303. Classroom Teachers: 1970-1971**

(a) For the 1970-1971 school year, classroom teachers shall be paid on a monthly basis as provided in the schedule below:

SALARY SCHEDULE 1970-1971  
SALARY BY STEPS ABOVE BASE

Teacher, B.A.		<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>		
Base Salary								
Month	600	630	662	695	730	767		
Teacher, M.A.		<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>
Base Salary								
Month	660	695	730	767	805	845	866	888

(b) Beginning teachers shall be paid the base salary. Other teachers shall be placed at the monthly salary step immediately above the monthly salary step in the 1969-1970 salary schedule nearest the monthly salary received by the teacher in 1969-1970. The annual salary for each teacher shall be the appropriate monthly salary multiplied by 10. The above schedule shall apply to all teaching positions and special service positions authorized under the Minimum Foundation Program, with the provision that all teaching positions authorized for more than 10 months shall receive the monthly salary multiplied by the number of months allowed.

(c) Non-degree teachers shall receive .80 of the monthly salary for B.A. degree teachers multiplied by the number of months allowed for the position in which they are employed.

(d) Salaries for the following positions shall be based on the monthly salaries for teachers with the same experience and degree and shall be computed as indicated below:

- (1) Supervisors and counselors shall receive 1.20 of the monthly teacher salary multiplied by 10.
- (2) Head teachers shall receive 1.08 of the monthly teacher salary multiplied by 10.
- (3) Part-time principals shall receive 1.15 of the monthly teacher salary multiplied by 10.
- (4) Full-time principals shall receive 1.25 of the monthly teacher salary multiplied by 11.
- (5) Superintendents in districts with 600 or less ADA shall receive 1.30 of the monthly teacher salary multiplied by 12. Superintendents in districts with 601-5,000 ADA shall receive 1.50 of the monthly teacher salary multiplied by 12. Superintendents in districts with 5,000-50,000 ADA shall receive 1.75 of the monthly teacher salary multiplied by 12. Superintendents in districts with 50,001 or more ADA shall receive 2.25 of the monthly teacher salary multiplied by 12.

[Acts 1971, 62nd Leg., p. 1498, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.304. Vocational Teachers, Counselors, Supervisors: 1969-1971**

(a) The minimum monthly base pay and increments for teaching experience for a vocational teacher conducting a 9, 10, or 12 months' vocational program approved by the commissioner of education shall be the same as that of a classroom teacher as provided herein; provided that vocational trade and

industrial teachers having qualifications approved by the State Board of Vocational Education shall be eligible for the minimum monthly base pay for a classroom teacher who holds a recognized bachelor's degree and a valid teacher's certificate.

(b) The annual salary of vocational teachers shall be the monthly base salary, plus increments, multiplied by 9, 10, or 12, as applicable for 1969-1970, and by 10, 11, or 12 as applicable for 1970-1971.

(c) The minimum salaries hereinabove prescribed for vocational teachers mean total salaries of such teachers to be received for public school instruction, whether they be paid out of state and/or federal funds. None of the provisions of this subchapter shall apply to teachers in distributive adult education.

(d) Expenses where allowable shall be paid from a separate vocational fund. No such expense shall be counted as part of the cost of Minimum Foundation School Program.

(e) The minimum monthly base salary and increments for teaching experience for vocational supervisors and vocational counselors shall be the same as that prescribed in the Foundation Program salary schedule for supervisors and counselors. The annual salary for such vocational supervisors and vocational counselors shall be the monthly base salary plus increments multiplied by 10 in the case of vocational counselors and 11 in the case of vocational supervisors. This subsection expires at the end of the 1970-1971 school year.

[Acts 1971, 62nd Leg., p. 1499, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.305. Special Service Teachers: 1969-1971**

(a) The minimum monthly base salary and increments for teaching experience for special service teachers shall be the same as those provided herein for classroom teachers. The annual salary of such teachers shall be the monthly base salary, plus increments, multiplied by 9 for 1969-1970, and by 10 for 1970-1971.

(b) A registered nurse shall be considered, for the purpose of computing salaries, as having a bachelor's degree, and a librarian having a recognized certificate or degree based upon five years of recognized college training therefor shall be considered as having a master's degree.

[Acts 1971, 62nd Leg., p. 1499, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.306. Teachers of Exceptional Children: 1969-1971**

The minimum monthly base salary and increments for teaching experience for teachers of exceptional children shall be the same as that prescribed in this subchapter for classroom teachers. The annual salary of such teachers shall be the monthly base salary, plus increments, multiplied by 9 in 1969-1970, and by 10 in 1970-1971, except that in cases where the commissioner of education approves such a unit for more than nine months, the annual salary shall be the monthly base salary, plus increments, multiplied by the number of months approved by the commissioner of education.

[Acts 1971, 62nd Leg., p. 1499, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.307. Supervisors and/or Counselors: 1969-1971**

The minimum monthly base salary and increments for teaching experience for supervisors and counselors shall be that prescribed in the salary schedules as printed above for 1969-1970 and 1970-1971, respectively.

[Acts 1971, 62nd Leg., p. 1500, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.308. Principals: 1969-1971**

(a) The minimum monthly base salary and increments for teaching experience for full-time principals shall be in compliance with the provisions set out in the above printed salary schedules for 1969-1970 and 1970-1971, respectively.

(b) The classroom teacher who serves as part-time principal on a campus to which are assigned seven or more classroom teacher units shall receive the salary prescribed for a part-time principal in the 1969-1970 and 1970-1971 schedules for each of these respective years.

(c) The classroom teacher who serves as a part-time principal on a campus to which are assigned three to six classroom teacher units shall receive the salary prescribed for the head teacher in the above-printed salary schedules for 1969-1970 and 1970-1971, respectively. In addition to the allotment of part-time principals as provided in Section 16.18 of this code, districts containing an accredited high school and having fewer than nine classroom teacher units shall be granted one head teacher.

[Acts 1971, 62nd Leg., p. 1500, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.309. Superintendents: 1969-1971**

The minimum monthly base salary increments for teaching experience for superintendents shall be as prescribed in the salary schedules for 1969-1970 and 1970-1971, respectively.

[Acts 1971, 62nd Leg., p. 1500, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.310. 10-Month Year**

Beginning with the school year 1970-1971, all classroom teaching positions and all other positions previously authorized for less than 10 months shall be paid at an annual rate calculated on the basis of 10 months' compensation for 10 months' service. Such service shall include the 180-day school term providing instruction for pupils plus not to exceed 10 days of inservice education and preparation for the beginning and ending of the school term.

[Acts 1971, 62nd Leg., p. 1500, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.311. Professional Salaries: Total Cost**

The total cost of professional salaries of positions allowable for purposes of this subchapter shall be determined by application of the salary schedule to the total number of approved professional units, provided that such professional units are serviced by approved professional position employments.

[Acts 1971, 62nd Leg., p. 1500, ch. 405, § 26, eff. May 26, 1971.]

“Texas State Public Education Compensation Plan”) below, multiplied by the number of months prescribed in the position description herein for each respective position. The salaries fixed in this schedule are minimum salaries only, and each district may supplement such salaries.

§ 16.312. Salaries: Beginning 1971-1972

(a) The annual salary of personnel authorized for employment under the Minimum Foundation Program for the school year 1971-1972 and for each year thereafter shall be the monthly base salary, plus increments, shown in the schedule (entitled

(b) The following schedule constitutes the Texas State Public Education Compensation Plan effective 1971-1972, and thereafter:

SALARY BY STEPS ABOVE BASE

Pay Grade	Base Monthly Salary	Steps Above Base									
		1	2	3	4	5	6	7	8	9	10
1	\$ 300	\$ 315	\$ 331	\$ 348	\$ 365	\$ 383	\$ 402	\$ 422	\$ 443	\$ 465	\$ 488
2	360	378	397	417	438	460	483	507	532	559	587
3	450	473	497	522	548	575	604	634	666	699	734
4	480	504	529	555	583	612	643	675	709	744	781
5	540	567	595	625	656	689	723	759	797	837	879
6	570	599	629	660	693	728	764	802	842	884	928
7	600	630	662	695	730	767	805	845	887	931	978
8	660	695	730	767	805	845	887	931	978	1027	1078
9	690	725	761	799	839	881	925	971	1020	1071	1125
10	720	756	794	834	876	920	966	1014	1065	1118	1174
11	750	788	827	868	911	957	1005	1055	1108	1163	1221
12	780	819	860	903	948	995	1045	1097	1152	1210	1270
13	840	882	926	972	1021	1072	1126	1182	1241	1303	1368
14	900	945	992	1042	1094	1149	1206	1266	1329	1395	1465
15	1050	1103	1158	1216	1277	1341	1408	1478	1552	1630	1712
16	1200	1260	1323	1389	1458	1531	1608	1688	1772	1861	1954
17	1350	1418	1489	1563	1641	1723	1809	1899	1994	2094	2199
18	1500	1575	1654	1737	1824	1915	2011	2112	2218	2329	2445

Each individual will move to the step in this schedule immediately above the monthly rate received in 1970-1971 and shall advance thereafter one additional step with each added year of experience until the maximum is attained.

(c) The position descriptions, required preparation and education, and number of monthly payments authorized for each position under the Texas State Public Education Compensation Plan are as follows:

Pay Grade	No. Mos. Paid	Class Title	Description of Positions Assigned to Class Title	Required Preparation and Education
1	10	Aide I	Assist teacher by duplicating materials; performing clerical operations; supervising students in routine drills or in P.T. drills or lunchroom supervision.	Some high school, community ties.
			Assist in office procedures at file clerk level.	High school graduate.
2	10	Aide II	Assist teacher in class drill exercises, in spotting student problems or problem students; perform functions of Aide I, as needed.	High school graduate.
			Perform stenographic, bookkeeping, and other clerical functions.	High school graduate and business college training.

Pay Grade	No. Mos. Paid	Class Title	Description of Positions Assigned to Class Title	Required Preparation and Education
3	10	Aide III	Relieve teacher of most routine drill of students; work in team teaching productively. Perform as an "Assistant Teacher" under direction of qualified teacher.  Perform secretarial, high-level receptionist, junior accounting, personnel assistant, campus principal secretary, etc.	2 years college or experience equivalent.  2 years college plus business training.
4	10	* Teacher Trainee I	Emergency Permit Teacher without degree, but with personal traits needed to function in the classroom. Teaches students under frequent supervisory check by principal, grade-level or department head.	Minimum 2 years college, normally no less than 3 years college.
5	10	* Teacher Trainee II	Emergency Permit Teacher with college degree but deficiencies in educational preparation in professional or academic background. Teaches students under frequent supervisory check by principal, grade-level or department head.	College degree but certain educational deficiencies.
5	10	* Certified Non-degree Teacher	Teach at grade level or in teaching field for which prepared, under general supervision only.	Fully certified as teacher, but no college degree.
6	10	* Nurse, R.N.	School nurse <i>without degree</i> .	R.N. (only)
7	10	* Teacher, B.A.	Teach at grade level or in teaching field for which prepared, under general supervision only.	Degree, no deficiency in professional education or in teaching field. Fully certified.
7	10	* Vocational Trades and Industries Teacher	Teach in an approved vocational trades and industries program.	Approved by State Board of Vocational Education.
7	10 11 12	* Vocational Teachers	Teach in approved vocational program.	Bachelor's degree; certified.
7	10	* Librarian I	Supervise school library or function as one of several librarians on a major campus.	Degree; certified.
7	10	* Visiting Teacher I	Works on personal, educational, family, and community problems with children, parents, school personnel, and community agencies.	Degree; certified.
7	10	* Nurse, B.A.	School nurse.	Degree; certified.
8	10	* Teacher, M.A.	Teach at grade level or in teaching field for which prepared, under general supervision only.	Master's degree; fully certified.
8	10 11 12	* Vocational Teacher	Teach in approved vocational program.	Master's degree; certified.
8	10	* Librarian II	Supervise school library or function as one of several librarians on a major campus.	Master's degree; fully certified.
8	10	* Physician	Serve as school physician.	M.D. degree.
8	10	* Visiting Teacher II	Works on personal, educational, family, and community problems with children, parents, school personnel, and community agencies.	Master's degree; certified.

\* These positions are presently authorized under the Minimum Foundation Program.

Pay Grade	No. Mos. Paid	Class Title	Description of Positions Assigned to Class Title	Required Preparation and Education
9	10	Special Duty Teacher	Teach regular load at grade level or in teaching field for which prepared, under general supervision only, and perform special duty as sponsor of major student program; serve as cooperating teacher for student teacher; direct after-hour recreation or "lighted library"; serve as team leader in team teaching; direct band or major music group; serve as coach or assistant coach.	Fully certified as teacher and special training for special duty assignment and holder of master's degree.
10	10	* Counselor I	Provide educational and vocational guidance to students with limited personal guidance.	Fully certified.
10	10	* Supervisor I	Provide consultant services to teachers in a grade level or adjacent grades or in a teaching field or group of related fields.	Fully certified.
10	10	* Instructional Officer I	Serve as part-time principal on campus with 19 or fewer teachers.	Certified as administrator.
10	10	Administrative Officer I	Serve as principal functional assistant to superintendent in system of 5,000 ADA or less.	College degree with major or minor in assignment.
11	10	* Instructional Officer II	Serve as part-time principal on campus with 20 or more teachers.	Certified as administrator.
11	10	Administrative Officer II	Serve as principal functional assistant to superintendent in system of 5,001-12,500 ADA.	Same as Administrative Officer I plus experience in function.
12	10	Teacher Leader	(1) as grade-level head, department head, coordinate work of minimum of five teachers; or (2) as director of learning or resource center provide instructional leadership to minimum of 10 classroom teachers.	Fully certified as teacher; usually would have special training in assignment.
12	11	* Instructional Officer III	Serve as full-time principal on campus with 19 or fewer teachers.	Fully certified as administrator.
12	10	Administrative Officer III	Direct major administrative activity in a system of 12,501-25,000 ADA.	Same as Administrative Officer I plus minimum 2 years' related experience.
13	11	* Instructional Officer IV	Serve as full-time principal on campus with 20-49 teachers.	Fully certified as administrator.
13	11	Instructional Officer IV	Serve in a system of 12,501-25,000 ADA under an assistant superintendent as key specialist for major instructional program.	Fully certified as administrator or in suitable speciality.
13	12	Administrative Officer IV	Serve in capacity comparable to Instructional Officer IV above.	Same as Administrative Officer I plus 3 years' experience in function.
14	11	* Instructional Officer V	Serve as full-time principal on campus with 50-99 teachers.	Fully certified as administrator.
14	12	* Instructional Officer V	Serve as full-time principal on campus with 100 or more teachers.	Fully certified as administrator.

\* These positions are presently authorized under the Minimum Foundation Program.

Pay Grade	No. Mos. Paid	Class Title	Description of Positions Assigned to Class Title	Required Preparation and Education
14	12	* Administrative Officer V	Serve as superintendent of system of 3,000 ADA or less.	Fully certified as administrator.
14	12	Instructional/Administrative Officer V	(1) Serve as assistant superintendent in system of 12,501-25,000 ADA or one of several in larger system; (2) serve in system of 25,001-50,000 ADA to direct (under an assistant superintendent) major instructional function.	Fully certified as administrator or in speciality.
14	12	Administrative Officer V	Serve in administrative capacity of comparable level as above in personnel, business, accounting, planning, research, etc.	Same as Administrative Officer I plus 5 years' related experience.
15	12	* Administrative Officer VI	Serve as superintendent in system of 3,001-5,000 ADA.	Fully certified as administrator.
15	12	Instructional/Administrative Officer VI	Serve as assistant superintendent or high-level director for major program (such as instruction, business manager, personnel director, research, planning) in system of 25,001-50,000 ADA.	Fully certified as administrator or in speciality.
16	12	* Administrative Officer VII	Serve as superintendent in system of 5,001-12,500 ADA.	Fully certified as administrator.
16	12	Instructional/Administrative Officer VII	Serve as assistant superintendent or equivalent status, coordinating group of major functions in system of more than 50,000 ADA.	Fully certified as administrator or in speciality.
17	12	* Administrative Officer VIII	Serve as superintendent in system of 12,501-50,000 ADA.	Fully certified as administrator.
18	12	* Administrative Officer IX	Serve as superintendent in system of more than 50,000 ADA.	Fully certified as administrator.

\* These positions are presently authorized under the Minimum Foundation Program.

[Acts 1971, 62nd Leg., p. 1500, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.313. Promotions, Demotions, Etc.**

The commissioner of education shall develop policies, subject to approval by the State Board of Education, to provide proper salary adjustments for promotions and demotions within grades provided in the compensation schedule, and for moving experienced teachers into the schedule who were not employed in 1969-1970 or 1970-1971.

[Acts 1971, 62nd Leg., p. 1506, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.314. Increases in 1974 and 1978**

To the salary of each person employed under the Texas Public Education Compensation Schedule as printed in Section 16.312(b) of this code there shall

be added \$60 per month effective September 1, 1974, and continuing thereafter. An additional \$66 per month shall be added effective September 1, 1978, and continuing thereafter to each salary provided under the Compensation Schedule as adjusted in 1974.

[Acts 1971, 62nd Leg., p. 1506, ch. 405, § 26, eff. May 26, 1971.]

**§ 16.315. Teacher Aides**

Effective for the school year 1970-1971 and for each school year thereafter, there shall be provided one teacher aide for each 20 classroom teacher units earned by a school district. For the school year 1970-1971, an aide shall be paid a monthly salary of \$300 and shall receive such salary for 10 months. For 1971-1972 and thereafter, the salary shall con-

form to the schedule provided for an Aide I in the Texas State Public Education Compensation Plan. [Acts 1971, 62nd Leg., p. 1506, ch. 405, § 26, eff. May 26, 1971.]

#### § 16.316. Certified Teachers Holding Law Degree

Beginning with the school year 1967-1968, any person certified to teach in the public schools of Texas who holds a bachelor of laws or doctor of jurisprudence degree from an accredited law school shall have his minimum salary calculated on the basis of a master's degree.

[Acts 1971, 62nd Leg., p. 1506, ch. 405, § 26, eff. May 26, 1971.]

[Sections 16.317 to 16.44 reserved for expansion]

### SUBCHAPTER E. CURRENT OPERATING COST

#### § 16.45. Current Operating Cost

The total current operating cost for each school district, other than professional salaries and transportation, shall be determined by multiplying the number of approved classroom teacher units, exceptional children teacher units, and vocational teacher units by \$660, and grants therefor shall be allotted.

[Acts 1969, 61st Leg., p. 2820, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1507, ch. 405, § 28, eff. May 26, 1971.]

[Sections 16.46 to 16.50 reserved for expansion]

### SUBCHAPTER F. TRANSPORTATION SERVICES

#### § 16.51. Transportation Services

Transportation services shall be provided and allotments therefor shall be determined according to the provisions of this subchapter.

[Acts 1969, 61st Leg., p. 2820, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 16.52. Public School Transportation System

(a) The county school boards of the several counties of this state, subject to approval by the state commissioner of education, are authorized to establish and operate an economical public school transportation system within their respective counties.

(b) In establishing and operating such transportation systems, the county school boards shall:

(1) requisition buses and supplies from the state board of control as provided for in this subchapter;

(2) prior to June 1 of each year, with the commissioner's approval, establish school bus routes within their respective counties for the succeeding school year;

(3) employ school bus drivers; and

(4) be responsible for the maintenance and operation of school buses.

[Acts 1969, 61st Leg., p. 2820, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 16.53. County and District Transportation Funds

(a) State warrants for transportation, payable to the county school transportation fund in each county, shall be for the total amount of transportation

funds for which the county is eligible under the provisions of this subchapter.

(b) When requested by the board of trustees of an independent school district, the county school board shall authorize such independent district to:

(1) employ its school bus drivers;

(2) be responsible for the maintenance and operation of its school buses; and

(3) receive transportation payments directly from the state.

(c) When the county superintendent reports such authorization to the state commissioner of education, state warrants for transportation funds for which the district is eligible shall be made payable to the district transportation fund, which is hereby created.

[Acts 1969, 61st Leg., p. 2820, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 16.54. Use of Buses for Extracurricular Activities, Etc.

The county school boards and the state commissioner of education shall promulgate regulations in regard to the use of school buses, for other than transporting eligible children to and from school. Under rules and regulations of the State Board of Education, the appropriate district allocation in the county transportation fund, when approved by the county school board, or the district transportation fund, when approved by the board of trustees of the independent school district operating its own transportation system, may be used for school bus transportation of its pupils and necessary personnel on extracurricular activities and field trips sponsored by the respective district.

[Acts 1969, 61st Leg., p. 2821, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 16.55. Approved School Bus Routes

School buses shall be operated to and from school upon approved school bus routes and no variations shall be made therefrom. The penalty for varying from authorized routes and for unauthorized use of buses shall be the withholding of transportation funds from the offending county or school district. In the event the violation is committed by a district which receives no Foundation School Program Funds, the penalty provisions of Section 4.00<sup>1</sup> of this code shall be applied.

[Acts 1969, 61st Leg., p. 2821, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> So in enrolled bill; probably should read "4.02".

#### § 16.56. Calculation of Allotment

(a) The total annual regular transportation cost allotment for each district or county shall be based upon the rules and formulas of this section.

(b) A typical bus route is defined as being from 45 to 55 miles of daily travel and composed of 60 percent surfaced roads and 40 percent dirt roads, over which 15 or more pupils who live two or more miles from school are transported.

(c) Allowable total base costs of maintenance, operation, salaries, depreciation, etc., for each bus shall be:

72 capacity bus	\$3,276 per year
60-71 capacity bus	3,156 per year
49-59 capacity bus	3,036 per year

42-48 capacity bus	\$2,916 per year
30-41 capacity bus	2,796 per year
20-29 capacity bus	2,676 per year
15-19 capacity bus	2,196 per year

(d) The capacity of a bus means the number of eligible children being transported who live two or more miles from school along the approved route served by the bus. A bus that makes two or more routes or serves two or more schools shall be considered as having a capacity equal to the largest number of eligible children on the bus at any one time.

(e) For each one percent increase of dirt road above 40 percent, one-half of one percent shall be added to the allowable total cost.

(f) For each five miles (or major fraction thereof) increase in daily bus travel above 55 miles, one percent shall be added to the total cost of operation. For each five miles (or major fraction thereof) less than 45 miles daily travel, one percent shall be deducted from the total cost of operation.

(g) The state commissioner of education may grant not to exceed \$75 per pupil per year for private or commercial transportation for eligible pupils from isolated areas. The need for this type of transportation grant shall be determined on an individual basis and the amount granted shall not exceed the actual cost. Such grants shall be made only in extreme hardship cases, and no such grants shall be made if the pupils live within two miles of an approved school bus route or city public transportation service.

(h) The cost of transporting vocational education students from one campus to another within a district or from a sending district to an area vocational school or to an approved post-secondary institution under a contract for instruction approved by the Central Education Agency shall be reimbursed based on the number of actual miles traveled times the district's official extracurricular travel per mile rate as set by their local board of trustees and approved by the Central Education Agency.

[Acts 1969, 61st Leg., p. 2821, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1503, ch. 405, § 30, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 1672, ch. 604, § 1, eff. June 15, 1973.]

**§ 16.57. Routes and Systems: Evaluation and Approval**

(a) All bus routes and transportation systems shall be reviewed by the state commissioner of education and he shall be responsible for establishing criteria for evaluating the several transportation systems of this state, but all such criteria shall be subject to approval by the State Board of Education.

(b) The commissioner shall evaluate all transportation systems as rapidly as possible.

(c) No new bus routes or extensions shall be approved prior to the survey of the transportation system of the district or county requesting them.

(d) Repealed by Acts 1971, 62nd Leg., p. 1162, ch. 267, § 1, eff. May 19, 1971.

(e) Extension of a city's boundaries for city purposes only, after June 8, 1949, so as to include within the city boundaries part of a school district into which public transportation lines or facilities are then operated shall not affect the district's eligibility

for transportation aid. Rather, all such districts shall be entitled to receive transportation aid under the provisions of this chapter, if otherwise qualified, to the same extent as if no part thereof had been annexed by the city and its public transportation lines had not operated therein.

(f) In approving a transportation system for a district or county, consideration shall be given to providing transportation for only those pupils who live two or more miles from the school they attend, but no consideration shall be given to providing transportation for pupils transferred from one district to another when their grades are taught in their home district unless transferred as provided by law and transportation has been approved by the county school board as provided by law.

(g) There shall be no duplication of bus routes and services within sending districts by buses operated by two school districts and/or counties except upon approval by the state commissioner of education. [Acts 1969, 61st Leg., p. 2822, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1162, ch. 267, § 1, eff. May 19, 1971.]

**§ 16.58. Use of Transportation Funds for Other Purposes**

No funds paid to the several transportation units for the operation of transportation systems in this state shall be expended for any other purpose.

[Acts 1969, 61st Leg., p. 2822, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 16.59. Rules of Commissioner**

The Commissioner of Education shall formulate rules and regulations, subject to approval by the State Board of Education for enforcing the provisions of this subchapter.

[Acts 1969, 61st Leg., p. 2822, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 16.60. Appeals**

Appeals to the commissioner of education and to the State Board of Education may be had from policy decisions of the county school boards affecting transportation.

[Acts 1969, 61st Leg., p. 2823, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 16.61. Purchase of Vehicles**

(a) Motor vehicles used for the purpose of transporting school children, including school buses, their chassis and/or bodies purchased through the state board of control, shall be paid for by the state board of control as set out in applicable laws. The Legislature may appropriate out of any money in the state treasury not otherwise appropriated a sum not exceeding \$250,000, or so much thereof as necessary, for the state board of control to be used for such purposes.

(b) Any such sum appropriated shall be known as the school bus revolving fund. When motor vehicles and school buses are delivered to the various schools coming within the provisions of this chapter, the governing bodies of such schools shall reimburse the state board of control for the money expended for such school buses including their chassis and/or bodies and the money shall be deposited by the state board of control in the school bus revolving fund.

[Acts 1969, 61st Leg., p. 2823, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 16.62. Transportation Allotment for Exceptional Children Program**

(a) An annual transportation cost allotment for each district operating an approved exceptional children program shall be computed and paid from the Foundation School Program Fund on a per capita basis as provided by this section.

(b) For physically and/or orthopedically handicapped children, visually handicapped children with conditions making impractical the use of public transportation, deaf children, trainable mentally retarded children, and/or educable mentally retarded children, the transportation allotment shall be \$150 per exceptional child receiving such transportation, provided the district locally determines and certifies subject to the approval of the state commissioner of education that the pupil:

(1) is unable to utilize existing regular transportation services; and

(2) would be unable to attend the exceptional children class unless such special transportation is provided.

(c) Allotments granted under this section shall be:

(1) used only for transportation purposes of children enrolled in a district-operated exceptional children program;

(2) deposited in the district's exceptional transportation fund; and

(3) accounted for separately from regular transportation funds.

[Acts 1969, 61st Leg., p. 2823, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1494, ch. 405, § 20, eff. May 26, 1971.]

**§ 16.63. Contract With Public Transportation Company**

(a) As an alternative to maintaining and operating a complete public school transportation system under this subchapter, and if the respective governing board is able to obtain an economically advantageous contract, a county school board for its transportation system or a board of trustees of an independent school district which has been authorized to be responsible for the maintenance and operation of its school buses may contract with public transportation companies for all or any part of its public school transportation.

(b) A contract is economically advantageous if the cost of the service contracted for is less than the projected cost of the same service as otherwise provided in this subchapter.

(c) The state commissioner of education, subject to the approval of the State Board of Education, shall make rules for the administration of this section.

(d) Contracts for public school transportation may include provisions for transporting students to and from approved school activities.

(e) Upon approval of the contract by the State Board of Education, the contract price for the service shall be included in the annual transportation cost allotment for the respective county or district.

[Acts 1969, 61st Leg., p. 2823, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 16.64 to 16.70 reserved for expansion]

**SUBCHAPTER G. FINANCING THE PROGRAM**

**§ 16.71. Financing—General Rule**

The sum of the approved salaries for professional positions, the current operating cost other than professional salaries and transportation, and cost of transportation service of each district, computed and determined in accordance with the provisions of this chapter, shall constitute the total cost of the Foundation School Program, which program shall be financed by:

(1) an equalized, local school district effort to the extent hereafter provided for the support of this program;

(2) distribution of the state and county available school funds based on the number of scholastics; and

(3) allocation to each local district a sum of state money appropriated for the purposes of public school education and sufficient to finance the remaining costs of the Foundation School Program in that district, which sum shall be computed and determined in accordance with the provisions of this subchapter.

[Acts 1969, 61st Leg., p. 2824, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 16.711. Committee to Study Financing of Program**

(a) There is hereby established a committee to be comprised of 18 members: Six to be appointed by the governor, six by the lieutenant governor, and six by the speaker of the house. Three members appointed by the lieutenant governor shall be members of the senate and three members appointed by the speaker of the house shall be members of the house of representatives. The committee members shall serve from the date of their respective appointments until August 31, 1971. Members of the committee shall serve without compensation but each shall receive reimbursement for actual travel expense when on official business of the committee.

(b) The governor shall call the first meeting of the committee immediately after a majority of the members have accepted appointment and at that time the members shall elect a chairman and a vice chairman from among their number and adopt procedural rules governing membership and committee conduct.

(c) The committee may create advisory committees to perform officially and effectively the duties and responsibilities imposed by this section.

(d) A majority of the committee shall constitute a quorum.

(e) The committee shall have the responsibility of studying the relationship between the state and local school districts in financing the Minimum Foundation Program. They shall examine the structure of the economic index now in operation, ascertaining its weaknesses and its strengths. It shall review the findings of the Governor's Committee on Public School Education and evaluate information available relative to the financing of the Minimum Foundation Program. They shall explore all facets and all possibilities in relation to this problem area and shall recommend to a called session of the legislature or to

the 62nd Legislature convening in 1971 a specific formula or formulae to establish a fair and equitable basis for the division of the financial responsibility between the state and the various local school districts of Texas.

(f) There is hereby appropriated from the General Revenue Fund for the fiscal year ending August 31, 1970, the sum of \$25,000 to pay the expenses of the committee. Any unexpended balance of the original appropriation of \$25,000 is hereby reappropriated to carry out the work of the committee during the fiscal year beginning September 1, 1970.

(g) The State Board of Education and the committee shall coordinate their efforts and the State Board of Education shall cooperate with the committee and shall furnish professional, technical, and clerical staff when deemed necessary to implement the work of the committee. Every state agency, department, and institution, and every state, county, and school district official is directed to provide such information as may be requested by the committee and to assist the committee in accomplishing its objective.

(h) The committee shall report the results of its studies and make recommendations to the governor and to each member of the legislature not later than August 31, 1970. Because of the serious problem which exists in the financing of the Minimum Foundation Program and of apparent inequities in the allocation of funds to be provided by local school districts, the committee is encouraged to complete its work at the earliest possible date so that a solution might be found to be made applicable to the 1970-1971 school year.

[Acts 1971, 62nd Leg., p. 1509, ch. 405, § 33, eff. May 26, 1971.]

**§ 16.72. Total Amount Chargeable to Districts**

(a) The sum of the amounts to be charged for the 1969-1970 school year against the local school districts of the state toward the Foundation School Program shall be \$180,800,000, to which shall be added by the State Board of Education at its July meeting in 1969, 20 percent of the estimated increased cost of the Foundation Program authorized by Acts of the 61st Legislature amending the Foundation School Program.

(b) The sum of the amounts to be charged for the 1970-1971 school year against the local school districts of the state toward the Foundation School Program shall be \$204,900,000, to which shall be added by the State Board of Education at its March meeting in 1970, 20 percent of the estimated increased cost of the Foundation Program authorized by Acts of the 61st Legislature amending the Foundation School Program.

(c) For the 1971-1972 school year, and for each school year thereafter, the sum of the amounts to be charged against the local school districts of the state toward the Foundation School Program shall be 20 percent of the estimated total cost of the Foundation School Program for the immediately preceding school year, plus an amount equal to the difference between the gross local fund assignment and the net local fund assignment for the immediately preceding school year.

[Acts 1969, 61st Leg., p. 2824, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1508, ch. 405, § 31, eff. May 26, 1971.]

**§ 16.73. Estimate of Total Cost of Program; Local Assignment**

At its regular meeting in March, 1971, and at each regular meeting in March thereafter, the State Board of Education, after receiving the recommendation of the state commissioner of education, shall estimate the total cost of the Foundation School Program for the then current school year, based upon laws and approved school budgets in effect on the date when such estimate is made. Within 30 days after such estimate has been made, the state commissioner of education, subject to the approval of the State Board of Education, shall assign to each school district, according to its taxpaying ability as determined in this subchapter, its proportionate part of such total to be raised locally for the next school year and applied towards the financing of its Minimum Foundation School Program.

[Acts 1969, 61st Leg., p. 2824, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1509, ch. 405, § 31, eff. May 26, 1971.]

**§ 16.74. County Economic Index**

(a) The state commissioner of education, subject to approval by the State Board of Education shall, not later than the first week in March of each year, calculate an economic index of the financial ability of each county to support the Foundation School Program. This index shall be calculated to approximate each county's percentage of statewide taxpaying ability and shall constitute for the purpose of this subchapter a measure of that county's ability, in relation to that of other counties in the state, to support schools.

(b) The economic index for each county shall be based upon and determined by the following weighted factors:

- (1) assessed property valuation of the county, weighted by twenty;
- (2) scholastic population of the county, weighted by eight; and
- (3) income for the county as measured by value added by manufacture, value of minerals produced, value of agricultural products, payrolls for retail establishments, payrolls for wholesale establishments, and payrolls for service establishments, all weighted collectively by seventy-two.

(c) The commissioner of education, subject to approval by the State Board of Education, shall annually recompute not later than the first week in March, a new economic index using an average of data for a three-year period which shall be taken from the most recently available official publications and reports of state and federal agencies.

[Acts 1969, 61st Leg., p. 2825, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 16.741. Livestock Sales From Feedlots**

(a) In calculating an economic index of the financial ability of each county to support the Foundation School Program pursuant to Section 16.74 of this code, the commissioner of education shall calculate the value of cattle or other animal sales from feedlots at the net increase in value while in the feedlot.

(b) The "net increase in value in a feedlot" is arrived at by using the latest three years' average of the Federal Reserve Bank's interest rate as of Janu-

ary 1 of each year to which is added one and one-half percentage points. This total interest rate percentage figure then multiplied by the average sale value of cattle or other animals from the feedlot, will result in the net increase in value while in a feedlot, and is the figure that shall be used to carry out the purposes of this section.

[Acts 1971, 62nd Leg., p. 1494, ch. 405, § 21, eff. May 26, 1971.]

#### § 16.75. County Assignment

For the school year beginning 1971-1972 and each school year thereafter, the state commissioner of education shall calculate and determine the total sum of local funds that the school districts of a county shall be assigned to contribute toward the total cost of the Foundation School Program by multiplying 20 percent of the estimated Foundation Program cost for the immediately preceding school year, plus an amount equal to the difference between the gross local fund assignment and the net local fund assignment for the immediately preceding school year, as determined under the provisions of this subchapter by the economic index determined for each county. The product shall be regarded as the local funds available in each respective county toward the support of the Foundation School Program and shall be used in calculating the portion of said amount which shall be assigned to each school district in the county.

[Acts 1969, 61st Leg., p. 2825, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1509, ch. 405, § 32, eff. May 26, 1971.]

#### § 16.76. School District Assignment

(a) The amount of local funds to be charged to each school district and used therein for support of the Foundation School Program shall be calculated and determined by the state commissioner of education as follows: Divide the state and county assessed valuation of all property in the county subject to school district taxation for the next preceding school year into state and county assessed valuation of the district for the next preceding school year, finding the district's percentage of the county valuation. Multiply the district's percentage of the county valuation by the amount of funds assigned to all of the districts in the county. The product shall be the amount of local funds that the district shall be assigned to raise toward the financing of its Foundation School Program.

(b) In any district containing state university-owned land, state-owned prison land, land in one or more parcels comprising a total area in excess of 7,000 acres used for municipal cooling lakes in the generation of electricity in counties having a population of more than 700,000 according to the last preceding federal census, federal-owned forestry land, federal-owned reservoirs, federal-owned recreation areas, federal-owned military reservations, or federal-owned Indian reservations, the amount assigned to a school district shall be reduced in the proportion that the area included in the above named classification bears to the total area of the district. For purposes hereof, state university owned land is defined to mean and include also state owned land located in Brazos County and devoted to the use of Texas A & M University, land owned by East Texas State University in Hunt County, land

owned by Pan American University, land owned by Texas Tech University in Carson County, and land located in McLennan County and devoted to the use of Texas State Technical Institute.

(c) No local fund assignment shall be charged to the Boy's Ranch Independent School District in Oldham County, the Bexar County School for Boys Independent School District in Bexar County, the Bexar County School for Girls Independent School District in Bexar County, or to any independent school district which is located in its entirety within the boundaries of a federally-owned military reservation.

(d) Beginning with the school year 1967-1968, and thereafter, in any school district having three percent or more of its total scholastic population for the preceding school year composed of scholastic residents and transfers of tax-exempt institutions for orphan, dependent, and/or neglected children, the amount assigned to such a district shall be reduced for the current school year by an amount equal to the product of the total average daily attendance of students who were residents and/or transfers of such tax exempt institutions during the preceding school year multiplied by \$151.50. The superintendent of any district desiring to receive such a reduction in assignment and qualifying therefor shall certify to the Central Education Agency, not later than December 1 of each year, the following information:

- (1) the total average daily attendance of the school district determined for students residing in the district for the preceding school year;
- (2) the average daily attendance for the preceding school year determined for the scholastic residents of the tax exempt institutions for orphan, dependent, and/or neglected children; and
- (3) a list showing the name of each such institution scholastic, the total daily attendance earned for such students in the preceding school year, and the name and address of the institution.

(e) If the revenue that would be derived from the legal maximum local maintenance school tax is less than the amount assigned to a school district according to its economic index, and if the district's property valuation is not less than the same property's valuation for state and county purposes, the lesser amount shall be assigned to be raised by such school district.

(f) Failure of a school district to collect local maintenance school funds equal to its assigned amount will not make the district ineligible for full state per capita apportionment and full foundation school fund grants, but the assigned amount shall be charged against the district as budgetary receipts whether or not actually collected.

(g) The amount of local funds assigned to a contract district, as provided for in Section 16.11(i) of this code, shall be assigned to the receiving district and all local taxes, except those required for the interest and sinking fund, shall be credited as collected to the receiving school district.

(h) If a district other than a contract district has no school, the amount of local funds assigned to, and local taxes collected from, such district shall be transferred for the current year to the receiving

district in which such children attend school. But if its pupils attend schools in more than one receiving district, local fund assignments and local taxes shall be apportioned for the current year between such receiving districts according to the number of transfers to each.

(i) If any school district has a budgetary income, as provided above in Section 16.71(1) and (2) of this code, in excess of the amount needed to operate a minimum Foundation School Program and transfers pupils to another district, it shall pay to the receiving district a proportionate part of such excess, based upon the ratio of the number transferred to its enumerated scholastic population, and this excess portion shall be charged to such receiving district.

(j) The sum of the amounts assigned to the several parts of a county-line school district shall be the amount assigned to be raised by such district for financing its Foundation School Program.

[Acts 1969, 61st Leg., p. 2825, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1494, ch. 405, §§ 22, 23, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 2408, ch. 753, § 1, eff. June 8, 1971; Acts 1973, 63rd Leg., p. 744, ch. 323, § 1, eff. June 12, 1973; Acts 1973, 63rd Leg., p. 810, ch. 365, § 1, eff. June 12, 1973; Acts 1973, 63rd Leg., p. 1082, ch. 416, § 1, eff. June 14, 1973.]

**§ 16.77. Notification of Local Fund Assignment**

(a) The county tax assessor-collector in each county, in addition to his other duties prescribed by law, shall certify to the state commissioner of education, not later than December 1 of each year, the following information:

(1) the assessed valuation, on a state and county valuation basis, of all property subject to school district taxation in each school district, or portion of a school district in such county, and the total assessed valuation of all property subject to school district taxation in the county;

(2) the total area of each school district; and

(3) the area within each school district comprised of state university-owned land, state-owned prison land, federal-owned forestry land, federal-owned reservoirs, federal-owned recreation areas, federal-owned military reservations, and/or federal-owned Indian reservation.

(b) Should any county tax assessor collector fail to submit such certificates to the state commissioner of education, the state comptroller of public accounts is directed to do so, estimating when necessary.

(c) As soon after the receipt of such certificates as practicable, and prior to setting the respective tax rates for the school districts of the county, the state commissioner of education shall notify each school district of the amount of local funds that such district is assigned to raise for the succeeding school year.

(d) If there has been a marked increase or decrease in the assessed valuation of a school district within a county, and if the county school board, after certifying that the use of the preceding year's county and school district valuations for determining local fund assignments would be inequitable, recommends a different distribution of the county total than that made by the state commissioner of education, then such recommendations, subject to the commissioner's approval, shall become and be the lawful local fund assignments for such district.

[Acts 1969, 61st Leg., p. 2827, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1495, ch. 405, § 24, eff. May 26, 1971.]

**§ 16.78. Excess of Local Funds Over Amount Assigned.**

Any local maintenance funds in excess of the amount assigned to a district may be expended for any lawful school purpose or carried over into the next school year.

[Acts 1969, 61st Leg., p. 2827, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 16.79. Administration of Foundation School Program**

(a) It shall be the duty of the State Board of Education, State Board for Vocational Education, and the state commissioner of education to take such action, require such reports, and make such rules and regulations consistent with the terms of this chapter as may be necessary to carry out its provisions.

(b) The state commissioner of education shall determine annually:

(1) the amount of money necessary to operate a Foundation School Program in each school district;

(2) the amount of local funds to be assigned and charged to each school district; and

(3) the per capita apportionment from state and county available school funds available to each school district.

(c) The commissioner of education shall then grant to each school district from the foundation school fund appropriation the amount of funds necessary to provide the difference between subdivision (1) and the sum of subdivisions (2) and (3) of Subsection (b) of this section.

(d) The commissioner shall approve warrants to each school district equaling the amount of its grant. Warrants for all money expended according to the provisions of this chapter shall be approved and transmitted to treasurers or depositories of school districts in the same manner as warrants for state apportionment are now transmitted.

[Acts 1969, 61st Leg., p. 2827, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 16.80. Dormant School Districts**

(a) The county school boards of all counties of the state are authorized and required to consolidate by order of said board each dormant school district within the county with an adjoining district or districts.

(b) The term "dormant school district" means any school district that fails for any two successive years to operate a school in the district.

(c) The governing board of the district with which a dormant school district is consolidated shall continue to be the governing board for the new district.

(d) In each case, the consolidation order of the county school board shall define by legal boundary description the territory of the new district as so enlarged and shall be recorded in the minutes of the county school board as provided by law.

(e) Elections shall be held when required by law in such consolidated districts for the assumption of

outstanding bonds, if any, for the levying of taxes therefor, and for the levying of a local maintenance tax.

(f) If a county-line district is or becomes dormant, the consolidation provisions of this section shall apply to all counties affected to the extent of territory in each.

[Acts 1969, 61st Leg., p. 2828, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 16.81. Territory Not in School District

(a) All property subject to school district taxation in the state must be included within the limits of a school district and a proper and proportionate tax paid thereon for school purposes. Therefore, at any time it may be determined there is territory located in a county but not within the described limits of a school district, the county school board is authorized and required to add such territory to an adjoining district or districts.

(b) In each case, the order of consolidation shall define by legal boundary description the territory of the new district and shall be recorded in the minutes of the county school board as provided by law.

(c) Elections shall be held as provided by law in such new districts for the assumption of outstanding bonds, if any, for the levying of taxes therefor, and for the levying of a local maintenance tax.

[Acts 1969, 61st Leg., p. 2828, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 16.82. Cumulative Effect

The provisions of Sections 16.80 and 16.81 of this code shall not be construed to repeal, supercede or limit any existing law providing other methods for school district consolidation and annexation.

[Acts 1969, 61st Leg., p. 2829, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 16.83. Falsification of Records, Report

(a) When, in the opinion of the director of school audits of the Central Education Agency, audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of such records, or violation of the provisions of this chapter, whereby the district's share of state funds allocated under authority of this chapter would be, or has been, illegally increased, said director shall promptly and fully report such fact direct to the State Board of Education and to the state auditor.

(b) In the event of overallocation of such funds, as determined by the State Board of Education or the state auditor by reference to the director's report, the Central Education Agency shall, by withholding from subsequent allocations of state funds, recover from such district an amount, or amounts, equal to the overallocation.

[Acts 1969, 61st Leg., p. 2829, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 16.84 to 16.860 reserved for expansion]

### SUBCHAPTER G-1. FOUR-QUARTER SCHOOL YEAR

#### § 16.861. Transition to Four-Quarter System; Curriculum Revision

The Central Education Agency shall prepare a reorganized curriculum based on operation of the schools on a quarter basis. The revision shall be so

structured that the material covered during the present school year of two semesters is covered in three three-month quarters. The agency shall distribute this restructured curriculum to each school district in the state in sufficient time so that the new curriculum can be put into operation beginning with the 1972-1973 school year.

[Acts 1971, 62nd Leg., p. 2054, ch. 632, § 1, eff. Aug. 30, 1971.]

#### § 16.862. Operation on Quarter Basis

Beginning with the 1972-1973 school year, each school district in this state may operate on the basis of a quarter system, and beginning with the 1975-76 school year, each school district shall operate on the basis of a quarter system, with the schools being in operation during at least three quarters during each school year, providing 180 days of instruction for students and 10 days of inservice education for teachers.

[Acts 1971, 62nd Leg., p. 2054, ch. 632, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 5, ch. 4, § 1, eff. Feb. 27, 1973.]

#### § 16.863. Foundation School Program Credit

Each school district shall receive average daily attendance credit under the Foundation School Program for attendance by a student for any three quarters during any one school year.

[Acts 1971, 62nd Leg., p. 2054, ch. 632, § 1, eff. Aug. 30, 1971.]

#### § 16.864. Four-Quarter Operation Authorized

(a) A school district may choose to operate all or some of its schools for all four quarters of the school year. This choice shall be approved or disapproved by the district school board in a regularly scheduled open meeting. If a district so chooses, no credit for average daily attendance under the Foundation School Program may be given to the district for attendance by any one student for more than three quarters during any one school year. Attendance by a student for his fourth quarter must be financed either by the student on a tuition basis or by the district from its own funds, at the option of the district.

(b) A district operating during all four quarters of the school year shall decide which students are to attend school during which quarters. However, schedules shall be so arranged that all members of a family attending the schools of a district may attend the same three quarters.

(c) A district operating during all four quarters of the school year may not require a teacher to teach more than three quarters plus the number of days provided by law for inservice education and preparation during any one school year. A teacher or other school employee under the Minimum Foundation Program who elects to work four quarters during a school year shall receive a minimum salary which is increased proportionately in compliance with the state compensation plan.

(d) A district operating during all four quarters of the school year may not require a student to attend more than three quarters.

[Acts 1971, 62nd Leg., p. 2054, ch. 632, § 1, eff. Aug. 30, 1971.]

[Sections 16.865 to 16.90 reserved for expansion]

SUBCHAPTER H. QUARTERLY SEMESTER PILOT PROGRAMS

§§ 16.91 to 16.95. Repealed by Acts 1971, 62nd Leg., p. 2054, ch. 632, § 2, eff. Sept. 1, 1972

This subchapter, consisting of sections 16.91 to 16.95, enacted by Acts 1969, 61st Leg., p. 2735, ch. 889, § 1, provided a program for the exploration of operating quarterly semester pilot programs and established the basis upon which the cost of such programs would be borne by the state and each participating district. See, now, Subchapter G-1, section 16.861 et seq.

The repealed sections were derived from Acts 1967, 60th Leg., p. 1827, ch. 706, §§ 1 to 5, classified as Civil Statutes, Art. 2922-26, §§ 1 to 5.

[Sections 16.96 to 16.970 reserved for expansion]

SUBCHAPTER H-1. THREE-SEMESTER PILOT PROGRAMS

§ 16.971. Pilot Program

For the purpose of exploring the feasibility of operating three-semester pilot programs, public school districts of this state are hereby authorized to operate (in lieu of the usual 9-month program) a 12-month school year program and to receive allocation of state aid toward financing the additional 3-month operation from the Foundation Program Fund, determined in the manner prescribed in this subchapter. Provided, however, that the district shall operate such 12-month program under its proposed plan submitted to the Central Education Agency, and subject to approval of the agency as meeting policy and regulations established and adopted by the State Board of Education applicable thereto.

[Acts 1971, 62nd Leg., p. 1449, ch. 405, § 25, eff. May 26, 1971.]

§ 16.972. Limitation

(a) Three-semester pilot programs, annually approvable under this subchapter, shall be restricted in number to involve a maximum of 10 programs not to exceed 100,000 pupils, based on average daily attendance in the preceding school year, and the attendance of eligible pupils shall be restricted to two semesters out of the three-semester program.

(b) For purposes only of this pilot program, any child otherwise eligible who becomes six years of age after September 1 may be admitted to public school in any following semester beginning after he has reached six years of age, and such attendance shall be counted as eligible attendance for allocation purposes of the Foundation School Program Fund.

[Acts 1971, 62nd Leg., p. 1449, ch. 405, § 25, eff. May 26, 1971.]

§ 16.973. Cost Basis

The cost of operating such approved three-semester pilot programs shall be borne by the state and each participating district on the same percentage basis that applies to financing the Foundation School Program within the respective district.

[Acts 1971, 62nd Leg., p. 1449, ch. 405, § 25, eff. May 26, 1971.]

§ 16.974. Calculation of Costs

For purpose of computing authorized state aid and allocations under this subchapter, the cost of the program shall be ascertained as follows:

(1) The district's average daily attendance for classroom teacher unit eligibility and allocations shall be determined on a three-semester basis, limiting eligible pupil attendance to two semesters within each scholastic year. Eligibility for special service teachers, supervisors and/or counselors, head teachers, part-time principals, and full-time principals shall be determined by dividing the total aggregate days of attendance in the pilot program by the number of days that instruction is offered during two semesters, determined to the best advantage of the district.

(2) An additional salary adjustment, based on the state minimum salary schedule, shall be added for classroom teacher units occasioned by a 12-month operation. Provided further that the number of months and salary, based on the state minimum salary schedule, for eligible special service teachers, supervisors and/or counselors, head teachers, part-time principals, and full-time principals shall be allowed for 12 months.

(3) The total current operating costs of each pilot program as herein described, other than professional salaries and transportation, shall be determined by multiplying the number of classroom teacher units and exceptional teacher units times the number of months employed times \$67.

(4) An additional transportation allotment shall be added not to exceed the amount of one-third of the transportation allotment as normally computed for a nine-month operation.

[Acts 1971, 62nd Leg., p. 1449, ch. 405, § 25, eff. May 26, 1971.]

§ 16.975. State's Share of Cost

The state's share of the cost shall be paid from the Minimum Foundation Program Fund, and this cost shall be considered by the Foundation Program Committee in estimating the funds needed for Foundation School Program purposes.

[Acts 1971, 62nd Leg., p. 1449, ch. 405, § 25, eff. May 26, 1971.]

[Sections 16.976 to 16.979 reserved for expansion]

SUBCHAPTER I. SUPPLEMENTAL STATE SALARY AID TO SCHOOL DISTRICTS

§ 16.98. Supplemental State Salary Aid

(a) Established hereby is a program to provide supplemental state salary aid to public free school districts in addition to funds provided under any other provision of the laws or constitution of this state. Purpose of this supplementary aid program: To encourage higher salaries for classroom teachers as defined herein, of grades one through twelve.

(b) "Classroom teacher" for purposes of this program shall mean any professionally qualified teacher employed full time by a school district and spending at least one-half of his working time in actual instruction of pupils in regularly organized and scheduled classes, vocational and exceptional teachers included.

(c) Entitlement of each district for supplemental state aid authorized herein shall be determined by adding the number of classroom, vocational and exceptional teacher units allocated only to districts eligible under those provisions of foundation school program described under Sections 16.13, 16.14 and 16.16 of this code, and multiplying the sum of all such classroom teachers as herein defined by \$50.

(d) A school district may establish eligibility to receive funds to the amount determined under Subsection (c) of this section by submitting to the Central Education Agency a plan which shall meet the following conditions:

(1) State funds to be utilized as salary from amount determined under Subsection (c) of this section shall constitute not more than the same percentage of the total amount disbursed as supplemental salary to classroom teachers as the state share of the foundation school program in each participating school district; and

(2) All funds received as supplemental salary aid shall be paid as supplemental salary to persons who qualify as classroom teachers and of districts as defined in above Subsections (b) and (c) of this section; and

(3) Supplemental salary paid to any such classroom teacher shall be in addition to the salary to which such teacher is entitled under the regularly established salary policy of the school district; and

(4) Not less than ten percent of such classroom teachers employed by the school district shall participate in the state-aid supplemental salary funds disbursed to any district, and no classroom teacher shall receive less than \$100 or in excess of \$1000 in any school year.

(e) On or before its first meeting day of each fiscal year, the State Board of Education shall certify to the comptroller of public accounts the amount of money required to meet the provisions of this salary aid program. Upon receipt of the certification or as soon thereafter as possible, the comptroller shall cause to be set aside from funds collected or to be collected and credited to the general revenue fund a sum sufficient to meet such certification, and such sum(s) as so certified are hereby appropriated therefor. Any funds remaining unexpended and unencumbered in this salary program account on the last working day of each fiscal year shall be credited to the general revenue fund.

[Acts 1969, 61st Leg., p. 2830, ch. 889, § 1, eff. Sept. 1, 1969.]

## CHAPTER 17. COUNTY ADMINISTRATION

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### SUBCHAPTER A. COUNTY GOVERNING BODY

#### § 17.01. Management

(a) The general management and control of public free schools and high schools in each county, unless otherwise provided by law, shall be vested in a board of county school trustees.

(b) In those counties which have previously been placed under or adopted, by either general or special law, or which may hereafter adopt pursuant to Chapter 18 of this code,<sup>1</sup> the county-unit system for tax purposes, the governing body may be designated the county board of education.

(c) In any county of this state not having heretofore elected or appointed a board of county school trustees, the commissioners court is authorized to appoint a board of county school trustees for the county, the residence of whose members shall conform to the provisions of Section 17.02 of this code relating to the election of county trustees.

(d) No board of county school trustees or county board of education shall be required in those counties which have created or hereafter may create under the terms of Section 19.061 of this code a single independent school district embracing the entire county.

[Acts 1969, 61st Leg., p. 2833, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 18.01 et seq.

**§ 17.02. Composition of County Governing Board**

(a) Unless otherwise provided by law, the board of county school trustees or county board of education shall be composed of five members, one of whom shall be elected from each of the four commissioners precincts of the county by the qualified voters of such precincts, and one from the county at large by the qualified voters of the county. Each shall be elected for a term of two years. Two members shall be elected in one year and three members shall be elected in the alternate year.

(b) In those counties with a population in excess of 350,000, the board of county school trustees shall consist of seven members, three of whom shall be elected from the county at large and one from each commissioners precinct. The trustees' first terms shall be fixed by lot, with two drawing to serve two years, two for four years, and three for six years. Thereafter, each member shall serve six years, with either two or three members elected every two years, the number depending upon that needed to bring the board to seven members.

[Acts 1969, 61st Leg., p. 2833, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.03. Elections**

(a) Elections of county school trustees or members of the county board of education and district trustees shall be held on the first Saturday in April, except that in counties having a population of 500,000 or more, according to the last preceding federal census, such elections may be held on any other Saturday the trustees or board members may select by official resolution.

(b) Election officers appointed to hold the election for district trustees in each school district shall hold the regular election for county school trustees or county board members.

(c) In elections for county school trustees or county board members, all candidate applications for a place on the ballot must be filed with the county judge not less than 30 days prior to the day of election.

(d) The order for such elections must be made by the county judge at least 30 days prior to election day and must designate as voting places within each common or independent school district the same places at which votes are cast for the district trustees.

(e) It shall be no valid objection that the voters of a commissioners precinct are required by operation

of this section to cast their ballots at a polling place outside the commissioners precinct of their residence.

(f) Election returns shall be made to the county clerk within five days after the election is held. Such returns shall be delivered by the clerk to the commissioners court at its first meeting thereafter, and that body shall canvass the returns and declare the results as in other elections.

(g) After the newly-elected trustees or county board members have taken and filed with the county clerk the official oath of office, the clerk shall issue their commissions impressed with the seal of the commissioners court.

[Acts 1969, 61st Leg., p. 2834, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.04. Vacancies**

Any vacancy on a board of county school trustees or a county board of education shall be filled for the unexpired portion of the term by the remaining trustees or board members.

[Acts 1969, 61st Leg., p. 2834, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.05. Qualifications for Office**

County school trustees or members of county boards of education must meet the following qualifications:

- (1) They must be qualified voters of the county from which they are elected;
- (2) The four persons representing commissioners precincts must each reside in the precinct from which he is elected;
- (3) They must possess good moral character;
- (4) They must be able to read and speak the English language;
- (5) They must be persons of good education and in sympathy with the public free schools;
- (6) They must not be connected with the public schools of any district, either as an official or as an employee.

[Acts 1969, 61st Leg., p. 2834, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.06. Oath of Office**

All elected trustees or members of a county board of education must take the official oath of office and file same with the county clerk.

[Acts 1969, 61st Leg., p. 2834, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.07. Organization**

Each board of county school trustees or county board of education shall be organized as follows: A president shall be elected by the trustees or members of the board from their number at the regular meeting in May of each year. A vice-president may be elected in the same manner as the president. The county superintendent shall act as secretary.

[Acts 1969, 61st Leg., p. 2835, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.08. Meetings**

(a) The county school trustees or county boards of education shall hold meetings once each quarter on the first Monday in August, November, February,

and May, or as soon thereafter as is practicable. Such meetings may likewise be held on the first Monday each month, or as soon thereafter as is practicable.

(b) Additional meetings may be called by the president or at the instance of any two trustees or members of the county board of education and the county superintendent.

(c) The meeting place shall be at the county seat in the office of the county superintendent.

(d) A majority of the trustees or board members shall constitute a quorum to transact business. All questions shall be decided by majority vote.

[Acts 1969, 61st Leg., p. 2835, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 17.09. Compensation

Each county school trustee or member of a county board of education shall be paid, for the time spent in attending meetings, \$6 per day, not to exceed \$72 in any one year, out of the state and county available school fund by warrants drawn on order of the county superintendent and signed by the president of the body, after approval of the account properly sworn to by the president.

[Acts 1969, 61st Leg., p. 2835, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 17.10 to 17.20 reserved for expansion]

## SUBCHAPTER B. POWERS AND DUTIES

### § 17.21. Body Corporate

(a) The county school trustees or county board of education shall constitute a body corporate and in that name may acquire and hold real and personal property, sue and be sued, and receive bequests and donations or other moneys or funds coming legally into their hands.

(b) Unless otherwise provided by law, the corporate designation shall be County School Trustees of \_\_\_\_\_ County, State of Texas.

(c) If the county-unit system has been instituted in the county under previous law either general or special, and if the governing body thereunder is designated as a board of education, or if the county-unit system is hereafter adopted in the county under Chapter 18 of this code<sup>1</sup> and the designation board of education adopted, the corporate designation shall be County Board of Education of \_\_\_\_\_ County, State of Texas.

[Acts 1969, 61st Leg., p. 2835, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 18.01 et seq.

### § 17.22. School Property

The title to any school property belonging to the county, which title has heretofore been vested in the county judge and his successors in office, or to any school property which may be acquired, shall vest in the county school trustees or the county board of education and their successors in office for public free school purposes.

[Acts 1969, 61st Leg., p. 2835, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 17.23. Creation, Consolidation, Etc.

(a) The county school trustees or county boards of education shall participate in the creation, consolidation, subdivision, and abolition of school districts as provided in Chapter 19 of this code.<sup>1</sup>

(b) The county school trustees or county boards of education shall participate in the establishment of public junior colleges as provided in Chapter 51 of this code.<sup>2</sup>

[Acts 1969, 61st Leg., p. 2836, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.001 et seq.

<sup>2</sup> Section 51.001 et seq. (transferred to section 130.001 et seq.)

### § 17.24. Classification of Schools

(a) The county school trustees or county boards of education shall, at the regular meeting in May of each year, or as soon thereafter as practicable, and in accordance with such regulations as the commissioner of education may prescribe, classify the schools of the county, including those in independent school districts, into elementary schools and high schools for the purpose of promoting the efficiency of the elementary school and of establishing and promoting high schools at convenient and suitable places.

(b) In classifying the schools and in establishing high schools, the trustees or county board members shall give due regard to schools already located, to the distribution of population, and to the advancement of the students in their studies.

[Acts 1969, 61st Leg., p. 2836, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 17.25. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(1), eff. May 26, 1971

### § 17.26. Acquisition of Real Property

(a) The county school trustees or county boards of education shall have the power to purchase and lease, and by exercise of the right of eminent domain to acquire, the fee simple title to real property in the county for all common school districts and/or those independent school districts having a scholastic population of less than 150 and remaining under the supervision of the county governing board, for the purpose of supplying playgrounds, agricultural tracts, sites upon which to build schoolhouses, other buildings necessary for the operation of the schools, and for such other purpose as may be advisable for the schools within the districts.

(b) When real property is acquired by the exercise of the right of eminent domain, the trial and all other proceedings, including the assessing of damages, shall be in conformity to the statutes of the state for condemning and acquiring property by railroads. Whenever final judgment is rendered in any such condemnation proceedings, the plaintiff shall be awarded the fee simple title to the property condemned, and have full power over it, including the right of alienation.

[Acts 1969, 61st Leg., p. 2836, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 17.27. Joint Meetings

The county school trustees or county boards of education may call joint meetings with the district school trustees when deemed necessary and shall do so on petition of a majority of district school trustees.

[Acts 1969, 61st Leg., p. 2837, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.28. Veterans' Training**

(a) Unless the county is one in which a tax-supported college or junior college is already operating non-credit classes and schools for veterans, the board of county school trustees or county board of education may maintain, operate and administer a special school for such educational and vocational training of veterans as may be provided by law of this state or of the United States for such veterans, and may employ such instructors, as it deems necessary, and do all things deemed proper for the successful operation of such school.

(b) The State Board for Vocational Education is authorized to allocate and pay to the respective county governing boards and such county governing boards are authorized to receive such money as well as any private donations made for the same purpose and shall stand charged with the power and duty to maintain, operate and administer the same for the purposes above stated.

(c) Payment for all necessary expenses of such schools shall be made by the county governing boards by warrants drawn on funds received by them for the purpose.

[Acts 1969, 61st Leg., p. 2837, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.29. Budget; Finances**

(a) The county school trustees or members of the county board of education shall make the annual budget for county administration, have general supervision over the financial affairs of the schools under their jurisdiction, and see to it that all funds are expended in compliance with the regulations of the Central Education Agency.

(b) The county budget, including the applicable items set out in Sections 17.51-17.54 of this code and authorized under regulations of the commissioner of education, shall be filed with the State Department of Education on or before the first day of September of each scholastic year, and shall be certified to by the county school trustees or county board of education and attested to by the county superintendent. The commissioner of education shall transmit to the county governing board all instructions necessary for proper observance of this provision and shall remit in October of each scholastic year to the depository bank of each of the respective counties the amount of the state available fund provided in the budget of each county.

[Acts 1969, 61st Leg., p. 2837, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.30. Interim Financing; Teachers' Salaries**

(a) On September 1 of each year, or as soon thereafter as practicable, the county school trustees or county boards of education shall, upon the basis of information furnished by the county depository bank at the request of the county governing body, ascertain the current financial resources of each school district under their supervision and, in the event any of said districts do not or will not have sufficient funds on deposit to pay the salaries of teachers when and as due, borrow funds necessary for such purpose, and authorize the depository bank of the county to charge interest at a rate to be agreed upon by

said depository bank and said trustees under the rules prescribed in this section.

(b) The rate of interest shall not exceed eight percent per annum on vouchers issued to teachers from the date of the receipt by said depository until sufficient funds accrue to the credit of the district issuing said vouchers to liquidate the respective vouchers, the interest to be paid from the available funds of the district affected.

(c) No voucher shall draw interest after sufficient funds have accrued in the depository for its payment.

(d) The vouchers upon which interest is to be charged shall not exceed in amount 50 percent of the current available funds of the issuing district.

(e) All interest charged under this section shall be reported in full by the depository bank in its annual report to the state commissioner of education.

[Acts 1969, 61st Leg., p. 2837, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.31. Other Powers and Duties**

(a) The county school trustees or county boards of education shall provide all information requested of them by the commissioner of education or any other person associated with the Central Education Agency; they shall also exercise all other functions conferred upon them by the statute and may perform any other act consistent with law for the promotion of education in the county.

(b) In those counties in which the county-unit system has been established under either general or special law of this state, and in those counties which may hereafter adopt the county-unit system under Chapter 18 of this code,<sup>1</sup> the county school trustees or county boards of education shall have, in addition to the powers and duties set out in this subchapter, the further powers specified for such county governing boards in the applicable sections of Chapter 18.

[Acts 1969, 61st Leg., p. 2838, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 18.01 et seq.

[Sections 17.32 to 17.40 reserved for expansion]

**SUBCHAPTER C. COUNTY SUPERINTENDENT**

**§ 17.41. Office Established: Counties With 3,000 or More Scholastics**

(a) Except as provided by Section 17.45 of this code, the commissioners court of every county having 3,000 scholastic population or more, as shown by the preceding scholastic census, shall at a general election provide for the election of a county superintendent to serve for a term of four years.

(b) In every county that shall attain 3,000 scholastic population or more, the commissioners court shall appoint such superintendent who shall perform the duties of such office until the election and qualification of his successor.

(c) In counties having a scholastic population of between 3,000 and 5,000 scholastics, wherein the office of county superintendent has not been created and a superintendent elected, then in such counties the question of whether or not such office is established shall be determined by the qualified voters of said county in a special election called therefor by the commissioners court of said county, upon peti-

tion therefor as specified in Section 17.44 of this code.

[Acts 1969, 61st Leg., p. 2838, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.42. Where Scholastic Population Drops Below 3,000**

In all counties now or hereafter having the office of county superintendent where the scholastic population according to the last scholastic census is less than 3,000 but more than 2,000, the office of county superintendent shall continue unless and until a majority of the qualified property taxpaying voters of said county, voting at an election held to determine whether said office shall be abolished, shall vote to abolish said office, which election shall be ordered by the Commissioners Court upon petition therefor as specified in Section 17.44 of this code. Provided, however, that if a majority of said voters voting at said election hereinabove provided for, vote to abolish said office said election shall not become effective until the expiration of the term of office for which the county superintendent has been elected or appointed.

[Acts 1969, 61st Leg., p. 2839, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.43. Counties With Fewer Than 3,000 Scholastics**

In any county having a scholastic population of fewer than 3,000, on the presentation of a petition as specified in Section 17.44 of this code, the commissioners court shall order an election for said county to determine whether or not the office of county superintendent shall be created in said county; and, if a majority of the qualified property taxpaying voters voting at said election shall vote for the creation of the office of county superintendent in said county, the commissioners court, at its next regular term after the holding of said election, shall create the office of county superintendent, and name a county superintendent who shall qualify under this chapter, and hold such office until the next general election.

[Acts 1969, 61st Leg., p. 2839, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.44. Petition for Election**

The petition for any election under this subchapter must be signed by a number of qualified voters of the county equal to at least 25 percent of the votes cast in the county for governor at the last preceding general election.

[Acts 1969, 61st Leg., p. 2839, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.45. Counties of More Than 350,000**

In any county having a population of more than 350,000, according to the last preceding federal census, the county superintendent shall be appointed by the county board of education, and shall hold office for four years. However, this provision shall not operate so as to deprive any elected superintendent of his office prior to the expiration of the term for which he has been elected.

[Acts 1969, 61st Leg., p. 2839, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.46. Appointive Superintendents**

(a) In those counties which have previously adopted the county-unit system, under either general or special law of this state, wherein the county governing board was authorized to appoint the county superintendent, the office of county superintendent shall remain appointive so long as the county-unit system remains in effect.

(b) In those counties wherein the county governing board has previously been authorized, under either general or special law of the State, to appoint the county superintendent, or in any county which may hereafter qualify under the provisions of Chapter 18 of this code<sup>1</sup> for an appointive superintendent, the office of county superintendent shall be appointive.

[Acts 1969, 61st Leg., p. 2839, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 18.01 et seq.

**§ 17.47. Ex Officio County Superintendent**

In any county in which no county superintendent has been elected or appointed, the county judge shall be ex officio county superintendent and shall perform all the duties required of that office.

[Acts 1969, 61st Leg., p. 2840, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.48. Qualifications**

An elective or appointive county superintendent must be a person of educational attainments, good moral character, and executive ability. He must hold a permanent, provisional, or professional teacher's certificate.

[Acts 1969, 61st Leg., p. 2840, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.49. Oath and Bond**

The county superintendent, whether elected, appointed, or ex officio, shall take the official oath of office and shall give bond in the sum of \$1,000, conditioned upon the faithful performance of his duties and payable to and approved by the county governing board of the county, unless a county-wide independent school district has been created as provided in Chapter 19 of this code,<sup>1</sup> in which event the bond shall be payable to and approved by the county commissioners court.

[Acts 1969, 61st Leg., p. 2840, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.001 et seq.

**§ 17.50. Office**

The county commissioners court shall provide the county superintendent with an office in the courthouse and with the necessary office furniture and fixtures.

[Acts 1969, 61st Leg., p. 2840, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.51. Salary**

(a) The salary of elective and appointive county superintendents shall be fixed as provided in this section.

(b) Each county superintendent shall receive from the available school fund an annual salary based upon the following salary schedule:

(1) The minimum base pay of a county superintendent who has one year but less than two

years of college training in a standard college or university shall be \$155 per month. Six dollars per month shall be added for each year of teaching experience in the public schools of this state, not to exceed \$72 per month.

(2) The minimum base pay for a county superintendent who has two but less than three years of college training in a standard college or university shall be \$180 per month. Six dollars per month shall be added for each year of teaching experience in the public schools of this state, not to exceed \$72 per month.

(3) The minimum base pay for a county superintendent who has three years or more of college training in a standard college or university but who does not hold a bachelor's degree shall be \$205 per month. Six dollars per month shall be added for each year of teaching experience in the public schools of this state, not to exceed \$72 per month.

(4) The minimum base pay for a county superintendent who holds a bachelor's degree from a standard college or university and no higher degree shall be \$267 per month. Six dollars per month shall be added for each year of teaching experience in the public schools of this state, not to exceed \$72 per month.

(5) The minimum base pay for a county superintendent who holds a master's degree from a standard college or university shall be \$292 per month. Six dollars per month shall be added for each year of teaching experience in the public schools of this state, not to exceed \$156 per month.

(c) Each county superintendent shall receive, in addition to the salary based upon professional training and teaching experience in public schools of Texas as described in Subsection (b) above, monthly increments based upon the scholastic population brackets as indicated in the following table:

Population	Amount
3,000 or less	\$ 40.00
3,001 to 4,000	50.00
4,001 to 5,000	60.00
5,001 to 6,000	70.00
6,001 to 7,000	80.00
7,001 to 8,000	90.00
8,001 to 9,000	100.00
9,001 to 12,000	110.00
12,001 to 15,000	120.00
15,001 to 20,000	130.00
20,001 to 30,000	140.00
30,001 to 50,000	150.00
50,001 and over	160.00

(d) The annual salary for a county superintendent shall be the monthly base salary, plus increments, multiplied by 12. Any county superintendent who has served 24 or more years as an elected county superintendent in Texas may receive the same base pay and increments for experience as a county superintendent with a master's degree would receive in the same position.

(e) In those counties in which the county judge acts as ex officio county superintendent, he shall receive as salary for his services in performing the duties of county superintendent, in addition to all other compensation provided by law, whether paid

on a fee or salary basis, such sum as the board of county school trustees or county board of education may determine, provided that it shall never exceed \$2,600 per year.

(f) The compensation provided in this section shall be paid monthly upon order of the county school trustees or county board of education, but the salary for the month of September shall not be paid until the county superintendent presents a receipt from the office of the commissioner of education showing that he has made all reports required of him.

[Acts 1969, 61st Leg., p. 2840, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.52. Office Budget for County Superintendent**

(a) The office budget for an appointive or elective county superintendent may include the following items:

(1) Employment of a competent assistant with approval and confirmation of the county school trustees or county board of education. In counties with a total population equaling or fewer than 100,000, according to the last federal census, the annual salary of such assistant shall not exceed \$7,200. In counties with a total population greater than 100,000, according to the last federal census, the annual salary of such assistant shall not exceed \$7,700.

(2) Employment of one other assistant or assistants as may be necessary, provided that the total sum of all salaries of one other assistant or assistants to the county superintendent does not exceed annually \$13,800 in counties having a total population equaling or fewer than 100,000, nor \$14,300 in counties having a total population greater than 100,000.

(b) The county school trustees or county board of trustees may make further provisions as they deem necessary for office and travel expenses of the county superintendent, provided that such expenditures of the county superintendents shall not be more than \$1,080 annually and shall not be paid except upon notarized claims made upon forms filed by the county school superintendent and approved by the county school trustees or county board of education.

[Acts 1969, 61st Leg., p. 2841, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1512, ch. 405, § 37, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 2431, ch. 778, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1298, ch. 488, § 1, eff. Aug. 27, 1973.]

**§ 17.53. Office Budget: Ex Officio Superintendent**

The office budget for an ex officio county superintendent may include the following items:

(1) Appointment by the county school trustees or county board of education of an assistant to the ex officio county superintendent at a salary not to exceed \$2,600 per year.

(2) Provision by the county school trustees or county board of education for other office and travel expenses in an amount not to exceed \$1,050 per year.

[Acts 1969, 61st Leg., p. 2842, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.54. Supervisor**

Whenever a supervisor is assigned a position under the county superintendent, as provided in Sec-

tion 16.17 of this Code, the office and travel expenses of such supervisor may be included in the office budget of the county superintendent. Such expenses shall be in addition to the budget maximums set out above in Sections 17.52(b) and 17.53(2), but shall not exceed \$50 per month per supervisor. This budget item is limited to a ten-month basis. [Acts 1969, 61st Leg., p. 2842, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2431, ch. 778, § 2, eff. Aug. 30, 1971.]

#### § 17.55. Duties as Secretary of Board

(a) The county superintendent shall act as secretary of the county school trustees or county board of education. He shall keep in a well bound book, which shall be open to public inspection, a true and correct record of the proceedings of the county governing board.

(b) He shall keep an accurate record of the term of office of each common school district and county school trustee or county board member and shall furnish the county judge at least 60 days prior to the date of their election the number of trustees or board members to be elected in each district or precinct or in the county at large.

(c) He shall conduct all correspondence of the board, receive all reports required by the board, and see that such reports are in proper form, complete and accurate.

(d) He shall have the right to advise on any question under consideration by the board, but shall have no vote.

[Acts 1969, 61st Leg., p. 2842, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 17.56. Duties as Budget Officer

(a) The county superintendent shall be the budget officer for each common and rural high school district under such county's jurisdiction.

(b) On or before the tenth day of August, he shall prepare an itemized budget covering all carefully estimated receipts and proposed expenditures for the next succeeding fiscal year of each common and rural high school district under the jurisdiction of the county.

(c) When so prepared this budget shall be submitted to the trustees of each such district for approval; when approved by the trustees and by the county superintendent, copies shall be filed in the offices of county superintendent, the county clerk, and the Central Education Agency, all such copies having been prepared on forms authorized and according to regulations established by the State Board of Education. Such budgets shall be filed no later than the first day of November of the year for which the budget is approved.

(d) In case of an unforeseen emergency, a supplemental budget or budget amendment may be approved in the same manner and copies thereof filed with the original budget when approved.

(e) At any time during the process of budget preparation, any taxpayer of a common or rural high school district for which the budget is being prepared shall have the right to file with the county superintendent and/or trustees of the district any statement or protest he may desire to file concerning any item of expenditure proposed in the budget. Such statement or protest shall be given due consid-

eration by the county superintendent or by the trustees for the district in their final action upon adoption of the budget.

[Acts 1969, 61st Leg., p. 2842, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 17.57. Fiscal Accounting System

(a) The county superintendent shall select and install a standard school fiscal accounting system for each common and rural high school district in his jurisdiction. This system must meet at least the minimum requirements prescribed by the State Board of Education and be approved by the state auditor; it shall not, however, relieve any board from keeping any other accounting records. It shall also be keyed to and correlated with the classifications in the budget regarding the purposes of disbursements and sources of receipts.

(b) The county superintendent shall cause to be kept in his office for each district a record of expenditures made and income received during the fiscal year for which the budgets were approved. No expenditure of public funds shall be made in any common or rural high school district in any manner other than that provided in the budgets prepared and approved pursuant to the provisions of Section 17.56 of this code.

[Acts 1969, 61st Leg., p. 2843, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 17.58. Reports

At the time budgets are filed as prescribed in Section 17.56 of this code, the county superintendent shall report to the Central Education Agency on forms furnished by the agency the disbursements and receipts of each common and rural high school district in his jurisdiction for the preceding fiscal year.

[Acts 1969, 61st Leg., p. 2843, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 17.59. Supervision of Education in County

(a) The county superintendent shall have, under direction of the commissioner of education, the immediate supervision of all matters pertaining to public education in his county.

(b) For all common and rural high school districts and all independent school districts having fewer than 150 scholastics and remaining under his jurisdiction, he shall examine all contracts, including their salary provisions, between the district trustees and teachers of his county, and if in his judgment such contracts are proper, he shall approve them.

(c) He shall confer with the teachers and trustees and give them advice when needed, visit and examine schools, and deliver lectures promoting interest in public education.

(d) He shall distribute all school blanks and books to the officers and teachers of the public schools under his jurisdiction and shall make such reports to the Central Education Agency, or any division thereof, as may be asked of him.

(e) He shall, if possible, spend at least four days each week visiting the schools while they are in session.

(f) He shall approve the reports of independent school districts, except such as have a scholastic population of 500 or more, to the Central Education

Agency, and shall have jurisdiction over appeals from decisions of independent school districts of fewer than 500 scholastics.

[Acts 1969, 61st Leg., p. 2843, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.60. Teachers' Meetings**

(a) The county superintendent or ex officio county superintendent may call the teachers of the county together for one or more meetings, but not to exceed three in any one school year, the number to be determined by the county governing board and county superintendent. These meetings may be held on Saturday for one or more hours, but not to exceed three hours on any one day, as the program arranged may demand.

(b) The county superintendent may require teachers' attendance at these meetings but they shall not be paid therefor.

(c) The trustees of any independent district having 500 or more scholastic population may authorize the superintendent of schools in the district to hold district teachers' meetings in lieu of county meetings.

[Acts 1969, 61st Leg., p. 2844, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.61. Administer Oaths**

The county superintendents are empowered to administer oaths necessary in transacting any business relating to school affairs, but they shall receive no compensation therefor.

[Acts 1969, 61st Leg., p. 2844, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.62. County-Unit System**

In the event the county-unit system has been previously adopted in a county, under either general or special law of this state, or in the event the county-unit system should be adopted under the provisions of Chapter 18 of this code,<sup>1</sup> the county superintendent shall perform such additional duties as may have been or may be assigned to him for the proper functioning of that system.

[Acts 1969, 61st Leg., p. 2844, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 18.01 et seq.

**§ 17.63. Appeals**

All appeals from decisions of the county superintendent shall be to the county school trustees or county board of education. If desired, further appeal may be had to any court of competent jurisdiction over the subject matter, or to the commissioner of education pursuant to Section 11.13 of this code. Notice of election of either further appeal route must be given to the county governing board within five days after its final decision.

[Acts 1969, 61st Leg., p. 2844, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.64. Abolition of Office**

(a) Upon a petition of 25 percent of the qualified voters who cast a vote in the governor's race at the preceding general election in counties of less than 100,000 population according to the last federal census; or upon a petition of 20 percent of the qualified voters who cast a vote in the governor's race at the

preceding general election in counties of 100,000 or more population according to the last federal census, the county judge shall within 90 days of the receipt of such petition call an election to determine by majority vote whether the office of county superintendent (or ex officio county superintendent and the county school board in counties having an ex officio county superintendent) shall be abolished. At such an election all ballots shall have printed to provide for voting for or against the proposition:

"The abolishment of the office of county superintendent" or "the abolishment of the office of an ex officio county superintendent and the county school board" (as the case may be).

(b) Where the majority of the qualified electors approve the abolition of the office of county superintendent, the duties of such abolished office as may still be required by law shall vest in the county judge in ex officio capacity upon expiration of the current term of that office.

(c) Where the majority of the qualified electors approve the abolition of the office of the ex officio county superintendent and county school board, the duties of such abolished offices as may still be required by law shall be and become the duties of the office of county judge of said county upon the expiration of the current term of office of the ex officio county superintendent, and said county judge shall not be entitled to nor receive any additional compensation as a result of these additional duties.

(d) Not more than one such election may be called during any term of office of the incumbent county superintendent or ex officio county superintendent and that not during the year that a regular election for the office is being held.

(e) Nothing in this section shall apply to counties of 900,000 or more where the county superintendent and his staff are paid by the county. There shall be a county superintendent's office in these counties whether or not there is a common school district therein. The salaries of the county superintendent and his employees shall be set by the school board in said county.

[Acts 1969, 61st Leg., p. 2844, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 17.65 to 17.70 reserved for expansion]

SUBCHAPTER D. TREASURER AND DEPOSITORY

**§ 17.71. County Depository**

The county depository, selected in compliance with the general laws of the state, shall serve as treasurer of county school funds. The commissioners court of each county shall file with the State Department of Education a copy of the depository bond or a copy of the depository contract showing securities in escrow. No commission shall be paid to the county depository for receiving and disbursing school funds.

[Acts 1969, 61st Leg., p. 2845, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 17.72. Bond**

(a) Within 20 days after receipt of a certificate of its selection, the county depository shall execute a good and sufficient bond payable to the county judge.

(b) The bond shall equal the probable amounts of the available school fund which may be on deposit at

any one time, plus the permanent county funds as estimated by the county superintendent, or in a county having no superintendent, by the county judge.

(c) The bond shall be conditioned on the depository's good performance of its duties, including but not limited to safekeeping and faithful disbursement of the school fund according to law and payment of such warrants as may be drawn on the fund by competent authority.

(d) In lieu of a bond, the depository may secure the school funds by approved securities or in any other manner authorized by law for securing county funds.

[Acts 1969, 61st Leg., p. 2845, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 17.73. Apportionment to Districts

(a) The county depository, upon receiving notice from the Central Education Agency of the amount apportioned to the county, shall report the same to the county superintendent, who shall immediately apportion it to the several districts, according to the scholastic census, and notify the county treasurer of the amount apportioned to each district.

(b) The county treasurer shall keep a separate account with each district, showing the amount apportioned according to the certificate of apportionment and the amount paid out to each school and district.

(c) In no case shall the county treasurer pay out any part of the school fund without the approval of the county superintendent.

(d) All balances of the general school fund not appropriated for the current year shall be carried over by the treasurer as part of the county's general school fund for the succeeding year. Unexpended balances of any district not exceeding \$5 per capita, according to the last scholastic census, shall be carried over for the benefit of that school district. Unexpended balances in excess of \$5 per capita, according to the last scholastic census, shall be carried over for the benefit of that school district only to the extent of \$5 per capita, and the excess shall be reapportioned to the school districts of the county.

[Acts 1969, 61st Leg., p. 2846, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 17.74. County-Unit System

In any county in which the county-unit system has previously been established under either general or special law of this state, and in any county which may hereafter adopt the county-unit system under the provisions of Chapter 18 of this code,<sup>1</sup> the county depository shall secure and handle such funds as may be acquired through operation of that system in the same manner as other funds available for county school purposes.

[Acts 1969, 61st Leg., p. 2846, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup>Section 18.01 et seq.

[Sections 17.75 to 17.80 reserved for expansion]

### SUBCHAPTER E. COUNTY SCHOOL LANDS

#### § 17.81. Duty of Commissioners Court

It shall be the duty of the commissioners court to provide for the protection, preservation, and disposi-

tion of all lands heretofore granted, or which may hereafter be granted, to the county for educational purposes and which constitute the permanent county school fund.

[Acts 1969, 61st Leg., p. 2846, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 17.82. Sale of School Land

(a) Each county may sell or dispose of school lands in such manner as may be prescribed by the commissioners court of the county.

(b) The proceeds of any such sale shall be invested in bonds of the United States; the State of Texas; counties of the state; independent or common school districts; road precinct, drainage, irrigation, navigation, and levee districts in the state; or incorporated cities or towns; or in interest-bearing bank time deposits with the bank having been designated the depository for that county under the terms and conditions of the depository contract. These bonds and deposits shall be held by the county in trust for the benefit of its public free schools, and only interest thereon may be used and expended annually.

[Acts 1969, 61st Leg., p. 2847, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1512, ch. 405, § 38, eff. May 26, 1971.]

#### § 17.83. Rental Proceeds

Besides other available school funds provided by law, rental and lease proceeds from lands previously granted by the state to any county for educational purposes shall be appropriated by the commissioners court of the county in the same manner legally prescribed for the appropriation of interest on bonds purchased with the proceeds from sale of such lands. Likewise, proceeds from the sale of timber on these lands shall be invested by the commissioners court as prescribed in Section 17.82(b) of this code. None of the rental, lease, or timber proceeds shall be applied by the commissioners court to any purpose other than those prescribed in this code.

[Acts 1969, 61st Leg., p. 2847, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 17.84. Taxes on Agricultural or Grazing Land

Any county in this state owning as school land any agricultural or grazing land is authorized to pay taxes lawfully levied thereon out of revenue derived from such land by the county, but if any county has no revenue or insufficient revenue from the land, the taxes shall nevertheless be paid in whole or in necessary part from the county's general fund.

[Acts 1969, 61st Leg., p. 2847, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 17.85 to 17.90 reserved for expansion]

### SUBCHAPTER F. SOCIAL SECURITY FOR EMPLOYEES

#### § 17.91. Authority of Governing Board

The county school trustees or county board of education, as the case may be, of each county in this state may enter into all necessary agreements with the State Department of Public Welfare to provide for coverage under the Old Age and Survivors Insurance provisions of the Federal Social Security Act<sup>1</sup> of all persons who qualify under applicable federal

regulations and whose salaries, wages or other compensation are paid from the county administration fund, the county transportation fund, or any other fund or funds administered by such governing board. With reference to these agreements, the county governing board shall have the same authority as that of counties, municipalities, and other political subdivisions with respect to participation of employees in the Federal Old Age and Survivors Insurance program.

[Acts 1969, 61st Leg., p. 2847, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup>42 U.S.C.A. § 401 et seq.

**§ 17.92. Employer's Matching Contribution**

(a) The minimum employer's matching contributions, required by federal regulations, shall be paid into the fund from which each person is paid his salary, wages, or other compensation, by the state or subdivisions, as the case may be, which is required by law to pay the salary, wages, or other compensation of such person.

(b) If the salary, wages, or other compensation of a person comes from more than one source, each of said sources shall pay its pro rata share of the employer's matching contribution. The administrative costs of the program shall be prorated in like manner.

(c) In the case of instructors and other authorized personnel, if any, employed by the county school governing body for duties in connection with special schools for vocational and educational training of veterans, the employer's matching contributions and pro rata administrative costs for such instructors and employees shall be paid by the board from the operating funds of said special schools and collected in the same manner as other operating expenses of those schools are collected.

(d) The minimum employer's matching contribution shall, in all cases, be in addition to any maximum compensation fixed by law for the persons or employees covered by this subchapter.

[Acts 1969, 61st Leg., p. 2847, ch. 889, § 1, eff. Sept. 1, 1969.]

**CHAPTER 18. COUNTYWIDE EQUALIZATION FUND OR COUNTY UNIT SYSTEM OF EQUALIZATION TAXATION**

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**§ 18.01. Definition**

The county unit system is a method by which the voters of a county may, without affecting the operation of any existing school district within the county, create an additional countywide school district which may exercise in and for the entire territory of the county the taxing power conferred on school districts by Article VII, Section 3, of the Texas Constitution, for the purpose of adopting a countywide equalization tax for the maintenance of the public schools.

[Acts 1969, 61st Leg., p. 2849, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.02. Validation and Conversion to Present Law**

(a) All actions heretofore taken in establishing in any county a countywide equalization fund or a county-unit system of any sort, whether established, organized, and/or created by the vote of the people residing in such counties or by the action of the county school trustees or the county board of education, as the case may be, and whether authorized or created by general or special law in this state, are hereby validated in all respects, regardless of whether or not such actions were duly and legally taken in the first instance; and all such county equalization funds and/or county-unit systems resulting from such action and heretofore collecting and distributing countywide equalization funds or functioning as county-unit systems are hereby in all things validated.

(b) All facts of county judges, county school trustees, or county boards of education in such counties in ordering an election or elections, declaring the results of such election, levying, attempting, or purporting to levy county equalization taxes or taxes for or on behalf of a countywide district or a county equalization fund are hereby in all things validated.

(c) All county-unit systems heretofore created and hereby validated are hereby authorized and empowered to levy, assess, and collect the same rate of tax, or not to exceed the rate of tax heretofore authorized or attempted to be authorized by any act of the county governing body or by any election of the taxpaying voters of said county or by any act, whether general or special, by the legislature, or the same rate as is being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act or acts of said counties or by any act, whether general or special, of the legislature.

(d) All counties in which an equalization fund has heretofore been created are hereby authorized to levy, assess, and collect the same rate of tax or not to exceed the rate of tax heretofore authorized or attempted to be authorized by any election of the taxpaying voters of the county or by any act, whether general or special, by the legislature, or the same rate as is being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act or acts of said counties or by any act, whether general or special, of the legislature.

(e) All future administrative procedures, elections, and tax levies in those counties which now have an equalization fund or which are now operating under a county-unit system, shall be controlled by the provisions of this chapter.

[Acts 1969, 61st Leg., p. 2849, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 18.03. Authorization

(a) Any county in this state may, at an election called for that purpose under the provisions of this chapter and to the extent herein provided, adopt a county-unit system of education for the purpose of levying, assessing, and collecting a school equalization tax and for such other administrative purposes as are authorized in this chapter.

(b) Any county in which the county-unit system has been adopted may, if further authorized by a majority of the qualified property taxpaying voters residing therein at an election held for that purpose as provided in this chapter exercise in and for the entire territory of the county, to the extent in this chapter prescribed, the tax power conferred on school districts by Article VII, Section 3, of the Texas Constitution.

[Acts 1969, 61st Leg., p. 2849, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 18.04. Petition for Election to Adopt County-Unit System

(a) An election to adopt the county-unit system shall be ordered by the county judge of any county upon the presentation of a petition praying for the formation of a countywide school district and signed by the number of qualified voters specified below:

(1) In any county having a population of fewer than 100,000, according to the last federal census, the petition must be signed by at least 100 qualified voters; and

(2) In any county having a population of 100,000 or more, according to the last federal census, the petition must be signed by at least 500 qualified voters.

(b) Upon the receipt of a petition fulfilling the applicable requirements of subsection (a) of this section, the county judge shall order, in compliance with the applicable provision below, an election to determine whether or not the county-unit system shall be adopted in the county.

(c) In these counties with a population of fewer than 100,000, the county judge shall, within 30 days, order an election to be held throughout the county and give notice of the date of the election by publication of the order in some newspaper published in the county for 20 days prior to the date set for the election.

(d) In those counties with a population of 100,000 or more, the county judge shall, within 90 days, order an election to be held throughout the county and give notice by posting, in each precinct for at least 20 days prior to the election, notice of the date of the election and the question to be determined.  
[Acts 1969, 61st Leg., p. 2850, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 18.05. Election to Adopt the County-Unit System

(a) All legally qualified voters in the county shall be allowed to vote at the election to determine

whether or not the county shall adopt the county-unit system.

(b) The form of ballot shall be substantially as follows: "For Equalization District" and "Against Equalization District."

(c) The election shall be conducted by the election officer appointed to hold the election of district school trustees in each school district in the county and at the same polling places. The expenses of the election shall be paid from general county funds.

(d) The commissioners court at its next regular meeting following the election, shall canvass the returns of the election and declare the result. If a majority of the votes cast favor the formation of such a district, the court shall declare the county-wide school equalization district duly and legally created and the provisions of this chapter duly adopted.

[Acts 1969, 61st Leg., p. 2850, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 18.06. Management

(a) In those counties which have adopted or may hereafter adopt the county-unit system, the general management, supervision and control of the county-wide school district shall be vested in the county governing board as specified in Section 17.01 of this code.

(b) In those counties adopting the county-unit system and having a total population of fewer than 100,000, the county governing board shall be designated as the county school trustees.

(c) In those counties adopting the county-unit system and having a total population of 100,000 or more, the county governing board shall be designated as the county board of education.

(d) After the adoption of the provisions of this chapter, the county governing board shall continue to exercise all powers and duties assigned to it in Chapter 17 and in other provisions of this code,<sup>1</sup> and in addition thereto shall perform the other functions assigned to it under the terms of this chapter.

[Acts 1969, 61st Leg., p. 2850, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 17.01 et seq.

### § 18.07. Petition for Tax Election

(a) On receipt of a petition legally praying for the authority to levy and collect an equalization tax and fulfilling the requirements of this section, the county judge of any county which has adopted the county-unit system shall immediately order an election to be held throughout the county in compliance with the terms of the petition.

(b) The petition must be signed by the applicable number of legally qualified taxpaying voters of the county as specified below:

(1) In those counties with a population of fewer than 500,000, according to the last federal census, the petition must be signed by at least 100 properly qualified taxpaying voters.

(2) In those counties with a population of at least 500,000, according to the last federal census, the petition must be signed by a number equal to at least 10 percent of those voting for governor at the last preceding general election.

(c) The petition may pray for authority to levy and collect an equalization tax at any specified rate not in excess of the maximum for the county as set out in Section 18.12 of this code.

[Acts 1969, 61st Leg., p. 2851, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.08. Order; Notice**

(a) If the petition specifies a rate, the county judge shall incorporate that rate in his order; if no rate is specified in the petition, the order of the county shall indicate that the rate shall not be in excess of the maximum under the general law applicable to the county.

(b) The county judge shall give notice of the election by publication of the order at least 20 days prior to said election in some newspaper published in the county.

[Acts 1969, 61st Leg., p. 2851, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.09. Election**

(a) The election shall be held not more than 30 days after the date of the order.

(b) Only legally qualified property taxpaying voters, who own property in the county and who have duly rendered the same for taxation, shall be allowed to vote.

(c) The form of the ballot shall be substantially as follows: If no specific tax rate was set in the petition, the proposition shall read: "For county tax" and "Against county tax." If a specific tax rate was incorporated in the petition, the proposition shall read: "For county tax not exceeding \_\_\_\_\_ cents on the \$100 valuation" and "Against county tax not exceeding \_\_\_\_\_ cents on the \$100 valuation."

[Acts 1969, 61st Leg., p. 2851, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.10. Canvass; Result**

(a) The commissioners court shall, at its next regular meeting, canvass the returns of the election and declare the result.

(b) If a majority of the votes cast shall favor the tax, the court shall certify that fact to the county governing board and to the county tax assessor and collector.

(c) The county governing board, upon receipt of certification of the adoption of the tax, shall be authorized to levy the tax at the rate voted or, if no rate was specified, at a rate not to exceed the maximum for the county as provided in Section 18.12 of this code.

(d) The county tax assessor and collector, upon receipt of certification of the adoption of the tax, shall be authorized to assess and collect the equalization tax as levied by the county governing board.

(e) If a majority of the votes cast oppose the tax, a second election upon the basis of a new petition may be held at any time within two years after the adoption of the county unit system, but if at such second election a majority of the votes cast again oppose the tax, the county unit system shall cease to exist within the county and be reestablished only by a new election as provided in Sections 18.04 and 18.05 of this code.

[Acts 1969, 61st Leg., p. 2852, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.11. Election to Revoke Tax**

No election to revoke a tax adopted under the provisions of this chapter shall be ordered until the expiration of three years from the date of the election at which the tax was adopted.

[Acts 1969, 61st Leg., p. 2852, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.12. Maximum Tax Rate**

(a) The county-wide equalization tax which may be authorized by the voters under this chapter shall be assessed at rates not to exceed:

(1) 50 cents on the \$100 property valuation in those counties with a total population of 100,000 or more.

(2) \$1 on the \$100 property valuation in those counties with a total population of fewer than 100,000.

(b) In the event the petition requisite to the calling of a tax election, as specified in Section 18.07 of this code, prays for authority to levy and collect an equalization tax at a specific rate less than the maximum for the county as set out in subsection (a) of this section, the maximum for that county shall be the rate specified in the petition.

[Acts 1969, 61st Leg., p. 2852, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.13. Assessment and Collection of Tax**

(a) The officers assessing and collecting the county equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts.

(b) The county tax assessor shall assess all of the taxable property in the county at the same rate of valuation as it is assessed for state and county purposes.

(c) The county tax collector shall collect the tax at the same time and in the same manner as other state and county taxes are collected.

(d) The county tax collector, before entering upon the duties of his office, shall enter into a bond with two or more good and sufficient sureties, or surety bond, for the protection of the equalization fund. The bond shall be made payable to the county governing board and shall be made in a sum fixed by the county governing board at not less than double the amount of money belonging to the fund which the tax collector may have in his possession at any time. A similar bond may be required by the county governing board of any and all other persons or corporations in whose possession the equalization funds may be kept.

(e) The tax collector shall have the same authority and the same laws shall apply in the collection of the equalization tax as in the collection of county ad valorem taxes.

(f) The tax collector shall deposit the returns from the equalization tax in a separate fund to be known as the county equalization fund for the support of the public schools of the county.

(g) The tax collector shall, on or about the 10th day of each month, make a report to the county governing board and to the county superintendent

showing all money collected by him during the last month by the equalization tax.

(h) The tax collector shall, upon the authorization of the county governing board as provided in Section 18.14 of this code, place to the credit of the common school districts in the county such money as is apportioned to them, the funds to be protected as provided by existing depository laws.

(i) The tax collector shall honor all warrants issued by the county governing board in allocating money from the county equalization fund to independent school districts within the county, and the funds so received by the independent school districts shall be protected in accordance with existing depository laws.

[Acts 1969, 61st Leg., p. 2852, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 18.14. Distribution of Equalization Tax Funds

(a) The county governing board shall distribute the moneys collected from the equalization tax according to the provisions of this section.

(b) The funds shall be distributed to the common and independent school districts of the county on the basis of the average daily attendance for the prior year as approved by the State Department of Education.

(c) Any county-line district shall be eligible to receive its per capita apportionment based upon the number of scholastic pupils residing in the county of the equalization district as shown by the average daily attendance for the prior year as approved by the State Department of Education.

(d) The county governing board shall issue warrants (on the per capita basis specified above) against the equalization fund to the school district trustees in each district. However, the apportionment may be made by the county governing board either annually or from time to time as the money is collected.

(e) The county superintendent in each county adopting the county unit system and authorizing the assessment and collection of an equalization tax shall keep a record of all money, both received and paid out, from the county equalization fund.

[Acts 1969, 61st Leg., p. 2853, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 3048, ch. 1009, § 1, eff. June 15, 1971.]

#### § 18.15. Effect on Local School Districts

(a) The adoption of the county unit system under the provisions of this chapter shall not have the effect of changing any duties imposed on or powers conferred on the trustees of any common, independent, or other school district within the county.

(b) The several common, independent, or other school districts within any county adopting the provisions of this chapter shall continue to have authority to levy, assess, and collect the maintenance taxes which have theretofore or hereafter may be authorized by the property taxpayers of those districts.

(c) The adoption of the provisions of this chapter shall not affect the right and duty of the respective school districts to levy, assess, and collect taxes within respective districts for the payment of principal and interest on the bonded indebtedness of those districts.

(d) No money received by a common, independent, or other school district from the county equalization tax fund shall be used to pay any present or future bond issues of the district or interest thereon.

[Acts 1969, 61st Leg., p. 2853, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 18.16 to 18.20 reserved for expansion]

#### § 18.21. Petition for Election

In all counties having a population of 350,000 or more according to the last preceding Federal Census, the County Judge of such counties shall, upon the presentation to him of a petition signed by 150 or more of the qualified property taxpaying voters of such county praying for such an election, order an election for the purpose of submitting to the qualified property taxpaying voters of such county the question of whether or not a tax not to exceed one cent on the 100 Dollars valuation of the taxable property in such county shall be levied, assessed and collected in such county for the purpose of creating an Equalization Fund for the public free schools in such counties, to be expended in the equalization of educational opportunities and in the advancement and administration of the public free schools therein.

[Acts 1969, 61st Leg., p. 2854, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 18.22. Order for Election

Upon the presentation of such petition to the County Judge he shall order an election to be held in such county on the earliest day when a county wide election is being held; and such order shall designate at least one polling place in each school district, or part of school districts, in such county, with such additional polling places as he may deem necessary or advisable, and shall appoint one person, who shall be a qualified voter at such polling place, as presiding officer at such polling place; and such presiding officer may appoint one judge and two clerks to assist in holding such election. The ballots and other election supplies shall be furnished by the Election Board of such County, and such election shall be governed by the General Election Laws, except as may be otherwise provided in this chapter.

[Acts 1969, 61st Leg., p. 2854, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 18.23. Notice of Election

Notice of such election shall be given by publication of such order in a newspaper of general circulation in such county once each week for three consecutive weeks, or by posting notices thereof in three public places in such county for at least 20 days prior to the date of such election or by both such publication and posting.

[Acts 1969, 61st Leg., p. 2854, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 18.24. Returns; Declaring Result

The presiding officer at each polling place shall, within five days from the date of holding such election, make due return thereof to the Commissioners' Court of such county, which shall canvass the returns and declare the result thereof; and if a majority of the qualified property taxpaying voters voting at such an election shall vote in favor of such tax, the Commissioners' Court shall thereupon enter

its order upon the minutes of such Court declaring the result thereof, and shall certify such fact to the County School Trustees of such county.

[Acts 1969, 61st Leg., p. 2854, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.25. Meeting to Determine Tax Required**

If the vote be in favor of such tax, the County School Trustees of such county shall as soon thereafter as practicable hold a meeting for the purpose of determining the amount of money required for equalization purposes, and for the payment of administration expense in such counties, and they shall thereupon make their order setting forth the estimated amount of money required for such purposes, and the rate of tax to be levied to raise such sums, and shall certify the same to the Commissioners' Court; and the Commissioners' Court shall thereupon levy the rate so certified to them by the said County School Trustees, not to exceed the rate fixed by this chapter, and cause such tax to be assessed and collected in the same manner, at the same time, and by the same officers as State and County taxes are now collected.

[Acts 1969, 61st Leg., p. 2855, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.26. County Equalization Fund**

The tax herein provided for shall constitute a part of the school funds of said counties, and shall never be levied, assessed or collected for any purpose other than those herein specified, and for the advancement of public free schools in such counties; and when collected, it shall be deposited by the Tax Collector in the County Depository in a fund which shall be known as "County Equalization Fund", and a statement of the amounts collected shall be furnished monthly by the Collector to the County School Trustees.

[Acts 1969, 61st Leg., p. 2855, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.27. Tax Lien**

Such tax, when levied by order of the Commissioners' Court as herein provided, shall be a lien upon all property in such county, and shall be governed by the same laws as govern the levy, assessment and collection of State and County taxes, except as otherwise specially provided herein.

[Acts 1969, 61st Leg., p. 2855, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.28. Expenditure of Funds**

Such funds shall be expended by the County School Trustees of such counties for the equalization of educational opportunities in such counties, and for the payment of administration expense, upon warrants signed by the President and the Secretary of the County School Trustees; and all such expenditures shall be approved monthly by the County School Trustees; provided, however, no part of such fund shall be expended in any school district which does not levy a tax for school purposes of 75 cents or more on the 100 Dollars value of taxable property in such district.

[Acts 1969, 61st Leg., p. 2855, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.29. Duties and Powers**

The duties, powers and authorities herein given to the County School Trustees shall be cumulative of all other duties, powers and authorities heretofore or hereafter given such Trustees. This law shall not affect the levy, assessment or collection of any other tax heretofore or hereafter levied, assessed or collected in any school district in such counties, and the tax herein provided for shall be in addition to such other tax, or taxes.

[Acts 1969, 61st Leg., p. 2855, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.30. Payment of Superintendent's Salary and Expense**

(a) In the event that the tax herein provided for shall be authorized by the voters of the county to which this chapter applies, then the County Superintendent's salary and all expenses of maintaining his office shall be paid out of the funds realized from the collection of the tax herein provided for.

(b) Until the tax provided for herein shall be authorized and levied, the salary of the County Superintendent and his assistants, and the expenses of maintaining the office of County Superintendent, shall continue to be paid as otherwise provided by law.

[Acts 1969, 61st Leg., p. 2856, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 18.31. Tax Rate in Counties With Population of 500,000**

(a) In all counties having a population of 500,000 or more, according to the last preceding or any future federal census, the county judge shall, upon presentation to him of a petition praying for such an election, signed by qualified taxpaying voters of such county in a number equal to 10 percent or more of those voting for governor in the last preceding general election, order an election for the purpose of submitting to the qualified taxpaying voters of such county who own taxable property and who have duly and personally rendered it for taxation, the proposition of whether or not a tax of and at a rate not to exceed five cents on the \$100 valuation of all property subject to school district taxation in such county shall be levied, assessed, and collected for the purpose of creating an equalization fund for the public free schools in such county to be expended for the equalization of educational opportunities and payment of administrative expense.

(b) Such an election which shall be held in the same manner on the same day at the same polling place and under the same laws and regulations as have previously governed the holding of such elections in such counties; and the election supplies, ballots, and tally sheets shall be furnished by the same authorities and returns shall be made as heretofore provided for such elections. Notices thereof shall be given by publication or by posting as heretofore provided; and if and when authorization is granted, such tax shall be levied, assessed, and collected in the same manner as heretofore provided for such equalization taxes and the administration, depository bank, checking, accounting, and disbursement of such taxes shall be subject to all the rules and statutes governing school funds in such counties; it being the intention of this section only to increase the permissive rate of tax to be levied for such purposes.

[Acts 1971, 62nd Leg., p. 3008, ch. 994, § 5, eff. Aug. 30, 1971.]

## CHAPTER 19. CREATION, CONSOLIDATION, AND ABOLITION OF SCHOOL DISTRICTS

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SUBCHAPTER A. ENLARGING DISTRICTS BY ANNEXING OTHER DISTRICTS

§ 19.001. Enlarged Districts

(a) The county school trustees or county boards of education, as the case may be, in any county in this State, shall have the authority to create enlarged districts by either of the following methods:

(1) By annexing one or more common school districts or one or more independent school districts having a scholastic population of less than 250 to a common school district having 400 or more scholastic population.

(2) By annexing one or more common school districts or one or more independent school districts having a scholastic population of less than 250 to an independent school district having 150 or more scholastic population.

(b) An enlarged district created by the method described in Subsection (a)(1) of this section shall be classified as a common school district; an enlarged district created by the method described in Subsection (a)(2) of this section shall be classified as an independent school district.

[Acts 1969, 61st Leg., p. 2860, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 19.002 to 19.030 reserved for expansion]

SUBCHAPTER B. CREATION OF COUNTY-WIDE COMMON SCHOOL DISTRICTS

§ 19.031. Qualifications

A county-wide common school district may be created, under the terms of this subchapter, in any county in the State meeting all of the following qualifications:

(1) The county must have a scholastic population of fewer than 600 as shown by the last scholastic census on file in the State Department of Education.

(2) The county must not embrace the whole or any part of an independent school district.

(3) There must be no outstanding indebtedness against any common school district in the county.

(4) The county must have an assessed property valuation of less than \$6,000,000.

[Acts 1969, 61st Leg., p. 2860, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 19.032. Petition for Election: Order

(a) The county judge, when petitioned by 50 or a majority of the legally qualified property taxpaying voters of any county meeting the qualifications specified in Section 19.031 of this code, shall order an election to be held throughout the county for the purpose of determining whether a majority of the legally qualified property taxpaying voters residing in the county shall favor the creation of a common school district embracing the entire county.

(b) The petition and order for the election shall state that the purpose is to create a common school district embracing the entire county.

(c) The order for the election must be issued and public notice thereof given, as in other school

elections, for not less than three weeks prior to the date at which the election is to be held.

(d) It shall not be necessary for either the petition or the order to state the metes and bounds of the district proposed to be created.

[Acts 1969, 61st Leg., p. 2860, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 19.033. Election

The election to determine whether to create a common school district embracing the entire county shall be held at the usual voting places in each election precinct in the county and shall be conducted under the general election laws of this state.

[Acts 1969, 61st Leg., p. 2861, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 19.034. Canvass: Order

(a) The commissioners court shall, either at a regular or a special session, canvass the returns of the election and declare the results.

(b) If it is found that a majority of the legally qualified property taxpaying voters, voting at the election, are in favor of the creation of a common school district embracing the entire county, the commissioners court shall enter an order creating the common school district embracing the entire county and abolishing all common school districts existing prior thereto.

(c) It shall not be necessary for the order creating the district to state the metes and bounds of the county.

[Acts 1969, 61st Leg., p. 2861, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 19.035. Election of Trustees

(a) When any common school district embracing an entire county has been created as provided in this subchapter, the county judge shall immediately order an election for the election of three trustees for the school district.

(b) The county judge shall give public notice of the election by posting notices thereof at each voting place in the county not less than 20 days before the date at which the election is to be held.

(c) The county judge shall appoint for the election for each precinct in the county a presiding officer, who shall be authorized to appoint two clerks to assist him in the conduct of the election.

(d) Any person seeking election as trustee of the county-wide district shall, not less than 10 days before the election, apply in writing to the county judge to have his name placed on the ballot.

(e) The county judge shall order the preparation of the necessary number of ballots containing the names of each person applying as a candidate for trustee.

(f) The election shall be held at the usual voting places in each voting precinct in the county and shall be conducted in compliance with the general laws relating to common school district elections.

(g) The officers holding the election shall make returns thereof to the county judge within five days after the election. The commissioners court at its next regular or special session shall canvass the returns and declare the results of the election.

[Acts 1969, 61st Leg., p. 2861, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.036. Status of District**

Any county-wide common school district created under the terms of this subchapter shall be governed as other common school districts as provided in Chapter 22 of this code<sup>1</sup> and shall have all the rights and privileges of other common school districts heretofore created or which may hereafter be created under the general laws of this State.

[Acts 1969, 61st Leg., p. 2861, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 22.01 et seq.

[Sections 19.037 to 19.060 reserved for expansion]

SUBCHAPTER C. CREATION OF COUNTY-WIDE INDEPENDENT SCHOOL DISTRICTS

**§ 19.061. Qualifications**

A county-wide independent school district may be created, under the terms of this subchapter, in any county in the state meeting all of the following qualifications:

- (1) The county must have a scholastic population of not more than 2,500.
- (2) Not more than two school districts, either two common school districts or two independent school districts or one common school district and one independent school district, shall have conducted schools within the past two years.

[Acts 1969, 61st Leg., p. 2862, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.062. Petition**

Whenever it is desired that any county meeting the qualifications of Section 19.061 of this code be created into a single independent school district, there shall be presented to the county judge a petition which shall:

- (1) be signed by either a majority of the members of the board of trustees of the common and/or independent school districts within the county or by 20 qualified voters or a majority of the qualified voters of each of the common and/or independent school districts within the county;
- (2) state that the purpose is to create an independent school district embracing the entire county; and
- (3) provide that in the event a county line district, either common or independent, shall exist in the county, such county line district shall be excepted from the proposed county-wide independent school district and the provisions hereof.

[Acts 1969, 61st Leg., p. 2862, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.063. Election Order; Notice**

Upon the presentation of a petition fulfilling the qualifications of Section 19.061 of this code, the county judge shall:

- (1) order an election to be held throughout the county on a date not less than 21 days nor more than 30 days after the date of the filing of the petition; and
- (2) cause notice of the election to be given by posting a substantial copy of the election order

in a public place in each common and/or independent school district in the county not less than 15 days prior to the date fixed for the election.

[Acts 1969, 61st Leg., p. 2862, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.064. Election**

(a) The election shall be held at the usual voting place or places in each of the several districts in the county and shall be conducted under the general election laws of the state unless otherwise provided herein.

(b) The commissioners court shall at any regular or special session after the election canvass the return of the election and declare the result thereof. [Acts 1969, 61st Leg., p. 2862, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.065. Order Creating District**

If it is found that a majority of the legally qualified voters voting in the election favor the creation of a county-wide independent school district, the commissioners court shall pass an order which shall:

- (1) create the independent school district embracing the entire county and abolish all common and/or independent school districts participating in the election; and
- (2) declare the boundaries of the county-wide independent school district to be co-extensive with the boundaries of the county or, in the event a county line school district exists within the county, define the boundaries of the county-wide independent school district by metes and bounds, excluding the county line district.

[Acts 1969, 61st Leg., p. 2863, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.066. Appointment of Initial Trustees**

(a) The trustees of an independent school district embracing an entire county shall be selected as provided in this section and Section 19.067 of this code.

(b) Immediately following the election at which it was determined to create a county-wide independent school district, the county judge shall provide for the organization of the district within 10 days thereafter by appointing seven trustees as follows: One trustee shall be appointed from each of the four commissioners precincts within the county, and three trustees shall be appointed from the county at large.

[Acts 1969, 61st Leg., p. 2863, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.067. Election of Trustees**

(a) The first election for trustees shall be called by the county judge, shall be held on the first Saturday in April of the year following the election at which the county-wide independent school district was created and shall be conducted as provided by this section.

(b) Each elector in the county shall be permitted to vote for one board member from the commissioners precinct in which the elector and the candidate reside and shall be permitted to vote for three candidates from the county at large.

(c) The commissioners court shall appoint election judges and assistants, cause ballots to be printed and

distributed, canvass the votes, declare the results of the election, notify the persons elected, and call a meeting of the new board of trustees on a date not more than 10 days after the results of the election are determined.

(d) The seven trustees first elected shall determine by lot which shall serve for a term of one year and which for a term of two years. Those drawing numbers 1, 2, and 3 shall serve for a term of one year, and those drawing numbers 4, 5, 6, and 7 shall serve for a term of two years.

(e) All subsequent elections of trustees shall be called by the board of trustees in the manner provided in this code for trustee elections in independent school districts. The elections shall be held on the first Saturday in April of each year at places in each commissioners precinct designated by the board of trustees. Each year, either three or four trustees, as the case may be, shall be elected for a term of two years.

[Acts 1969, 61st Leg., p. 2863, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.068. Trustees; Powers, Etc.**

(a) The boards of trustees of independent school districts established under this subchapter, whether appointed or elected, shall have all the powers, rights, duties, privileges, and qualifications granted in or required by the general provisions of this code relating to independent school districts.

(b) The boards of trustees shall have general management and control of all schools situated or established in the districts, including management of the business affairs of the district and selection of teachers.

(c) The boards of trustees shall have all rights and powers of taxation as provided for independent school districts, including assessing and valuing property for taxation, fixing tax rates, and issuing bonds.

(d) The boards of trustees shall have any other rights and powers now held and exercised by boards of trustees of independent school districts as provided in Chapter 23 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2863, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.01 et seq.

**§ 19.069. Taxes**

(a) The maintenance and bond taxes and assessed valuations in each of the several component districts existing at the time of the creation of the independent school district embracing the entire county shall continue as authorized and approved until such time as an election shall have been held equalizing the maintenance tax and assuming the bonded indebtedness of the several component school districts making up the county-wide independent school district.

(b) Elections for the levying of taxes, assumption of debt, and issuance of bonds shall be called, held, and determined in accordance with the provisions governing such elections in independent school districts as provided in Subchapter O of this chapter<sup>1</sup> or in Chapter 20 of this code.<sup>2</sup>

(c) The laws governing the assessing and collecting of taxes, issuance of bonds (new or refunding), in independent school districts shall be applicable to independent school districts created under this subchapter.

[Acts 1969, 61st Leg., p. 2864, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.461 et seq.

<sup>2</sup> Section 20.01 et seq.

**§ 19.070. County Governing Board Not Required**

No county school trustees or county boards of education shall be required in those counties which create county-wide independent school districts under the terms of this subchapter.

[Acts 1969, 61st Leg., p. 2864, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 19.071 to 19.100 reserved for expansion]

SUBCHAPTER D. COUNTY-LINE DISTRICTS

**§ 19.101. Creation of County-Line Common School Districts**

(a) The county school trustees and/or county boards of education of two or more adjoining counties shall have the authority, in compliance with the provisions of this section, to create common school districts to contain territory in two or more counties.

(b) No county-line common school district shall be created with or changed to an area less than nine square miles.

(c) Each county-line common school district shall be laid out in as near the shape of a square as possible, and in no event shall the length of the district be greater than one and one-half times its width.

(d) The county governing board of each county having territory included in the proposed district shall pass an order which shall:

(1) describe by metes and bounds the territory to be included in the district;

(2) give the course and direction with the exact length of each line contained in the description and locate each corner called for upon the ground;

(3) give the acres of each survey and parts of surveys of lands included in the district;

(4) include a map showing the conditions upon the ground as described in the field notes and giving the number of acres of land contained in each survey and parts of surveys contained in each county;

(5) show the exact position and location of the county line in the territory proposed to be created into a county-line district; and

(6) designate and name one of the counties having territory included in the description of the proposed district which shall manage and have control of the public schools of the county-line district for all school purposes.

(e) The proposed district shall be deemed created and established when the order described in Subsection (d) of this section has been passed by the county governing board of each county having territory included therein.

[Acts 1969, 61st Leg., p. 2864, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.102. County-Line Rural High School Districts**

(a) The county school trustees and/or county boards of education of two or more adjoining coun-

ties shall have the authority, upon the written order of a majority of the members of the governing board of each county concerned, to establish county-line rural high school districts. The order shall designate the county which shall have supervision of the county-line rural high school district.

(b) A county-line rural high school district, so established, shall be governed in all respects as other rural high school districts as provided in Chapter 25 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2865, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 25.01 et seq.

#### § 19.103. Joint Maintenance

The county governing boards of each county having territory included within a county-line district shall have power to provide jointly for the maintenance of the county-line school.

[Acts 1969, 61st Leg., p. 2865, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 19.104. Voter Qualifications

All persons who are otherwise qualified to vote in an election involving a school district question and who reside in a county line school district shall be entitled to vote at any such election involving the school district regardless of whether or not such voters reside in the county having management and control of the county line district.

[Acts 1969, 61st Leg., p. 2865, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 19.105. Conversion of County-Line Rural High School Districts Into Independent School Districts

(a) Any county-line rural high school district in which there is maintained an accredited school system of 12 grades, including a high school offering 16 or more credits, may be converted into an independent school district as prescribed by this section.

(b) A petition signed by 20 or a majority of the qualified property taxpaying voters residing in the district and praying for an election to determine whether the rural high school district shall be incorporated for free school purposes only shall be presented to the county judge of the county in which the greater or greatest area of the district lies.

(c) Upon receipt of the petition, the county judge shall issue an order calling for an election to be held throughout the district not less than 20 nor more than 30 days from the date of filing the petition, for the purpose of converting the rural high school district into an independent school district for school purposes.

(d) After the election is held, the commissioners court of the county in which the greater or greatest area of the district lies shall canvass the returns and declare the result of the election.

(e) If a majority of the votes cast favor the change from a rural high school district into an independent school district, the commissioners court shall:

- (1) enter its order incorporating the independent school district; and
- (2) cause a certified copy of the order to be recorded by the county clerks in the deed

records of the counties having territory within the district.

(f) An independent school district created under the provisions of this section shall be regarded as duly incorporated for free school purposes only and shall be vested with all the rights, powers, and privileges conferred and imposed upon independent school districts as provided in Chapter 23 of this code.<sup>1</sup>

(g) Whenever any independent school district is incorporated under this section, the members of the board of trustees of the rural high school district shall maintain their status as trustees of the newly incorporated independent school district and shall continue to serve until their respective terms of office expire.

(h) The titles and rights to all property owned, held, set apart, or in any way dedicated to the use of the public schools of the elementary school districts comprising the rural high school district for school purposes only, shall be vested in the board of trustees of the independent school district, after incorporated under this section, and shall be managed and controlled by the board of trustees, as is now or may hereafter be provided by law.

(i) All bonds issued by and outstanding against the rural high school district, as a school district, and all obligations, contracts, and indebtedness existing against the rural high school district, shall become the obligations and debts of the independent school district at the time of its incorporation.

[Acts 1969, 61st Leg., p. 2865, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.01 et seq.

#### § 19.106. Creation of County-Line Independent School Districts

(a) Independent school districts may be created containing territory within two or more counties by the same procedure that towns and villages are created by law for municipal purposes, except that the map required by the statute governing municipal incorporations shall also show the correct location and position of the county-line or lines involved in the incorporation of the independent school district.

(b) An incorporated free school district containing territory in two or more counties shall have all the rights, powers and privileges granted to any other incorporations for free school purposes only.

(c) The same modes, manners, and methods of government and procedure provided by Chapter 23 of this code<sup>1</sup> for independent school districts shall govern the management and control of incorporated school districts containing territory within two or more counties.

[Acts 1969, 61st Leg., p. 2866, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.01 et seq.

[Sections 19.107 to 19.130 reserved for expansion]

#### SUBCHAPTER E. RURAL HIGH SCHOOL DISTRICTS—CREATION, CONVERSION, ETC.

#### § 19.131. Establishment of Rural High School Districts

The county school trustees or county board of education, as the case may be, in each county in this

state shall have the authority to form one or more rural high school districts by grouping contiguous common school districts having fewer than 400 scholastic population and independent school districts having fewer than 250 scholastic population.

[Acts 1969, 61st Leg., p. 2867, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.132. Limitations**

No rural high school district shall contain a greater area than 100 square miles or more than 10 elementary school districts, except that:

(1) The county school trustees or county board of education may create a rural high school district containing more than 100 square miles when so authorized by the vote of a majority of the qualified electors in the proposed rural high school district voting at an election called for that purpose.

(2) The county school trustees or county board of education may create a rural high school district containing more than 10 elementary districts when so authorized by the vote of a majority of the qualified electors of each elementary district in the proposed rural high school district voting at an election called for that purpose.

[Acts 1969, 61st Leg., p. 2867, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.133. Status**

A rural high school district shall be classified as a common school district, and all other districts, whether common or independent, composing the rural high school district shall be referred to as elementary school districts.

[Acts 1969, 61st Leg., p. 2867, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.134. Transfer of Control**

The board of trustees of each elementary school districts grouped or included to form a rural high school district, as hereinabove provided, shall continue in control of its respective district until the close of the current scholastic year, but it shall make no contract affecting the expenditure of any school funds subsequent to September 1 nor shall it have any authority in the management and control of the schools of the district after September 1. The board of trustees for the rural high school district shall, immediately upon its organization, proceed to make contracts for the operation of all schools under its control.

[Acts 1969, 61st Leg., p. 2867, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.135. Conversion of Rural High School District Into Independent School District**

(a) A rural high school district in which there is maintained an accredited school system of 12 grades, including a high school offering 16 or more credits, may be converted into an independent school district as prescribed by this section.

(b) A petition signed by 20 or a majority of the qualified property taxpaying voters residing in the district and praying for an election to determine whether the rural high school district shall be incorporated for free school purposes only shall be presented to the county judge.

(c) Upon receipt of the petition, the county judge shall issue an order calling for an election to be held not less than 20 nor more than 30 days from the date of filing the petition, for the purpose of converting the rural high school district into an independent school district for school purposes.

(d) After the election is held, the commissioners court shall canvass the returns and declare the result of the election.

(e) If a majority of the votes cast favor the change from a rural high school district into an independent school district, the commissioners court shall:

(1) enter its order incorporating the independent school district; and

(2) cause a certified copy of the order to be recorded by the county clerk in the deed records of the county.

(f) An independent school district created under this section shall be regarded as duly incorporated for free school purposes only and shall be vested with all the rights, powers, and privileges conferred and imposed upon independent school districts as provided in Chapter 23 of this code.<sup>1</sup>

(g) When any independent school district is incorporated under the terms of this section, the members of the board of trustees of the rural high school district shall maintain their status as trustees of the newly incorporated independent school district and shall continue to serve until their respective terms of office expire.

(h) The titles and rights to all property owned, held, set apart, or in any way dedicated to the use of the public schools of the elementary school districts comprising the rural high school district for school purposes only, shall, after incorporating under this section, be vested in the board of trustees of the independent school district, and shall be managed and controlled by the board of trustees as is now or may hereafter be provided by law.

(i) All bonds issued by and outstanding against the rural high school district, as a school district, and all obligations, contracts, and indebtedness existing against the rural high school district, shall become the obligations and debts of the independent school district at the time of its incorporation.

[Acts 1969, 61st Leg., p. 2867, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup>Section 23.01 et seq.

**§ 19.136. Abolition of Rural High School District**

(a) The county school trustees or county board of education, as the case may be, shall have the authority to abolish a rural high school district on a petition signed by a majority of the voters of each elementary school district composing the rural high school district.

(b) When a rural high school district has been abolished, each district of which it was composed shall revert back to its original status with the exception that, in the event there is any outstanding indebtedness against the rural high school district, each component district shall assume its proportional part of the debts, bonded or otherwise.

[Acts 1969, 61st Leg., p. 2868, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 19.137 to 19.160 reserved for expansion]

SUBCHAPTER F. MUNICIPAL SCHOOL DISTRICTS—CREATION, BOUNDARY CHANGES, CONVERSION, ETC.

**§ 19.161. City May Acquire Control of Schools**

(a) Any city or town in this state may acquire the exclusive control of the public free schools within its limits by a majority vote of the property taxpaying voters of the city or town voting at an election held for that purpose as herein provided.

(b) A petition, signed by not less than 50 of the qualified electors of the city or town and requesting an election to determine whether the city or town shall acquire the exclusive control of the public free schools within its limits, shall be presented to the mayor.

(c) Upon receipt of the petition, the mayor shall order an election to be held at a date within 20 days thereafter.

(d) The election shall be conducted as other municipal elections; and if a majority of the votes cast favor the proposition, the city or town shall by ordinance duly passed and entered of record, assume control and management of the public free schools within its limits. Not more than one election shall be held in any one calendar year to determine the question.

[Acts 1969, 61st Leg., p. 2869, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.162. Transfer of Control From District to City**

(a) Any independent school district including within its limits a city or town incorporated for municipal purposes under the laws of this State may transfer the control and management of the school district to the incorporated city or town as prescribed by this section.

(b) A petition, signed by as many as 50 or a majority of the resident qualified voters of the independent school district and requesting an election on the proposition of whether the public free schools of the district should be assumed and controlled by the incorporated city or town, shall be presented to the board of trustees of the independent school district.

(c) Upon receipt of the petition, the board shall order an election to be held at the usual voting places within the district at a date within 20 days thereafter.

(d) The election shall be ordered and held in conformity with the law governing tax and bond elections in independent school districts, as provided in Section 20.04 of this code, except that the qualified electors need not be property taxpayers but need only qualify to vote under the laws of this State regulating general elections.

(e) The ballot for use at the election shall have printed thereon the words: "For assuming control of the public free school of \_\_\_\_\_ Independent School District by the city of \_\_\_\_\_, Texas," and "Against assuming control of the public free school of \_\_\_\_\_ Independent School District by the city of \_\_\_\_\_, Texas."

(f) If a majority of the qualified voters voting at the election vote in favor of the proposition, the board of trustees of the independent school district

shall certify the results of the election to the governing authority of the incorporated city or town, together with a certified copy of the record showing all the proceedings had in the incorporation of the independent school district and all boundary extensions thereto, if any, and a well-defined map accurately showing the territory described in the record.

(g) If the governing authority of the city or town finds that the election has been in all respects lawfully held and the returns thereof duly and legally made, then it shall, by ordinance duly passed and entered of record, assume control and management of the public free schools within its limits and perform such other duties as may be required of it by this code.

(h) If the boundaries of the independent school district do not coincide with the boundaries of the incorporated city or town, the city governing body shall on the same day pass an ordinance extending its corporate line for school purposes only so that the same shall coincide with and embrace the same territory as the independent school district.

(i) If the independent school district shall have an outstanding bonded indebtedness, the incorporated city or town shall become liable and bound for the payment of such indebtedness, and the governing body of the city or town shall levy and cause to be assessed and collected, upon all property subject to taxation within the limits of the incorporated city or town or within the limits of the corporation as extended for school purposes only, taxes to pay interest on such bonds and to provide a sinking fund sufficient to redeem the same at maturity. Such tax shall thereafter be annually levied and collected so long as the bonds, or any of them, are outstanding and unpaid.

(j) If the independent school district had previously authorized a maintenance tax, the assumption of the control and management of the schools of the district shall not abrogate or affect such tax, and the maintenance tax shall thereafter be annually levied, assessed, and collected by the proper authorities of the incorporated city or town until increased or changed by the qualified voters in conformity with the provisions and requirements of Chapter 20 of this code.<sup>1</sup>

(k) The trustees of the independent school district serving at the time of the assumption of the control of the schools of the district by the incorporated city or town shall continue to serve until the expiration of their terms of office; subsequent trustees shall continue to be elected in compliance with the general law relative to the election of trustees of independent school districts as provided in Chapter 23 of this code.<sup>2</sup>

[Acts 1969, 61st Leg., p. 2869, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 20.01 et seq.

<sup>2</sup> Section 23.01 et seq.

**§ 19.163. Status of District**

Municipal school districts, established under either Section 19.161 or Section 19.162 of this code shall be classified as independent school districts and shall operate and be governed according to the general laws relative to independent school districts, as provided in Chapter 23 of this code,<sup>1</sup> except insofar as such laws are modified by the specific provisions

relative to municipal school districts as contained in Chapter 24 of this code.<sup>2</sup>

[Acts 1969, 61st Leg., p. 2870, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 3007, ch. 994, § 2, eff. Aug. 30, 1971.]

<sup>1</sup> Section 23.01 et seq.  
<sup>2</sup> Section 24.01 et seq.

**§ 19.164. Extension of Boundaries**

(a) Any city or town which has assumed control of its schools and become a municipal school district under the terms of Section 19.161 of this code or under prior statutory authority may extend its corporation lines for school purposes only under the provisions of this section.

(b) A petition signed by a majority of the resident qualified voters of the territory seeking to be included in the municipal school district shall be presented to the board of trustees of the municipal school district.

(c) If the extension of boundaries is recommended by a majority vote of the board of trustees of the municipal school district, the governing body of the city may, by ordinance and on the conditions prescribed by this section, extend its boundaries for school purposes only.

(d) The proposed change in boundaries shall not deprive the scholastic children of the remaining part of any common or independent school district which may be affected by the proposed change of the opportunity of attending school.

(e) The added territory shall bear its pro rata part according to taxable values of any obligation owed by the municipal school district, but shall not bear any part of any other debt owed or contracted by the town or city. The property of the added territory shall bear its pro rata part of all school taxes but of no other taxes. The added territory shall not affect the city's debts or business relations in any manner whatsoever except for school purposes.

(f) The officers whose duty it is to assess and collect school taxes within the city limits shall also assess and collect school taxes within the territory added for school purposes only.

(g) When hereafter an entire territory of a contiguous district or districts is added for school purposes only, under the provisions of this section, the extended city control district shall be regarded as eligible for incentive aid to the extent and under the conditions prescribed in Subchapter G, Chapter 23, of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2870, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 3008, ch. 994, § 3, eff. Aug. 30, 1971.]

<sup>1</sup> Section 23.991 et seq.

**§ 19.165. Disannexation of Territory**

(a) Any territory added to a municipal school district for school purposes only and outside the municipal limits of the city or town may be disannexed under the terms and conditions of this section.

(b) A petition signed by a majority of the persons owning property in the territory proposed to be disannexed shall be presented to the board of trustees of the municipal school district.

(c) If the board of trustees consents to the disannexation, the governing body of the city or town

may by ordinance disannex the territory, in which event:

(1) The governing body of the city or town shall notify the county school trustees or county board of education of the county in which the disannexed territory is situated by sending to the commissioners court a copy of the disannexation ordinance.

(2) The liability of the disannexed territory for any obligations of the municipal school district shall be adjusted in the manner provided in Subchapter N of this chapter.<sup>1</sup>

(3) The disannexed territory shall ipso facto immediately become a part of the adjoining school district other than that from which it has been disannexed, or if the disannexed territory adjoins more than one other district, the disannexed territory shall become a part of the adjoining district designated to receive the territory by the county school trustees or county board of education.

[Acts 1969, 61st Leg., p. 2871, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.431 et seq.

**§ 19.166. Separation From Municipal Control and Conversion to Independent School District**

(a) Any municipal school district, established either under the terms of Section 19.161 of this code or under any other prior statutory authority, may be separated from municipal control so that the school corporation shall become and be an independent school district, without the dual character theretofore possessed by the school corporation and the city or town, under the provisions of this section.

(b) A petition signed by 100 or more of the resident qualified voters of the municipal school district and/or city or town and praying for an election on the proposition of whether or not the public schools shall be divorced from municipal control shall be presented to the board of trustees of the municipal school district. The board of trustees of the municipal school district shall certify the petition to the governing body of the city or town.

(c) Upon receipt of the petition and certification, the governing body of the city or town shall fix a date not more than 10 days thereafter for the holding of a joint meeting of the governing body of the city or town and the board of trustees of the municipal school district. At the joint meeting, the governing body of the city or town and the board of trustees of the municipal school district, acting jointly as one body, the mayor or chairman of the governing body presiding, shall order an election as prayed for in the petition.

(d) The election shall be held not more than 30 days nor less than 10 days thereafter. At least 10 days notice of the election shall be given.

(e) Every person who has attained the age of 21 years and who has resided within the limits of the municipal school district for the six months next preceding the date of election and who is a qualified elector under the laws of this State shall be entitled to vote.

(f) The ballots for use at the election shall have printed thereon the words: "For the separation of the public schools from municipal control," and

"Against the separation of the public schools from municipal control."

(g) In all respects not specifically covered herein, the election shall be conducted as nearly as possible in compliance with the law with reference to regular city elections in the town or city.

(h) The governing body of the city or town shall immediately canvass the returns of the election and certify the results to the board of trustees of the municipal school district, together with a certified copy of the record showing all proceedings in respect of the election.

(i) If a majority of the qualified voters, voting at the election in the municipal school district, vote in favor of the separation of the public schools from municipal control and if the board of trustees of the school district finds that the election has been in all respects lawfully held and the returns thereof duly and legally made to the governing body of the city or town, the board of trustees shall by resolution duly passed and entered of record, declare that the public schools of the municipal school district have been separated from municipal control and that the corporate name of the school district shall thereafter be "\_\_\_\_\_ Independent School District," inserting the name of the city or town.

(j) If the proposition shall be defeated at the election, then no election for that purpose shall be ordered until after the expiration of one year from the date of the previous election.

(k) The separation of the schools from municipal control shall produce the following results:

(1) The school district shall have all the powers conferred upon independent school districts by the constitution and laws of the state, including the rights to assess, levy, and collect taxes and issue bonds for school purposes.

(2) Any and all maintenance and/or bond taxes previously voted, authorized, and/or levied on the taxable properties situated within the limits of the municipal school district shall be continued in full force by the independent school district.

(3) The board of trustees of the independent school district shall consist of seven members.

(4) The members of the board of trustees of the municipal school district shall continue as members of the board of trustees of the independent school district until the terms for which they have been elected or appointed, as the case may be, shall have expired or until their successors have been elected or qualified.

(5) In the event the board of trustees of the municipal school district consisted of fewer than seven members, those serving shall appoint a sufficient number of new trustees to bring the total membership of the board to seven members, the appointees to serve in accordance with the general law governing the election and tenure of office of independent school district trustees.

(6) At the expiration of the terms of office of the existing trustees, election of trustees shall be held in compliance with the general law relating to the election of trustees in independent school districts as provided in Chapter 23 of this code.<sup>1</sup>

(7) The title and rights to all property owned, held, set apart or in any way dedicated to the use of the public schools of the city or town, and/or heretofore vested in such city or town and/or the mayor, chairman of the commission, city council, city commission or board of school trustees of the city or town, prior to separation from municipal control, shall be vested in the board of trustees of the independent school district and shall be managed and controlled by the board of trustees as provided in Chapter 23 of this code.

(8) All bonds issued by and outstanding against the city or town, as a school district, and all obligations, contracts and indebtedness existing against the city or town, as a school district, shall become the obligations and debts of the independent school district at the time of its separation from municipal control. The independent school district, after separation from municipal control, shall be held to have assumed the discharge of all such obligations, contracts and indebtedness, and the same shall be enforceable and collectible from, paid off and discharged by, the independent school district; and it shall not be necessary to call an election within and for such district for the purpose of assuming such bonds and other indebtedness.

[Acts 1969, 61st Leg., p. 2873, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.01 et seq.

#### § 19.167. Separation From Municipal Control and Conversion to Common School District

(a) Any municipal school district, established either under the terms of Section 19.161 of this code or under any other prior statutory authority, may be separated from municipal control and become a common school district, without the dual character theretofore possessed by the school corporation of the city or town, under the provisions of this section.

(b) A petition signed by 100 or more of the resident qualified voters of the municipal school district and praying for an election on the proposition of whether or not the public schools shall have divorced from municipal control, shall be presented to the board of trustees of the municipal school district. The board of trustees of the municipal school district shall certify the petition to the governing body of the city or town.

(c) Upon receipt of the petition and certification, the governing body of the city or town shall fix a date not more than 10 days thereafter for the holding of a joint meeting of the governing body of the city or town and the board of trustees of the municipal school district. At the joint meeting, the governing body of the city or town and the board of trustees of the municipal school district, acting jointly as one body, the mayor or chairman of the governing body presiding, shall order an election as prayed for in the petition.

(d) The election shall be held not more than 30 days nor less than 10 days thereafter. At least 10 days notice of the election shall be given.

(e) Every person who has attained the age of 21 years and who has resided within the limits of the municipal school district for six months next preceding the date of election, and who is a qualified

elector under the laws of this State shall be entitled to vote.

(f) The ballots for use at the election shall have printed thereon the words: "For the separation of the public schools from municipal control and converting same into a common school district," and "Against the separation of the public schools from municipal control and converting same into a common school district."

(g) In all respects not specifically covered herein, the election shall be conducted as nearly as possible in compliance with the law with reference to regular city elections in the town or city.

(h) The governing body of the city or town shall immediately canvass the returns of the election and certify the results to the board of trustees of the municipal school district, together with a certified copy of the record showing all proceedings in respect of the election.

(i) If a majority of the qualified voters, voting at the election in the municipal school district, vote in favor of the separation of the public school from municipal control and in favor of creating a common school district therefor and if the board of trustees of the municipal school district finds that the election has been in all respects lawfully held and the returns thereof duly and legally made to the governing body of the city or town, then it shall by resolution duly passed and entered of record, declare that the public schools of the municipal school district have been separated from municipal control, and that the name of the school district shall there be "\_\_\_\_\_ Common School District," inserting the name of the city or town.

(j) If the proposition shall be defeated at the election, then no election for that purpose shall be ordered until after the expiration of one year from the date of the previous election.

(k) The separation of the schools from municipal control shall produce the following results:

(1) The members of the board of trustees of the municipal school district shall continue to serve as the board of trustees of the common school district until a special election can be held for choosing their successors and until such successors have been duly elected and qualified.

(2) The commissioners court of the county, pursuant to its duties in connection with common school districts, shall order an election for the purpose of naming a board of trustees of the school district as provided in Section 22.00 of this code.<sup>1</sup>

(3) The elected trustees of the common school district shall conduct the affairs of the district as provided in Chapter 22 of this code.<sup>2</sup>

(4) The title and rights to all property owned, held, set apart or in any way dedicated to the use of the public schools of the city or town, and/or heretofore vested in the city or town and/or the mayor, chairman of the commission, city council, city commission, or board of school trustees of the city or town prior to separation shall be vested in the board of trustees of the common school district.

(5) All bonds issued by and outstanding against the city or town as a municipal school district, and all obligations, contracts, and in-

debtedness existing against the city or town as a municipal school district shall become the obligations and debts of the school district at the time of its separation from municipal control, and the same shall be enforceable and collectible from, paid off and discharged by the common school district as if originally created by it as a common school district; and it shall not be necessary to call an election within and for such district for the purpose of assuming such bonds and other indebtedness.

[Acts 1969, 61st Leg., p. 2873, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> So in enrolled bill. Possibly should read "Section 22.02".  
<sup>2</sup> Section 22.01 et seq.

[Sections 19.168 to 19.200 reserved for expansion]

SUBCHAPTER G. CONVERSION OF COMMON SCHOOL DISTRICT TO INDEPENDENT SCHOOL DISTRICT

§ 19.201. Qualifications

(a) Any common school district possessing the qualifications specified below may, by the method herein provided, form an incorporation for free school purposes only and become an independent school district.

(b) In order to become an independent school district under the terms of Sections 19.202-19.205 of this code, the common school district must:

- (1) have 165 inhabitants or more;
- (2) contain an area of not less than 83 square miles;
- (3) have an assessed property valuation of not less than \$3,000,000; and
- (4) not include within its bounds any municipally incorporated town or village which has assumed control of the public free schools within its limits.

[Acts 1969, 61st Leg., p. 2875, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 19.202. Petition

Whenever it is desired that any common school district possessing the qualifications set out in Section 19.201 of this code become incorporated, there shall be presented to the county judge a petition which shall:

- (1) be signed by 20 or a majority of the resident qualified voters of the common school district;
- (2) contain a definite description by metes and bounds of the common school district proposed to be incorporated;
- (3) recite the name by which the independent school district should be known;
- (4) pray for an election to determine whether the common school district shall be incorporated as an independent school district; and
- (5) pray for the election of seven trustees.

[Acts 1969, 61st Leg., p. 2875, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 19.203. Election Order; Notice

(a) If the county judge finds that the petition fulfills the requirements of Section 19.202 of this

code and that the facts contained therein are true, he shall:

(1) enter his order upon the minutes of the commissioners court granting the petition;

(2) specify in the order the place or places and a date, within 20 days of the order, at which the election shall be held;

(3) appoint in the order a presiding officer for the place of each of the places of election;

(4) describe in the order the proposition to be submitted together with a definite description by metes and bounds of the common school district proposed to be incorporated;

(5) issue a notice of the election stating in substance the contents of the election order and the time and place or places of the election; and

(6) cause the sheriff not less than 10 days prior to the date set for the election to post a copy of the notice of election in three different public places within the boundaries of the common school district as described in the election order.

(b) Whenever the county judge shall enter his order for an incorporation election, as provided above, he shall at the same time order an election to be held for the selection of a board of trustees to consist of seven members. Notice of the election for trustees shall be given the same time and in the same manner as provided for the giving of notice for the incorporation election. The election of trustees shall be held at the same time, under the same rules, and by the same officers as the incorporation election.

[Acts 1969, 61st Leg., p. 2876, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 19.204. Election

The election shall be held under the provisions of the laws of this State regulating general elections except as otherwise provided herein. Only qualified voters who are residents of the common school district proposed to be incorporated shall be entitled to vote. The officers holding the election shall make returns of the results thereof to the county judge. The county judge shall canvass the returns and declare the results of the election.

[Acts 1969, 61st Leg., p. 2876, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 19.205. Incorporation; Trustees; Organization

(a) If a majority vote favors the incorporation of the district, the county judge shall enter upon the minutes of the commissioners court an order incorporating the school district and cause the county clerk to record a certified copy of the order in the deed records of the county. The independent school district shall thereafter be regarded as duly incorporated for free school purposes only and shall be vested with all the rights, powers, and privileges conferred and imposed upon independent school districts as provided in Chapter 23 of this Code.<sup>1</sup>

(b) The county judge shall issue his certificate of election to each of the seven candidates for the office of trustee who received the greatest number of votes cast. Upon the issuance of the certificate of election and the taking by the trustees of the official oath of office the trustees shall be deemed to have qualified and shall immediately enter upon the discharge of their duties.

(c) The trustees elected at the incorporation election shall organize as provided in Chapter 23 of this Code but shall hold office only until the first Saturday in April next succeeding and until their respective successors have been duly elected and qualified.

(d) Upon notice to the commissioner of education, the independent school district shall be entitled to receive the share of the available school fund to which the district is entitled. No incorporated town or village included within the boundaries of the independent school district may thereafter acquire any right to take or assume control of the public free schools within its limits.

[Acts 1969, 61st Leg., p. 2876, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.01 et seq.

#### § 19.206. Conversion of District With 12-Grade School

(a) Any common school district in which there is maintained an accredited school of 12 grades, including a high school offering 16 or more credits, may become an independent school district under the terms of this section.

(b) A petition signed by 20 or a majority of the legally qualified property taxpaying voters residing in the common school district and praying for an election to determine whether the common school district shall be incorporated shall be presented to the county judge.

(c) Upon receipt of the petition, the county judge shall issue an order calling for an election to be held not less than 20 nor more than 30 days from the date of the filing of the petition for the purpose of determining whether the common school district shall be converted into an independent school district.

(d) After the election is held, the commissioners court shall canvass the returns thereof as in other similar elections and declare the results thereof. If the majority of the votes cast favor the change from common school district to independent school district, the county school trustees or county board of education, as the case may be, shall:

(1) pass such order or orders as may be necessary creating the independent school district; and

(2) appoint a board of seven members, all of whom shall possess the qualifications of school trustees and all of whom shall serve until the next regular trustee election under the laws of this state, at which time seven members shall be elected.

[Acts 1969, 61st Leg., p. 2877, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 19.207. Law Governing District

Any independent school district established in compliance with this subchapter shall be governed and controlled as provided in Chapter 23 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2877, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.01 et seq.

[Sections 19.208 to 19.230 reserved for expansion]

SUBCHAPTER H. CONSOLIDATION OF SCHOOL DISTRICTS

§ 19.231. Districts Which May Consolidate

(a) Subject to the limitation of Subchapter K of this chapter,<sup>1</sup> any of the following groups of school districts may, by the procedure described in this subchapter, consolidate into a single school district:

- (1) two or more contiguous common or county-line common school districts;
- (2) two or more contiguous independent or county-line independent school districts;
- (3) one or more independent or county-line independent school districts and one or more common or county-line common school districts constituting as a whole one continuous territory;
- (4) a rural high school district and one or more contiguous common or county-line common school districts; or
- (5) one or more rural high school districts and one or more independent or county-line independent school districts, where all of the districts constitute as a whole one continuous territory.

(b) The combined districts may all be located wholly within a single county, or they may be located in adjoining counties; or the combined districts may be composed of one or more districts located wholly within one or more counties and one or more county line districts.

[Acts 1969, 61st Leg., p. 2878, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.331 et seq.

§ 19.232. Petition

A petition signed by 20 or a majority of the legally qualified voters of each of the several contiguous school districts proposed to be consolidated and praying for an election to authorize the consolidation shall be presented to the county judge of the county in which the school districts are located, or if one or more districts to be consolidated is a county-line district, to the county judge of the respective county or counties having jurisdiction thereof.

[Acts 1969, 61st Leg., p. 2878, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 19.233. Election Order; Notice

Upon the receipt of a petition fulfilling the qualifications of Section 19.232 of this code, each county shall:

- (1) issue an order for an election to be held on the same day in each district included in the proposed consolidated district; and
- (2) give notice of the date and purpose of the election by publication of the order in some newspaper published in the county for at least 20 days prior to the date on which the elections are to be held or by posting a notice of the election in each of the districts or by both publication and posted notice.

[Acts 1969, 61st Leg., p. 2878, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 19.234. Canvass; Result

(a) The commissioners court of the county (or the commissioners court of the several counties, if more than one county is involved) shall at the next meeting thereof, canvass the returns of the election in each district voting and publish the results separately for each district.

(b) If the votes cast in each and all districts show a majority in each district voting separately in favor of the consolidation, the commissioners court (or the commissioners courts of the several counties, if more than one county is involved) shall declare the school districts consolidated. If less than a majority of the votes cast in any one of the districts is in favor of the consolidation, then another election involving the same consolidation proposal may not be held until at least one year has elapsed since the date of the election.

[Acts 1969, 61st Leg., p. 2878, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 19.235. Consolidation of Common School Districts

(a) When common school districts are consolidated together, regardless of whether or not one or more of the districts may be a common county-line district, the consolidated district shall be classed as a common school district and shall be named and governed as provided by this section.

(b) The trustees of each district participating in the consolidation shall, upon notification and at the time and place specified by the commissioners court or commissioners courts of the county or counties involved, meet in a joint meeting to:

- (1) select a name by which the new consolidated school district shall be known; and
- (2) designate the county which shall have the supervision of the new consolidated school district.

(c) The county governing board of the county having supervision of the new consolidated school district shall appoint a board of seven trustees for the new consolidated school district who shall serve until the next April election or until their successors shall qualify.

(d) The new common consolidated school district shall thereafter be governed and controlled as provided in Chapter 22 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2879, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 22.01 et seq.

§ 19.236. Consolidation Involving Independent School District

When two or more independent school districts are consolidated together or when one or more independent school districts are consolidated with one or more independent school districts, the consolidated district shall be classed as an independent school district and shall be named and governed according to Section 19.237 or 19.238 of this code, whichever is applicable.

[Acts 1969, 61st Leg., p. 2879, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 19.237. Consolidation Involving Only One Independent School District

(a) If only one independent school district is consolidated with one or more common school districts, the provisions of this section apply.

(b) The consolidated district shall bear the name of the independent school district.

(c) The board of trustees of the independent school district shall serve as the board of trustees of the consolidated district until the next regular election of trustees, at which time the consolidated district shall elect a board of seven trustees, unless the scholastic population of the independent school district is in excess of five times that of the other district or districts consolidating with it, in which event the trustees of the independent school district shall continue to serve for the terms for which they have been elected and only the vacancies, as they occur, shall be filled from the consolidated district.

(d) The powers, duties, and terms of office of the trustees shall be in accordance with the general laws governing independent school districts as provided in Chapter 23 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2879, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.01 et seq.

#### § 19.238. Consolidation Involving Two or More Independent School Districts

(a) If two or more independent school districts are included in the consolidation, the provisions of this section apply.

(b) The consolidated district shall bear the name as prescribed in the petition for consolidation and shall include "Consolidated Independent School District."

(c) The board of trustees of the independent school district having the greater or greatest number of scholastics at the time of consolidation shall serve as the board of trustees of the consolidated district until the next regular election of trustees, at which time the consolidated district shall elect a board of seven trustees, at least two of whom shall be elected from the area of each former independent district included in the consolidation, unless the scholastic population of the larger or largest independent school district is in excess of five times that of the other district or districts consolidating with it, in which event the trustees of the larger or largest district shall continue to serve for the terms for which they have been elected and only the vacancies, as they occur, shall be filled from the consolidated district.

(d) The powers, duties and terms of office of the trustees shall be in accordance with the general laws governing independent school districts as provided in Chapter 23 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2880, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.01 et seq.

#### § 19.239. Consolidation of Common and Rural High School Districts

(a) When one or more common school districts are consolidated with a rural high school district, the consolidated district shall, if there be no bonded indebtedness in any district involved or if any bonded indebtedness is adjusted as specified below, take form of such rural high school district and be governed by the board of trustees of the rural high school district if all parts had originally been included in the rural high school district.

(b) In case of any outstanding bonded indebtedness in any district participating in the consolidation, an election shall be held to determine whether or not the common school district or districts or the rural high school district shall assume its or their pro rata share of the indebtedness.

(c) The consolidation shall not become effective until after the election adjusting the bonded indebtedness. In case the election fails to be carried, the consolidation shall be held for naught and such districts shall remain in their original status.

[Acts 1969, 61st Leg., p. 2880, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 19.240. Consolidation of Rural and Independent Districts

When one or more rural high school districts are consolidated with one or more independent school districts, the consolidation district shall be classed as an independent school district and shall be named and governed according to Section 19.241 or Section 19.242 of this code, whichever is applicable.

[Acts 1969, 61st Leg., p. 2880, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 19.241. One Independent District

(a) If only one independent school district is involved in the consolidation, the provisions of this section apply.

(b) The consolidated district shall bear the name of the independent school district.

(c) The board of trustees of the independent school district shall serve as the board of trustees of the consolidated district until the next regular election of trustees, at which time the consolidated district shall elect a board of seven trustees, unless the scholastic population of the independent school district is in excess of five times that of the other district or combined districts consolidating with it, in which event the trustees of the independent school district shall continue to serve for the terms for which they have been elected and only the vacancies, as they occur, shall be filled from the consolidated district.

(d) The powers, duties, and terms of office of the trustees shall be in accordance with the general laws governing independent school districts as provided in Chapter 23 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2880, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.01 et seq.

#### § 19.242. Two Independent Districts

(a) If two or more independent school districts are included in the consolidation, the provisions of this section apply.

(b) The consolidated district shall bear the name prescribed in the petitions for consolidation and shall include "Consolidated Independent School District."

(c) The board of trustees of the independent school district having the greater or greatest number of scholastics at the time of consolidation shall serve as the board of trustees of the consolidated district until the next regular election of trustees, at which time the consolidated district shall elect a board of seven trustees at least two of whom shall be elected from the area of each former independent school district included in the consolidation, unless

the scholastic population of the larger or largest independent school district participating in the consolidation is in excess of five times that of the other district or combined districts consolidating with it, in which event the trustees of the larger or largest independent school district shall continue to serve until their terms expire and only the vacancies, as they occur, shall be filled from the consolidated district.

(d) The powers, duties, and terms of office of the trustees shall be in accordance with the provisions of Chapter 23 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2881, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.01 et seq.

**§ 19.243. Assumption of Debt**

(a) If at the time of the proposed consolidation there are outstanding bonds of any district included in the proposed consolidation, an election shall be held to determine whether or not the consolidated district shall assume and pay off the outstanding bonds and levy a tax therefor.

(b) The election may be held after consolidation has been accomplished on the call of the trustees of the consolidated district as authorized in Subchapter O of this chapter.<sup>1</sup>

(c) The election may be held on the same day upon which the election on the question of consolidation is held provided that separate notices, separate ballots, separate ballot boxes, and separate tally sheets are provided for the two separate elections.

(d) If at an election, either on the day of the consolidation election or on some future day, a majority of the voters vote to assume and pay off the bonded indebtedness of the district or districts consolidating, then the bonded indebtedness shall become valid and subsisting obligations of the consolidated district, and the proper officers thereof shall annually thereafter levy sufficient taxes to pay the interest thereon as it accrues and to create a sinking fund which, in addition to the sinking funds already accumulated in the original bonded district, will pay off and retire the outstanding bonds when they become due.

[Acts 1969, 61st Leg., p. 2881, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.461 et seq.

**§ 19.244. Dissolution of Consolidated School Districts**

(a) Any consolidated school district may be dissolved and the districts included therein restored to their original status by the same procedure provided for consolidation, except that it shall not be necessary to provide polling places in each district.

(b) When dissolution is brought about by majority vote of the qualified voters of the consolidated district, each of the restored districts shall assume and be liable for its prorata part of the outstanding financial obligations of the consolidated district, each prorata part to be based on the relation that the total assessed valuation of all property in the original district bears to the total assessed valuation of property in the consolidated district.

(c) No election for the dissolution of a consolidated district shall be held until three years have elapsed after the date of the election at which the districts were consolidated.

[Acts 1969, 61st Leg., p. 2882, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.245. Dissolution of County-Line Consolidated School Districts**

(a) A county-line consolidated school district may be dissolved as provided by this section whenever the consolidated school district fails to operate a public free school.

(b) A petition signed by 20 or a majority of the qualified voters of the county-line district shall be filed with the county judge of the county in which that portion of the district desiring to be dissolved is situated.

(c) Upon the filing of such a petition, the county judge shall call an election to be held at some designated place in the district.

(d) If a majority of the votes cast at the election favor dissolution, the boundaries of the original districts, before consolidation, shall be reapportioned by order of the county judge. Thereafter, the consolidated county-line school district shall cease to exist insofar as it shall relate to that portion of the district in which the election was held.

(e) Dissolution of the district under the terms of this section shall not operate to relieve any one of the original districts from assuming and bearing its prorata part of the total indebtedness of the consolidated county-line school district; and any indebtedness, bonded or otherwise, shall be borne proportionately by the original districts comprising the county-line school district.

[Acts 1969, 61st Leg., p. 2882, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 19.246 to 19.260 reserved for expansion]

SUBCHAPTER I. DETACHMENT AND ANNEXATION OF TERRITORY

**§ 19.261. Detachment and Annexation**

(a) The county school trustees or county board of education, as the case may be, in each county of this state shall have the authority, when duly petitioned as herein provided and in compliance with the limitations of Subchapter K of this chapter,<sup>1</sup> to detach from and annex to any school district territory contiguous to the common boundary line of the two districts.

(b) The petition requesting detachment and annexation must:

(1) be signed by a majority of the qualified voters residing in the territory to be detached from one district and added to the other; and

(2) give the metes and bounds of the territory to be detached from one district and added to the other.

(c) The proposed annexation must be approved by a majority of the board of trustees of the district to which the annexation is to be made.

(d) Unless the petition is signed by a majority of the trustees of the district from which the territory is to be detached, no school district territory may be detached where the ratio of the number of scholastics residing in the area to be detached to the total number of the scholastics residing in the district from which the territory is to be detached is less

than one-half the ratio of the assessed valuation (based on preceding year valuations) in the territory to be detached to the total assessed valuation (based on the preceding year valuations) of the district from which the area is to be detached.

(e) No school district may be reduced to an area of less than nine square miles.

(f) Upon receipt of the petition and notice of the approval as required by this section, the county governing board shall notify the trustees of any other common school districts which may be affected by any contemplated change and specify the place and date at which a hearing on the matter shall be held and at which the trustees of any common school district to be affected shall be given an opportunity to be heard.

(g) After the conclusion of the hearing, the county governing board may pass an order transferring the territory and redefining the boundaries of the district affected by the transfer. The order shall be recorded in the minutes of the county governing board.

(h) Any outstanding indebtedness affected by a change in boundaries shall be adjusted by the county governing board as provided in Subchapter N of this chapter.<sup>2</sup>

[Acts 1969, 61st Leg., p. 2882, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.331 et seq.

<sup>2</sup> Section 19.431 et seq.

#### § 19.262. Annexation of Districts in Larger Counties

(a) In every county in this state having a population of 210,000 or more according to the last preceding Federal census, any school district may be annexed to any contiguous independent school district as herein provided.

(b) There shall be presented to the county school trustees or county board of education, as the case may be, a petition which shall:

- (1) request annexation to a specified independent school district;
- (2) state the metes and bounds of the district proposed to be annexed; and
- (3) be signed by a majority of the board of trustees of the district seeking annexation or by not less than 20 qualified voters of such district.

(c) The proposed annexation must be approved by a majority of the board of trustees of the independent school district to which the petitioning district seeks to be annexed.

(d) Upon receipt of the petition and notice of approval, the county governing board, if the proposed annexation appears to it to be in the best interest of the districts affected, shall enter its order for an election to be held within the petitioning district at its expense.

(e) The following propositions shall be submitted at the election: "For the annexation of \_\_\_\_\_ School District to \_\_\_\_\_ School District" and the contrary thereof.

(f) No election in the receiving district shall be necessary on the question of annexation and the governing board of the receiving independent school district, without the necessity of an additional election, shall have the power to assess, levy and

collect ad valorem taxes on all taxable property within the boundaries of the district as changed, for the purposes of the maintenance of public free schools therein, and the payment of principal of and interest on all bonded indebtedness outstanding against, or attributable, adjusted or allocated to, such district or any territory therein, in the amount, at the rate, or not to exceed the rate, and in the manner authorized in the district prior to the change in its boundaries, and further in accordance with the laws under which all such bonds, respectively, were voted; and such governing body also shall have the power, without the necessity of an additional election, to sell and deliver any unissued bonds voted in the district prior to any such change in boundaries, and to assess, levy and collect ad valorem taxes on all taxable property in the district as changed, for the payment of principal of and interest on such bonds in the manner permitted by the laws under which such bonds were voted.

(g) The county governing board and the board of trustees of the receiving district shall each enter an order on its minutes:

- (1) declaring the petitioning district to be duly annexed to the receiving district and subject to all the laws governing the same; and
- (2) redefining the boundaries of the receiving district showing the annexation.

(h) A certified copy of the order of the county governing board shall be transmitted to the county clerk of the county and recorded in the "Record of School Districts" of the county.

(i) Title to all property, real and personal, of the annexed district shall vest in the receiving district. The receiving district shall have complete authority over and management of the public schools in the territory annexed.

(j) The receiving district shall assume all outstanding indebtedness of the annexed district, bonded or otherwise. Any tax in effect in the receiving independent school district shall continue and become effective and apply to the entire independent district as constituted after annexation is completed.

(k) The independent receiving district shall continue as the same district and operate in all respects as it was prior to the annexation except that the annexed territory shall become liable for all indebtedness, subject to all taxes, and be a part thereof for all purposes as though originally included in the independent district.

[Acts 1969, 61st Leg., p. 2883, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 19.263. Creation of Districts in Response to Petition for Detachment

(a) Subject to the limitations contained in Subchapter K of this chapter,<sup>1</sup> and in conformity with the following provisions, new school districts, either independent or common, may be created by detaching territory from existing contiguous districts and uniting such territory into a new district.

(b) A petition requesting the creation of a new school district shall:

- (1) give the metes and bounds of the proposed new district;
- (2) be signed by a majority of the qualified voters residing in each territory to be detached from an existing district; and

(3) be addressed to the county governing board of the county in which the territory of the proposed district is located, or, if the territory is in more than one county, to the county governing board of the county in which the principal school of the new district is to be located and in which the administrative jurisdiction of the proposed district is to be vested.

(c) The county governing board to which the petition is addressed must give notice of the proposed action in writing to the officers of the boards of trustees of each district whose area would be affected by the creation of the proposed district. The officers of the boards of trustees of each district to be affected must be given an opportunity to be heard by the county governing board to whom the petition is addressed.

(d) In the event the territory to be detached from any district exceeds 10 percent of the total area of the district, the proposed detachment must be approved in writing by a majority of the board of trustees of the district.

(e) No new district may be created within an area of less than nine square miles; and no district shall be reduced below an area of nine square miles.

(f) Any district affected, either remaining or newly created, must have sufficient taxable valuations to support an efficient school system.

(g) If all the requirements of this section are met, the county governing board to which the petition was addressed may enter its order creating the new school district. If the new district embraces territory in two or more counties, the orders affecting its establishment shall be concurred in by the county governing boards of each county concerned.

(h) At the time the order establishing the district is made, the county governing board having jurisdiction over the new district shall appoint a board of trustees for the new common or independent school district, as the case may be, to serve until the next regular election of trustees when a board of trustees shall be elected in compliance with the provisions of Chapter 22 of this code<sup>2</sup> governing common school districts or the provisions of Chapter 23 of this code<sup>3</sup> governing independent school districts, whichever is applicable.

(i) Any bonded indebtedness affected by the establishment of a new district shall be adjusted by the county school trustees or county board of education, as the case may be, as provided in Subchapter N of this chapter.<sup>4</sup>

(j) Before any tax may be levied over the territory of the new district for the liquidation of its proportionate part of the outstanding bonded indebtedness of any district from which the territory of the new district was taken, the new district shall vote to assume the indebtedness and to authorize the levy of the necessary taxes.

(k) Such elections shall be held in accordance with the provisions governing bond tax elections in a common or independent school district, whichever is applicable.

(l) A new district, when created in compliance with the terms of this section, shall have all the rights and privileges of an independent or a common school district.

[Acts 1969, 61st Leg., p. 2884, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.331 et seq.  
<sup>2</sup> Section 22.01 et seq.  
<sup>3</sup> Section 23.01 et seq.  
<sup>4</sup> Section 19.431 et seq.

[Sections 19.264 to 19.300 reserved for expansion]

SUBCHAPTER J. EXTENSION OF MUNICIPAL BOUNDARIES

§ 19.301. Extension of Municipal Boundaries: Counties of Less Than 165,000

(a) In any county with a total population of fewer than 165,000 according to the last preceding federal census, whenever the limits of any incorporated city or town constituting an independent school district are so extended or enlarged as to embrace the whole or any part of any school district, independent or common, that portion so embraced within the corporate limits of the city or town shall, unless specifically determined otherwise as provided in Subsection (c) of this section, automatically become a part of the independent school district constituted by the incorporated city or town.

(b) If within a portion of a district so embraced there should be situated any real property belonging to the partially embraced district, the city or town may acquire the property upon such terms as may be mutually agreed upon between the governing body of such city or town and the authorities of the district.

(c) If it is determined by majority vote of those voting at an election held within the city or town that the territory or any portion thereof to be embraced within the corporate limits shall not thereby become a part of the independent school district constituted by the city or town but shall be taken into the city limits for municipal purposes only, the embraced territory shall continue to be included within the school district or districts in which it had previously been included as though the city limits had not been extended.

(d) When the corporate limits of any city or town are extended to include therein the whole or any part of any school district having an outstanding bonded indebtedness and the extension was not limited to municipal purposes only, the city or town shall become liable and bound for the payment of such proportion of the bonded indebtedness of the district as the assessed value of the included portion bears to the entire assessed value of the district from which it was taken. The assessed values of the district so included shall be those shown upon the last preceding tax assessment roll after the district is so included. The incorporated city or town shall pay either directly or through the officers of the district the proportion of the interest and principal of the bonded indebtedness for which it is liable. [Acts 1969, 61st Leg., p. 2886, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 19.302. Counties of 165,000 or More

(a) In any county with a total population of 165,000 or more according to the last preceding census, whenever the limits of any incorporated city or town are extended or enlarged to include additional territory or whenever any territory is annexed to any incorporated city or town, the extension or enlargement of the limits of the incorporated city or town shall be for municipal purposes only and shall not

automatically bring about any change in any existing school district or districts situated in the annexed area.

(b) After the territory has been included in or annexed to the incorporated city or town, the county governing board of the county or counties in which the districts are situated may, with the approval specified in Subsection (c) of this section, annex the territory to any contiguous school district as specified in Section 19.261 of this code.

(c) Any subdivision of or annexation to any existing school district under the terms of this section must be approved by a majority of the school trustees of each school district affected.

[Acts 1969, 61st Leg., p. 2886, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 19.303 to 19.330 reserved for expansion]

#### SUBCHAPTER K. CHANGES IN BOUNDARIES OF INDEPENDENT SCHOOL DISTRICTS

##### § 19.331. Nine-Member Board; County of 100,000 or More

No change in the boundaries of an independent school district governed by an elective board of nine members and located in a county having a population of 100,000 or more according to the last preceding federal census may be made or effected, whether by election or by order of the county governing board or by any other method, until and unless the proposed change has been approved by a majority of the governing board of the independent school district.

[Acts 1969, 61st Leg., p. 2887, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 19.332. District With 30,220 or More Scholastics

No election shall be ordered for the purpose of determining whether or not territory shall be added to any independent school district having 30,220 or more scholastics according to the last official scholastic census unless prior to the ordering of the election, the proposed addition of territory has been approved by a majority vote of the board of trustees of the independent school district to which the territory is proposed to be added.

[Acts 1969, 61st Leg., p. 2887, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 19.333 to 19.360 reserved for expansion]

#### SUBCHAPTER L. ABOLITION OF INDEPENDENT SCHOOL DISTRICTS

##### § 19.361. Abolition of Independent School Districts

Subject to the limitation on elections in Section 19.365 of this code, any independent school district incorporated for free school purposes under the laws of Texas may be abolished in the manner provided by this subchapter.

[Acts 1969, 61st Leg., p. 2887, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 19.362. Petition

A petition requesting the abolition of the district and signed by at least 10 percent of the qualified voters residing in the district shall be presented to the county judge of the county in which the independent school district or a part thereof is situated.

[Acts 1969, 61st Leg., p. 2887, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 19.363. Election

(a) Upon the receipt of such a petition, the county judge shall:

(1) issue an order designating the time and place within the school district and within the county of his court at which there shall be held an election to determine whether the independent school district shall be abolished;

(2) appoint to preside at the election an officer who shall select two judges and two clerks to assist in holding the election; and

(3) cause notice of the election to be given by posting advertisement for at least ten days prior to the date of the election at three public places within the independent school district.

(b) Except as herein provided, the election shall be held in the manner prescribed by law for holding general elections.

(c) All persons who are legally qualified voters of the state and of the county in which the independent school district or part thereof is situated and who have resided within the independent school district for at least six months next preceding shall be entitled to vote.

(d) The officers holding the election shall make return thereof to the county judge within 10 days after the election is held.

[Acts 1969, 61st Leg., p. 2888, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 19.364. Order Abolishing District

If a majority of the voters, voting at the election, shall vote to abolish the independent school district, the county judge shall declare the independent school district abolished and enter an order to that effect upon the minutes of the commissioners court and from the date of such order, the independent school district shall cease to exist.

[Acts 1969, 61st Leg., p. 2888, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 19.365. Limitation on Elections

Within any 12-month period not more than one election shall be held on either:

(1) the question of abolishing an independent school district; or

(2) the question of creating an independent school district out of territory formerly comprising an independent district which has been abolished within the preceding 12 months.

[Acts 1969, 61st Leg., p. 2888, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 19.366. Disposition of Territory

All of the territory of an abolished independent school district must be created into a common school district or be annexed to or included within some other contiguous district or districts, and its property and affairs, unless otherwise controlled by the manner in which the district was abolished, shall be regulated as herein provided.

[Acts 1969, 61st Leg., p. 2888, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 19.367. Territory Formerly Two or More Common School Districts

(a) Upon the abolishment of an independent school district heretofore created by local or special

law out of territory theretofore containing two or more common school districts, the common school districts shall immediately come into existence by operation of law with the same boundaries they had prior to the creation of the independent school district.

(b) All funds, property, rights, and liabilities of the abolished independent school district may be divided between the common school districts by agreement of the trustees of the common school districts.

(c) In the event the district trustees are unable to agree, the county governing board shall apportion the funds, property, rights, and liabilities of the abolished independent district between the common school districts in an equitable and just manner, taking into consideration the property owned and the assets and liabilities of each common school district at the time of the creation of the independent district as well as the assets and liabilities coming into existence after the formation of the independent district.

(d) Any bonds issued by one of the common school districts prior to the creation of the independent school district shall be paid and retired by the common school district issuing the same. Taxes for the payment of the bonded indebtedness shall be levied and collected in the same manner as other taxes voted by a common school district. Any amounts paid of the abolished independent school district in connection with such bond issue shall be paid back by the common school district issuing the bonds to such an extent as will be necessary to reimburse the other common school district or districts for its or their proportionate part of the payment.

(e) Any debt incurred by the abolished independent school district, the benefits of which will accrue particularly to one of the common school districts, shall be taken over by that common school district.

(f) High school children in a common school district within the territory of the abolished independent school district shall have the right to attend, without tuition, any other common school district within the territory formerly composing the independent school district provided the common school district so chosen does not have a scholastic population of more than 350.

[Acts 1969, 61st Leg., p. 2888, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 19.368. Territory Formerly Single District or Parts of Several Districts

(a) Upon the abolishment of an independent school district created out of territory formerly comprising a single common school district and/or consisting of parts of several districts and/or districts annexed thereto, the county governing board shall contain or embrace the territory of the abolished independent school district into a newly created common school district or shall annex the territory to one or more contiguous districts.

(b) When all the territory embraced within the abolished independent school district is created into a common school district or is annexed to or included within the limits of one other district, title to all property, both real and personal, belonging to the

abolished independent school districts shall be vested in the other school district or its governing officers.

(c) When the territory of the abolished independent school district is subdivided and annexed to two or more other school districts, all real property, improvements, and appurtenances belonging to the abolished independent school district shall become the property of the districts to which these properties are annexed, and all personal property shall be divided between the receiving districts in proportion to the assessed property value of the part of the abolished independent school district so annexed.

(d) When at the time of its abolishment the independent school district had no outstanding indebtedness, all uncollected taxes on the property of the district for the years up to and including the last day of January of the year immediately following that in which the independent school district is abolished shall be levied and collected, at the same rate and in the same manner as authorized for the independent school district immediately prior to its abolishment, by the school district or districts to which the territory containing the property upon which taxes are due has been annexed.

(e) When at the time of its abolishment the independent school district had outstanding bonds or other indebtedness, enforceable either at law or in equity, the school district or districts to which the territory of the abolished independent school district has been annexed may, at an election held for that purpose, assume such bonds or other indebtedness. The election shall be held in the manner provided for holding an election for voting bonds or for voting a special tax, as the case may be, within the receiving school district as provided in Chapter 20 of this code.<sup>1</sup> If a majority of the qualified property tax-paying voters within the receiving district vote in favor of assuming the indebtedness, all property within the receiving district, not exempt under the general law, shall be subject to taxation for the payment of the bonds or other indebtedness of the abolished independent school district, and the proper officers of the receiving district shall levy upon the property of the district a tax adequate for the payment of the bonds or other indebtedness over such a period of time as may be necessary for that purpose.

(f) In the event the qualified taxpaying voters of the receiving district or districts do not by majority vote assume the outstanding bonds and other indebtedness of the abolished independent school district, all taxes against the property of the abolished independent school district shall remain in full force and effect and shall be levied and collected by the proper officers of the district or districts to which the territory of the abolished independent school district has been annexed until the entire indebtedness is fully paid.

(g) In the event the qualified taxpaying voters of the receiving district or districts do not by majority vote assume the outstanding bonds and other indebtedness of the abolished independent school district, the county school trustees or county board of education, as the case may be, shall manage, control or dispose of all property within the county belonging to the abolished independent school district. The county governing board shall have the power to do any and all things necessary for the payment of such

bonds or other indebtedness which the independent school district, or the trustees thereof, could have done had the independent school district not been abolished. The county governing board shall also have the power to levy and collect taxes, and the power to bring and defend litigation in the name of the independent school district.

(h) Any creditor of an abolished independent school district shall file his claim against the district with the county school trustees or county board of education, as the case may be, within 60 days after the independent school district has been abolished and, if the claim is not allowed, may maintain suit against the abolished independent school district as such. Service in a suit, if necessary, may be had upon the chief officer of the county governing board. The county governing board shall defend any suit against an abolished independent school but may, in its discretion, make such settlement of the litigation as may be deemed advisable.

[Acts 1969, 61st Leg., p. 2889, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 20.01 et seq.

[Sections 19.369 to 19.400 reserved for expansion]

#### SUBCHAPTER M. ABOLITION OR SUBDIVISION OF COMMON SCHOOL DISTRICTS

##### § 19.401. Authority of County Governing Board

(a) The county school trustees or county board of education, as the case may be, may abolish and annex or subdivide any common school district located entirely within its county, provided that a formal application or request is submitted by the trustees of the common school district. Said application or request shall not affect the authority of the county school trustees or county board of education, as the case may be, to determine if the common school district should be abolished, annexed or subdivided.

(b) The territory of the district so abolished shall be annexed to a single contiguous independent school district, or subdivided and annexed to one or more contiguous independent school districts located entirely within its county, in such manner as may be determined by order of the county governing board. [Acts 1969, 61st Leg., p. 2891, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2399, ch. 752, § 1, eff. June 8, 1971.]

##### § 19.402. Adjustment of Bonded Debt

The county governing board shall also, at the time of abolishing or subdividing a common school district, make an adjustment of outstanding bonded indebtedness, if there be such, and provide for an equitable distribution of all district properties as specified in Subchapter N of this chapter.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2891, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.431 et seq.

##### § 19.403. Appeal

Any trustee or any resident of a district or territory affected by the action of the county governing board, as authorized by this subchapter, may appeal from the decision of the county governing board to the district court of the county in which the governing board acts.

[Acts 1969, 61st Leg., p. 2891, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 19.404 to 19.430 reserved for expansion]

#### SUBCHAPTER N. ADJUSTMENT OF BONDED INDEBTEDNESS BY COUNTY GOVERNING BOARD

##### § 19.431. Duty of County Governing Board

Whenever a board of county school trustees or a county board of education has participated in the creation of any new school district or in the changing of the boundaries of any existing district (whether by consolidation, by detachment-attachment, by subdivision, or by any other authorized means), it shall be the duty of the county governing board to make an adjustment of any outstanding bonded indebtedness and district properties of any district or districts affected.

[Acts 1969, 61st Leg., p. 2891, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 19.432. Basis for Adjustment

The county governing board shall take into consideration the value of the school properties and the taxable wealth of the districts affected and the territory so divided, detached, or added, as the case may be, to make an equitable adjustment of the indebtedness and the district properties between the districts affected and between the territory divided, detached, or added.

[Acts 1969, 61st Leg., p. 2891, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 19.433. Adjustment Orders

(a) When the governing board has arrived at a satisfactory basis of such an adjustment, it shall have the power to make such orders in relation thereto as shall be conclusive and binding upon the districts and the territory affected thereby.

(b) The county governing board may order the trustees of the districts affected to order an election for the issuing of such refunding bonds as may be necessary to carry out the purposes of the order of the county governing board.

[Acts 1969, 61st Leg., p. 2892, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 19.434. Refunding Bond Election

In the event an election is ordered by the county governing board, it shall be the duty of the district trustees to order such election and to cause the same to be held.

[Acts 1969, 61st Leg., p. 2892, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 19.435. Refunding Bonds

(a) If a majority of the voters casting votes at a refunding bond election held to carry out the orders of the county governing board favoring the issuance of refunding bonds, the provisions of this section apply.

(b) The bonds shall be issued by the district trustees.

(c) The bonds shall be of the same denomination and carry the same interest rate and mature at the same time as the outstanding bonds owing<sup>1</sup> by the district issuing them.

(d) The new bonds, when so issued, shall be subject to exchange for the outstanding bonds for which the district issuing them shall still be liable, according to the order adjusting the indebtedness. In the event an exchange of the new bonds for the outstanding bonds cannot be made, the new bonds of the district, to the amount of the old bonds for which it is still liable and to which no exchange can be made, shall be deposited in the county treasury to the account of the district.

(e) Taxes shall be levied and assessed only for the payment of interest, sinking fund, and principal of the new bonds so issued. The funds arising from taxation shall be used to discharge the principal and interest of such new bonds as have been issued and exchanged and such old bonds as have not been exchanged.

(f) When taxes are collected applicable to new bonds not exchanged and the proceeds applied to payment on old bonds not exchanged, the corresponding new bonds in the county treasury shall be credited with such payment and retired as the old un-exchanged bonds are retired.

[Acts 1969, 61st Leg., p. 2892, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> So in enrolled bill; probably should read "owing".

**§ 19.436. Failure of Bond Election**

(a) If a refunding bond election held to carry out the orders of the county governing board fails to secure approval of a majority of the voters voting at such election or if the county governing board is unable otherwise to arrange an adjustment or settlement of outstanding bonded indebtedness, it shall be the duty of the county governing board to certify to the commissioners court that the bonded indebtedness of the territories affected by the changes has not been adjusted.

(b) Upon receipt of such certification, it shall be the duty of the commissioners court thereafter annually to levy and cause to be assessed and collected from the taxpayers of the districts as they existed before the changes were made, the tax necessary to pay the interest, the sinking fund, and the principal of the indebtedness as it matures.

(c) It shall be the duty of each independent school district so affected to cause all funds in its hands, whether sinking funds or otherwise, which have been collected on account of such bonded indebtedness, to be transferred to the county treasurer of the county in which the district is situated, and the district shall thereafter cease to levy and collect any tax on account of such bonds.

(d) It shall be the duty of the county treasurer to keep all funds transferred by independent school districts affected and all funds collected by the taxation authorized in Subsection (b) of this section in separate accounts and apply the same only to the discharge of the existing bonded indebtedness and the interest thereon, it matures.

[Acts 1969, 61st Leg., p. 2892, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.437. Discretion of County Governing Board**

The county school trustees or county boards of education as the case may be, shall not be restricted to the method of adjusting bonded indebtedness set out in the preceding sections of this subchapter, but

they shall have full power and authority to make any legal and equitable adjustment and settlement that can be effected to adjust the bonded indebtedness of any district affected by any type of authorized boundary change.

[Acts 1969, 61st Leg., p. 2893, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 19.438 to 19.460 reserved for expansion]

**SUBCHAPTER O. ADJUSTMENT OF BONDED INDEBTEDNESS BY DISTRICT TRUSTEES**

**§ 19.461. Authority of District Trustees**

The trustees of any school district, independent, common, or rural high school, as such district exists after consolidation, annexation, subdivision, or any other authorized type of boundary change, are authorized to call an election for any one or all of the following purposes:

(1) To assume any bonded or other debt created by the district as it previously existed or by any district or districts wholly or partially incorporated in the district as constituted after the boundary change.

(2) To levy taxes for the payment of any previously existing debt of the district as it previously existed or by any district or districts wholly or partially incorporated in the district as constituted after the boundary change.

(3) To levy taxes for the further maintenance and operation of the district as constituted after the boundary change by the qualified taxpaying voters of the new district.

[Acts 1969, 61st Leg., p. 2893, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 19.462. Election**

Any election called under the authorization of Section 19.461 of this code shall be held at such time and in such manner and upon such notice as specified in Section 20.04 of this code. A rural high school election shall be held under the rules applicable to independent school districts.

[Acts 1969, 61st Leg., p. 2893, ch. 889, § 1, eff. Sept. 1, 1969.]

**CHAPTER 20. SCHOOL DISTRICT FUNDS**

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## SUBCHAPTER A. SCHOOL DISTRICT TAX BONDS AND MAINTENANCE TAXES

## § 20.01. Bonds and Bond Taxes

The governing board of each independent school district (including, as to each municipally controlled independent school district, the city council or commission which has jurisdiction thereof), and the governing board of each rural high school district, and the commissioners court of every county, for and on behalf of each common school district under its jurisdiction, shall be authorized to issue negotiable coupon bonds for the construction and equipment of school buildings in the district and the purchase of the necessary sites therefor, and to levy and pledge, and cause to be assessed and collected, annual ad valorem taxes sufficient to pay the principal of and interest on said bonds as the same come due, subject to the provisions and restrictions of Section 20.04 of this code. Such bonds may be issued in various series or issues, and shall mature serially or otherwise not more than 40 years from their date, and shall bear interest at such rate or rates as shall be determined within the discretion of such governing board or commissioners court. Said bonds, and the interest coupons appertaining thereto, shall be negotiable instruments, and they may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and shall be signed and executed, as provided by such governing board or commissioners court in the resolution or order authorizing the issuance of said bonds. All bonds shall be sold to the highest bidder for not less than their par value and accrued interest.

[Acts 1969, 61st Leg., p. 2895, ch. 889, § 1, eff. Sept. 1, 1969.]

## § 20.02. Maintenance Taxes

The governing board of each independent school district (including, as to each municipally controlled independent school district, the city council or commission which has jurisdiction thereof), and the governing board of each rural high school district, and the commissioners court of every county, for and on

behalf of each common school district under its jurisdiction, shall be authorized to levy, and cause to be assessed and collected, annual ad valorem taxes for the further maintenance of public free schools in the district, subject to the provisions and restrictions of Section 20.04 of this code.

[Acts 1969, 61st Leg., p. 2895, ch. 889, § 1, eff. Sept. 1, 1969.]

## § 20.03. Assessment of Property

In common school districts the value of taxable property shall be assessed on the same basis as that used for state and county purposes; but in all other school districts such value may be assessed on any basis authorized or permitted by any applicable law.

[Acts 1969, 61st Leg., p. 2895, ch. 889, § 1, eff. Sept. 1, 1969.]

## § 20.04. Bond and Tax Elections

(a) No such bonds shall be issued and none of the aforesaid taxes shall be levied unless authorized by a majority of the resident, qualified electors of the district, who own taxable property therein and who have duly rendered the same for taxation, voting at an election held for such purpose, at the expense of the district, in accordance with the Texas Election Code, except as hereinafter provided. Each such election shall be called by resolution or order of such governing board or commissioners court, which shall set forth the date of the election, the proposition or propositions to be submitted and voted on, the polling place or places, and any other matters deemed necessary or advisable by such governing board or commissioners court.

(b) In each proposition submitted to authorize the issuance of bonds there shall be included the question of whether the governing board or commissioners court shall be authorized to levy and pledge, and cause to be assessed and collected, annual ad valorem taxes, on all taxable property in the district, either—

(1) sufficient, without limit as to rate or amount, to pay the principal of and interest on said bonds; or

(2) sufficient to pay the principal of and interest on said bonds, provided that the annual aggregate bond taxes in the district shall never be more than the rate (not to exceed \$1 on the \$100 valuation of taxable property in the district) stated in said proposition.

(c) If bonds are ever voted in a district pursuant to Subsection (b)(1) of this section, then all bonds thereafter proposed shall be submitted pursuant to that subsection, and Subsection (b)(2) of this section shall not be applicable to such district. No bonds shall be issued pursuant to Subsection (b)(1) of this section if the aggregate principal amount of tax bond indebtedness of the district after such issuance would be in excess of 10 percent of the assessed valuation of taxable property in the district according to the then last completed and approved ad valorem tax rolls of the district.

(d) In each proposition submitted to authorize the levy of maintenance taxes there shall be included the question of whether the governing board or commissioners court shall be authorized to levy, and cause to be assessed and collected, annual ad valorem taxes, for the further maintenance of public

free schools, of not to exceed the rate (which shall be not more than \$1.50 on the \$100 valuation of taxable property in the district) stated in said proposition.

(e) Notice of each such election shall be given by publishing a substantial copy of the election resolution or order one time, at least 10 days prior to the date set for the election, in a newspaper of general circulation in the district. Such governing board or commissioners court shall canvass the returns and declare the results of such elections.

[Acts 1969, 61st Leg., p. 2895, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 20.05. Refunding Bonds**

Each such governing board or commissioners court shall be authorized to refund or refinance all or any part of any of the district's outstanding bonds and matured but unpaid interest coupons payable from ad valorem taxes by the issuance of negotiable, coupon, refunding bonds payable from ad valorem taxes. Said refunding bonds shall mature serially or otherwise not more than forty years from their date, and shall bear interest at such rate or rates, as shall be determined within the discretion of such governing board or commissioners court. Said refunding bonds may be issued without an election in connection therewith, provided that in no event shall any series or issue of refunding bonds be issued in a principal amount greater than the face or par value of the obligations being refunded thereby, and provided that if a maximum interest rate was voted for the bonds being refunded, the refunding bonds shall not bear interest at a rate higher than such voted maximum rate, and provided further that refunding bonds shall be payable from taxes of the same nature as those pledged to the payment of the obligations being refunded thereby. Said refunding bonds, and the interest coupons appurtenant thereto, shall be negotiable instruments and they may be made redeemable prior to maturity, and may be issued in such form, denomination, and manner, and under such terms, conditions and details, and shall be signed and executed, as provided by the governing board or the commissioners court in the resolution or order authorizing the issuance of said refunding bonds. The refunding bonds shall be issued and delivered in lieu of, and upon surrender to the comptroller of public accounts of Texas and cancellation of, the obligations being refunded thereby, and the comptroller of public accounts shall register the refunding bonds and deliver the same in accordance with the provisions of the resolution or order authorizing the refunding bonds. Such refunding may be accomplished in one or in several installment deliveries. Said refunding bonds also may be issued and delivered in accordance with the provisions of and procedures authorized by any other applicable law.

[Acts 1969, 61st Leg., p. 2896, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 20.06. Examination of Bonds by the Attorney General**

All bonds issued pursuant to this subchapter, and the appropriate proceedings authorizing their issuance, shall be submitted to the attorney general of Texas for examination. If he finds that such bonds have been authorized in accordance with law he shall approve them, and thereupon they shall be registered by the comptroller of public accounts of the State of Texas; and after such approval and regis-

tration such bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

[Acts 1969, 61st Leg., p. 2897, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 20.07. Bonds are Legal Investments**

All bonds issued pursuant to this subchapter shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, small business investment corporations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies and bodies politic. Said bonds also shall be eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of said bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

[Acts 1969, 61st Leg., p. 2897, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 20.08. Previously Voted Bonds and Taxes**

All tax bonds voted in any school district in accordance with law but unissued at the effective date of this code may be issued in the manner provided by the law in effect at the time such bonds were voted, or issued in the manner provided in this subchapter, to the extent pertinent and applicable, without an additional election; and all maintenance taxes heretofore voted in any school district in accordance with law may be levied and collected in the manner provided by the law in effect at the time such bonds were voted, or issued in the manner provided in this subchapter, to the extent pertinent and applicable, without an additional election.

[Acts 1969, 61st Leg., p. 2897, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 20.09 to 20.20 reserved for expansion]

SUBCHAPTER B. SCHOOL DISTRICT REVENUE BONDS

**§ 20.21. Gymnasia, Stadia, and Other Recreational Facilities**

The governing board of each independent school district (including, as to each municipally controlled independent school district, the city council or commission which has jurisdiction thereof) and the governing board of each rural high school district, and the commissioners court of every county, for and on behalf of each common school district under its jurisdiction, shall be authorized and have the power to acquire, purchase, construct, improve, enlarge, equip, operate, and maintain gymnasia, stadia, or other recreational facilities for and on behalf of its district, and such facilities may be located within or without the district.

[Acts 1969, 61st Leg., p. 2898, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 20.22. Revenue Bonds

For the purpose of providing funds to acquire, purchase, construct, improve, enlarge, and/or equip gymnasias, stadia, or other recreational facilities, such board or commissioners court shall be authorized to issue its revenue bonds to be payable from and secured by liens on and pledges of all or any part of any of the revenues from any rentals, rates, charges, or other revenues from any or all of such facilities, in the manner hereinafter provided. Said bonds may be additionally secured by mortgages and deeds of trust on any real property on which any of said facilities are or will be located, or any real or personal property incident or appurtenant to said facilities, and the board or the commissioners court may authorize the execution and delivery of trust indentures, mortgages, deeds of trust or other forms of encumbrances to evidence same. Said bonds may be issued to mature serially or otherwise not to exceed 50 years from their date. In the authorization of any such bonds, each board or the commissioners court may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, or other types of bonds, under such terms or conditions as may be set forth in the resolution or order authorizing the issuance of said bonds, all within the discretion of the board or commissioners court. Said bonds, and any interest coupons appertaining thereto, shall be negotiable instruments (provided that such bonds may be issued registrable as to principal alone or as to both principal and interest), and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and may be sold in such manner, at such price, and under such terms, and said bonds shall bear interest at such rates, as shall be determined and provided by the board or commissioners court in the resolution or order authorizing the issuance of said bonds. If so permitted in the bond resolution or order, any required part of the proceeds from the sale of the bonds may be used for paying interest thereon during the period of the construction of any facilities to be provided through the issuance of said bonds, and for the payment of operation and maintenance expenses of said facilities to the extent, and for the period of time, specified in said bond resolution, and also for the creation of reserves for the payment of the principal of and interest on the bonds; and such moneys may be invested, until needed, to the extent, and in the manner provided, in said bond resolution or order.

[Acts 1969, 61st Leg., p. 2898, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 20.23. Rentals, Rates, and Charges

The board or commissioners court shall be authorized to fix and collect rentals, rates, and charges, from students and others for the occupancy or use of any of said facilities, in such amounts and in such manner as may be determined by such board or commissioners court.

[Acts 1969, 61st Leg., p. 2898, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 20.24. Pledge of Revenues

The board or commissioners court shall be authorized to pledge all or any part of any of its revenues from the aforesaid facilities to the payment of any bonds issued hereunder, including the payment of principal, interest, and any other amounts required or permitted in connection with said bonds. When any of the revenues from said facilities are pledged to the payment of bonds, the rentals, rates and charges for the occupancy or use thereof shall be fixed and collected in such amounts as will be at least sufficient to provide for all payments of principal, interest, and any other amounts required in connection with said bonds, and, to the extent required by the resolution or order authorizing the issuance of said bonds, to provide for the payment of operation, maintenance, and other expenses.

[Acts 1969, 61st Leg., p. 2899, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 20.25. Refunding Bonds

Any revenue bonds issued by any such board or commissioners court under this subchapter, and any revenue bonds issued by any such board or commissioners court under any other Texas statute and payable from revenues from any such facilities may be refunded or otherwise refinanced by such governing board or commissioners court, and in such case all pertinent and appropriate provisions of this subchapter shall be fully applicable to such refunding bonds. In refunding or otherwise refinancing any such bonds the board or commissioners court may, in the same authorizing proceedings, refund or refinance bonds issued pursuant to this code and bonds issued pursuant to any other such Texas statute and combine all said refunding bonds and any other additional new bonds to be issued pursuant hereto into one or more issues or series of bonds, and may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, or other type of bonds. All refunding bonds shall be issued and delivered under such terms and conditions as may be set forth in the authorizing proceedings.

[Acts 1969, 61st Leg., p. 2899, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 20.26. Examination of Bonds by the Attorney General

All bonds issued pursuant to this subchapter, and the appropriate proceedings authorizing their issuance, shall be submitted to the attorney general of Texas for examination. If he finds that such bonds have been authorized in accordance with law he shall approve them, and thereupon they shall be registered by the comptroller of public accounts of Texas; and after such approval and registration such bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

[Acts 1969, 61st Leg., p. 2899, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 20.27. Bonds Eligible as Investments and Security

All bonds issued pursuant to this subchapter shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, small business investment corporations, insurance companies of all kinds and

types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies and bodies politic. Said bonds also shall be eligible and lawful security for all deposits of public funds of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of said bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

[Acts 1969, 61st Leg., p. 2899, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 20.28 to 20.40 reserved for expansion]

SUBCHAPTER C. MISCELLANEOUS PROVISIONS

§ 20.41. Proceeds; Use for Water, Sewer or Gas Connections

Whenever bonds are hereafter voted and issued by school districts for the statutory purpose of construction and equipment of school buildings in the district and the purchase of the necessary sites therefor, the bond proceeds may be used, among other things, to pay the cost of acquiring, laying, and installing pipes or lines to connect with the water, sewer, or gas lines of an incorporated city or town, including home rule cities, or other municipal corporation, or private utility company (whether or not the water, sewer, or gas lines of such city, town, or other municipal corporation adjoin the school site or sites), so that the school district may afford its public free school buildings of the water, sewer, or gas services offered by such city, town, or other municipal corporation, or private utility company.

[Acts 1969, 61st Leg., p. 2900, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 20.42. Investment of Bond Proceeds in Obligations of United States; Interest Bearing Secured Time Bank Deposits

From and after the effective date of this code, any school district within the state which has or may have on hand any sums of money which are proceeds received from the issue and sale of bonds of any such school district, either before or after the effective date of this code, which proceeds are not immediately needed for the purposes for which such bonds were issued and sold, may, upon order of the board of trustees of such school district, place the proceeds of such bonds on interest bearing time deposit, secured in the manner provided in Section 23.63 of this code, with a state or national banking corporation within this state, or invest the proceeds of such bonds in bonds of the United States of America or in other obligations of the United States of America, as may be determined by the board of trustees of the school district; but such interest bearing secured time deposits or bonds or other obligations of the United States of America shall be of a type which cannot be cashed, sold or redeemed for an amount less than the sum deposited or invested therein by such school district; and when such sums so placed or so invested by a school district are needed for the

purposes for which the bonds of the school district were originally authorized, issued and sold, such time deposits or bonds or other obligations of the United States of America in which such sums have been placed or invested shall be cashed, sold or redeemed and the proceeds thereof shall be used for the purposes for which the bonds of the school district were originally authorized, issued and sold. [Acts 1969, 61st Leg., p. 2900, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 20.43. Interest Bearing Time Warrants

(a) Any school district in the State of Texas in need of funds to repair or renovate school buildings; purchase school buildings and school equipment; to equip school properties with necessary heating, water, sanitation, lunchroom and electric facilities; or is in need of funds with which to employ an individual firm or corporation deemed to have special skill and experience to compile taxation data for use by its board of equalization; and said school district is financially unable out of available funds to make such repairs, renovations of school buildings, purchase school buildings, purchase school equipment, to equip school properties with necessary heating, water, sanitation, lunchroom or electric facilities or is unable to pay such individual or corporation for the performance of the professional duties hereinabove mentioned, may, subject to the provisions hereof, issue interest-bearing time warrants, in amounts sufficient to make such purchase and improvements, to pay all or part of the compensation of such individual, firm or corporation to compile such data, any law to the contrary notwithstanding. Such warrants shall mature in serial installments of not more than five years from their date of issue, and to bear interest at a rate not to exceed six percent per annum. Such warrants shall upon maturity be payable out of any available funds of such school district in the order of their maturity dates. Any such interest-bearing time warrants so issued may be issued and sold by such district for not less than their face value, and the proceeds thereof used to provide funds required for the purpose for which they are issued. Such warrants shall be entitled to first and prior payment out of any available funds of such district as they become due. Included in such purposes is the payment of any amounts owed by said school districts, which indebtedness was incurred in carrying out any of such purposes.

(b) No such interest-bearing time warrants shall be issued or sold by a common school district, rural high school district, or an independent school district of less than 150 scholastics until the same shall have been approved by the county board of school trustees; and said board shall, upon application of such school district, inquire into the financial conditions and needs of such district, and shall not approve the issuance of such interest-bearing time warrants unless in its opinion said district is in need of such repair and renovation of school building, and school equipment and to equip school properties with necessary heating, water, sanitation, lunchroom and electric facilities, and will be able with the resources in prospect to liquidate said warrants at their maturity.

(c) No school district in the State of Texas shall issue such interest-bearing time warrants in excess of two percent of the assessed valuation of the district, for the year in which such interest-bearing

time warrants are issued; nor shall the payment of such interest-bearing time warrants in any one year exceed the anticipated surplus income of the district for the year in which the warrants are issued. Based on the budget of the district for said year, such anticipated income to be computed by taking the entire expected income of such school district from every source for the year in which such interest-bearing time warrants are issued, less teachers' salaries, bus aid included in the foundation fund, and that part of the local maintenance tax earmarked for salaries and known in the Gilmer-Aiken Law<sup>1</sup> as the economic index or fund assignment. The anticipated income computation as herein defined shall be exclusive of all bond taxes. No school district shall have outstanding at any one time warrants totaling in excess of \$60,000 under the provisions of this section.

(d) In every instance wherein interest-bearing time warrants or other evidence of indebtedness have been issued by school districts within the State of Texas for any of the purposes herein provided for, the act of the board of trustees, and/or governing board of such district in issuing such interest-bearing time warrants are each and all hereby expressly validated. The indebtedness thus attempted to be created by such action is hereby declared to be the indebtedness of such district and shall be paid out of available funds as herein provided.

(e) Whenever any such interest-bearing time warrants have been issued under this section, and so long as any of them may be outstanding the officer in charge of the collection of delinquent taxes shall pay the same to legal depository of the district, to be deposited and held in a special fund for the payment of such interest-bearing time warrants, and except as herein otherwise provided, no part thereof shall be applied or used for any other purpose.

(f) Interest and penalties on delinquent taxes shall be deemed a part of such taxes for the purpose of this section. Should any delinquent taxes, including interest and penalties, be cancelled, waived, released or reduced either by such school district or in any other way, with or without its consent, the amount of the loss so sustained shall be paid by the district to the special fund provided for herein out of funds not otherwise pledged to such special fund.

(g) All school districts issuing interest-bearing time warrants shall have the power to fix lien on and encumber and mortgage any and all property purchased with the proceeds of such warrants, and to fix a lien on and encumber any property, including teacherages owned by the district to secure the payment of legally incurred obligations. Provided, however, there shall never be a valid lien authorized or fixed on any school building wherein actual classroom instruction of pupils attending such school is being carried on or conducted.

(h) The word "interest-bearing time warrant" as used in this section means promissory note, interest-bearing time warrant, obligation or other evidence of indebtedness issued under this section.

(i) Taxes levied in any year to pay principal and interest of bonds and which taxes subsequently become delinquent for the purpose of this section, shall not be included in the term taxes or revenues or delinquent taxes as herein used.

<sup>1</sup> West's Tex. Stats. & Codes—26

[Acts 1969, 61st Leg., p. 2900, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1512, ch. 405, § 39, eff. May 26, 1971.]

<sup>1</sup> The Teachers' Retirement Act, classified as Civil Statutes, Art. 2922-1 (repealed; see, now, section 3.01 et seq.).

#### § 20.44. Delinquent Tax Penalties in Independent Districts Having City of 275,000

(a) That the board of education or the board of trustees, as the case may be, of any independent school district within the State of Texas, whether created by general law or special act of the legislature, and wherein there may be situated a city having not less than 275,000 population according to the last preceding federal census, shall have the power by passing a resolution by a majority vote of the members of said board of education or board of trustees, as the case may be, beginning with 1933 delinquent taxes due to any such school district, to require in addition to the payment of any such delinquent taxes, in lieu of the present penalties provided by law, the payment of a penalty of two percent upon the amount of the tax due if paid during the first month of such delinquency, four percent if paid during the second month of such delinquency, six percent if paid during the third month of such delinquency, eight percent if paid during the fourth month of such delinquency, nine percent if paid during the fifth month of such delinquency, and 10 percent if paid thereafter. Such resolution shall provide that, in addition to the payment of the tax and penalty as provided, interest at the rate of six percent per annum shall be charged and paid upon the gross amount of the tax and penalty due from the date the tax became delinquent until paid.

(b) Until and unless the board of education or board of trustees of any such independent school district shall pass the resolution provided for in the next preceding section hereof, the penalties and interest now provided by law on delinquent taxes due to any such independent school district shall be and remain in full force and effect.

(c) Notwithstanding the fact that such board of education or board of trustees of any such independent school district may hereafter, during any particular year, pass a resolution as provided for in Subsection (a) of this section, such action may be rescinded as to future years thereafter by a resolution passed by such board of education or board of trustees in any such school district by a majority vote of the members of such board of education or board of trustees, in which event the same interest and penalties now provided by law on delinquent taxes due to independent school districts shall immediately accrue on all taxes thereafter becoming delinquent if such taxes be not paid before the same become delinquent.

[Acts 1969, 61st Leg., p. 2902, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 20.45. Pledge of Delinquent Taxes as Security for Loan

The board of trustees of any school district of Texas is hereby authorized to pledge its delinquent school taxes levied for local maintenance purposes for specific school years as security for a loan, and such delinquent taxes pledged shall be applied against the principal and interest of the loan as they

are collected. Provided, there shall be no pledging of delinquent taxes levied for school bonds for purposes herein set out. Funds secured through such loans may be employed for any legal maintenance expenditure or purpose of the school district. Provided further, that such loans may bear interest at a rate not to exceed six percent per annum.

[Acts 1959, 61st Leg., p. 2903, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 20.46. Additional Tax for Construction, Repair and Equipment of School Buildings; Purchase of Sites; Election**

(a) Any school district, whether created under general or special law, having all or a portion of its territory situated in a county having a population of more than 190,000 according to the last preceding federal census, shall have the authority to levy an ad valorem tax, not to exceed 50 cents per \$100 valuation, for the purpose of paying the cost of the purchase, construction, repair, renovation or equipment of public free school buildings and the purchase of necessary sites therefor, provided, however, that no bonds or other evidence of indebtedness may be issued payable in whole or in part from the tax herein authorized; and provided further that no contract shall be made which will encumber more than the revenues to be collected from said tax in any one fiscal year.

(b) This additional tax for the maintenance of public free schools shall not be levied or collected until such time as it has been approved by a majority of the resident, qualified, property-taxpaying voters who own taxable property within the district which has been duly rendered for taxation, participating in an election called for that purpose, have approved the additional maintenance tax. Nothing herein shall prohibit the submission of other propositions at such election; provided, however, that the proposition for the additional maintenance tax shall not be included in any other maintenance tax proposition, but shall be voted upon separately.

(c) It is the intent of this section to confer upon the school districts situated in large counties the right and power to make contracts for the expenditure of current funds for the same purpose as it may issue bonds, without the necessity of issuing bonds and paying the interest on such obligations, and shall be construed to this end and as not being in conflict with the provisions of any other law regulating the issuance of bonds. The election for the additional maintenance tax shall be called and held in the manner provided by Section 20.04(a) and (c) of this code.

(d) The provisions of this statute shall not preclude the use of other tax revenues for such revenues to be so used.

[Acts 1969, 61st Leg., p. 2903, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 20.47. Additional Tax for Construction, Repair and Equipment of Schools in Counties With Population in Excess of 150,000; Purchase of Sites; Election**

(a) Any school district whether created under general or special law, having all or a portion of its territory situated in a county having a population of more than 150,000 according to the last preceding federal census and having or acquiring the authority

to levy under then existing law an ad valorem tax of not to exceed \$1.75 per \$100.00 of assessed valuation for maintenance purposes, shall have the authority to levy, apportion and expend out of any such maintenance tax levy \$.50 per \$100.00 of assessed valuation for the purpose of paying the cost of purchase, construction, repair, renovation and equipment of public free school buildings and purchase of sites therefor; provided, however, that no bonds or other evidences of indebtedness may be issued payable in whole or in part from the maintenance tax so levied and allocated and provided further that no contract shall be made which will encumber more than the revenues on hand and to be collected from said tax in any one fiscal year.

(b) The levy, allocation and expenditure of such portion of the maintenance tax as herein provided, may be made after such action has been approved by a majority of the resident, qualified property tax paying voters, who own taxable property within the district which has been duly rendered for taxation, participating in an election called for that purpose. This section shall not affect maintenance taxes levied for the year 1958 and prior years by any school district adopting same.

(c) It is the intent of this section to confer upon school districts to which it is applicable now or hereafter, the right and power to make contracts for the expenditure of maintenance funds for the same purpose as it may issue bonds, without the necessity of issuing bonds and paying the interest on such obligations and this section shall be construed to this end and as not being in conflict with the provisions of any other law regulating the issuance of bonds. The election for the allocation and expenditure of such maintenance tax as provided herein shall be called and held in the manner provided by Section 20.04(a) and (3)<sup>1</sup> of this code.

(d) The provisions of this statute shall not preclude the use of any tax revenues for the same or different purposes as herein specified to the extent it is now lawful for such revenues to be used.

[Acts 1969, 61st Leg., p. 2904, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Probably should read "(e)".

**§ 20.48. Authorized Expenditures**

(a) The public free school funds shall not be expended except as provided in this section.

(b) The state and county available funds shall be used exclusively for the payment of teachers' and superintendents' salaries, fees for taking the scholastic census, and interest on money borrowed on short time to pay salaries of teachers and superintendents, when these salaries become due before the school funds for the current year become available; provided that no loans for the purpose of payment of teachers shall be paid out of funds other than those for the then current year.

(c) Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used for the purposes enumerated for state and county funds and for purchasing appliances and supplies, for the payment of insurance premiums, janitors and other employees, for buying school sites, buying, building and repairing and renting school houses, and for other purposes necessary in the conduct of the public schools to be

determined by the board of trustees, the accounts and vouchers for county districts to be approved by the county superintendent; provided, that when the state available school fund in any city or district is sufficient to maintain the schools thereof in any year for at least eight months, and leave a surplus, such surplus may be expended for the purposes mentioned herein.

(d) All independent school districts having within their limits a city with a population of 160,000 or more according to the last preceding federal census shall, in addition to the powers now possessed by them for the use and expenditure of local school funds and for the issuance of school bonds, be expressly authorized and empowered, at the option of the governing body of any such school district, in the buying of school sites and/or additions to school sites and in the building of school houses, to issue and deliver notes of the school district, negotiable or non-negotiable in form, representing all or a part of the purchase price or cost to the school district of the land and/or building so purchased or built, and to secure such notes by a vendor's lien and/or deed of trust lien against such land and/or building, and, by resolution or order of the governing body of the school district made at or before the delivery of such notes, to set aside and appropriate as a trust fund, and the sole and only fund, for the payment of the principal of and interest on such notes such part and portion of the local school funds, levied and collected by the school district in that year and/or subsequent years, as the governing body of the school district may determine, provided that in no event shall the aggregate amount of local school funds set aside in or for any subsequent year for the retirement of such notes exceed, in any one such subsequent year, 10 percent of the local school funds collected during such year.

[Acts 1969, 61st Leg., p. 2904, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 20.481. Use of County Available Fund Apportionment for Vocational and Technical Schools

Where any public school district or accumulation of districts of this state operates a school designated as an area vocational school for vocational and technical school purposes and/or which participates in such a designated area vocational school program, its annual county available school fund apportionment, if any, shall be employed in the operation of such school and/or in financing facilities therefor notwithstanding any laws to the contrary; provided further, that any such school district(s) shall not be held accountable for or charged with county available school funds in determination of eligibility for minimum foundation school program funds.

[Acts 1971, 62nd Leg., p. 3008, ch. 994, § 4, eff. Aug. 30, 1971.]

#### § 20.49. Borrowing Money for Current Maintenance Expenses

(a) Independent or consolidated school districts are hereby authorized to borrow money for the purpose of paying maintenance expenses and to evidence such loans with negotiable notes; provided that at no time shall said loans exceed 75% of the previous years' income. Such notes shall be payable only from current maintenance taxes levied at or

before the time of making such loans and from delinquent maintenance taxes. The term "maintenance expenses" or "maintenance expenditures" as used in this section means any lawful expenditure of the school district other than payment of principal of and interest on bonds.

(b) Such notes may be issued only after a budget has been adopted for the current school year and the maintenance expenditures stated therein do not exceed the maintenance tax levied for the current year, plus the delinquent maintenance taxes expected by the board of trustees to be collected during the then current school year. A budget, within the meaning of this section, may be amended or a new budget may be adopted at any time before the issuance of such notes.

(c) Such notes shall be authorized by resolution adopted by a majority vote of the board of trustees, signed by the president or vice president and attested by the secretary of said board. The notes shall bear interest at a rate of not to exceed six percent per annum.

(d) Any such note may contain a certification that it is issued pursuant to and in compliance with this section, and pursuant to a resolution duly adopted by the board of trustees, and such certification shall constitute sufficient evidence that said note is a valid and binding obligation of the district.

(e) This section is cumulative of and is not intended to replace or impair the provisions of Section 20.48 of this code.

[Acts 1969, 61st Leg., p. 2905, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 20.50. Contracts for Athletic Facilities

(a) Any independent school district, acting by and through its board of trustees, is hereby authorized to enter into a contract with any corporation, or any city or any institution of higher learning of the State of Texas (State University or College) located wholly or partially within its boundaries, for the use of any stadium and other athletic facilities owned by, or under the control of, any such entity. Such contract may be for any period, not exceeding 75 years, and may contain such terms and conditions as may be agreed upon between the parties.

(b) The district may enter into such contract for the use of such stadium and other athletic facilities for any purpose related to sports activities and other physical education programs for the students at the public free schools operated and maintained by such independent school district.

(c) The consideration for any such contract may be paid from any source available to such independent school district; but it<sup>1</sup> voted, as hereinafter provided, such independent school district shall be authorized to pledge to the payment of said contract an annual maintenance tax in an amount sufficient, without limitation, to provide all of such consideration. If so voted and pledged, such maintenance tax shall be assessed, levied, and collected annually in the same manner as provided by general law applicable to independent school districts for other maintenance taxes.

(d) No maintenance tax shall be pledged to the payment of any such contract or assessed, levied or collected unless an election is held in the independent school district and any such maintenance tax is

duly and favorably voted by a majority of the resident, qualified electors of the independent school district who own taxable property therein and who have duly rendered the same for taxation, voting at said election. Each such election shall be called by order of the board of trustees of the independent school district. The election order shall set forth the date of the election, the proposition to be submitted and voted on, the polling place or places, and any other matters deemed advisable by the board of trustees. Notice of said election shall be given by publishing a substantial copy of the order calling the election one time, at least ten days prior to the election, in a newspaper of general circulation in the district. Except as herein otherwise specifically provided, any such election shall be held in accordance with the Texas Election Code.

[Acts 1969, 61st Leg., p. 2906, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> So in enrolled bill; probably should read "if".

**§ 20.51. Issuance of Time Warrants by Districts Entitled to Certain Federal Aid**

[Text as added by Acts 1973, 63rd Leg., p. 53, ch. 36, § 1]

(a) This section applies to any independent school district and to any common school district within the State of Texas, whether created by general law or special Act of the Legislature, which is entitled to payments for maintenance and operation of schools under the Act of September 30, 1950, 64 United States Statutes at Large 1100, Public Law 874 (81st Congress) as amended.<sup>1</sup>

(b) The board of trustees of an independent school district or of a common school district described in Subsection (a) of this section may, upon a determination that there are insufficient funds to properly operate and maintain the district's schools, make and enter an order in their minutes directing:

(1) the issuing of time warrants sufficient to obtain funds for operation and maintenance of the district's schools and payment of existing accounts already obligated for these purposes;

(2) the levying of a tax sufficient to pay the principal and interest on the warrants where a sufficient maintenance tax had theretofore been authorized by a vote of the legally qualified voters in the district; and

(3) the creation of an interest and sinking fund.

(c) The board shall deposit in the sinking fund, created by the order in Subsection (b) of this section, an amount from each year's maintenance taxes sufficient to pay the principal and interest on outstanding warrants when they become due and payable, and the funds may only be used to pay the principal and interest on the warrants.

(d) The warrants shall be payable serially and annually for a period of years not to exceed eight, and shall bear interest at a rate not to exceed six percent per annum, with the option to call any part or all of the warrants for payment on any interest installment or paying date, and may provide for the payment of interest on a quarterly or semiannual basis.

(e) The president of the board shall sign the warrants and the secretary shall countersign them.

(f) The board may not sell the warrants for less than par value and accrued interest.

(g) The board may not issue time warrants exceeding the amount to which the independent school district or the common school district was entitled on January 1, 1972, to receive as payments for maintenance and operation of schools under the Act of September 30, 1950, 64 United States Statutes at Large 1100, Public Law 874 (81st Congress) as amended, plus any anticipated payments for maintenance and operation of schools to which the independent school district or the common school district would be entitled through the expiration of the fiscal year of the United States Government which commences July 1, 1973, in accordance with the pertinent provisions of the aforesaid Act of September 30, 1950, 64 United States Statutes at Large 1100, Public Law 874 (81st Congress) as it existed on January 1, 1972.

(h) The board may not issue or execute a warrant after the expiration of four years from June 1, 1972.

(i) Upon the issuance of any warrants provided for in this section, the affidavit of the president and secretary of the board of trustees that the warrants have been issued in conformity with this section, and the statement on the face of each warrant so issued or executed that they are made in compliance with and under the authority of this section, shall be prima facie evidence of the validity of the warrants.

(j) This section shall not be construed as repealing any laws now in existence authorizing the issuance of interest-bearing time warrants, but this section shall be cumulative of all existing laws and Acts.

[Acts 1973, 63rd Leg., p. 53, ch. 36, § 1, eff. April 12, 1973.]

<sup>1</sup> 20 U.S.C.A. § 236 et seq.

For text as added by Acts 1973, 63rd Leg., p. 81, ch. 51, § 4, and Acts 1973, 63rd Leg., p. 286, ch. 135, § 1, see Sections 20.51, post.

**§ 20.51. Certificates of Indebtedness; Issuance by Certain School and Junior College Districts**

[Text as added by Acts 1973, 63rd Leg., p. 81, ch. 51, § 4]

(a) Any school district, including a junior college district, situated in a county containing a population of 200,000 or more, according to the last preceding federal census, may issue interest-bearing certificates of indebtedness for the purpose of providing funds for the erection and equipment of school buildings within the boundaries of the district or refinancing outstanding certificates as herein provided. The term "certificates," as used in this section, includes all obligations authorized to be issued hereunder, and the term shall include interest thereon, unless clearly indicated by the context that another meaning is intended.

(b) The governing body of the district shall make provision for the payment of the certificates issued under the authority of this section by the appropriation and pledge of local school funds derived and to be derived from maintenance taxes levied and assessed or to be levied and assessed under authority of Sections 20.02 and 130.122 of this code, Chapter 273, Acts of the 53rd Legislature, 1953, as amended (Article 2784g, Vernon's Texas Civil Statutes), or other similar law now in existence or hereinafter

enacted which limits the amount of tax which may be levied for maintenance purposes, as distinguished from bond requirements. The appropriation and pledge may be in the nature of a continuing irrevocable pledge to apply the first moneys collected or to be collected annually from the tax levy to the payment of the obligations or by the irrevocable present levy and appropriation of the amount of the maintenance tax as is required to meet the annual debt service requirements of the obligations, in which event the governing body shall covenant to annually set aside the amount in the annual tax levy, showing the same is a portion of the maintenance tax. The governing body shall annually budget the amount required to pay the debt service requirements, principal and interest, of the obligations which may be scheduled to become due in any fiscal year. Nothing herein shall be construed as permitting the levy of a maintenance tax in excess of the amount approved by the resident qualified property taxpaying voters of the district.

(c) No district at any one time shall have certificates outstanding and unpaid in principal amount in excess of \$250,000 unless the excessive amount becomes the obligation of the district by assumption as contemplated by Subsection (k) of this section or the new certificates are being issued to refund or refinance outstanding obligations as contemplated by Subsection (i) of this section.

(d) The principal amount of certificates which may be authorized at any one time and the scheduling of their principal maturity shall be further restricted as follows:

(1) where the assessed valuation is more than \$1 million and less than \$15 million the limiting factor is 25 cents.

(2) where the assessed valuation is \$15 million or more but less than \$35 million the limiting factor is 15 cents.

(3) where the assessed valuation is \$35 million or more the limiting factor is 5 cents.

(e) Assessed valuation means the valuation for school district purposes on the tax rolls of the district last approved prior to the authorization of the certificates. The limiting factor for a particular district, as set forth in the foregoing schedule, shall be multiplied by the assessed valuation of the district and the product shall be the maximum amount of debt service requirements on the certificates which may be scheduled to become due in any fiscal year on a cumulative basis. No district which has an assessed valuation less than \$1 million may issue certificates under this section.

(f) Certificates authorized to be issued hereunder shall be payable at such times, be in such form and denomination or denominations either in coupon form or registered as to principal and interest, either or both, and may contain such options for redemption prior to the scheduled maturity, and be payable at such place or places and contain such other provisions as the governing body of the district may determine, but in no event shall any certificate mature over a period in excess of 25 years from the date thereof, or bear interest at a rate in excess of seven percent per annum.

(g) Except where issued in exchange for certificates outstanding as provided in Subsection (i), the certificates shall be sold for cash at not less than the

face or par value plus accrued interest and the proceeds applied for the purpose for which the same were issued, provided, however, that all accrued interest and premium received, if any, shall be deposited in the interest and sinking fund established for the payment of the obligations. The cost of issuing the obligations, including attorneys', printing, and fiscal fees, may be paid from the proceeds received from the sale thereof, except where such certificates are sold under the provisions of Subsection (i).

(h) The certificates, including interest thereon whether issued in coupon or registered form, shall be deemed and construed to be a security within the meaning of Chapter 8, dealing with "Investment Securities," of the Uniform Commercial Code,<sup>1</sup> and the provisions shall be applicable thereto from and after their approval by the Attorney General of Texas and registration by the comptroller of public accounts.

(i) Each governing body may refund or refinance outstanding certificates by the issuance of new interest-bearing certificates within the limitations and conditions provided herein. The new certificates shall be issued and delivered in lieu of and upon surrender to the Comptroller of Public Accounts of Texas and the cancellation of the obligations being refunded thereby, and the comptroller shall register the new certificates and deliver them in accordance with the order authorizing their issuance. The new certificates may be issued and delivered in accordance with the provisions of Chapter 503, Acts of the 54th Legislature, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes).

(j) A certified copy of all proceedings relating to the authorization of the certificates shall be submitted to the Attorney General of Texas and if he finds the certificates to have been authorized in accordance with the provisions of this section, he shall execute a certificate or opinion to that effect which shall be filed in the office of the comptroller of public accounts, who shall register the certificates which shall thereafter be incontestable for any cause.

(k) Certificates issued under the provisions of this section shall be an indebtedness of the school district issuing them, but the holder thereof shall not have the right to demand payment thereof out of any fund or funds other than those pledged to its payment. In the event the boundary lines of any issuing district are changed while the certificates remain outstanding, the indebtedness shall be adjusted or assumed as provided under general law for the adjustment of bond indebtedness payable from taxation.

(l) All certificates issued under this section shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees and guardians, and for any sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. The certificates shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas, and shall be lawful and sufficient security for deposits at their

face value when accompanied by all unmatured coupons, if any, appurtenant thereto.

(m) For the purpose of this section, the governing body of a common school district shall be the commissioners court of the county having administrative jurisdiction. The governing body of an independent school district, a rural high school district, or a junior college district shall be its duly elected board of trustees, and the governing body of a municipality controlled school district shall be the city or town council or commission. Certificates shall be authorized by order of the governing body of the district.

(n) The provisions of this section shall be cumulative of existing laws relating to the financing of the cost of erecting and equipping school buildings by school districts, it being the legislative intent that this section shall be complete authority for the issuance, sale, and delivery of certificates by school districts.

(o) Nothing in this section shall be construed to violate any provision of the federal or state constitutions and all acts done hereunder shall be done in such manner as may conform thereto whether herein expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the district shall have the power by resolution to provide an alternative procedure conformable to the constitutions.

[Acts 1973, 63rd Leg., p. 81, ch. 51, § 4, eff. Aug. 27, 1973.]

<sup>1</sup> See V.T.C.A. Bus. & C. § 8.101 et seq.

*For text as added by Acts 1973, 63rd Leg., p. 53, ch. 36, § 1, and Acts 1973, 63rd Leg., p. 286, ch. 135, § 1, see Sections 20.51, ante and post.*

**Amendment by Acts 1973, 63rd Leg., p. 1776, ch. 651, § 1**

*Acts 1973, 63rd Leg., p. 1776, ch. 651, § 1, effective June 16, 1973, purports to amend Vernon's Ann.Civ.St. art. 2784g-2, § 1 [now, subsec. (a) of this section] without reference to repeal of said article by Acts 1971, 63rd Leg., p. 90, ch. 51, § 19, effective August 27, 1973. As so amended, § 1 of article 2784g-2 reads: "(a) Any school district, including a junior college district, may issue interest bearing Certificates of Indebtedness for the purpose of (1) providing funds for the erection and equipment of school buildings within the boundaries of the district, (2) refinancing outstanding certificates as herein provided, or (3) purchasing sites for the future construction of public school facilities. The term certificates, as used in this Act, shall include all obligations authorized to be issued hereunder and the term shall include interest thereon, unless clearly indicated by the context that another meaning is intended."*

**§ 20.51. Athletic Stadium Authorities**

*[Text as added by Acts 1973, 63rd Leg., p. 286, ch. 135, § 1]*

(a) Athletic stadium authorities without taxing power may be created as hereinafter provided.

(b) As used in this section:

(1) "District" means any independent school district in this state.

(2) "Stadium" means the structural and associated facilities designed for staging and holding athletic contests and other events.

(3) "Authority" means an athletic stadium authority created under this Act.

(4) "Board" or "board of directors" means the board of directors of the authority.

(5) "Bond resolution" means the resolution authorizing the issuance of revenue bonds.

(6) "Trust indenture" means the mortgage, deed of trust, or other instrument pledging revenues of or creating a mortgage lien on properties, or both, to secure the revenue bonds issued by the authority.

(7) "Trustee" means the trustee under the trust indenture.

(c) If the boards of trustees of two districts find that it is to the best interest of the districts to create an athletic stadium authority to include the districts, each board of trustees shall adopt a resolution creating an authority and designating the name by which it shall be known. The authority shall be a body politic and corporate. It shall have a seal, may sue and be sued, and may make, amend, and repeal its bylaws.

(d) The authority shall be governed by a board of directors consisting of seven members. The members of the board shall serve terms ending May 1, providing the terms do not exceed two years, or until their successors are appointed and qualified. The board of trustees of each district shall each appoint three of the directors, and the appointees shall by majority vote appoint a seventh director.

(e) The board of directors shall elect from among the directors a president and vice-president, and shall elect a secretary and a treasurer who may or may not be directors, and may elect such other officers as may be authorized by the authority's bylaws. The offices of secretary and treasurer may be combined. The president has the same right to vote on all matters as other members of the board. A majority of the members of the board constitutes a quorum, and when a quorum is present, action may be taken by a majority vote of directors present. The board may employ a manager and such other employees, experts, and agents as it may see fit, but it may delegate to the manager the power to employ and discharge employees. The board may employ legal counsel.

(f) The authority shall have the power to construct, enlarge, furnish, and equip stadia, purchase existing stadia, furnishings, and equipment for its stadia, and to operate and maintain stadia. A stadium need not be located inside the district or districts.

(g) The authority may issue revenue bonds to provide funds for any of its purposes. The bonds shall be payable from and secured by a pledge of all or any part of the revenue to be derived from the operation of the stadium or stadia and any other revenues resulting from the ownership of stadium properties. The bonds may be additionally secured by a mortgage or deed of trust on property of the authority.

(h) The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the board of directors, and shall be signed by the president or

vice-president and countersigned by the secretary, or either or both of their facsimile signatures may be printed thereon. The seal of the authority shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed 40 years. The bonds may be registrable as to principal, or as to both principal and interest. Appropriate provisions may be inserted in the resolution authorizing the execution and delivery of bonds for the conversion of registered bonds into bearer bonds and vice versa. Provisions may be made in the bond resolution or trust indenture for the substitution of new bonds for those lost or mutilated. When bonds shall have once been approved by the attorney general and registered by the comptroller as prescribed in Subsection (1) of this section, it shall not be necessary to obtain the approval of the attorney general or registration by the comptroller as to such converted or substituted bonds.

(i) All bonds issued pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking fund of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value, when accompanied by all unmatured coupons appurtenant thereto.

(j) Bonds constituting a junior lien on the revenue or properties may be issued unless prohibited by the bond resolution or trust indenture. Parity bonds may be issued under conditions specified in the bond resolution or trust indenture.

(k) (1) Any district, acting by and through its board of trustees, is authorized to enter into a contract with any athletic stadium authority organized under this section for the use of any stadium or stadia owned by any that<sup>1</sup> entity. Such contract may be for any period, not exceeding 75 years, and may contain such terms and conditions as may be agreed on between the parties.

(2) The district may enter into a contract for the use of the stadium or stadia for any purpose related to sports activities and other physical education programs for the students at the public free schools operated and maintained by the district.

(3) The consideration payable by the district under a contract may be paid from any source available to the district; and if voted, the district is authorized to pledge to the payment of the contract an annual maintenance tax in an amount sufficient, without limitation, to provide all or part of the consideration. If so voted and pledged, the maintenance tax shall be assessed, levied, and collected annually in the same manner as provided by general law applicable to independent school districts for other maintenance taxes. No maintenance tax shall be pledged to the payment of any contract or assessed, levied, or collected unless an election is held by and in the district, and the maintenance tax for

that purpose is duly and favorably voted by a majority of the resident, qualified electors of the district who own taxable property therein and who have duly rendered the property for taxation, voting at the election. Each election shall be called by order of the board of trustees of the district. The election order shall set forth the date of the election, the proposition to be submitted and voted on, the polling place or places, and any other matters deemed advisable by the board of trustees. Notice of election shall be given by publishing a substantial copy of the order calling the election one time, at least 10 days prior to the election, in a newspaper of general circulation in the district. Except as herein otherwise specifically provided, the election shall be held in accordance with the Texas Election Code.

(r) The board of directors is authorized to accept donations, gifts, and endowments to be held and

(l) Bonds issued under this section and the record relating to their issuance shall be submitted to the attorney general, and if he finds that they have been issued in accordance with this section and constitute valid and binding obligations of the authority and are secured as recited therein he shall approve them, and they shall be registered by the Comptroller of Public Accounts of the State of Texas, who shall certify such registration thereon. Thereafter they shall be incontestable.

(m) It is the duty of the board of directors to charge sufficient rates for services rendered by the stadium or stadia and to utilize other sources of its revenues so that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation, and upkeep of the stadium or stadia, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture. The bond resolution or trust indenture may prescribe systems, methods, routines, and procedures under or in accordance with which the stadium or stadia shall be operated.

(n) The authority may select a depository or depositories according to the procedures provided by law for the selection of independent school district depositories.

(o) Recognizing the fact that the property owned by authority will be held for public purposes only and will be devoted exclusively to the use and benefit of the public, it shall be exempt from taxation of every character.

(p) For the purpose of carrying out any power conferred by this section, the authority shall have the right to acquire the fee simple title to land and other property and easements by condemnation in the manner provided by Title 52, Revised Civil Statutes, as amended,<sup>2</sup> relating to eminent domain. The authority is declared to be a municipal corporation within the meaning of Article 3268 of Title 52. The amount of and character or interest in land, other property, and easements thus to be acquired shall be determined by the board of directors.

(q) In addition to other powers, the authority has the right to invest the proceeds of its bonds, until such money is needed, in the direct obligations of or obligations unconditionally guaranteed by the United States government, to the extent authorized in the bond resolution or trust indenture or in both.

administered as may be required by the respective donors, to the extent that such requirements would not contravene law.

[Acts 1973, 63rd Leg., p. 286, ch. 135, § 1, eff. May 18, 1973.]

<sup>1</sup> So in enrolled bill.

<sup>2</sup> Vernon's Ann.Civ.St. art. 3264 et seq.

*For text as added by Acts 1973, 63rd Leg., p. 53, ch. 36, § 1 and Acts 1973, 63rd Leg., p. 81, ch. 51, § 4, see Sections 20.51, ante.*

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SUBCHAPTER A. GENERAL PROVISIONS

**§ 21.001. Scholastic Year**

The scholastic year shall commence on the first day of September of each year and end on the thirty-first day of August thereafter.

[Acts 1969, 61st Leg., p. 2910, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.002. Scholastic Month**

A school month shall consist of not less than 20 school days, inclusive of holidays.

[Acts 1969, 61st Leg., p. 2910, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.003. Scholastic Week**

A school week shall consist of five days, inclusive of holidays.

[Acts 1969, 61st Leg., p. 2910, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.004. School Day**

A school day shall be taught for not less than seven hours each day, including intermissions and recesses.

[Acts 1969, 61st Leg., p. 2910, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.005. Holidays**

The public schools shall not be closed on legal holidays unless so ordered by the board of trustees.

[Acts 1969, 61st Leg., p. 2910, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.006. Names of School Districts**

(a) Whenever the board of trustees of any school district in this state shall determine that the name of the district should be changed or amended by adding or deleting any word or words therefrom or any name or names of cities or towns, the board of trustees may, by resolution, change the name of the district.

(b) Notice of the change in name shall be given to the Central Education Agency by sending to the commissioner of education a copy of the resolution, attested by the president and secretary of the board of trustees of the school district. The district, under its changed name, shall be deemed to be a continuation of the district, as formerly named, for all purposes.

[Acts 1969, 61st Leg., p. 2910, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.007. Qualifications of Trustees**

No person shall be elected as a trustee of a school district in this state unless he is a qualified voter. This section does not apply to a school district trustee elected or appointed before August 30, 1965.<sup>1</sup>

[Acts 1971, 62nd Leg., p. 3009, ch. 994, § 6, eff. Aug. 30, 1971.]

<sup>1</sup> Effective date of source statute: Acts 1965, 59th Leg., p. 1017, ch. 501.

[Sections 21.008 to 21.030 reserved for expansion]

SUBCHAPTER B. ADMISSION AND  
ATTENDANCE

**§ 21.031. Admission**

(a) All children without regard to color over the age of six years and under the age of 18 years on the first day of September of any scholastic year shall be entitled to the benefits of the Available School Fund for that year.

(b) Every child in this state over the age of six years and not over the age of 21 years on the first day of September of the year in which admission is sought shall be permitted to attend the public free schools of the district in which he resides or in which his parent, guardian, or the person having lawful control of him resides at the time he applies for admission notwithstanding the fact that he may have been enumerated in the scholastic census of a different district or may have attended school elsewhere for a part of the year.

(c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons over six and not over 21 years of age at the beginning of the scholastic year if such person or his parent, guardian or person having lawful control resides within the school district.

[Acts 1969, 61st Leg., p. 2910, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.032. Compulsory Attendance**

Unless specifically exempted by Section 21.033 of this code or under other laws, every child in the state who is as much as seven years of age and not more than 17 years of age shall be required to attend the public schools in the district of his residence or in some other district to which he may be transferred as provided or authorized by law a mini-

mum of 165 days of the regular school term of the district in which the child resides or to which he has been transferred.

[Acts 1969, 61st Leg., p. 2911, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 21.033. Exemptions

The following classes of children are exempt from the requirements of compulsory attendance:

(1) any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship;

(2) any child whose physical or mental condition is such that attendance in regular classrooms or in special education facilities supported with tax funds is not feasible, and who holds a definite certificate of a qualified physician specifying this condition and covering the period of absence;

(3) any child more than 17 years of age who has satisfactorily completed the work of the ninth grade and who presents to the superintendent satisfactory evidence showing that his services are needed in support of a parent or other person standing in a parental relation to the child; and

(4) any child more than 15 years of age who is enrolled in a technical-vocational training program, a work-study program, or an apprenticeship program approved by the superintendent, parent or guardian of the public school he would otherwise attend.

[Acts 1969, 61st Leg., p. 2911, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1513, ch. 405, § 10, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 769, ch. 342, § 1, eff. June 12, 1973.]

§ 21.0331. Blind, Deaf, or Mentally Retarded Children

(a) A child who is blind or deaf and who does not have adequate or appropriate educational facilities available in the area in which he resides shall be referred by the superintendent of the school district in which he resides to the Texas School for the Blind or the Texas School for the Deaf for admission as appropriate to the child's disability. The governing board of every school district referring blind or deaf children to the Texas School for the Blind or the Texas School for the Deaf shall promptly notify the Central Education Agency of each referral made, and notice of referral shall include a statement setting forth the basis for the determination that the child could not be served adequately or appropriately in the area in which the child resides.

(b) On or before October 30 of each year preceding a regular session of the legislature, the Central Education Agency shall furnish the governor and the budget office of the legislature with statistics relating to the number of children referred to or applying for admission to the Texas School for the Blind and the Texas School for the Deaf, the number of blind or deaf children actually being served by these schools, and the number of blind or deaf children who might be eligible for admission to these schools but whose admission has been delayed because of inadequate facilities at these schools.

(c) The governing board of any school district which contains children who are blind, deaf, mute, or

mentally retarded and which has failed to provide adequate services for these children shall report this fact, the number of children, and the type of disability to the Central Education Agency each year at the time required by that agency.

[Acts 1971, 62nd Leg., p. 1513, ch. 405, § 41, eff. May 26, 1971.]

§ 21.034. Reports

(a) The failure of any child within the compulsory attendance age to enroll in school shall be determined upon the basis of the reports prescribed by this section.

(b) The county superintendent of each county shall furnish to the superintendent of schools of each school district in the county, or to the principal in the event there be no superintendent, a complete list of all children belonging in the district as shown by the last scholastic census and the record to<sup>1</sup> transfers to and from the district.

(c) Each superintendent or principal shall report to the county superintendent the names of all children subject to the provisions of this subchapter who have not enrolled in the school.

(d) The superintendent, principal, or other official of any private, denominational, or parochial school shall furnish the county superintendent a list of all children of scholastic age enrolled in the school and the district in which each child was enumerated in the public school census.

(e) From the lists supplied by the public school superintendents and principals and by the officials of any private, denominational, or parochial schools, the county superintendent shall compile a list for each district showing all children who are shown by the census to be of scholastic age but who have not enrolled in any school. The list for each district shall be furnished to the person or persons serving as attendance officer for the district.

[Acts 1969, 61st Leg., p. 2911, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> So in enrolled bill.

§ 21.035. Violations of Attendance Requirements

(a) Violations of the compulsory attendance law by absence after enrollment shall be determined upon the basis of the provisions of this section.

(b) Any child not excepted from compulsory school attendance may be excused, as provided by this section, for temporary absence resulting from personal sickness, sickness or death in the family, quarantine, weather or road conditions making travel dangerous, or any other unusual cause acceptable to the teacher, principal, or superintendent of the school in which the child is enrolled.

(c) The reason for an excused absence must be stated in writing and signed by the parent or other person standing in parental relation to the child.

(d) The person discharging the duties of attendance officer of the school may investigate any case in which an excused absence is requested.

(e) Any teacher giving instruction to any child within the compulsory attendance age shall promptly report any unexcused absence to the person serving as attendance officer for the school.

[Acts 1969, 61st Leg., p. 2912, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.036. School Attendance Officer**

In compliance with the terms of this section, a school attendance officer may be elected by either of the following types of governing bodies:

(1) The county school trustees of any county having a scholastic population of more than three thousand (3,000).

(2) The board of trustees of any independent school district having a scholastic population of more than two thousand (2,000).

[Acts 1969, 61st Leg., p. 2912, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.037. Selection of Attendance Officer**

(a) Authorization to elect a school attendance officer shall be derived from the provisions of this section.

(b) A petition requesting and explaining the need for a school attendance officer and signed by at least 50 resident freeholders of the area involved shall be presented to the county school trustees or the trustees of the independent school district, as the case may be.

(c) The governing body, upon receipt of a petition as prescribed as<sup>1</sup> Subsection (b) of this section, shall set a date for a public hearing and give notice thereof by publication in a newspaper published at the county seat for three consecutive weeks or, if there be no such newspaper, by posting printed notices in two public places within the area and one at the courthouse door of the county.

(d) If, after the public hearing, the governing body is of the opinion that a school attendance officer is necessary to the proper enforcement of the compulsory attendance law and that the school concerned will be benefited by such an officer, the governing body may elect an attendance officer.

(e) An elected attendance officer may be compensated from the available school funds belonging to the county or independent school district.

(f) An elected attendance officer may, at the option of the county or independent district governing body, be the probation officer or some officer or officers of the juvenile court of the county.

[Acts 1969, 61st Leg., p. 2912, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Probably should read "in".

**§ 21.038. Where No Attendance Officer Selected**

In those counties and independent school districts where no attendance officer has been elected, the duties of attendance officer shall devolve upon the school superintendents and peace officers of the counties and districts, but no additional compensation may be paid for the services.

[Acts 1969, 61st Leg., p. 2913, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.039. Powers and Duties of Attendance Officer**

(a) A school attendance officer shall have the following powers and duties:

(1) to investigate all cases of unexcused absences from school;

(2) to administer oaths and to serve legal process;

(3) to enforce the provisions of the compulsory attendance law;

(4) to keep records of all cases of any kind investigated by him in the discharge of his duties;

(5) to make all reports of his work required of him by the commissioner of education; and

(6) to proceed in juvenile court against any incorrigible pupil, or against any recalcitrant person having parental control as provided in Section 4.25 of this code.

(b) A school attendance officer shall not invade or enter any private home or private residence or any part thereof without the permission of the owner or tenant except to serve lawful process upon a parent, guardian, or other person standing in parental relation to a child affected by the compulsory attendance law.

(c) A school attendance officer shall not forcibly take corporal custody of any child anywhere without permission of the parent, guardian, or other person standing in parental relation to the child except in obedience to a valid process issued by a court of competent jurisdiction.

[Acts 1969, 61st Leg., p. 2913, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.040. Permissive Attendance**

The board of trustees of any school district may, upon such terms as it may deem just and proper, admit pupils either over or under the school age, either in or out of the district, but in admitting such pupils the board shall see to it that the schools are not overcrowded to the neglect and injury of pupils within the scholastic age.

[Acts 1969, 61st Leg., p. 2913, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 21.041 to 21.060 reserved for expansion]

### SUBCHAPTER C. TRANSFERS AND SCHOOL ASSIGNMENTS

**§ 21.061. Transfer of Student**

(a) Any child, other than a high school graduate, who is over 6 and under 21 years of age at the beginning of any scholastic year may annually transfer from his school district of residence to another Texas district, provided that both the receiving district and the applicant parent or guardian or person having lawful control of the child jointly approve and timely agree in writing to transfer.

(b) Such a transfer agreement shall locally be filed and preserved as a receiving district record for audit purposes of the Central Education Agency.

[Acts 1969, 61st Leg., p. 2913, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1514, ch. 405, § 42, eff. May 26, 1971.]

**§ 21.062. Transfer of State Funds**

Upon the filing and certification of the transfer of any such child in the manner timely and in the form prescribed by regulations of the State Board of Education, the state per capita apportionment shall transfer with the child; and for purposes of computing state allotments to districts eligible under the Foundation School Program Act, the attendance of the child prior to the date of transfer shall be counted by the transfer sending district and the

attendance of the child after the date of transfer shall be counted by the transfer receiving district. [Acts 1969, 61st Leg., p. 2914, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1514, ch. 405, § 42, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 3340, ch. 1024, art. 2, § 8, eff. Sept. 1, 1971.]

**§ 21.063. Tuition Fee for Transfer Students**

The receiving district may charge a tuition fee to the extent that the district's actual expenditure per student in average daily attendance, determinable by its board of trustees, exceeds the sum the district benefits from state aid sources as provided in Section 21.062 of this code. However, unless a tuition fee is prescribed and set out in transfer agreement prior to its execution by the parties, no increase in tuition charge shall be made for the year of that transfer that exceeds the tuition charge, if any, of the preceding school year.

[Acts 1969, 61st Leg., p. 2914, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1514, ch. 405, § 42, eff. May 26, 1971.]

**§§ 21.064, 21.065. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(1), eff. May 26, 1971**

**§ 21.066. Emergency Transfers**

(a) Emergency transfers of state apportionment for any child or children of school age may be made only under the provisions of this section.

(b) Emergency transfers may be made only from a county or counties where a public calamity, such as serious floods, prolonged drought, or extraordinary border disturbances, occurring after the taking of the scholastic census, has resulted in such a sudden change in scholastic population as to create a hardship in the support of the public schools.

(c) Emergency transfers may be made only on application of the county or district trustees of the county or district to which the transfer is to be made. The application formally requesting the transfer must be made to the commissioner of education before June 1 of the year in which the conditions warranting the transfer occur. The application must set forth the facts warranting the transfer and show that it may properly be granted under the terms of this section.

(d) No application for emergency transfer shall be granted unless:

(1) the increase in scholastic population, as evidenced by a list of pupils actually residing within the district but not enumerated in the census of the district as filed with the State Department of Education, is in excess of 20 percent of the number of children assigned to the district as a result of the scholastic census and regular transfers; and

(2) the sudden change in scholastic population of the county or district would work a hardship in the support of the public free schools of the county or district in which the increase in population occurs.

(e) The commissioner of education may grant an application fulfilling the above qualifications and, with the approval of the State Board of Education, order any apportionment or apportionments transferred, in which event the commissioner of education

shall notify the county superintendents of each county involved and the board of trustees of any independent school district involved that the final apportionment of school funds cannot be made under these circumstances before June 15.

(f) All arrangements for emergency transfers must be completed by June 15 of the year following the occurrence of the unusual condition causing the emergency.

(g) Children whose state funds are thus transferred to any county shall be included in the number of children for whom the county school apportionment of the county is made.

[Acts 1969, 61st Leg., p. 2914, ch. 889, § 1, eff. Sept. 1, 1969.]

**§§ 21.067 to 21.072. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(1), eff. May 26, 1971**

**§ 21.073. Transfer to District of Bordering State**

(a) Any child who would be entitled to attend the public school of any district situated on the border of Louisiana, Arkansas, Oklahoma, or New Mexico and who may find it more convenient to attend the public school in a district in one of those contiguous states may have the state and county per capita apportionment of the available school funds paid to the school district of the contiguous state and may have additional tuition, if necessary, paid by the district of his residence on such terms as may be agreed upon by the trustees of the receiving district and the trustees of the residence district.

(b) Such arrangements must be approved by the county superintendent and the county school trustees of the Texas county of residence.

(c) The restrictions of Sections 21.068-21.072<sup>1</sup> of this code with regard to the payment of high school tuition shall not apply to transfers to contiguous state high schools.

[Acts 1969, 61st Leg., p. 2917, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Repealed.

**§ 21.074. Transfers in Discretion of Governing Board**

(a) In conformity with the provisions of Sections 21.075-21.078 of this code, the board of trustees of any school district or any board of county school trustees shall have authority to transfer and assign any pupil or pupils from one school facility or classrooms to another within its jurisdiction.

(b) Such transfers may not be made by any general or blanket order but must be made upon an individual basis as specified herein.

(c) The authority herein granted may be exercised by the board directly or may be delegated by it to the superintendent of schools or to any other person or persons employed by the board.

[Acts 1969, 61st Leg., p. 2917, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.075. Factors to be Considered**

(a) In the assignment, transfer, or continuance of pupils among and within the schools, or within the classroom and other facilities thereof, the following factors and the effect or result thereof shall be

considered, with respect to the individual pupil as well as other relevant matters:

- (1) available room and teaching capacity in the various schools;
- (2) availability of transportation facilities;
- (3) effect of the admission of new pupils upon established or proposed academic programs;
- (4) suitability of established curricula for the particular pupil;
- (5) adequacy of the pupil's academic preparation for admission to a particular school and curriculum;
- (6) scholastic aptitude and relative intelligence or mental energy or ability of the pupil;
- (7) psychological qualification of the pupil for the type of teaching and associations involved;
- (8) effect of the admission of the pupil upon the academic progress of other students in the particular school or facility thereof;
- (9) effect of the admission of the pupil upon prevailing academic standards at a particular school;
- (10) psychological effect upon the pupil of attendance at a particular school;
- (11) possibility or threat of friction or disorder among pupils or others;
- (12) possibility of breaches of the peace or ill will or economic retaliation within the community;
- (13) home environment of the pupil;
- (14) maintenance or severance of established social and psychological relationships with other pupils and with teachers;
- (15) choice and interest of the pupil;
- (16) morals, conduct, health, and personal standards of the pupil; and request or consent of parents or guardians and the reasons assigned therefor.

(b) The board or the person acting for the board shall not consider a factor in its evaluation any matter relating to the national origin of the pupil or the pupil's ancestral language.

[Acts 1969, 61st Leg., p. 2917, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.076. Assignment on Basis of Sex

A board may require the assignment of pupils to any or all schools within its jurisdiction on the basis of sex, but assignments of pupils of the same sex among schools reserved for that sex shall be made in the light of the factors set out in Section 21.075(a) of this code.

[Acts 1969, 61st Leg., p. 2918, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.077. Petition of Parent

The parent or person standing in parental relation to any pupil may by petition in writing either:

- (1) request the transfer or assignment of the pupil to a designated school or to a school to be designated by the board; or
- (2) file objections to the assignment of the pupil to the school to which he has been assigned.

[Acts 1969, 61st Leg., p. 2918, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.078. Hearing; Action on Petition; Appeal

(a) Upon receipt of a petition of either type described in Section 21.077 of this code, the board shall:

(1) if no hearing is requested, act upon the petition within 30 days and notify the petitioner of its conclusion; or

(2) if a hearing is requested, designate a time and place for the holding of a hearing within 30 days.

(b) Whenever a hearing is requested, it shall be conducted by the board in compliance with the provisions of this section.

(c) The hearing shall be final on behalf of the board except as specified in Subsection (f) of this section.

(d) The petitioner may present evidence relevant to the individual pupil.

(e) The board may conduct investigations as to the objection or request, examine the pupil or pupils involved, and employ agents, professional or otherwise, for the purpose of such examinations and investigations.

(f) The decision of the board, either with or without hearing, shall be final unless the pupil or the parent, guardian, or custodian of the pupil as next friend, shall file exception to the action of the board as constituting a denial of any right of the pupil guaranteed under the constitution of the United States.

(g) In the event exception is filed on the ground that the decision of the board constitutes a denial of a right of the pupil guaranteed under the constitution of the United States and the board does not within 15 days reconsider its final action, an appeal may be taken from the final action of the board, on that ground alone, to the district court of the county in which the board is located, in which event:

(1) the petition must be filed within 30 days from the date of the board's final decision;

(2) the petition must state the facts relevant to the pupil as bearing on the alleged denial of his rights under the constitution of the United States; and

(3) the petition must be accompanied by bond, with sureties approved by the clerk of the court, conditioned to pay all costs of appeal if the same shall not be sustained.

[Acts 1969, 61st Leg., p. 2918, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.079. Transfers Between Districts or Counties

The boards of trustees of two or more adjoining districts or the boards of county school trustees of two or more adjoining counties may, by mutual agreement and under the same rules specified in Sections 21.075-21.078 of this code, arrange for the transfer and assignment of any pupil or pupils from the jurisdiction of one board to that of another, in which event the participating governing boards shall also agree to the transfer of school funds or other payments proportionate to the transfer of attendance.

[Acts 1969, 61st Leg., p. 2919, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.080. Transfer of Children or Wards of Employees of State Schools**

A school age child or ward of an employee of a State school for the mentally retarded which is constituted as a school district who resides within the boundaries of the State school property but who is not a student at the State school is entitled to attend school in a school district adjacent to the State school free of any charge to his parents or guardian provided such parent or guardian is required by the Superintendent of the State school to live on the grounds of the State school for the convenience of the State of Texas. In such instance, any tuition charge required by the admitting school district shall be paid by the school district constituting the State school out of funds allotted to it by the Central Education Agency.

[Acts 1971, 62nd Leg., p. 1815, ch. 540, § 1, eff. June 1, 1971; Acts 1973, 63rd Leg., p. 71, ch. 47, § 1, eff. June 1, 1973.]

[Sections 21.081 to 21.100 reserved for expansion]

**SUBCHAPTER D. COURSES OF STUDY**

**§ 21.101. Courses of Study**

All public free schools in this state shall be required to offer instruction in the following subjects: English grammar, reading in English, orthography, penmanship, composition, arithmetic, mental arithmetic, United States history, Texas history, modern geography, civil government, physiology and hygiene, physical education, and, in all grades, a course or courses in which some attention is given to the effects of alcohol and narcotics. Such subjects shall be taught in compliance with any applicable provision of this subchapter.

[Acts 1969, 61st Leg., p. 2919, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.102. Patriotism**

The daily program of every public school shall be so formulated by the teacher, principal, or superintendent as to include at least 10 minutes for the teaching of intelligent patriotism, including the needs of the state and federal governments, the duty of the citizen to the state, and the obligation of the state to the citizen.

[Acts 1969, 61st Leg., p. 2919, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.103. Texas History**

The history of Texas shall be taught in all public schools in and only in the history courses of all such schools. The course shall be taught for not less than two hours in any one week. The commissioner of education shall notify the different county, city, and district superintendents as to how the course may be divided.

[Acts 1969, 61st Leg., p. 2919, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.1031. Instruction in Free Enterprise System**

(a) All public high schools shall give instruction on the essentials and benefits of the free enterprise system. Instruction shall be given in accordance with the course of study prescribed by the State Board of Education for at least one semester or

quarter, equal to one-half unit of credit. The State Board of Education shall prescribe suitable teaching material for the instruction.

(b) As used in this section "free enterprise" means an economic system characterized by private or corporate ownership of capital goods, by investments that are determined by private decision rather than by state control, and by prices, production, and the distribution of goods that are determined in a free manner.

[Acts 1973, 63rd Leg., p. 799, ch. 359, § 1, eff. Aug. 27, 1973.]

**§ 21.104. Physiology and Hygiene**

All textbooks on physiology and hygiene purchased in the future for use in the public schools of this state shall include at least one chapter on the effects of alcohol and narcotics. Although physiology and hygiene must be taught in all public schools, any child may be exempted, without penalty, from receiving instruction therein if his parent or guardian presents to the school principal a signed statement that the teaching of disease, its symptoms, development and treatment, and the viewing of pictures or motion pictures on such subjects conflict with the religious teachings of a well-established church or denomination to which the parent or guardian and the child belong.

[Acts 1969, 61st Leg., p. 2920, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.105. Kindness to animals**

In the primary grades of all public schools in this state, suitable instruction shall be given with regard to kindness to animals and the protection of birds and their nests and eggs.

[Acts 1969, 61st Leg., p. 2920, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.106. Constitution**

All public free high schools in this state shall teach and require a course of instruction in the constitutions of the United States and the State of Texas. The course shall be a combined course in both constitutions, and shall be given for at least one-half hour each week in the school year or at least one hour each week for one-half of the school year, or the equivalent thereof. No student shall be graduated from any public free high school in this state who has not passed a satisfactory examination in the course of instruction herein described.

[Acts 1969, 61st Leg., p. 2920, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.107. Vocational Courses**

All public free high schools located outside of incorporated cities or towns shall be required, in addition to all other courses required by this subchapter, to offer instruction in agriculture, industrial arts, home economics, and other vocational studies.

[Acts 1969, 61st Leg., p. 2920, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.108. Other Courses**

Courses other than those prescribed in the foregoing sections of this subchapter, including the Spanish language or any other modern language, may be required to be taught by:

- (1) the board of trustees of any school district for the schools within its district; or

(2) the commissioner of education for all public free schools within the state or any recognized division of such schools.

[Acts 1969, 61st Leg., p. 2920, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.109. Language of Instruction

(a) English shall be the basic language of instruction in all schools.

(b) It is the policy of this state to insure the mastery of English by all pupils in the schools; provided that bilingual instruction may be offered or permitted in those situations when such instruction is necessary to insure their reasonable efficiency in the English language so as not to be educationally disadvantaged.

[Acts 1969, 61st Leg., p. 2920, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1514, ch. 405, § 43, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 863, ch. 392, § 4, eff. Aug. 27, 1973.]

#### § 21.110. Military Instruction

(a) In all school districts wherein military instruction is conducted pursuant to a state or federal law requiring the district to give bond or otherwise indemnify the State of Texas or the United States or any authorized agency of either in an amount and upon conditions determined by any agency under authority of and pursuant to such law for the care, safe-keeping, and return of property furnished, the board of trustees of the school district shall have authority to:

(1) make contracts with the proper governmental agency with respect to the teaching of such courses in military training; and

(2) execute, as principal or surety, a bond or bonds to secure the contracts for the purpose of procuring arms, ammunition, animals, uniforms, equipment, supplies, means of transportation, or other needed property.

(b) In those school districts wherein military instruction is given as provided in Subsection (a) of this Section, available school funds may be expended to:

(1) procure from any guaranty or surety company any bond or bonds authorized above, in such amount and on such conditions as may be required by the governmental agency; or

(2) reimburse the State of Texas or the United States for any loss pursuant to the terms of any contract entered into.

[Acts 1969, 61st Leg., p. 2920, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.111. Vocational and Other Educational Programs

(a) The board of trustees of any public free school district of this state, subject to rules and regulations of the Central Education Agency heretofore and hereafter adopted, is hereby authorized and empowered to conduct and supervise vocational classes and other educational programs for students of all ages; and whenever it deems necessary to expend local maintenance funds for the cost thereof.

(b) For purposes of conducting and/or supervision by the district of such vocational classes and other educational programs for students of any and all ages, said board of trustees is hereby authorized and

empowered to purchase, acquire or lease real or personal property; to contract or enter into agreements with any department or agency of the United States or this state, subject to rules and regulations prescribed by the Central Education Agency appertaining to such educational programs; and to contract or enter into agreements with any person, partnership, firm or corporation pertaining to the local operation and supervision of such programs by the district.

[Acts 1969, 61st Leg., p. 2921, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.111. Contracts With Other Schools for Vocational Classes

(a) The board of trustees of a school district may contract with another school district or with a public or private post-secondary educational institution or trade or technical school, which is regulated by the State, as designated in the State Plan for Vocational Education to provide vocational classes for students in the district.

(b) A pupil who attends vocational classes at another school pursuant to a contract authorized in Subsection (a) shall be included in computations of average daily attendance by the school district in which he is regularly enrolled.

(c) Any agreement entered into under the provisions of this section shall be subject to the rules and regulations of the State Board of Vocational Education, and the cost to the State shall not exceed the cost that would result if the classes were operated by the school district entering into the agreement.

(d) The instructors and instructional materials and equipment utilized in the classes shall be subject to the approval of the Central Education Agency.

(e) The instructors teaching in private schools, which are contracting with public schools for instruction of public school students, shall be eligible for the same in-service teacher education opportunities provided by the State for public school teachers.

[Acts 1971, 62nd Leg., p. 1740, ch. 507, § 1, eff. May 31, 1971.]

#### § 21.112. Police Administration and Fire Protection Administration

Beginning with the 1967-1968 school year, every independent school district in a county having a population of 200,000 or more, according to the last preceding federal census, may offer in each high school for senior students a one-semester course in police administration and a one-semester course in fire protection administration, to be conducted according to the State Department of Education's requirements relating to curricula and teaching materials. Such courses, if offered, shall be elective courses.

[Acts 1969, 61st Leg., p. 2921, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.113. Dangers of Crime and Narcotics

The Central Education Agency shall develop curricula and teaching materials for units of study on the dangers of crime and narcotics. The units of study shall be required for all students each academic year for grades 5 through 12.

[Acts 1971, 62nd Leg., p. 1514, ch. 405, § 44, eff. May 26, 1971.]

**§ 21.114. Advisory Commission**

(a) The Crime and Narcotics Advisory Commission is created. The advisory commission is composed of nine members, who shall serve for terms of two years expiring January 31 of odd-numbered years.

(b) The governor shall appoint three members of the commission, with the following representation:

- (1) a licensed physician;
- (2) an official of the Department of Public Safety; and
- (3) a narcotics official from the Federal Bureau of Narcotics and Dangerous Drugs.

(c) The lieutenant governor shall appoint three members of the commission, with the following representation:

- (1) an official of a local-level law enforcement agency;
- (2) a group social worker; and
- (3) a public school superintendent in a city with a population of over 200,000, according to the last preceding federal census.

(d) The speaker of the house of representatives shall appoint three members of the commission, with the following representation:

- (1) a businessman;
- (2) a college student who is either a senior or a graduate student; and
- (3) a juvenile judge who serves in a city with a population of over 200,000, according to the last preceding federal census.

(e) The advisory commission shall meet when the chairman deems necessary. The commission shall elect its chairman, vice chairman, and any other officers it deems necessary. The commission shall adopt rules to govern the conduct of its business.

(f) Members of the commission shall serve without compensation, but each member is entitled to reimbursement for actual and necessary expenses incurred in performing his duties, as provided by legislative appropriation.

[Acts 1971, 62nd Leg., p. 1515, ch. 405, § 44, eff. May 26, 1971.]

**§ 21.115. Duties of Advisory Commission**

(a) The advisory commission shall:

- (1) advise and assist the Central Education Agency in developing curricula and teaching materials for a course on the dangers of crime and narcotics;
- (2) advise and assist the Central Education Agency in designating the number of hours that the course shall be taught; and
- (3) assist local citizens' groups formed to combat unlawful use of and traffic in drugs and narcotics.

(b) The commission shall develop a research program designed to measure the effectiveness of the commission's activities and shall prepare a research report annually to facilitate planning and development.

(c) The commission shall cooperate and coordinate its activities with any other state agency or legislative committee or commission that is investigating or studying drug and narcotics activity, availability, or use in Texas.

[Acts 1971, 62nd Leg., p. 1515, ch. 405, § 44, eff. May 26, 1971.]

**§ 21.116. Instruction Sessions for Teachers**

(a) In order to keep the teachers abreast of the latest developments in the subject matter, the Central Education Agency, with the cooperation of the advisory commission, shall provide by regulation for annual instruction sessions.

(b) Every person assigned to teach the course in the public schools shall attend the instruction sessions as required by regulation of the Central Education Agency.

[Acts 1971, 62nd Leg., p. 1515, ch. 405, § 44, eff. May 26, 1971.]

**§ 21.117. Physical Education**

Instruction in physical education shall be part of the course of instruction and training in the public elementary and secondary schools of the state. The state commissioner of education shall prepare courses of instruction for the public schools of the state for the purpose of carrying out this section.

[Acts 1971, 62nd Leg., p. 3009, ch. 994, § 7, eff. Aug. 30, 1971.]

**§ 21.118. Crime and Narcotics Program, Administration**

(a) A comprehensive program to provide for an effective state-supported administration of course preparation, instruction and teaching in the public schools of this state, as required by law, on the dangers and prevention of crime, narcotics, and drug abuse shall be developed under policies and regulations of the Central Education Agency. Such program administered by the agency shall provide for and encompass also the services of the regional education service centers and the school districts of this state, thereby to coordinate and effectuate improvement in instruction, development of teachers therein, and preparation and distribution of instructional materials and guidelines for program development.

(b) Among desired conditions necessary to provide and implement an effective education program, the Central Education Agency in its development of such program shall consider the following:

- (1) Carefully conducted assessment(s) of the drug problem of each local school district, to include the needs of students, thereby to provide data on a regional service center and statewide basis and to define specific needs.
- (2) Continued training of Central Education Agency, regional education service center and school district personnel in drug-crime education.
- (3) Cooperative efforts to educate all members of the community concerning the drug problem and ways community involvement can contribute to the solution.
- (4) Continued research and study to define further needs and design of model programs to such needs.
- (5) Future accreditation standards and teacher certification requirements.

(c) The commissioner of education shall establish the requirements for teachers who teach in this program.

(d) The comprehensive program authorized by this Act shall be state funded as provided hereafter to include the following:

(1) Administrative costs of the Central Education Agency for program development and administration.

(2) Coordinating and training professional positions assigned to each regional education service center on a formula basis determined by the State Board of Education ensuring one position in each region but allowing for increase in personnel in the more populated regions.

(3) School district costs for materials and staff development.

(4) The commissioner of education shall transmit or cause to be transmitted the money as authorized to be expended herein to the respective regional service centers and school districts pursuant to policies adopted by the State Board of Education providing for the approval and disbursement thereof.

(e) The cost of operating the comprehensive program as authorized and developed herein shall be borne by the state. The state's share of the cost shall be paid from the general revenue fund or other source in the amounts as may be specifically appropriated and allocated in the general appropriation bill for the purpose of this Act. No state funds provided for herein shall be used for any purpose other than for the program herein.

[Acts 1973, 63rd Leg., p. 1574, ch. 566, § 1, eff. Aug. 27, 1973.]

#### § 21.119. Consumer Education

(a) The Central Education Agency shall develop curricula and teaching materials for a unit of study in consumer education. The unit shall include study of installment purchasing, budgeting, and price comparison.

(b) Beginning with the 1975-76 school year, any public school in the State may offer consumer education as an optional unit of study.

[Acts 1973, 63rd Leg., p. 763, ch. 337, § 1, eff. June 12, 1973.]

[Sections 21.120 to 21.130 reserved for expansion]

### SUBCHAPTER E. KINDERGARTEN

#### § 21.131. Free Kindergarten

The board of trustees of any school district in Texas is hereby authorized to establish and maintain as a part of the public free schools of said district one or more kindergartens for the training of children residing in said district who are under the scholastic age and who are at least five years of age.

[1969, 61st Leg., p. 2921, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.132. Petition and Election

(a) The board of trustees of any school district shall, upon the petition of 20 percent of the qualified voters residing within the school district, call an election within 60 days of the filing of such petition to determine by a majority vote of the legally qualified voters residing in such district whether or not the district shall establish and maintain a kindergarten as a part of the public free schools of such

district. Such petition shall be filed between April 1 and June 1 of any year.

(b) At such election the ballot shall have printed thereon the following: "FOR public kindergarten"; and "AGAINST public kindergarten."

(c) If a majority of the votes cast at such election favor the exercise of the power herein granted, the board of trustees shall establish and maintain such kindergarten, or kindergartens, as such board deems in the best interests of the residents of the district as a part of the public free schools of the district for the training of children under the scholastic age down to and including five years residing in the district, and shall establish such courses of training, study, and discipline, and such rules and regulations governing such kindergartens as such board shall deem best.

[Acts 1969, 61st Leg., p. 2922, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.133. Establishment

After voter approval of a kindergarten for a school district, the board of trustees shall establish the kindergarten by the commencement date of the next scholastic year following the year in which the election is held. The cost of establishing and maintaining such kindergartens shall be paid from the special school tax of said districts. The kindergartens shall be a part of the public school system and shall be governed, as far as practicable, in the same manner and by the same officers as are or may be provided by law for the government of the other public schools of the state.

[Acts 1969, 61st Leg., p. 2922, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.134. Subsequent Elections

If an election should be called and held hereunder in any school district and the proposition should fail to receive a majority of the votes cast, then no additional election shall be called on such proposition in such school district until at least one year after the date that such prior election was held.

[Acts 1969, 61st Leg., p. 2922, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.135. Operation of Kindergartens on Full-Day or Half-Day Basis

A public school kindergarten may be operated on a half-day or a full-day basis at the option of the governing board of the school district.

[Acts 1971, 62nd Leg., p. 2409, ch. 759, § 1, eff. Aug. 30, 1971.]

[Sections 21.136 to 21.160 reserved for expansion]

### SUBCHAPTER F. SCHOOL BUSES

#### § 21.161. General Rule

Except as specifically authorized by this subchapter all motor vehicles used for transporting school children (including buses, bus chassis, and bus bodies, tires and tubes, but excluding passenger cars), purchased by or for any school district participating in the Foundation School Program, shall be purchased by and through the State Board of Control.

[Acts 1969, 61st Leg., p. 2922, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.162. Emergency Purchase**

Any of the items specified in Section 21.161 of this code may, in instances where an emergency requires an immediate purchase thereof, be purchased by any school district or the school trustees of any county provided the purchase is reported to and approved by the Board of Control.

[Acts 1969, 61st Leg., p. 2922, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.163. Purchase of Bus in Operation**

The board of trustees of any school district in this state may purchase, with the approval of and at a price determined by the Board of Control, any privately-owned or contracted school bus now in operation in the transportation of school children, but the owners of such buses are not obligated to sell to the school district.

[Acts 1969, 61st Leg., p. 2923, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.164. Purchase With Donated Money, Etc.**

Without the approval of the Board of Control, the board of trustees of any school district may purchase buses, bodies, chassis, tires, or tubes with funds provided by gifts or by profits from athletic contests or other school enterprises in no way supported by tax funds or grants or appropriations from any governmental agency, either state or federal.

[Acts 1969, 61st Leg., p. 2923, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.165. Purchase Through Board of Control**

(a) The purchase of motor vehicles (including buses, bus chassis, bus bodies, tires, and tubes) by the Board of Control shall be made in compliance with the provisions of this section.

(b) The purchase must be made on the basis of competitive bids submitted under such rules and regulations as may be made by the Board of Control.

(c) The purchase must be authorized by a requisition, which may be submitted by either a board of county school trustees or the board of trustees of a school district. The requisition must include a general description of the article or articles desired, as well as any other applicable matter specified in this section.

(d) If the requisition is for the purchase of a motor vehicle, bus, bus body, or bus chassis, it must be approved by the county school trustees and by the commissioner of education.

(e) If the requisition is for the purchase of tires and tubes, it must be approved by either the county superintendent or the county school trustees.

(f) If the requisition is for the purchase of special equipment required, because of climatic or road conditions, to guarantee adequate safety and comfort of school children, the requisition must describe the special conditions and requirements so that the Board of Control may purchase equipment which it determines to be adapted or designed for the conditions or requirements.

(g) The requisition must contain a certification as to the funds that will be available to pay for the article or articles requisitioned.

[Acts 1969, 61st Leg., p. 2923, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.166. Financing**

(a) Any school district financially unable to comply with the requirements of immediate payment for any motor vehicle, including buses, bus bodies, or bus chassis purchased by it, may, subject to the provisions hereunder, issue interest-bearing time warrants in amounts sufficient to make such purchase, any other law to the contrary notwithstanding.

(b) The warrants shall mature in serial installments not more than five years from the date of issue, and shall bear interest at a rate not to exceed six percent per annum. The warrants shall be issued and sold at not less than their face value.

(c) The proceeds of the sale of the warrants shall be used to provide the funds required for the purchase requisitioned.

(d) The warrants shall upon maturity and in the order of their maturity dates be payable out of any available funds of the school district and, as they become due, shall be entitled to first and prior payment out of such funds.

(e) Full records of all warrants issued and sold shall be kept by the school district and reported to the Board of Control.

[Acts 1969, 61st Leg., p. 2923, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.167. Sale of Buses**

The sale price or trade-in value of any buses owned by any county or school district shall be considered in determining eligibility for transportation grants; and whenever any such buses are to be sold, traded in, or otherwise disposed of, they must be disposed of by the Board of Control or by the county school trustees or the trustees of the school district under such rules and regulations as the Board of Control may provide.

[Acts 1969, 61st Leg., p. 2924, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.168. Rules and Regulations**

The Board of Control shall have the power to make rules or adopt regulations to effectuate the purpose of the purchase and sale provisions of this subchapter.

[Acts 1969, 61st Leg., p. 2924, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.169. Compliance**

Compliance with the purchase and sale provisions of this subchapter shall be a condition precedent to participation in the Foundation School Fund. Any school district failing or refusing to comply shall be ineligible to share in the Foundation School Fund for one year from the date of such failure or refusal or violation of the terms hereof.

[Acts 1969, 61st Leg., p. 2924, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.170. Operation of School Buses**

(a) The board of trustees of any school district or county school board providing transportation of pupils to and from school shall employ or contract with a responsible person or firm to provide operators for the buses in compliance with the provisions of this section.

(b) No driver shall be employed who is not at least 17 years of age, licensed as a chauffeur, and sound in body and mind.

(c) Each driver shall be required to give bond in an amount determined by the board but not less than \$2,000, payable to the employing board and conditioned upon the faithful and careful discharge of his duties for the protection of the pupils under his charge and the faithful performance of his contract with the board.

(d) The board shall require all drivers to bring their vehicles to a dead stop before crossing any railroad or interurban railway tracks. The failure to stop before any such crossing shall forfeit the driver's contract, and, in case of accident to pupils or to the vehicle, shall cause the driver's bond to be forfeited and the amount and all rights thereunder determined by a court of competent jurisdiction.

(e) The board shall see to it that all motor vehicles operated by the district in the transporting of pupils are equipped with efficient lights and brakes, with adequate protection from inclement weather, and with the safety devices specified in Section 4.18 of this code.

[Acts 1969, 61st Leg., p. 2924, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.171. Regulations of Department of Education

The boards of trustees of all school districts providing transportation for pupils and all drivers used in that service shall abide by any and all regulations pertaining thereto which may be promulgated by the State Department of Education as authorized in Section 11.12 of this code.

[Acts 1969, 61st Leg., p. 2924, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.172. Transportation to Nearest College or University

(a) Any school district may furnish transportation by school bus or other conveyance to and from the nearest college or university for residents of the district who are enrolled at the college or university. Neighboring school districts may contract with each other to provide this transportation service for residents of the districts.

(b) Nothing in this section affects the transportation cost allotment to which any school district is entitled under the Minimum Foundation School Program.

[Acts 1971, 62nd Leg., p. 1516, ch. 405, § 45, eff. May 26, 1971.]

[Sections 21.173 to 21.200 reserved for expansion]

### SUBCHAPTER G. TEACHERS' EMPLOYMENT CONTRACTS

§§ 21.201 to 21.216. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(1), eff. May 26, 1971

[Sections 21.217 to 21.250 reserved for expansion]

### SUBCHAPTER H. RECORDS AND REPORTS

#### § 21.251. Teachers' Records and Reports

(a) Each teacher in the public free schools of this state shall keep a daily register showing the names, ages, courses of study, and attendance records of all pupils which the teacher is instructing.

(b) The register shall be open to the inspection of all parents, school officers, and all other persons who may be interested.

(c) Each teacher shall make a monthly report following the directives of either the county superintendent or the commissioner of education. The monthly reports must be approved by a majority of the board of trustees of the district and must be filed by the board of trustees with the county superintendent at the time vouchers for teachers' salaries are presented.

(d) Each teacher shall, at the end of the school term, make such reports as may be prescribed by the commissioner of education. Until such reports are made, the trustees shall not approve a voucher for the last month of the teacher's salary, nor shall the county treasurer pay the same.

[Acts 1969, 61st Leg., p. 2930, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.252. Reports to Commissioner

The commissioner of education shall require of judges acting as ex-officio county superintendents of public schools, of county, city, and town superintendents, of county and city treasurers and depositories, and of treasurers and depositories of school boards, and of other school officers and teachers, such school reports relating to the school fund and to other school affairs as he may deem proper for collecting information and advancing the interests of the public schools, and shall furnish the county, city, and town superintendents, treasurers, and depositories, and other school officers and teachers for the use of such teachers and officers the necessary blanks and forms for making such reports and carrying out such instructions as may be required of them.

[Acts 1969, 61st Leg., p. 2930, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.253. Registration Card

All teachers, librarians, school presidents, superintendents, principals, or other school officers employed by all schools supported wholly or partly by the state, shall fill out and send to the State Department of Education, before the expiration of the first school month of each annual session, a registration card, supplied by the State Department of Education, which card shall furnish blanks for useful statistical information; and the teachers, librarians, school presidents, superintendents, and principals shall not be paid the salary for the first month's services, except on the presentation of a receipt certifying that the registration card has been received by the State Department of Education.

[Acts 1969, 61st Leg., p. 2930, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.254. Withholding of Salary

The monthly salary of any county judge acting as ex-officio county superintendent of public schools, or any county, district, city or town superintendent, or principal or any teacher or librarian in any school supported wholly or partly by the state, or any assessor, county treasurer, treasurer in county school depository or treasurer of any school district depository, shall be withheld by the officials or authorities paying the said salary, on notification by the commissioner of education that the county judge, acting as ex-officio county superintendent of public schools,

or the county, district, city, or town superintendent or principal, teacher, librarian, assessor, county treasurer, treasurer of county school depository or treasurer of school district depository has refused or failed to make the reports required of him; provided, that this notification shall not be sent by the commissioner of education until at least two written requests have been made for the desired information and until 30 days have elapsed from the time of the first request without the receipt of the information required; in such case the aforesaid monthly salary shall be withheld until a notice is received from the commissioner of education, certifying that the information requested has been furnished by the delinquent person.

[Acts 1969, 61st Leg., p. 2930, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.255. Financial Reports to Commissioners or Department of Education; Forms**

(a) All financial reports made by or for school districts, either independent or common, or by their officers, agents or employees, to the commissioner or to the Department of Education, shall be made on forms prescribed or approved by the state auditor.

(b) It shall be the duty of the state auditor to combine as many forms as possible to the end that multiplicity of reports is avoided. Such forms shall call for all information required by law or the commissioner, as well as such information as is deemed necessary by the state auditor.

(c) The provisions of this section shall take precedence over any other law of this state in conflict herewith.

[Acts 1969, 61st Leg., p. 2931, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.256. Annual Audit; Report**

(a) The board of school trustees of each and every school district of the state, whether created under general or special law, shall have its school district fiscal accounts audited annually at district expense by a Texas certified or public accountant holding a permit from the Texas State Board of Public Accountancy. Such annual audit shall be completed following the close of each such fiscal year.

(b) Such independent audit shall meet at least the minimum requirements as shall be, and in such form as may be prescribed by the State Board of Education and approved by the state auditor.

(c) Each treasurer (depository) receiving or having control of any school fund of any school district shall keep a full and separate itemized account with each of the different classes of its school funds coming into his hands; provided further, the treasurer's records of the district's itemized accounts and records shall be made available to audit.

(d) A copy of the annual audit report, approved by the board of school trustees, shall be filed by the district with the Central Education Agency on or prior to the first day of December next following the close of the scholastic year for which audit was made. Where the board of trustees declines or refuses to approve its auditor's report, it shall nevertheless file with the Central Education Agency a copy of the audit report with its statement detailing reasons for failure to approve same.

(e) The audit reports shall be reviewed by the Central Education Agency, and the commissioner of education shall notify the board of trustees of objections, violations of sound accounting practices or law and regulation requirements, or of recommendations concerning same should he desire to make any. Where the audit report reflects that penal laws have been violated, the commissioner of education shall address such information to the appropriate county or district attorney, and to the attorney general. The commissioner of education shall have access to all vouchers, receipts, district fiscal and financial records, and such other school records as he may deem needed and appropriate for the review, analysis, and passing on audit reports.

(f) The audit report shall be submitted in lieu of the treasurer's (depository) report heretofore required to be filed annually with the commissioner of education.

[Acts 1971, 62nd Leg., p. 3009, ch. 994, § 8, eff. Aug. 30, 1971.]

[Sections 21.257 to 21.300 reserved for expansion]

**SUBCHAPTER I. DISCIPLINE, LAW AND ORDER**

**§ 21.301. Suspension of Incurrible Pupil**

The board of trustees of any school district may suspend from the privileges of the schools any pupil found guilty of incurrible conduct, but such suspension shall not extend beyond the current term of the school.

[Acts 1969, 61st Leg., p. 2931, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.302. Proceedings in Juvenile Court**

The school attendance officer shall proceed in juvenile court against any child within the compulsory school attendance age who is reported to him as being insubordinate, disorderly, vicious, or immoral in conduct, or who persistently violates the reasonable rules and regulations of the school which he attends, or who otherwise persistently misbehaves in such a manner as to render himself an incurrible.

[Acts 1969, 61st Leg., p. 2931, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.303. Parole**

The judge of the juvenile court shall have the power to parole any child found by him to be guilty of the charges brought by the school attendance officer and to require the parent or the person standing in parently<sup>1</sup> relation to the child to execute a bond in a sum not less than \$10, conditioned that the child shall attend school regularly and comply with all the rules and regulations of the school.

[Acts 1969, 61st Leg., p. 2931, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> So in enrolled bill.

**§ 21.304. Violation of Parole**

(a) The principal or superintendent shall report to the school attendance officer any child who violates the conditions of his parole.

(b) The school attendance officer shall proceed in juvenile court against any child reported to him as having violated the conditions of his parole.

(c) The judge of the juvenile court shall give the child a fair and impartial hearing and, if he is found guilty of violating the conditions of the parole, shall declare the bond to be forfeited and order the proceeds paid into the available school fund of the district.

(d) On finding a child guilty of violation of a first parole, the judge may again parole the child, requiring such bond as he may deem prudent and requiring the child again to enter school. On finding a child guilty of violation of a second parole, the judge shall commit the child to a suitable training school as determined by the judge of the juvenile court and the parent of the child convicted.

[Acts 1969, 61st Leg., p. 2932, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 21.305. Maintenance of Law and Order

(a) In order to maintain law, peace, and order in the operation of the public schools, the board of trustees of any school district may, when in the opinion of the governing board such action is necessary, exercise the powers described in this section.

(b) To prevent violence and to maintain peace and order, the board may call upon the governor for assistance through the Department of Public Safety, but neither the Texas National Guard nor other military force shall be used for the direction or control of the operation of or attendance at such schools.

(c) The board may close the school or schools and suspend operation for such period as the board finds it necessary to maintain order and public peace if:

(1) the governor by written proclamation finds that violence or the danger thereof cannot be prevented except by resort to military force or occupation of a public school;

(2) the board of trustees finds that violence or the danger thereof cannot be prevented except by resort to military force or occupation of a public school; or

(3) the National Guard or any other military troops or personnel are employed or used upon order of any federal authority on public school property or in the vicinity of any public school for direction or control of the order, operation, or attendance at such school.

(d) The board, upon finding that violence or the danger thereof cannot be prevented except by resort to military force or occupation of the public schools, may certify such fact to the governor, in which event it shall be the duty of the governor to close the school and suspend its operation until such time as the school board shall certify to the governor that such closure is no longer necessary in the maintenance of order and public peace. Upon certification that closure is no longer necessary, the governor must cancel and annul the closure and issue a proclamation to that effect.

[Acts 1969, 61st Leg., p. 2932, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 21.306. Effect of Closing Schools

(a) If a school is closed under authority of Section 21.305 of this code, the provisions of this section are applicable.

(b) School officials, teachers, and other employees shall continue to receive the salaries provided by the

terms of their employment, but such persons may be assigned to other duties as may be determined by the board having jurisdiction over the school.

(c) Neither state aid as provided by law nor school accreditation shall be affected.

(d) The board may authorize and provide for the transfer of pupils to another school in the district upon petition of the parents or persons standing in loco parentis.

(e) Compulsory attendance laws shall not be applicable to pupils whose schools are closed.

(f) The local board, in cooperation with the State Board of Education, shall use all personnel, funds, and facilities necessary and available to provide out-of-classroom instruction for the pupils concerned and to facilitate the reopening of the school at the earliest possible time that peace and order can be maintained without the use or occupation of military forces.

[Acts 1969, 61st Leg., p. 2932, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 21.307. Assistance of Attorney General

In order to help prevent situations which might result in the occupation of public schools by military forces or the closure thereof, the Attorney General of Texas is authorized to assist any public school board which requests his assistance in the defense of any law suit in a federal court which seeks to challenge the constitutionality of a statute of this State. This section shall not apply, however, in the event of a controversy between a public school board and an agency of the state which, under existing law, the Attorney General is authorized or required to represent.

[Acts 1969, 61st Leg., p. 2933, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 21.308. Security Personnel

(a) The governing board of any school district may employ security personnel for use in any school within its district when the board in its discretion determines that the personnel are necessary.

(b) All costs incurred by a school district in employing security personnel shall be borne by the school district.

[Acts 1971, 62nd Leg., p. 3356, ch. 1024, art. 2, § 32, eff. Sept. 1, 1971.]

[Sections 21.309 to 21.350 reserved for expansion]

## SUBCHAPTER J. SCHOOL-COUNTY LIBRARY FACILITIES

### § 21.351. Contract With County

In compliance with the terms of this subchapter, any school district having boundaries embracing the entire area of a county having a valuation in excess of \$30 million may enter into contracts with the county and with its board of library trustees to provide joint library facilities.

[Acts 1969, 61st Leg., p. 2933, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 21.352. Procedure to Execute Contract

(a) The procedure by which such contracts may be authorized shall be as prescribed by this section.

(b) The commissioners court of the county shall appoint a board of library trustees consisting of five members who are residents of the county.

(c) The board of library trustees shall organize by appointing a chairman, a secretary, and a treasurer.

(d) The board of library trustees shall call a public meeting for the purpose of presenting to the trustees of the school district and the members of the commissioners court a petition setting forth the need for additional library facilities and the agreement of the board of library trustees to assume the financial obligation of providing and maintaining an adequate public library building upon or adjacent to the school campus or grounds, the building to be used as a county free library and as a school library for the benefit of both the school students and the general public.

(e) The school trustees and the members of the commissioners court, at a joint meeting called for that purpose, shall consider the petition and agreement. If the plan of financing is found to be practicable and feasible and is approved by a majority both of the school trustees and of the commissioners court, a contract in compliance with Section 21.353 of this Code may be executed.

[Acts 1969, 61st Leg., p. 2933, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.353. Contract Provisions**

(a) Contracts authorized by this Article shall contain the provisions described in this Section in consideration for the agreement of the board of library trustees:

(b) The commissioners court must agree on its part to deliver over to the board of library trustees in trust and keeping the county-owned free library or libraries.

(c) The board of trustees of the school district must agree on its part to convey, with or without added consideration (and is hereby authorized to convey without the necessity of securing the consent of the Texas Education Agency or any officer thereof), the fee simple title to any individual lot or tract of land of any area not greater than two city lots, if any such area is owned by the school district on or adjacent to its campus and is not required under then existing school plans. The conveyance may be conditioned only by reserving to the school district the right to repurchase the tract, in the event of its abandonment for library purposes, at a price not to exceed any outstanding indebtedness against any building constructed thereon by the board of library trustees.

[Acts 1969, 61st Leg., p. 2934, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.354. Construction of Library**

(a) The public library building, authorized by the above-described contract, shall be constructed according to the provisions of this Section.

(b) After the execution of the joint contracts and the receipt of conveyance of the tract of land, the board of library trustees, by a majority vote at a meeting called for that purpose, may employ an architect to prepare plans for the construction of a combined library building and assembly hall.

(c) After the approval of the plans by both the board of trustees of the school district and the

commissioners court, the board of library trustees may enter into all necessary contracts for the construction of the building and the equipment thereof. The board of library trustees is authorized to mortgage or encumber the building to secure the financing thereof, but the indebtedness so created must be repaid out of revenue funds produced from the rental of the assembly hall or from private contributions and shall never become a debt against the county of the school district. No taxes shall be levied therefor.

[Acts 1969, 61st Leg., p. 2934, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.355. Management of Library**

(a) The management and control of the public library building shall be under the supervision and control of the board of library trustees so long as a public free library is maintained therein, subject to the provisions of law as to county free libraries and to the provisions of this Section.

(b) A separate room or rooms shall be provided for the county free library.

(c) The assembly hall and other parts of the building shall be set aside for the use of educational and civic organizations of the county. Educational and civic organizations shall have the right of use of the assembly hall, subject to the rules made by the board of library trustees and the necessary charges for use and maintenance. County civic organizations may use the assembly hall as a public assembly hall in keeping with the rules adopted by the board of library trustees.

[Acts 1969, 61st Leg., p. 2934, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 21.356 to 21.400 reserved for expansion]

SUBCHAPTER K. CONSOLIDATED ELECTIONS

**§ 21.401. Consolidated Elections**

The various officers, boards, or bodies charged with the duty of appointing election officers, providing supplies, canvassing returns, and paying the expenses of school board elections may agree to hold joint and consolidated elections and may agree upon the method of allocating the expenses of the elections whenever an election for members of the board of county school trustees, board of education, board of trustees, or other governing board of any school district, or the board of regents, board of trustees, or other governing board of any junior college district, regional college district, or other type of public college district is to be held on the same day and within all or part of the same territory as any other election or elections herein enumerated.

[Acts 1969, 61st Leg., p. 2935, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.402. Agreement**

Resolutions reciting the terms of the agreement shall be adopted by each of the participating boards or bodies. The agreement may provide for a single ballot form at each polling place to contain all the officers to be voted on at the place, or may provide for separate ballot forms which may combine two or more of the sets of county or district offices to be voted on, but all of the offices and candidates for

any one district or political subdivision must appear on the same ballot.

[Acts 1969, 61st Leg., p. 2935, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.403. Election Officers

One set of election officers may be appointed to conduct the joint election, and any person otherwise qualified who is a resident of any participating district or political subdivision shall be eligible to serve.

[Acts 1969, 61st Leg., p. 2935, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.404. Poll Lists, Ballot Boxes, Etc.

(a) Poll lists, tally sheets, and return forms for the various elections may be combined in any manner convenient and adequate to record and report the results of each election.

(b) One set of ballot boxes and one stub box may be used for receiving all ballots and ballot stubs at any one polling place.

[Acts 1969, 61st Leg., p. 2935, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 21.405. Returns; Canvass

(a) Returns on joint or separate forms may be made to any<sup>1</sup> the canvass made by each officer, board, or body designated by law to receive and canvass the returns of each election; or one of such officers, boards, or bodies may be designated to receive and canvass the returns for the joint election and to report the results of each election to the proper authorities.

(b) Where the counted ballots for two or more elections are deposited in a single ballot box, the box containing the counted ballots shall be returned to the officer or board designated in the agreement, which shall be an officer or board designated by law to receive and preserve the counted ballots for one of the elections constituting a part of the joint election.

[Acts 1969, 61st Leg., p. 2935, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> So in enrolled bill. Probably should read "and".

[Sections 21.406 to 21.450 reserved for expansion]

### SUBCHAPTER L. BILINGUAL EDUCATION

#### § 21.451. State Policy

The legislature finds that there are large numbers of children in the state who come from environments where the primary language is other than English. Experience has shown that public school classes in which instruction is given only in English are often inadequate for the education of children whose native tongue is another language. The legislature believes that a compensatory program of bilingual education can meet the needs of these children and facilitate their integration into the regular school curriculum. Therefore, pursuant to the policy of the state to insure equal educational opportunity to every child, and in recognition of the educational needs of children of limited English-speaking ability, it is the purpose of this subchapter to provide for the establishment of bilingual education programs in the public schools and to provide supplemental financial assistance to help local school districts meet the extra costs of the programs.

[Acts 1973, 63rd Leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.]

#### § 21.452. Definitions

In this subchapter the following words have the indicated meanings:

(1) "Agency" means the Central Education Agency.

(2) "Board" means the governing board of a school district.

(3) "Children of limited English-speaking ability" means children whose native tongue is a language other than English and who have difficulty performing ordinary classwork in English.

[Acts 1973, 63rd Leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.]

#### § 21.453. Establishment of Bilingual Programs

(a) The governing board of each school district shall determine not later than the first day of March, under regulations prescribed by the State Board of Education, the number of school-age children of limited English-speaking ability within the district and shall classify them according to the language in which they possess a primary speaking ability.

(b) Beginning with the 1974-75 scholastic year, each school district which has an enrollment of 20 or more children of limited English-speaking ability in any language classification in the same grade level during the preceding scholastic year, and which does not have a program of bilingual instruction which accomplishes the state policy set out in Section 21.451 of this Act, shall institute a program of bilingual instruction for the children in each language classification commencing in the first grade, and shall increase the program by one grade each year until bilingual instruction is offered in each grade up to the sixth. The board may establish a program with respect to a language classification with less than 20 children.

[Acts 1973, 63rd Leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.]

#### § 21.454. Program Content; Method of Instruction

(a) The bilingual education program established by a school district shall be a full-time program of instruction (1) in all subjects required by law or by the school district, which shall be given in the native language of the children of limited English-speaking ability who are enrolled in the program, and in the English language; (2) in the comprehension, speaking, reading, and writing of the native language of the children of limited English-speaking ability who are enrolled in the program, and in the comprehension, speaking, reading, and writing of the English language; and (3) in the history and culture associated with the native language of the children of limited English-speaking ability who are enrolled in the program, and in the history and culture of the United States.

(b) In predominantly nonverbal subjects, such as art, music, and physical education, children of limited English-speaking ability shall participate fully with their English-speaking contemporaries in regular classes provided in the subjects.

(c) Elective courses included in the curriculum may be taught in a language other than English.

(d) Each school district shall insure to children enrolled in the program a meaningful opportunity to participate fully with other children in all extracurricular activities.

[Acts 1973, 63rd Leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.]

**§ 21.455. Enrollment of Children in Program**

(a) Every school-age child of limited English-speaking ability residing within a school district required to provide a bilingual program for his classification shall be enrolled in the program for a period of three years or until he achieves a level of English language proficiency which will enable him to perform successfully in classes in which instruction is given only in English, whichever first occurs.

(b) A child of limited English-speaking ability enrolled in a program of bilingual education may continue in that program for a period longer than three years with the approval of the school district and the child's parents or legal guardian.

(c) No school district may transfer a child of limited English-speaking ability out of a program in bilingual education prior to his third year of enrollment in the program unless the parents of the child approve the transfer in writing, and unless the child has received a score on an examination which, in the determination of the agency, reflects a level of English language skills appropriate to his or her grade level. If later evidence suggests that a child who has been transferred is still handicapped by an inadequate command of English, he may be re-enrolled in the program for a length of time equal to that which remained at the time he was transferred.

(d) No later than 10 days after the enrollment of a child in a program in bilingual education the school district shall notify the parents or legal guardian of the child that the child has been enrolled in the program. The notice shall be in writing in English, and in the language of which the child of the parents possesses a primary speaking ability.

[Acts 1973, 63rd Leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.]

**§ 21.456. Facilities: Classes**

(a) Programs in bilingual education, whenever possible, shall be located in the regular public schools of the district rather than in separate facilities.

(b) Children enrolled in the program, whenever possible, shall be placed in classes with other children of approximately the same age and level of educational attainment. If children of different age groups or educational levels are combined, the school district shall insure that the instruction given each child is appropriate to his or her level of educational attainment, and the district shall keep adequate records of the educational level and progress of each child enrolled in the program.

(c) The maximum student-teacher ratio shall be set by the agency and shall reflect the special educational needs of children enrolled in programs of bilingual education.

[Acts 1973, 63rd Leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.]

**§ 21.457. Cooperation Among Districts**

(a) A school district may join with any other district or districts to provide the programs in bilin-

gual education required or permitted by this subchapter. The availability of the programs shall be publicized throughout the affected districts.

(b) A school district may allow a nonresident child of limited English-speaking ability to enroll in or attend its program in bilingual education, and the tuition for the child shall be paid by the district in which the child resides.

[Acts 1973, 63rd Leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.]

**§ 21.458. Preschool and Summer School Programs**

A school district may establish on a full- or part-time basis preschool or summer school programs in bilingual education for children of limited English-speaking ability and may join with other districts in establishing the programs. The preschool or summer programs shall not be a substitute for programs required to be provided during the regular school year.

[Acts 1973, 63rd Leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.]

**§ 21.459. Bilingual Education Teachers**

(a) The State Board of Education shall promulgate rules and regulations governing the issuance of teaching certificates with bilingual education endorsements to teachers who possess a speaking and reading ability in a language other than English in which bilingual education programs are offered and who meet the general requirements set out in Chapter 13 of this code.<sup>1</sup>

(b) The minimum monthly base pay and increments for teaching experience for a bilingual education teacher are the same as for a classroom teacher with an equivalent degree under the Texas State Public Education Compensation Plan. The minimum annual salary for a bilingual education teacher is the monthly base salary, plus increments, multiplied by 10, 11, or 12, as applicable.

[Acts 1973, 63rd Leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Section 13.01 et seq.

**§ 21.460. Allotments for Operational Expenses and Transportation**

(a) To each school district operating an approved bilingual education program there shall be allotted a special allowance in an amount to be determined by the agency for pupil evaluation, books, instructional media, and other supplies required for quality instruction.

(b) The cost of transporting bilingual education students from one campus to another within a district or from a sending district to an area vocational school or to an approved post-secondary institution under a contract for instruction approved by the Central Education Agency shall be reimbursed based on the number or actual miles traveled times the district's official extracurricular travel per mile rate as set by their local board of trustees and approved by the Central Education Agency.

(c) The Foundation School Fund Budget Committee shall consider all amounts required for the operation of bilingual education programs in estimating the funds needed for purposes of the Foundation School Program.

(d) The cost of funding this Act shall, for fiscal years 1974 and 1975, be maintained at the level contained in House Bill 139, 63rd Legislature, Regular Session, 1973.

[Acts 1973, 63rd Leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.]

[Sections 21.461 to 21.480 reserved for expansion]

#### SUBCHAPTER M. PROTECTION OF BUILDINGS AND GROUNDS

##### Application of Act

*Section 2 of Acts 1973, 63rd Leg., p. 1639, ch. 596, adding this Subchapter, provides: "Nothing in this Act shall apply to school districts in counties with a population of less than 1,300,000."*

##### § 21.481. Applicability of Criminal Laws

All the general and criminal laws of the state are declared to be in full force and effect within the areas under the control and jurisdiction of the board of trustees of any school district in this state.

[Acts 1973, 63rd Leg., p. 1637, ch. 596, § 1, eff. Aug. 27, 1973.]

##### § 21.482. Rules and Regulations; Penalty

(a) The board of trustees of any school district may promulgate rules and regulations for the safety and welfare of students, employees, and property, and other rules and regulations it may deem necessary to carry out the provisions of this subchapter and the governance of the school, providing for the operation and parking of vehicles on the grounds, streets, drives, alleys, and any other school property under its control, including but not limited to the following:

- (1) limiting the rate of speed;
- (2) assigning parking spaces and designating parking areas and their use and assessing a charge for parking;
- (3) prohibiting parking as it deems necessary;
- (4) removing vehicles parked in violation of board rules and regulations or law at the expense of the violator;
- (5) instituting a system of registration for vehicle identification, including a reasonable charge.

(b) A person who violates any provision of this subchapter or any rule or regulation promulgated under the authority of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$200.

[Acts 1973, 63rd Leg., p. 1637, ch. 596, § 1, eff. Aug. 27, 1973.]

##### § 21.483. Campus Security Personnel

The board of trustees of any school district may employ campus security personnel for the purpose of carrying out the provisions of this subchapter and if the board of trustees authorizes any officer to bear arms then they must commission them as peace officers. Any officer commissioned under this section is vested with all the powers, privileges, and immunities of peace officers while on the property under the control and jurisdiction of the district or

otherwise in the performance of his duties. Any officer assigned to duty and commissioned shall take and file the oath required of peace officers, and shall execute and file a good and sufficient bond in the sum of \$1,000, payable to the board of trustees, with two or more good and sufficient sureties, conditioned that he will fairly, impartially, and faithfully perform all the duties that may be required of him by law. The bond may be sued on from time to time in the name of any person injured until the whole amount of the bond is recovered. Any peace officer commissioned under this section must meet all minimum standards for peace officers established by the Commission on Law Enforcement Officer Standards and Education within one year of his commission, or his commission shall automatically expire.

[Acts 1973, 63rd Leg., p. 1637, ch. 596, § 1, eff. Aug. 27, 1973.]

##### § 21.484. Trespass, Damage, Etc.

It is unlawful for any person to trespass on the grounds of any school district of this state or to damage or deface any of the buildings, statues, monuments, memorials, trees, shrubs, grasses, or flowers on the grounds of any school district.

[Acts 1973, 63rd Leg., p. 1637, ch. 596, § 1, eff. Aug. 27, 1973.]

##### § 21.485. Parking; Blocking or Impeding Traffic

It is unlawful for any person to park a vehicle on any property under the control and jurisdiction of a school district of this state except in the manner designated by the district and in the spaces marked and designated by the board of trustees, or to block or impede traffic through any driveway of that property. All laws regulating traffic on highways and streets apply to the operation of vehicles within the property of the institution, except as may be modified in this subchapter.

[Acts 1973, 63rd Leg., p. 1637, ch. 596, § 1, eff. Aug. 27, 1973.]

##### § 21.486. Parking and Traffic Tickets; Summons; Arrest Warrants

In connection with traffic and parking violations, only the officers authorized to enforce the provisions of this subchapter have the authority to issue and use traffic tickets and summons of the type used by the Texas Highway Patrol, with any changes that are necessitated by reason of this subchapter. On the issuance of any parking or traffic ticket or summons, the same procedures shall be followed as prevail in connection with the use of parking and traffic violation tickets by the cities of this state and the Texas Highway Patrol. Nothing in this subchapter restricts the application and use of regular arrest warrants.

[Acts 1973, 63rd Leg., p. 1637, ch. 596, § 1, eff. Aug. 27, 1973.]

##### § 21.487. Vehicle Identification Insignia

Each school district may provide for the issuance and use of suitable vehicle identification insignia. The institution may bar or suspend the permit of any vehicle from driving or parking on any school property for the violation of any rule or regulation promulgated by the board as well as for any violation of this subchapter. Reinstatement of the privileges may be permitted and a reasonable fee assessed.

[Acts 1973, 63rd Leg., p. 1637, ch. 596, § 1, eff. Aug. 27, 1973.]

**§ 21.488. Courts Having Jurisdiction**

The judge of a municipal court or any justice of the peace of any city or county where property under the control and jurisdiction of school district is located is each separately vested with all jurisdiction necessary to hear and determine criminal cases involving violations of this subchapter or rules or regulations promulgated under this subchapter for which the punishment does not exceed a fine of \$200.

[Acts 1973, 63rd Leg., p. 1637, ch. 596, § 1, eff. Aug. 27, 1973.]

**§ 21.489. Unauthorized Persons: Refusal of Entry, Ejection, Identification**

The board of trustees of a school district or its authorized representatives may refuse to allow persons having no legitimate business to enter on property under the board's control, and may eject any undesirable person from the property on his refusal to leave peaceably on request. Identification may be required of any person on the property.

[Acts 1973, 63rd Leg., p. 1637, ch. 596, § 1, eff. Aug. 27, 1973.]

**§ 21.490. Enforcement of Rules and Regulations**

Notwithstanding any of the provisions of this subchapter, all officers commissioned by the board of trustees of a school district may be empowered by the board to enforce rules and regulations promulgated by the board. Nothing in this subchapter is intended to limit or restrict the authority of each district to promulgate and enforce appropriate rules and regulations for the orderly conduct of the institution in carrying out its purposes and objectives or the right of separate jurisdiction relating to the conduct of its students and personnel.

[Acts 1973, 63rd Leg., p. 1637, ch. 596, § 1, eff. Aug. 27, 1973.]

[Sections 21.491 to 21.900 reserved for expansion]

**SUBCHAPTER Z. MISCELLANEOUS PROVISIONS**

**§ 21.901. Contracts—Competitive Bidding**

(a) All contracts proposed to be made by any Texas public school board for the purchase of any personal property shall be submitted to competitive bidding when said property is valued at \$1,000 or more.

(b) All contracts proposed to be made by any Texas public school board for the construction, maintenance, repair or renovation of any building or for materials used in said construction, maintenance, repair or renovation, shall be submitted to competitive bidding when said contracts involve \$1,000 or more.

(c) Nothing in this section shall apply to fees received for professional services rendered, including but not limited to architects fees, attorney's fees, and fees for fiscal agents.

(d) Notice of the time when and place where such contracts will be let and bids opened shall be published in the county where the purchasing school is located, once a week for at least two weeks prior to

the time set for letting said contract and in two other newspapers that the school board may designate. Provided, however, that on contracts involving less than \$25,000, such advertising may be limited to two successive issues of any newspaper published in the county in which the school is located, and if there is no newspaper in the county in which the school is located, then said advertising shall be for publication in some newspaper in some county nearest the county seat of the county in which the school is located.

[Acts 1969, 61st Leg., p. 2936, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.902. Late Afternoon and Evening Sessions**

The board of trustees of any district may provide late afternoon and evening sessions and determine which pupils shall be admitted or assigned to such school programs. The attendance of eligible pupils as defined from time to time by the policies of the State Board of Education shall be applicable to those pupils attending late afternoon and evening sessions.

[Acts 1969, 61st Leg., p. 2936, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 209, ch. 93, § 2, eff. Aug. 27, 1973.]

**§ 21.903. Donations to the Public Schools**

(a) All conveyances, devises, and bequests of property for the benefit of the public schools made by anyone for any county, city, town, or district shall, when not otherwise directed by the grantor or devisor, vest the property in the county school trustees, the board of trustees of the city, town, or district, or their successors in office as trustees for those to be benefited thereby.

(b) The funds or other property donated or the income therefrom may be expended by the trustees:

(1) for any purpose designated by the donor so long as that purpose is in keeping with the lawful purposes of the schools for the benefit of which the donation was made; or

(2) for any purpose authorized by the commissioner of education in the event that no specific purpose is designated by the donor.

[Acts 1969, 61st Leg., p. 2936, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 21.904. Requiring or Coercing Teachers to Join Groups, Clubs, Committees, or Organizations: Political Affairs**

(a) No school district, board of education, superintendent, assistant superintendent, principal, or other administrator benefiting by the funds provided for in this code shall directly or indirectly require or coerce any teacher to join any group, club, committee, organization, or association.

(b) It shall be the responsibility of the State Board of Education to enforce the provisions of this section.

(c) It shall be the responsibility of the State Board of Education to notify every superintendent of schools in every school district of the state of the provisions of this section.

(d) No school district, board of education, superintendent, assistant superintendent, principal, or other administrator shall directly or indirectly coerce any teacher to refrain from participating in political affairs in his community, state or nation.

[Acts 1969, 61st Leg., p. 2936, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 21.905. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(1), eff. May 26, 1971

§ 21.906. Insurance for School Athletes

(a) In compliance with the terms of this section, the board of trustees of any school district in this state is authorized, but not required, to secure for the protection of students who participate in interschool athletic competition, insurance against bodily injuries sustained by such students while training for or engaging in such competition.

(b) The amount of insurance to be obtained shall be in keeping with the financial condition of the school district and shall not exceed the amount which, in the opinion of the board of trustees, is reasonably necessary to afford adequate medical treatment of students so injured.

(c) The insurance herein authorized shall in all cases be obtained from some reliable insurance company authorized to do business in Texas and shall be on forms approved by the State Board of Insurance.

(d) The cost of such insurance shall constitute a legitimate part of the total cost of the athletic program of the school district, but premium payments shall be paid only from receipts accruing to the school from admission charges to school athletic contests or other receipts from such contests and from no other fund.

(e) The failure of any board of trustees to carry the insurance herein authorized shall not be construed as placing any legal liability upon the school district or its officers, agents, or employees, for any injury which may result.

[Acts 1969, 61st Leg., p. 2937, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 21.907. Deaf and Deaf-Mute Students

A teacher may use the oral, manual, Rochester (combination method), and the language of signs methods of instruction in teaching deaf and deaf-mute students in any school of this state, subject to the recommendation of his supervising teacher.

[Acts 1969, 61st Leg., p. 2937, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 21.908. Court-Related Children—Liaison Officers

Each school district shall appoint at least one counsellor or teacher to act as liaison officer for court-related children who are scholastics of the district. The liaison officer shall provide counselling and services for each court-related child and his parents with the objective of establishing or reestablishing normal attendance and progress of the child in the school.

[Acts 1969, 61st Leg., p. 2937, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 21.909. Protective Eye Devices in Public Schools

(a) Industrial quality eye-protective devices shall be worn by every teacher and pupil in Texas participating in any of the following courses:

(1) vocational or industrial arts shops or laboratories involving experience with:

(A) hot molten metals;

(B) milling, sawing, turning, shaping, cutting or stamping of any solid materials;

(C) heat treatment, tempering, or kiln firing of any metal or other materials;

(D) gas or electric arc welding; or

(E) caustic or explosive materials; or

(2) chemical or combined chemical-physical laboratories involving caustic or explosive chemicals or hot liquids or solids.

(b) In this section, "industrial quality eye-protective devices" means devices meeting the standards set by the State Department of Health.

(c) The governing boards and administrators of Texas school districts offering any of the listed courses are responsible for furnishing free of charge or providing at cost to teachers and pupils participating in the courses the required eye-protective devices.

(d) Whenever an accident occurs during the conduct of any of the courses described in Subsection (a) of this section, and an injury to the eye of a teacher or pupil results, the principal shall make a full written report of the accident and injury to the State Department of Education. The department shall prescribe the form and content of the reports and shall maintain a file of all reports submitted. [Acts 1969, 61st Leg., p. 2938, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 21.910. Developmental Leaves of Absence

(a) In this section, "teacher" means an employee of a school district who is employed in a position requiring a permanent teaching certificate under the laws of this State.

(b) The governing board of a school district may grant a developmental leave of absence for study, research, travel, or other suitable purpose to a teacher who has served in the same school district at least five consecutive school years.

(c) The governing board may grant a teacher a developmental leave of absence for one school year at one-half of his regular salary or for one-half of a school year at his full regular salary. Payment to the teacher shall be made periodically by the school district in the same manner, on the same schedule, and with the same deductions as if the teacher were on full time duty.

(d) The State Board of Education by regulation shall establish a procedure whereby applications for developmental leave are received and evaluated by the governing board of a school district and shall determine an equitable ratio of classroom teachers to other certified personnel who may be granted leave over a period of time.

(e) A teacher on developmental leave shall continue to be a member of the Teacher Retirement System of Texas and shall be a teacher of the school district for purposes of participating in programs, holding memberships, and receiving benefits afforded by his employment in the school district.

[Acts 1971, 62nd Leg., p. 2727, ch. 888, § 1, eff. Aug. 30, 1971.]

§ 21.911. Financial Support for Instructional Television Services

[Text as renumbered by Acts 1973, 63rd Leg., p. 90, ch. 51, § 18]

(a) Any school district of this state classified common, independent school district or rural high school

district whose governing board elects to utilize and contract for available educational television programs and services, including transmission services with educational television stations and interconnecting communications common carriers, to enrich its classroom instruction shall, upon application and pursuant to regulations prescribed by the Central Education Agency, be reimbursed for such costs from state funds to the extent herein authorized.

(b) The annual cost of such television service programs of the district shall be borne equally by the state and the participating district eligible therefor on the basis, one-half by the state and one-half by the district, provided that the state's part of the cost therein shall not exceed 75 cents per pupil determined on the Average Daily Attendance (ADA) of the district for the preceding school year.

(c) The state's share of the cost shall be paid from the foundation school fund, and this cost shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for foundation school program purposes.

[Added as § 21.910 by Acts 1971, 62nd Leg., p. 3010, ch. 994, § 9; Renumbered as § 21.911 by Acts 1973, 63rd Leg., p. 90, ch. 51, § 18, eff. Aug. 27, 1973.]

*For text as added by Acts 1973, 63rd Leg., p. 578, ch. 247, § 1, see § 21.911, post.*

**§ 21.911. Testing Pupils for Assignment to Special Education Classes**

*[Text as added by Acts 1973, 63rd Leg., p. 578, ch. 247, § 1]*

(a) Before a pupil is assigned to a special education class he shall be given verbal or nonverbal individual intelligence tests in the primary home language in which the pupil is most fluent and has the best speaking ability and capacity to understand. The tests shall be selected from a list approved by the State Board of Education.

(b) No school district may assign a pupil to a special education class on the basis of intelligence tests administered in a language other than the primary home language of the child.

[Acts 1973, 63rd Leg., p. 578, ch. 247, § 1, eff. June 11, 1973.]

*For text as renumbered by Acts 1973, 63rd Leg., p. 90, ch. 51, § 18, see § 21.911, ante.*

**§ 21.912. Duties of Professional Employees; Liability**

(a) The board of trustees of each school district within this state shall adopt policies specifying the duties of each of its professional positions of employment. The board of trustees shall assign positions of employment earned under the minimum foundation program to meet the specific needs of the district.

(b) No professional employee of any school district within this state shall be personally liable for any act incident to or within the scope of the duties of his position of employment, and which act involves the exercise of judgment or discretion on the part of the employee, except in circumstances where professional employees use excessive force in the discipline of students or negligence resulting in bodily injury to students.

(c) This section is not applicable to the operation, use, or maintenance of any motor vehicle.

(d) "Professional employee," as used in this section, includes superintendents, principals, classroom teachers, supervisors, counselors, and any other person whose employment requires certification and an exercise of discretion.

[Acts 1973, 63rd Leg., p. 79, ch. 51, § 2, eff. Aug. 27, 1973.]

**CHAPTER 22. COMMON SCHOOL DISTRICTS**

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**§ 22.01. Government**

(a) A common school district is under the immediate control and management of a board of three trustees, who function under the provisions of this chapter but who are under the general supervision of a county governing board as provided in Chapter 17 of this code.<sup>1</sup>

(b) A common consolidated school district is under the immediate control and management of a board of seven trustees, who function under the provisions of this chapter but who are under the general supervision of a county governing board as provided in Chapter 17 of this code.

[Acts 1969, 61st Leg., p. 2939, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 17.01 et seq.

**§ 22.02. Election of Common and Common Consolidated School District Trustees**

(a) Trustees for common or common consolidated school districts are selected at an election called for that purpose and held on the first Saturday in April of each year, except in those counties with a population of 500,000 or more, according to the last preceding federal census, all elections of school district trustees shall be held on the first Saturday in April or on some other Saturday the school district trustees or board members may select by official resolution, as provided by this section.

(b) All elections of trustees, after the election at which the common or common consolidated school district is first organized, shall be called by the trustees of the district, who shall also:

(1) give notice of the time and place at which the election will be held by posting notices in at least three public places in the district at least 20 days prior to the date of holding the election; and

(2) appoint three qualified voters for each place of voting to hold the election and to make returns thereof, one to be designated presiding officer; and these persons shall receive as com-

compensation for their services the sum of \$3 each, to be paid out of the local funds of the district where the election is held.

(c) Any person desiring to have his name placed on the ballot as a candidate for the office of trustee of a common or common consolidated school district shall, at least 30 days before the day of election, file a written request with the county judge of the county in which the district is located, requesting that his name be placed on the official ballot.

(d) Five or more qualified voters in the district may request that the county judge place any name or names on the ballot, provided such request is made within the time and manner specified in Subsection (c) of this section.

(e) At least 20 days before the election, the county judge shall have the ballots printed as follows:

(1) the ballots shall be of uniform style and dimension and shall be of the stub type provided for in the general election laws;

(2) the ballots shall be printed with black ink on clear white paper of sufficient thickness to prevent the marks thereon from being seen through the paper;

(3) at the top of the ballot there shall be printed "Official Ballot, \_\_\_\_\_ School District," the number or name of the district to be supplied by the county judge when he orders the ballots printed; and

(4) the name of each person qualifying as a candidate under either Subsection (c) or Subsection (d) of this section, and fulfilling the requirements of Section 22.05 of this code, shall be listed.

(f) At least one day before the election is to be held, the county judge shall deliver to the presiding officer of the election, by mail or other suitable method, a sufficient number of printed ballots, boxes, and other supplies necessary for the election, with these conditions:

(1) the ballots and tally sheets shall be delivered in sealed envelopes;

(2) the envelopes shall not be opened by the election officer until the day on which the election is to be held; and

(3) the officers holding the election shall be required to use the ballots furnished them by the county judge as provided in this chapter.

(g) The expenses of printing the ballots and delivering them to the presiding officer, together with the other expenses incidental to the election, shall be paid out of the available maintenance funds of the school district in which the election is held or to be held.

(h) All qualified voters of the common or common consolidated school district shall be eligible to vote.

(i) The polls shall be open from 8 a. m. until 7 p. m., except in counties of 100,000 or more population, according to the last preceding federal census, where the polls must be open from 7 a. m. to 7 p. m.

(j) The election officers shall make returns of the election to the county clerk within five days after such election, to be delivered by him to the commissioners court at its first meeting after the election, to be canvassed by the court, and the court or its clerk shall certify the result to the district trustees and issue to the person or persons elected their commissions as trustees.

(k) Ballot boxes which have been furnished by local officials shall be sent to the county judge; and the certified election returns and ballot boxes shall be safely preserved for a period of three months after the date of the election.

[Acts 1969, 61st Leg., p. 2939, ch. 889, § 1, eff. Sept. 1, 1972.]

#### § 22.03. Terms of Common School District Trustees

(a) At all elections following that at which the common school district is first organized, each common school district trustee shall be elected for a term of three years, except as otherwise provided by this section.

(b) At the first election following the creation of a common school district, the qualified voters shall elect three trustees, who shall determine their terms by lot with the trustees drawing numbers. The trustee drawing number one shall serve for a term of one year, the trustee drawing number two shall serve for a term of two years, and the trustee drawing number three shall serve for a term of three years.

(c) At each annual election following the first, one trustee shall be elected who shall serve for three years or until his successor is elected and has qualified.

(d) The term of each trustee shall begin on May 1 following his election.

(e) Any vacancy shall be filled by the county school trustees or county board of education for the remainder of the unexpired term in which the vacancy occurs.

[Acts 1969, 61st Leg., p. 2940, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 22.04. Terms of Common Consolidated School District Trustees

(a) At all elections following that at which a common consolidated school district is first organized, each common consolidated school district trustee shall be elected for a term of three years.

(b) At the first election following the creation of the common consolidated school district, the qualified voters shall elect seven trustees, who shall determine their terms by lot. The three members drawing numbers one, two, and three shall serve for terms of one year; the two members drawing numbers four and five shall serve for terms of two years; and the two members drawing numbers six and seven shall serve for terms of three years.

(c) At each annual election following the first, three or two trustees shall be elected for a term of three years to succeed the trustees whose terms expire.

(d) The members of the board remaining after a vacancy shall fill the same for the unexpired term. [Acts 1969, 61st Leg., p. 2940, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 22.05. Qualifications of Common and Common Consolidated School District Trustees

Each person elected to serve as a common school district trustee must

(1) be able to read and write the English language; and

(2) have been a resident of the common school district for at least six months prior to his election or appointment and a qualified property taxpaying elector in the district.

[Acts 1969, 61st Leg., p. 2941, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 22.06. Removal for Lack of Qualifications**

(a) If any person elected or appointed to serve as trustee of a common or common consolidated school district does not in the opinion of the county superintendent possess the qualifications prescribed by law, the county superintendent shall refuse to recognize the person and shall make a written request, within 20 days after such election, to the county attorney or district attorney, if there be no county attorney, to institute and prosecute suit in the name of the state for the removal of the trustee.

(b) On good cause shown, within the discretion of the court where such suit is pending, it shall be lawful to enjoin and restrain such person from acting as trustee during the pendency of the suit.

(c) It shall be lawful to summon the elected trustee before the court in the trial of the cause and there to examine him as to his qualifications to serve as trustee.

(d) The hearing shall be conducted under rules applicable to the trial of civil actions generally and, if the elected trustee is found to be disqualified, the court shall declare the office vacant.

(e) Whenever a person is enjoined from acting as trustee, pending trial by the court, the county school trustees or county board of education for the common school district or the board of trustees for the common consolidated school district shall appoint a suitable person to act as trustee during the enjoinder, and if the trustee enjoined is, by judgment of the court, removed from office, then trustee appointed shall continue to serve for the unexpired term.

(f) Whenever a trustee is removed from office by judgment of the court without an injunction previously having been issued, the county school trustees or county board of education for the common school district or the board of trustees for the common consolidated school district shall appoint a suitable person to fill the vacancy for the unexpired term. [Acts 1969, 61st Leg., p. 2941, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 22.07. Organization of Common School District Trustees**

(a) Each trustee must take the official oath and, as soon as practicable, file the oath with the county superintendent or, if the county judge is acting as ex officio county superintendent, with the county judge.

(b) Immediately after each election the trustees shall organize by electing one of their number as president and one as secretary and shall file a report of their organization with the county superintendent.

(c) The trustees shall be a body politic and corporate in law and shall be known by and under the title and name of district trustees of district number \_\_\_\_\_, and county of \_\_\_\_\_, State of Texas. All reports and other official papers shall be

headed with the name and number of the district and the name of the county.

[Acts 1969, 61st Leg., p. 2942, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 22.08. Powers and Duties of Common and Common Consolidated School District Trustees**

(a) Under such powers as are granted under the provisions of this code and/or necessarily implied therefrom, the trustees of a common or common consolidated school district shall have the power to contract and be contracted with for the general good of the school district.

(b) The trustees of a common or common consolidated school district may sue and be sued, plead or be impleaded, in any court of Texas of proper jurisdiction.

(c) The trustees of a common or common consolidated school district may receive any gift, grant, donation, or devise made for the use of the public schools of the district.

(d) The trustees of a common or common consolidated school district shall have the management and control of the public schools, the public school grounds and all other property belonging to the district whether acquired by purchase or lease. They shall determine how many schools shall be maintained in the district and at what points the schools shall be located. They shall determine when the schools shall be open and when closed.

(e) The trustees of a common or common consolidated school district shall have the power to employ teachers and other school officials and to contract with them as provided in Section 22.09 of this code, but in making contracts with teachers or other employees or in contracting for services or supplies, the trustees shall not create a deficiency debt against the district.

(f) The trustees of a common or common consolidated school district may dismiss teachers or other employees, but a teacher or other official dismissed shall have the right of appeal to the county superintendent and to the commissioner of education.

(g) The trustees of a common or common consolidated school district shall approve all claims against the school funds of the district and shall manage and supervise the schools in accordance with the rules and regulations of the county superintendent and the officials of the Central Education Agency.

(h) The amount contracted by trustees to be paid a teacher or other employee shall be paid on a check drawn on the county depository for the district, signed or drawn upon order authorized by a majority of the trustees of the district and approved by the county superintendent.

(i) The trustees of a common or common consolidated school district shall supply all information required of them by the county superintendent or the Central Education Agency for the proper operation of the foundation school program within the district or for carrying out the objectives of the Central Education Agency.

[Acts 1969, 61st Leg., p. 2942, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 22.09. Contracts With Teachers and Other School Officials

(a) The board of trustees of any common school district or any district which is classified as common shall at all times have the right to enter into written contracts employing a superintendent, principals, teachers, and other executive officers for a term not to exceed three years, provided that:

(1) all contracts for 12 months or more shall begin on July 1 and end on June 30 of the year terminating the contract; and

(2) all contracts for 12 months or more shall be approved by the county superintendent of the county having jurisdiction over the district.

(b) Employment contracts for a term of less than one year need not be approved by the county superintendent and may be entered into at any time and for whatever period the trustees determine.

(c) This section is applicable to any common or common consolidated school district which has not adopted the provisions of the continuing contract law as set out in Chapter 13 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2943, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 89, ch. 51, § 15, eff. Aug. 27, 1973.]

<sup>1</sup> Section 13.001 et seq.

### § 22.10. Acquisition and Sale of School Property

(a) The trustees of a common school district may contract for the erection of school buildings, provided that:

(1) no mechanic, contractor, material man, or other person can contract for, or in any other manner acquire, any lien upon a school building or the land upon which it is situated, and all contracts for the erection of school buildings shall expressly stipulate a waiver of such lien;

(2) the district trustees shall superintend the construction and approve all accounts submitted in connection therewith;

(3) payment shall be made by the county superintendent, who shall draw his warrant on the school fund appropriated therefor on the account approved by the district trustees; and

(4) any bonds issued shall be in compliance with the terms of Chapter 20 of this code<sup>1</sup> and such bonds shall be handled in compliance with Chapter 20 of this code.

(b) The trustees of a common or common consolidated school district may sell any property belonging to the school district, provided that:

(1) the terms of the sale must be prescribed and approved by order of the county school trustees or county board of education having jurisdiction over the common school district; and

(2) the proceeds of the sale must be used to purchase necessary grounds or to build or repair school buildings or be placed to the credit of the local maintenance school fund of the district.

[Acts 1969, 61st Leg., p. 2943, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 20.01 et seq.

### § 22.11. Taxation

(a) The county commissioners court of each county shall have the power to levy and cause to be

collected taxes and to issue bonds for the common or common consolidated school districts of the county in compliance with the provisions in Chapter 20 of this code.<sup>1</sup>

(b) All property assessed for school purposes in a common or common consolidated school district shall be assessed at the same value as that property is assessed for state and county purposes.

(c) The commissioners court, at the time of levying taxes for county purposes, shall also levy upon all taxable property within any common or common consolidated school district any school tax voted by the district in compliance with Chapter 20 of this code, and if

(1) a specific rate has been voted, the commissioners court shall levy the tax at the rate provided in the election; and

(2) no specific rate has been voted, the commissioners court shall levy the tax at such a rate within the limit voted as determined by the board of trustees of the district and the county superintendent and certified to the commissioners court by the county superintendent.

(d) If the tax has been voted after the levy of county taxes, the tax may be levied at any meeting of the commissioners court prior to the delivery of the assessment rolls by the assessor.

(e) The tax assessor shall assess the school tax as other taxes are assessed and make an abstract showing the amount of special taxes assessed against each school district in his county and furnish the same to the county superintendent on or before September 1 of the year for which such taxes are assessed.

(f) The taxes levied upon the real property in common or common consolidated school districts shall be a lien thereon and the same shall be sold for unpaid taxes in the manner and at the time of sales for state and county taxes.

(g) The county tax collector shall collect taxes levied upon the property of a common or common consolidated school district as other taxes in the district are collected, and shall pay all such taxes to the county treasurer. The tax assessor shall receive a commission of one percent for assessing the taxes, and the tax collector, a commission of one percent for collecting the taxes.

(h) The county treasurer shall credit each common or common consolidated school district with the amount of tax funds received belonging to the district and shall pay out such funds in accordance with law.

[Acts 1969, 61st Leg., p. 2943, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 20.01 et seq.

### § 22.12. Common or Common Consolidated County-Line School Districts

(a) Common or common consolidated county-line school districts shall have all the rights, powers, and privileges of other common or common consolidated school districts as provided in this code.

(b) A common or common consolidated county-line school district shall be managed and controlled by the county named in the order creating the district, and the operation of the schools shall be under the administrative jurisdiction of the county governing

board of the county named in the order creating the district.

(c) A petition requesting a tax or bond election or both meeting the provisions of Chapter 20 of this code<sup>1</sup> applicable to common school districts shall be presented to the county judge of the county having jurisdiction of the district. If it has been determined by a majority vote that such county-line district shall levy such tax or issue such bonds, the commissioners court of the county having jurisdiction of the district shall pass an order levying such tax within the rate authorized or issue such bonds, or both, as the case may be, against the territory within the county, and a like order levying such tax, or issuing bonds and levying a tax for interest and retirement thereof, or both, shall be passed by the commissioners court of each other county having territory within the district, subject to the provisions of this section.

(d) The rate of tax, if not determined at the election, shall be set annually by the commissioners court of the county having jurisdiction within the lawful limit that has been determined by the board of trustees of the district and the county superintendent of the county having jurisdiction and certified to the court by the county superintendent until such tax is diminished or abrogated as provided by law, of<sup>2</sup> such bond obligations, if any, have been fully paid.

(e) Each county shall continue annually to levy the tax or taxes at the rate determined as specified above.

(f) The assessor-collector of each county shall assess the taxes levied by the commissioners court of his county against the territory of the county-line district in his county.

(g) The assessor-collector of each county having territory within the county-line school district shall maintain a separate roll covering any special tax or taxes on the territory in his county included in the county-line school district.

(h) The assessor-collector of each county shall collect the taxes for the county-line district in his county, and all taxes collected for the benefit of the county-line district and recorded in a separate account shall be deposited by the county with the treasurer or depository designated for the county-line district.

[Acts 1969, 61st Leg., p. 2944, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 20.01 et seq.

<sup>2</sup> So in enrolled bill; probably should read "or".

**CHAPTER 23. INDEPENDENT SCHOOL DISTRICTS**

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## SUBCHAPTER A. BOARD OF TRUSTEES

**§ 23.01. Districts With 150 or More Scholastics**

The public schools of an independent school district having 150 or more scholastics according to the latest approved scholastic census shall be under the control and management of a board of seven trustees.

[Acts 1969, 61st Leg., p. 2947, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.02. Districts With Fewer Than 150 Scholastics**

(a) An independent school district having fewer than 150 scholastics according to the latest approved scholastic census shall have a board of seven trustees as provided in this chapter but shall, unless the trustees determine otherwise as specified below, be governed in the general administration of its schools by the laws which apply to common school districts as provided in Chapter 22 of this code.<sup>1</sup>

(b) The trustees of an independent school district having fewer than 150 scholastics as shown by last approved census may choose, by majority vote shown on the minutes of the board, not to be governed in the general administration of its schools by the laws which apply to common school districts and be governed instead by the laws which apply to other independent school districts.

(c) By filing, on or before September 1 of each year, certified copies of the minutes adopting such a policy in both the office of the county clerk and the office of the Central Education Agency, an independent school district having fewer than 150 scholastics may be governed as other independent school districts.

[Acts 1969, 61st Leg., p. 2947, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 22.01 et seq.

**§ 23.021. Certain Districts; Creation of Seven-Member Board**

(a) Any independent school district created by special law may establish a board of trustees to be composed of seven members. When at least 25 percent of the number of qualified voters who voted in the last regular school board election sign and present to the county judge a petition praying for submission of the proposition that at the next regular school board election there shall be a vote as to whether or not the board of trustees shall be composed of seven members, the county judge shall determine the sufficiency of said petition, and if sufficient, shall enter his order upon the minutes of the commissioners court to submit the proposition as herein provided. Approval of the proposition shall be by a majority vote.

(b) If the proposition is approved, then at the next following regular school board election there shall be elected trustees, to serve a three-year term, to fill any new vacancies created by the approval of the proposition creating a seven-member board, if any, or any vacancy created by the expiration of the term of a member. Any member previously named shall serve the full term to which elected. The county judge may provide for staggered terms of the board of trustees, provided if it should be required that two or more newly elected trustees serve less than

<sup>1</sup> West's Tex. Stats. & Codes—28

the full term of three years, then the determination of which members shall serve for the lesser term shall be by lot.

[Acts 1971, 62nd Leg., p. 3010, ch. 994, § 11, eff. Aug. 30, 1971.]

**§ 23.03. Application to Get on Ballot**

(a) Applications of candidates for a place on the ballot shall be filed not less than 30 days prior to the day of the election, and no candidate shall have his name printed on said ballot unless there has been compliance with the provisions of this section.

(b) Candidates for office of trustee of an independent school district having fewer than 150 scholastics as shown by the last scholastic census approved by the Central Education Agency must file their applications with the county judge of the county in which the district is located, but any five or more resident qualified voters of the district may request of the county judge that any name or names be listed on the official ballot as candidates.

(c) Candidates for office of trustee of an independent school district having 150 or more scholastics must file their applications with the secretary of the school board of trustees.

(d) In those districts in which the positions on the board of trustees are authorized to be designated by number, as provided in Section 23.11 of this code, each applicant shall also state the number of the position for which he is filing as candidate. No candidate shall be eligible to have his name placed on the official ballot under more than one position to be filled at such election.

(e) In those districts in which the positions on the board of trustees are not authorized to be designated by number, it shall not be necessary for an applicant to state which other candidate, if any, he is opposing.

[Acts 1969, 61st Leg., p. 2948, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 902, ch. 128, § 1, eff. Aug. 30, 1971.]

**§ 23.04. Ballots: Deadline for Printing**

Ballots for use in the election of trustees of an independent school district shall be printed not less than 20 days prior to the day of the election.

[Acts 1969, 61st Leg., p. 2948, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.05. Ballots: Districts With Fewer Than 150 Scholastics**

(a) Ballots for the election of school trustees for independent school districts having fewer than 150 scholastics as shown by the last approved scholastic census shall be ordered by the county judge and must fulfill the requirements of this section.

(b) The ballots must be of uniform style and dimension and must be of the stub type provided for in the general election laws.

(c) The ballots must be printed with black ink on clear white paper of sufficient thickness to prevent the marks thereon from being seen through the paper.

(d) At the top of the ballot there shall be printed "Official Ballot, \_\_\_\_\_ School District," the name of the district to be filled in by the county judge when he orders the ballots printed.

(e) The names of all eligible candidates whose applications have been duly filed shall be placed thereon.

(f) The printed ballots, boxes, tally sheets, and other supplies necessary for the holding of the election shall be delivered by the county judge, in sealed envelopes, to the presiding officer of the election at least one day before the election is to be held but shall not be opened until the day of the election.

(g) The expenses of printing the ballots and delivering same to the presiding officer, together with the other expenses incidental to the election shall be paid out of the available maintenance funds belonging to the school district in which said election is held.

(h) The officers of the election must use the ballots furnished by the county judge as herein provided.

[Acts 1969, 61st Leg., p. 2948, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 902, ch. 128, § 2, eff. Aug. 30, 1971.]

**§ 23.06. Ballots: Districts With 150 or More Scholastics**

(a) Ballots for the election of school trustees for independent school districts having 150 or more scholastics as shown by the last approved census shall be prepared as ordered by the trustees of the district and must fulfill the requirements of this section.

(b) The ballots must be of uniform style and dimension and must be of the stub type provided for in the general election laws.

(c) The ballots must be printed with black ink on clear white paper of sufficient thickness to prevent the marks thereon from being seen through the paper.

(d) The ballots shall have printed at the top, "Official Ballot, \_\_\_\_\_ Independent School District," specifying the name of the school district.

(e) The names of all eligible persons who have properly qualified as candidates for school trustee of the district shall be included, and if the positions on the board are designated by number as provided in Section 23.11 of this code, the position for which each person is a candidate shall be clearly shown.

[Acts 1969, 61st Leg., p. 2949, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 902, ch. 128, § 3, eff. Aug. 30, 1971.]

**§ 23.07. Order; Election Officers**

(a) The board of trustees of each independent school district shall order all regular elections for trustees and give notice thereof. The order and notice shall be made at least 20 days before the date of election. A notice of the order shall be posted at three public places in the district and shall designate the places where the polls shall be open.

(b) The board of trustees shall appoint to hold the election three or more persons who shall possess the qualifications and receive the compensation provided for election officers under the general election laws.

[Acts 1969, 61st Leg., p. 2949, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.08. Election**

(a) Elections for trustees of independent school districts shall be held on the first Saturday in April, except that in counties having a population of 500,000 or more the trustees may by official resolution select any other Saturday.

(b) Elections shall be held either annually or biennially, depending upon the term for which the trustees are to be elected as provided in this subchapter.

(c) Voting machines may be used.

(d) All qualified voters of the district shall be entitled to vote.

(e) The elections shall be governed by the general election laws except where in conflict with this subchapter.

[Acts 1969, 61st Leg., p. 2949, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.09. Determination of Results**

(a) In those districts where the positions of trustees are authorized to be designated by number, as provided in Section 23.11 of this code, the candidate receiving the highest number of votes for each respective position voted on shall be entitled to serve as trustee.

(b) In those districts where the positions of trustees are not authorized to be designated by number, the candidates receiving the highest number of votes shall fill the positions the terms of which are normally expiring.

[Acts 1969, 61st Leg., p. 2950, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.10. Returns; Canvass**

(a) In those school districts having fewer than 150 scholastics, according to the latest approved scholastic census, the election officers shall make returns of the election to the county clerk within five days after such election, to be delivered by him to the commissioners court at its first meeting thereafter to be canvassed by such court. The court or its clerk shall certify the result to the district trustees and issue to the person or persons elected their commissions as trustees.

(b) In those districts having 150 or more scholastics, according to the latest approved scholastic census, the election returns certified to by the election officers shall be made to the board of school trustees which shall canvass the returns, declare the results of the election, and issue certificates of election to the persons shown to be elected.

[Acts 1969, 61st Leg., p. 2950, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 902, ch. 128, § 4, eff. Aug. 30, 1971.]

**§ 23.11. Election by Position**

(a) The designation of the positions of trustees by number is or may be required only as specified in this section.

(b) The positions on the board of trustees shall be designated by number in any independent school district wherein the procedure of designating and electing the trustees by number has been authorized and instituted whether under general or special law and whether by resolution of the trustees or by operation of law.

(c) The positions on the board of trustees shall be designated by number in any independent school district in which the scholastic population is 150 or more according to the latest approved scholastic census and in which the board of trustees, by appropriate action as specified below, orders that all candidates for trustee be voted upon and elected separately for positions on the board of trustees and that all candidates be designated on the official ballot according to the number of the positions for which they seek election.

(d) The order of resolution of the board of trustees must be made at least 60 days prior to any trustee election to be controlled by this section.

(e) The board shall also, at least 60 days prior to the election, number the positions on the board in the order in which the terms of office of the trustees expire.

(f) Once the board of trustees of an independent school district has adopted the provisions of this section, neither the board of trustees nor their successors may rescind the action.

(g) In any such independent school district in which procedure of designating and electing trustees by numbered positions has been or may hereafter be instituted, any candidate offering himself for a position as trustee in any election shall indicate in a written notice timely filed the number of the position for which he desires to run, and his application for a place on the ballot shall disclose the position number for which he is a candidate or the name of the incumbent member holding the position for which he desires to run. The names of the candidates for each position shall be arranged by lot by the board of trustees of the district.

(h) The board may also provide by resolution, at least 60 days prior to the election, that if no candidate for a position receives a majority of the votes cast for that position the board will order a runoff election to be held not more than 30 days after the date of the first election. At that runoff election, the names of the two persons receiving the highest number of votes for that position in the first election shall be placed on the ballot.

[Acts 1969, 61st Leg., p. 2950, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 903, ch. 128, § 5, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 2410, ch. 760, § 1, eff. Aug. 30, 1971.]

### § 23.12. Districts Converted From Common School Districts

(a) This section shall apply to any independent school district incorporated under the provisions of Subchapter G, Chapter 19 of this code,<sup>1</sup> having a board of seven trustees whereunder in alternate years four trustees are elected for two-year terms and three trustees are elected for two-year terms.

(b) Immediately after any next regular election of a board of trustees in any independent school district to which this section applies, members of such board of school trustees may draw lots. Those members drawing numbers 1, 2, and 3 shall serve for a term of one year and until their respective successors are duly elected and qualified. Those members drawing numbers 4 and 5 shall serve for a term of two years and until their respective successors are duly elected and qualified. Those drawing numbers 6 and 7 shall serve for a term of three years and until their respective successors be duly elected and qualified.

(c) Those members of the board of trustees, in any district to which this section applies, who are elected at the expiration of each of the terms provided for in Subsection (b) of this section, shall serve for a term of three years and the term of office of members of such board of school trustees shall continue to be three years with two or three members thereof, as the case may be, being elected each year thereafter.

[Acts 1969, 61st Leg., p. 2951, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.201 et seq.

### § 23.13. Term of Office—General Rule—Three Years

(a) Unless a different term is authorized by Section 23.14 or 23.15 of this code, the term of trustees of independent school districts, other than county-wide independent school districts, shall be three years in any district which does not include within its boundaries a city or town with a population in excess of 75,000 or in any district where a term of three years has previously instituted under either general or special law of this state.

(b) The term of trustees may be three (3) years in any independent district, other than a county-wide district in which the trustees, by majority vote, adopt a three-year term and, at least 90 days prior to a regular election date, publish in a newspaper printed in the county in which the district is situated notice of the election and the terms for which the trustees are to be elected.

(c) Elections shall be held annually. At the first regular trustee election after the creation of the district or the adoption of the three-year term, as provided above, the seven trustees elected shall determine by lot the terms for which they are to serve, as follows: the three members drawing numbers 1, 2, and 3 shall serve for a term of one year; the two members drawing numbers 4 and 5 shall serve for a term of two years; and the two members drawing numbers 6 and 7 shall serve for a term of three years.

(d) Each year, following the first election, either three or two trustees shall be elected, the number depending upon that required to constitute a board of seven trustees.

(e) If the procedure of designating and electing trustees by numbered positions, as provided in Section 23.11 of this code, is applicable to the district, the trustees shall be elected in compliance with the terms of that section.

(f) The trustees of any independent school district which has previously instituted a term of three years may continue to be elected for a term of three years. [Acts 1969, 61st Leg., p. 2951, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 23.14. Six-Year Terms

(a) Unless a different term is authorized by either Section 23.13 or 23.15 of this code, the term of trustees of independent school districts, other than county-wide independent school districts, shall be six years in those districts which include within their boundaries a city with a population of 75,000 or more and in those districts where a term of six years has been previously instituted under either general or special law of this state.

(b) The term of office may be six years in any district in which there are as many as 30,220 scholastics, according to the last scholastic census, and in which the trustees, by majority vote, adopt a six-year term.

(c) At the first regular trustee election after the creation of the district or the applicability or the adoption of the six-year term, the seven trustees elected shall determine by lot the terms for which they are to serve. The three members drawing numbers 1, 2, and 3 shall serve for a term of six years; the two members drawing numbers 4 and 5 shall serve for a term of four years; and the two members drawing numbers 6 and 7 shall serve for a term of two years.

(d) Elections shall be held biennially. At each election following the first, either two or three trustees shall be elected, the number depending upon that required to compose a board of seven trustees.

(e) If the procedure of designating and electing trustees by numbered positions, as provided in Section 23.11 of this code, is applicable to the district, the trustees shall be elected in compliance with the terms of that section.

[Acts 1969, 61st Leg., p. 2952, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.15. Four-Year Terms**

The trustees of any independent school district which has previously, under either general or special law of this state, adopted or instituted a term of four years may continue to be elected for a term of four years. Elections shall be held biennially. Either three or four trustees shall be elected at each election, the number depending upon that required to compose a board of seven trustees. The trustees shall be elected by position number as provided in Section 23.11 of this code.

[Acts 1969, 61st Leg., p. 2952, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.16. County-Wide Districts: Two Year Terms**

The trustees of all county-wide independent school districts, previously established or hereafter created as provided in Subchapter C, Chapter 19 of this code,<sup>1</sup> shall serve for a regular term of two years. Each year either three or four trustees shall be elected, the number depending upon that required to constitute a board of seven trustees as provided in Section 19.067 of this code.

[Acts 1969, 61st Leg., p. 2952, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.061 et seq.

**§ 23.17. Length of Term May be Continued**

The trustees of any independent school district which has lawfully instituted a particular term of office may, by resolution, continue that term even though the size of the district changes so that the specified term is no longer applicable.

[Acts 1969, 61st Leg., p. 2953, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.18. Vacancies**

(a) If a vacancy occurs in the board of trustees, the remaining members of the board of trustees shall fill the vacancy until the next regular election for members of the board of trustees. If at the time of that election, there remains any portion of the term so filled, a person shall be elected to serve out the remainder of the unexpired term.

(b) The provisions of this section shall not apply to school districts where the school board is appointed by the city commission. A trustee appointed by city commission to fill a vacancy shall serve for the unexpired term of his or her predecessor.

[Acts 1969, 61st Leg., p. 2953, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.19. Qualification and Organization of Trustees**

(a) Each elected trustee shall qualify by taking the official oath of office.

(b) The trustees first elected or appointed after the creation or incorporation of the independent school district shall file their oaths with the county judge of the county in which the district or a major portion thereof is situated. After all subsequent elections the newly elected trustees shall file their oaths with the president of the board of trustees.

(c) No person shall be elected trustee of an independent school district unless he is a qualified voter.

(d) At the first meeting after each election and qualification of trustees, the members shall organize by selecting:

- (1) a president, who shall be a member of the board;
- (2) a secretary, who may or may not be a member of the board;
- (3) a treasurer, as provided in Section 23.61 of this code;
- (4) an assessor and collector of taxes, as provided in Subchapter F of this chapter;<sup>1</sup> and
- (5) such other officers and committees as the board may deem necessary.

(e) the trustees shall serve without compensation.

[Acts 1969, 61st Leg., p. 2953, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.91 et seq.

[Sections 23.20 to 23.24 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF TRUSTEES

**§ 23.25. Powers and Duties**

The board of trustees of an independent school district shall have the powers and duties described in this subchapter, in addition to any other powers and duties granted or imposed by this code or by law.

[Acts 1969, 61st Leg., p. 2953, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.26. In General**

(a) The trustees shall constitute a body corporate and in the name of the school district may acquire and hold real and personal property, sue and be sued, and receive bequests and donations or other moneys or funds coming legally into their hands.

(b) The trustees shall have the exclusive power to manage and govern the public free schools of the district.

(c) All rights and titles to the school property of the district, whether real or personal, shall be vested in the trustees and their successors in office.

(d) The trustees may adopt such rules, regulations, and by-laws as they may deem proper.

[Acts 1969, 61st Leg., p. 2954, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 23.27. Taxes; Bonds

The trustees shall have the power to levy and collect taxes and to issue bonds in compliance with the applicable provisions in Chapter 20 of this code,<sup>1</sup> and if no specific rate of tax is adopted at an election authorizing a tax, shall determine the rate of tax to be levied within the limit voted and specified by law.

[Acts 1969, 61st Leg., p. 2954, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup>Section 20.01 et seq.

### § 23.28. Contracts With Officers and Teachers

(a) The board of trustees of any independent school district may employ by contract a superintendent, a principal or principals, teachers, or other executive officers for a term not to exceed the maximum specified in this section.

(b) In those independent school districts with a scholastic population of fewer than 5,000, the term of such contracts shall not exceed three years.

(c) In those independent school districts with a scholastic population of 5,000 or more, in the last preceding scholastic year, the term of such contracts shall not exceed five years.

(d) All 12 month contracts made with employees above-mentioned shall begin on July 1 of the year beginning the contract and end on June 30 of the year terminating the contract.

(e) This section does not apply to teacher's contracts in those independent school districts which have adopted the provisions of the probationary or continuing contract law as set out in Subchapter C, Chapter 13 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2954, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 89, ch. 51, § 14, eff. Aug. 27, 1973.]

<sup>1</sup>Section 13.101 et seq.

### § 23.29. Sale of Minerals

(a) Minerals in land or any part thereof belonging to an independent school district may be sold to any person under the provisions of this section.

(b) The sale must be authorized by a resolution adopted by majority vote of the board of trustees of the independent school district; and the sale and the terms thereof must be approved by the commissioner of education.

(c) When the requirements of Subsection (b) of this section are fulfilled, the president of the board of trustees may execute an oil and/or gas lease or sell, exchange, and convey the minerals, or any part thereof, in land belonging to the school district to any person upon the terms which the trustees deem advisable and which the commissioner of education approves. The mineral deed or lease shall recite the approval of the commissioner of education and the resolution of the board authorizing the sale.

(d) If the district has outstanding bonds, the proceeds of the sale shall be applied to the sinking fund account of the district. If the district has no outstanding bonds, the proceeds shall be used for the purchase of necessary grounds or the construction or repairing of school buildings or deposited to the local maintenance school fund of the district.

(e) Any and all sales or leases of mineral heretofore made by any independent school districts in substantial compliance with the provisions of this section, when such sales or leases have been made with the consent of the State Board of Education or the chief administrative officer of the public schools of this state after the same have been authorized by the trustees of the independent school district, shall not be invalid by reason of any lack of authority to make and enter into such sales and leases.

[Acts 1969, 61st Leg., p. 2954, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 23.30. Sale of Property Other Than Minerals

(a) The board of trustees of any independent school district may, by resolution, authorize the sale of any property, other than minerals, held in trust for free school purposes.

(b) The president of the board of trustees shall execute his deed to the purchaser of such reciting therein the resolution of the board of trustees authorizing the sale.

(c) The proceeds of such sale shall be used for the purchase of more convenient and more desirable school property or for the construction or repairing of school buildings or deposited to the credit of the local maintenance fund of the district.

(d) Any and all sales of school houses, buildings or lands heretofore made by any independent school district in substantial compliance with the provisions of this section, after same has been authorized by the trustees of the independent school district, shall not be invalid by reason of any lack of authority to make and enter into such sales.

[Acts 1969, 61st Leg., p. 2955, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 23.31. Eminent Domain

(a) All independent school districts, except those covered in Section 17.26 of this code, shall have the power by the exercise of the right of eminent domain to acquire the fee simple title to real property for the purpose of securing sites upon which to construct school buildings or for any other purpose which may be deemed necessary for the independent school district.

(b) In all such condemnations, the trial and all other proceedings, including the assessing of damages, shall be in conformity with the statutes of the state for condemning and acquiring property by railroads.

(c) Whenever final judgment is rendered in a condemnation, the plaintiff shall be awarded the fee simple title to the property condemned and thereafter have, hold, and possess such property in fee simple title, with full power over the same including the right of alienation.

(d) If the school district should desire to enter upon and take possession of the property sought to be condemned pending suit, it may do so at any time after the award of the commissioners, upon the following conditions:

(1) It shall not be required to give any bond whatsoever, but it shall pay to the defendant the amount of damages awarded or adjudged against it by the commissioners or deposit the same in money in court subject to the order of the defendant, and also pay the costs awarded against it.

(2) If on an appeal from the award of the commissioners the judgment shall exceed the amount of the award, the district, in the event it shall have previously taken possession of the property condemned, shall pay the judgment and costs awarded against it, within 60 days from the date of the final judgment in the case and, upon its failure so to do, the court shall upon application of the defendant inquire what damages, if any, have been suffered by the defendant by reason of the temporary possession by plaintiff, and order the same paid out of the award deposited in court and order a writ of possession for the property in favor of the defendant.

(3) If the final judgment on any such appeal shall be less than the amount of the award of the commissioners, the court shall adjudge the excess to be returned to the district.

(4) If the cause should be appealed from the decision of the county court, the appeal shall be governed by the law governing appeals in other cases, except that the judgment of the county court shall not be suspended thereby.

[Acts 1969, 61st Leg., p. 2955, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.32. Combined Occupancy Structures in Certain Independent School Districts**

(a) The board of trustees of any independent school district having an average daily attendance of more than 100,000 according to the last preceding scholastic census may enter into an agreement with any person, association of persons, firm, or corporation, for the purpose of constructing a combined occupancy structure over any existing or proposed independent school district improvement.

(b) The board may sell or lease the air rights, condominium property rights or interest, horizontal or vertical stratification rights or interest, or any other possessory right or interest or any combination of the rights or interests, in relation to the existing or proposed improvement.

(c) The board may require any person, association of persons, firm, or corporation that enters into an agreement with the board pursuant to this section to construct or cause to be constructed any portion of the combined occupancy structure, including that portion which is to be occupied by the independent school district. The portion constructed or caused to be constructed by the person, association of persons, firm, or corporation, shall be constructed in compliance with all terms, conditions, and restrictions imposed by the board. For the purposes of this section, only the board may determine whether the portion of the combined occupancy structure not intended for the occupancy of the independent school district is being constructed or has been constructed in compliance with the terms, conditions, and restrictions imposed.

(d) If the agreement calls for the board to construct the combined occupancy structure, Section 21.901 of this code and all other applicable laws shall apply to the construction.

(e) Any portion of the combined occupancy structure which is owned or leased by any person, association of persons, firm, or corporation shall be subject to all applicable state and local taxes, and shall not

for any purpose be considered the property of the independent school district.

(f) Notwithstanding any other provision of this section, the portion of the combined occupancy structure which is occupied and used by the independent school district shall for all purposes be considered the property of the district.

(g) The board may call an election to authorize the issuance of bonds for the purpose of providing funds to finance the construction of the portion of the combined occupancy structure which the independent school district is obligated by agreement to construct. The board may allocate the income from the sale or lease of property rights as authorized by this section to retire the bonds authorized by this subsection. The bond election and the issuance and sale of the bonds shall be governed by all laws applicable thereto.

(h) The board shall publish notice of a public hearing concerning the construction of a proposed combined occupancy structure before entering into any agreement for the construction of the structure. Notice of the hearing shall be published not less than 10 days nor more than 20 days before the hearing in two newspapers having general circulation in the independent school district. The notice of the hearing shall contain a summary of the proposed action of the board.

[Acts 1973, 63rd Leg., p. 80, ch. 51, § 3, eff. Aug. 27, 1973.]

[Sections 23.33 to 23.40 reserved for expansion]

**SUBCHAPTER C. BUDGET AND FISCAL ACCOUNTING SYSTEM**

**§ 23.41. Budget Officer**

The president of the board of trustees of each independent school district whether created by general or special law shall be the budget officer for the district and, as such, shall have the duties prescribed in this subchapter.

[Acts 1969, 61st Leg., p. 2956, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.42. Preparation of Budget**

(a) Not later than August 20 of each year, the president shall prepare, or cause to be prepared, a budget covering all estimated receipts and proposed expenditures of the district for the next succeeding fiscal year.

(b) The budget must be itemized in detail according to classification and purpose of expenditure, and must be prepared according to the rules and regulations established by the State Board of Education.

[Acts 1969, 61st Leg., p. 2956, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.43. Deputy Budget Officer**

To assist him in the professional and technical phases of budget preparation, the president of the board of trustees shall designate as deputy budget officer the business manager, if any, of the district, or the superintendent of schools; and if the district has no superintendent, the chief administrative employee of the district shall be designated as deputy budget officer.

[Acts 1969, 61st Leg., p. 2956, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 23.44. Records and Reports

The president of the board of trustees shall see to it that records are kept and that copies of all budgets, all forms, and all other reports are filed at the proper times and in the proper offices as required by subsequent sections of this subchapter.

[Acts 1969, 61st Leg., p. 2956, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 23.45. Budget Meeting

(a) When the budget has been prepared, the president shall call a meeting of the board of trustees, giving five days public notice and stating that the purpose of the meeting is the adoption of a budget for the succeeding fiscal year.

(b) It shall be the duty of the board of trustees, at the meeting called for that purpose, to adopt a budget to cover all expenditures for the independent school district for the next succeeding fiscal year. Any taxpayer of the district may be present and participate in the hearing.

[Acts 1969, 61st Leg., p. 2956, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 23.46. Filing of Adopted Budget

Not later than November 1 of the year for which the budget is adopted, copies of the budget must be filed in the office of the county clerk of the county or counties in which the district is located and with the Central Education Agency. All copies must be prepared according to the rules and regulations established by the State Board of Education, upon forms furnished by the Central Education Agency.

[Acts 1969, 61st Leg., p. 2957, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 23.47. Effect of Adopted Budget; Amendments

(a) No public funds of the independent school district shall be expended in any manner other than as provided for in the budget adopted by the board of trustees, but the board shall have the authority to amend a budget or to adopt a supplementary emergency budget to cover necessary unforeseen expenses.

(b) Copies of any amendment or supplementary budget, when adopted, shall be filed with the county clerk of the county or counties in which the district is situated and with the Central Education Agency. Any amendment or supplementary budget must be prepared on forms prescribed and furnished by the Central Education Agency.

[Acts 1969, 61st Leg., p. 2957, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 23.48. Accounting System; Report

(a) A standard school fiscal accounting system must be adopted and installed by the board of trustees of each independent school district. The accounting system must be keyed to and correlated with the classifications in the budget with respect to purposes of disbursements and sources of receipts.

(b) The accounting system must meet at least the minimum requirements prescribed by the State Board of Education and approved by the state auditor.

(c) Record must be kept of all expenditures made and all income received during the fiscal year for which a budget is adopted. A report of the dis-

bursements and receipts for the preceding fiscal year shall be filed with the Central Education Agency on forms provided by the agency, at the time the budget for the current fiscal year is filed.

[Acts 1969, 61st Leg., p. 2957, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 23.49. Review by Department of Education

The budget and fiscal reports filed with the Central Education Agency shall be reviewed and analyzed by the staff of the State Department of Education. The fiscal data collected shall be used by the department in the preparation of school fiscal reports to be submitted to the governor and the legislature.

[Acts 1969, 61st Leg., p. 2957, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 23.50. Loss of Accreditation

The agency shall drop from the list of accredited schools any district which fails to comply with the provisions of this subchapter or with the rules and regulations of the State Board of Education pursuant thereto.

[Acts 1969, 61st Leg., p. 2957, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 23.51 to 23.60 reserved for expansion]

### SUBCHAPTER D. TREASURER OR DEPOSITORY

#### § 23.61. Treasurer or Depository

(a) The treasurer or depository of an independent school district having 150 scholastics or more shall be that person or corporation who offers satisfactory bond or other security, as provided in this subchapter, and the best bid of interest on the average daily balances or time deposits for the privilege of acting as treasurer.

(b) The treasurer or depository when selected as provided above shall serve for a term of two years and until his successor shall have been duly selected and qualified.

[Acts 1969, 61st Leg., p. 2958, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 23.62. Bond

(a) Unless the board of trustees of an independent school district elects to accept a deposit of securities in lieu of a bond, as authorized by Section 23.63 of this code, the treasurer or depository of the independent school district shall be required to make a satisfactory bond as herein specified.

(b) When the bond is a personal bond, it shall be in an amount equal to the estimated amount of the total receipts coming annually into the hands of the treasurer. When the bond is executed by a surety company or is a bond other than a personal bond, it shall be in an amount equal to the highest estimated daily balance for the current biennium as determined by the governing board of the independent school district.

(c) No premium on any bond shall be paid out of the funds of the independent school district.

(d) The bond shall be payable to the president of the board of trustees and his successors in office and conditioned:

(1) that the treasurer shall faithfully discharge the duties of his office and make pay-

ment from the funds received by him upon draft of the president of the school board drawn upon order, duly entered, of the board of trustees; and

(2) that the treasurer shall safely keep and faithfully disburse all funds coming into his hands as treasurer and shall faithfully pay over to his successor all balances remaining in his hands.

(e) When the board of trustees of the independent school district has approved the treasurer's bond, the president of the board shall notify the State Department of Education by filing a copy of the bond with the department.

[Acts 1969, 61st Leg., p. 2958, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.63. Deposit of Securities**

(a) The board of trustees of an independent school district may, in lieu of the bond specified in Section 23.62 of this code, accept a deposit of approved securities as provided by this section.

(b) Such securities may include bonds of the United States, or bonds of the State of Texas, or bonds of any county, city, town, or independent school district in the state, or anticipation tax warrants and/or anticipation tax notes legally issued by the governing body of the independent school district.

(c) Such securities shall be deposited as the board of trustees of the independent school district may direct in an amount sufficient adequately to protect the funds of the school district in the hands of the selected treasurer.

(d) When the board of trustees of the independent school district has approved the treasurer's deposit of securities, the president of the board of trustees shall notify the State Department of Education by filing a copy of the depository pledge contract listing the securities on deposit.

[Acts 1969, 61st Leg., p. 2958, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.64. Records**

Each treasurer or depository receiving or having control of the school funds of an independent school district shall keep a full and separate itemized account of each different classes of school funds coming into his hands and shall make his records available for audit.

[Acts 1969, 61st Leg., p. 2959, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 23.65 to 23.70 reserved for expansion]

**SUBCHAPTER E. SCHOOL DEPOSITORY ACT**

**§ 23.71. Short Title**

This subchapter may be cited as the School Depository Act.

[Acts 1969, 61st Leg., p. 2959, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.72. Adoption of Act Optional**

Any independent school district of more than 150 scholastics may elect by a majority vote of its board of trustees to adopt the terms and provisions of this subchapter. Thereafter, the school depository or

depositories for said school district shall be selected in accordance with the terms and provisions of this subchapter.

[Acts 1969, 61st Leg., p. 2959, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.73. Definitions**

As used in this Act, unless otherwise clearly indicated by the context:

(1) "School district" means any public independent school district of more than 150 scholastics.

(2) "Bank" means a state bank authorized and regulated under the laws of the state pertaining to banking and in particular authorized and regulated by the Banking Department Self-Support and Administration Act,<sup>1</sup> or a national bank authorized and regulated by federal law.

(3) "Time Deposit," including "time certificate" and "time deposit-open account," have the same definitions as adopted for said terms by the Board of Governors of the Federal Reserve System.

(4) "Approved securities" means bonds of the United States, bonds of the State of Texas, bonds of the counties of the State of Texas, bonds of school districts of the State of Texas, bonds of any town or city of the State of Texas, and bonds of any other district or political subdivision of the State of Texas.

[Acts 1969, 61st Leg., p. 2959, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> See Art. 342-101A et seq.

**§ 23.74. Depository Must be a Bank**

A school depository under the terms and provisions of this subchapter shall be a bank, if any, located within the territory of the school district selecting said depository, and, if none, a bank within the territory of an adjoining school district.

[Acts 1969, 61st Leg., p. 2959, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.75. Trustee as Stockholder, Etc., of Bank**

In the event a member of the board of trustees of a school district is a stockholder, officer, director, or employee of a bank located in said school district, or a bank located in an adjoining school district, said bank shall not be disqualified from bidding and becoming the school depository of said school district provided said bank is selected by a majority vote of the board of trustees of said school district or a majority vote of a quorum when only a quorum eligible to vote is present. Common law rules in conflict with the terms and provisions of this Act are hereby modified as herein provided. If a member of the board of trustees of a school district is a stockholder, officer, director, or employee of a bank that has bid to become the depository for said school district, said member of said board of trustees shall not vote on the awarding of the depository contract to said bank and said school depository contract shall be awarded by a majority vote of said board of trustees as above provided who are not either a stockholder, officer, director, or employee of the bank receiving said school district depository contract.

[Acts 1969, 61st Leg., p. 2959, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 23.76. Term: Bond

The depository bank when thus selected shall serve for a term of two years and until its successor shall have been duly selected and qualified, and shall give bond as hereinafter provided. Said term shall commence on September 1 and terminate on August 31. No premium on any depository bond shall be paid out of funds of the school district.

[Acts 1969, 61st Leg., p. 2960, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 23.77. Bid Notices; Bid Form

The board of trustees of any school district adopting this subchapter shall, at least 30 days prior to the termination of the then current depository contract, mail to each bank located in said school district, if any, otherwise to each of the banks located in an adjoining school district, a notice stating the time and place in which bid applications will be received for school depository. Attached to said notice shall be a uniform bid blank which shall be substantially in the following form:

Board of Trustees

\_\_\_\_\_ School District

Gentlemen:

The undersigned, a state or national banking corporation, hereinafter called bidder, for the privilege of acting as Depository of the \_\_\_\_\_ School District of \_\_\_\_\_ County, Texas, hereinafter called District, for a term of two years, beginning September 1, 19\_\_\_\_, and ending August 31, 19\_\_\_\_, and for the further privilege of receiving all funds or only certain funds to be designated by the District if more than one depository is selected, at its option to place on demand or interest bearing time deposits as provided in the School Depository Act, bidder will pay District as follows:

1. \_\_\_\_\_% interest per annum compounded quarterly on time deposits having a maturity date 90 days or more after the date of deposit or payable upon written notice of 90 days or more.

2. \_\_\_\_\_% interest per annum compounded quarterly on time deposits having a maturity date less than 90 days after the date of deposit or payable upon written notice of less than 90 days.

3. \_\_\_\_\_% interest rate to be paid by District to Bidder on overdrafts or their equivalent. (Overdraft as used in this paragraph shall mean that District does not have a compensating balance in other funds or accounts in the then current school year in Bidder's bank.)

4. Bidder will charge District \$\_\_\_\_\_ for keeping District's deposit records and accounts for the period covered by this bid. Included in and required as a part of this duty are the following:

(a) Preparation of monthly statements showing debits, credits and balance of each separate fund.

(b) Preparation of all accounts, reports, and records as provided in Section 21.256, Texas Education Code.

(c) Preparation of such other reports, accounts and records which may, from time to time, be required by District in order to properly discharge the duties as provided by law of Depository.

(d) Furnishing of the quantity, quality and type of checks necessary for District's use during the period for which this bid is submitted.

5. District reserves the right to invest any and all of its funds in bonds of the United States of America or other type of bonds, securities, certificates, warrants, etc., which District is authorized by law to invest in. Bidder will and shall aid and assist District in any investment without charge.

6. Bidder shall furnish to District a bond in the amount and conditioned as provided in The School Depository Act, or in lieu thereof pledged approved securities in an amount sufficient as determined by the Board of Trustees of District to adequately protect the funds of the District deposited with Bidder. District reserves the right to alter from time to time the required amount of securities to be sufficiently adequate to protect said funds and to approve or reject the securities so pledged. Bidder shall have the right and privilege of substituting securities upon obtaining the approval of District, provided the total amount of securities deposited is adequate as herein provided.

7. This bid was requested by District and is made by Bidder with the expressed agreement and understanding that District reserves the right to reject any and all bids and the further right that if any portion or provision of this bid and/or any contract between Bidder and District entered into by virtue thereof is invalid, the remainder of this bid and/or resulting contract at the option of the District shall remain in full force and effect, and not be affected by said invalid portion or provision.

8. Attached hereto is certified, or Cashier's Check in the sum of \$\_\_\_\_\_ payable to the \_\_\_\_\_ School District. If this bid to be Depository of all District funds or to be Depository of only a designated amount of said funds, is accepted, said check is to secure the performance of said bid, and if Bidder fails to enter into a contract with District as provided in bid, then said check shall be retained by District as liquidated damages for said failure. In the event this bid is not accepted, the above check is to be returned to the Bidder immediately after the award is made.

DATED this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

BIDDER \_\_\_\_\_

BY \_\_\_\_\_

TITLE \_\_\_\_\_

[Acts 1969, 61st Leg., p. 2960, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 3011, ch. 994, § 12, eff. Aug. 30, 1971.]

### § 23.78. Award of Contract

(a) If tie bids are received for said school depository contract and each of said tie bidders has bid to pay the school district the maximum interest rate allowed by law by the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation, and said tie bids are otherwise equal in the judgment and discretion of the board of trustees of said school district and two or more of said tie bidders in the judgment and discretion of said school district have the facilities and ability to render the necessary services of school depository for said school district, said board of trustees may award said depository

contract in accordance with any one of the following methods:

- (1) Award said contract, at the discretion of the board of trustees, to any one of said tie bidders;
- (2) Determine by lot which of said tie bidders shall receive said depository contract; or
- (3) Award a depository contract to each of said tie bidders or to as many of said tie bidders as the board of trustees may select.

(b) Said board of trustees shall have the discretion from time to time during the period of said contract to determine the amount of funds to be deposited in each of said depository banks and to determine the account services which are to be rendered by each of said banks in its capacity as school depository. Provided, however, that all funds received by the district from or through the Central Education Agency shall be deposited and retained in one depository bank to be designated by the district as its depository for said funds.

(c) The board of trustees of the school district shall at a regular meeting or special meeting consider all bids received in accordance with the terms and provisions of the above-mentioned procedure; and in determining the highest and best bid, or in case of tie bids as above provided the highest and best tie bids, said board of trustees shall consider the interest rate bid on time deposits, charge for keeping district accounts, records, and reports and furnishing checks, and the ability of the bidder to render the necessary services and perform the duties as school depository, together with all other matters which in the judgment of said board of trustees would be to the best interest of said school district. The board of trustees of said school district shall have the right to reject any and all bids.

[Acts 1969, 61st Leg., p. 2961, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.79. Depository Contract; Bond**

(a) The bank or banks selected as school depository or depositories in accordance with the terms and provisions of this Act, and the school district shall make and enter into a depository contract or contracts, bond or bonds, or such other necessary instruments setting forth the duties, responsibilities, and agreements pertaining to said depository, and said depository bank shall attach to said contract and file with the school district a bond in an amount equal to the estimated highest daily balance to be determined by the board of trustees of the district of all deposits which the school district will have in said depository. Said bond shall be payable to the school district and shall be signed by said depository bank and by some surety company authorized to do business in the state.

(b) Said bond shall be conditioned for the faithful performance of all duties and obligations devolving by law upon said depository, and for the payment upon presentation of all checks or drafts upon order of the board of trustees of said school district, in accordance with its orders duly entered by said board of trustees according to the laws of the State of Texas; for the payment upon demand of any demand deposit in said depository; for the payment after the expiration of the period of notice required, of any time deposit in said depository; and that said

school funds shall be faithfully kept by said depository and accounted for according to law and shall faithfully pay over to the successor depository all balances remaining in said accounts. Said bond and the surety thereon shall be approved by the board of trustees of said school district and a copy of said depository contract and bond shall be filed with the State Department of Education.

(c) In lieu of the above-mentioned bond, the depository bank shall have the option of depositing or pledging with the school district or with a trustee designated by the school district approved securities in an amount sufficient to adequately protect the funds of the school district deposited with depository bank. The school district shall designate from time to time the amount of approved securities to adequately protect district. The depository bank shall have the right and privilege of substituting approved securities upon obtaining the approval of the school district.

[Acts 1969, 61st Leg., p. 2962, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.80. Investment of District Funds**

The school district shall have the right to place on time deposits or to invest any and all of its funds in bonds of the United States of America or other types of bonds, securities, certificates, warrants, etc., which the district is authorized by law to invest in.

[Acts 1969, 61st Leg., p. 2963, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.81. Depository as Treasurer**

The bank or banks selected as school depository or depositories under the terms and provisions of this subchapter shall also be known as treasurer for said school district, and all depository duties of a treasurer of a school district provided in other statutes shall be performed by said depository bank or banks without any additional charge.

[Acts 1969, 61st Leg., p. 2963, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.82. Effect of Subchapter**

This subchapter shall be an alternate method of selecting a school depository or depositories and shall be applicable only to the districts adopting same as provided in Section 23.72 of this code. A district adopting this subchapter shall select its depository or depositories in accordance with the terms and provisions hereof, and all other statutes pertaining to the selection of a depository shall not apply. A district adopting this subchapter may, by majority vote of its board of trustees, discontinue the selection of its depository as herein provided.

[Acts 1969, 61st Leg., p. 2963, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 23.83 to 23.90 reserved for expansion]

SUBCHAPTER F. ASSESSMENT AND COLLECTION OF TAXES

**§ 23.91. Assessor and Collector: Powers and Duties**

The assessor and collector of taxes of an independent school district shall have the same power and shall perform the same duties with reference to the

assessment and collection of taxes for free school purposes that are conferred by law upon the assessor and collector of taxes in and for any incorporated city, town, or village, or upon the person or officer legally performing the duties of such assessor and collector.

[Acts 1969, 61st Leg., p. 2963, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 23.92. Alternate Methods of Selection

The board of trustees of each independent school district other than a municipal school district shall select an assessor and collector of taxes by one of the applicable procedures authorized by this subchapter.

[Acts 1969, 61st Leg., p. 2964, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 23.93. Assessor-Collector Appointed by Board

(a) The board of trustees of any independent school district may appoint an assessor-collector of taxes for the district. The appointment shall be for a term not to exceed three (3) years as determined by the board.

(b) The assessor-collector shall give bond, to be executed by a surety company authorized to do business in the State of Texas, in an amount sufficient adequately to protect the funds of the school district in the hands of the assessor-collector. In no event shall the bond be less than twice the largest amount collected at any one time in the preceding fiscal or calendar year, or \$50,000, whichever is smaller, to be determined by the governing body in such school district. The conditions of the bond payable to and to be approved by the president of the board, shall be that the assessor-collector will faithfully discharge the duties of his office and that he will pay over to the treasurer of the independent school district all funds coming into his hands by virtue of his office as assessor-collector of taxes for the independent school district.

(c) The assessor-collector so appointed shall assess the taxable property within the limits of the independent school district within the time and in the manner provided by existing law.

(d) The assessment shall be equalized by a board of equalization appointed for that purpose by the board of trustees of the independent school district. When assessments are so equalized, the assessor-collector shall prepare the tax rolls of said district.

(e) The assessor-collector for such service shall receive such compensation as the board of trustees may allow, not to exceed four percent of the total amount of taxes received by him.

[Acts 1969, 61st Leg., p. 2964, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 23.94. Designation of County Tax Assessor-Collector

(a) The board of trustees of any independent school district may designate as its assessor and collector of taxes for the school district the county tax assessor-collector.

(b) The property in the school district may be assessed at a greater rate of value than the same property is assessed for state and county purposes.

(c) When the county tax assessor and collector is required to assess and collect the taxes of an inde-

pendent school district, the board of trustees of such school district may contract with the commissioners court of said county for payment for such services as they may see fit to allow, not to exceed the actual cost incurred in assessing and collecting said taxes.

(d) The county official so selected shall turn over all independent school district taxes collected by him to the depository of the independent school district.

[Acts 1969, 61st Leg., p. 2964, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 23.95. Appointment of Assessor Only

(a) The board of trustees of any independent school district may appoint an assessor of taxes and by resolution determine and provide that the taxes shall be collected by either the county tax collector or the tax collector of any city or town wholly or partly within the limits of the school district.

(b) The assessor of taxes shall assess the taxable property within the limits of the independent school district and, when the assessment has been equalized by a board of equalization appointed by the board of trustees of the school district for that purpose, shall prepare the tax rolls of the district and sign and certify them to the county or city officer designated to collect the taxes.

(c) The assessor shall receive a fee of two percent of the whole amount of taxes assessed by him as shown by the completed certified tax rolls.

(d) The city or county collector selected by the trustee to collect the taxes for the independent school district shall accept the rolls prepared by the special assessor as provided above.

(e) When the assessor and collector of an incorporated city, or town, is required to assess and collect the taxes of independent school districts, the board of trustees of such school districts may contract with the governing body of said city for payment for such services as they may see fit to allow, not to exceed the actual cost incurred in assessing and collecting said taxes. The property of such districts having their taxes assessed and collected by the city assessor-collector may be assessed at a greater value than that assessed for city purposes, and in such cases the city tax assessor-collector may assess the taxes for said district on separate assessment blanks furnished by said district and shall prepare the rolls for said district in accordance with the assessment values which have been equalized by the Board of Trustees for that purpose.

(f) The city or county official so selected shall turn over all independent school district funds collected by him to depository of the independent school district.

[Acts 1969, 61st Leg., p. 2964, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 3012, ch. 994, § 13, eff. Aug. 30, 1971.]

#### § 23.96. Assessment, Collection, and Equalization by City

(a) Any independent school district located entirely or partly within the boundaries of an incorporated city or town may authorize, by ordinance or resolution, the tax assessor, board of equalization, and tax collector of the municipality in which it is located, entirely or partly, to act as tax assessor, board of equalization, and tax collector, respectively, for the district.

(b) The property in the independent school district utilizing the services of such assessor, board of equalization, and collector shall be assessed at not more than the value for which it is assessed for taxing purposes by the municipality.

(c) When the ordinance or resolution is passed making available their services, said assessor shall assess the taxes for and perform the duties of tax assessor for the independent school district; the board of equalization shall act as and perform the duties of a board of equalization for the independent school district; and the collector shall collect the taxes and assessments for, and turn over as soon as collected to the depository of the independent school district, all taxes or money, so collected, and shall perform the duties of tax collector of the independent school district.

(d) In all matters pertaining to such assessments and collections the tax assessor, board of equalization and tax collector shall be authorized to act as and shall perform respectively the duties of tax assessor, board of equalization and tax collector of the independent school district.

(e) When the tax assessor, board of equalization, and tax collector of any municipality have been authorized by ordinance or resolution to act as and perform the duties, respectively, of tax assessor, board of equalization and tax collector of an independent school district located entirely or partly within its boundaries, such included district shall pay the municipality for said services and for such other incidental expenses as are necessarily incurred in connection with the rendering of such services, such an amount as may be agreed upon by the governing bodies of the municipality and the independent school district.

[Acts 1969, 61st Leg., p. 2965, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.97. Cooperation Between Districts**

(a) The trustees of two or more independent school districts may, by a two-thirds vote of each board of trustees participating, consolidate the assessing and collecting of their taxes by appointing one and the same person as assessor-collector for all the districts entering into the agreement.

(b) The appointment shall be for a term not to exceed two years. The boards of trustees may prescribe additional duties and qualifications to those usually required of such officers.

(c) The assessor-collector shall give bond as prescribed in Section 23.93(b) of this code.

(d) The assessor-collector shall receive such compensation as the boards of trustees may fix, not to exceed two percent for assessing and not to exceed two percent for collecting on the total amount of taxes collected.

(e) If the assessor-collector selected is a regularly licensed attorney, the participating boards of trustees may by agreement include in his duties the collecting of delinquent taxes and provide as extra compensation therefor the percentage provided for the collection of delinquent state and county taxes.

[Acts 1969, 61st Leg., p. 2966, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 23.98. Enforced Collection**

(a) Any independent school district may contract with any competent attorney of this state for the collection of delinquent taxes for the independent school district and compensate him for his services in an amount not to exceed that allowed attorneys collecting delinquent taxes for the state and county.

(b) Any independent school district which contracts for the collection of delinquent taxes under Subsection (a) may use the contract form set out in this subsection.

**"CONTRACT FOR THE COLLECTION OF DELINQUENT TAXES**

THE STATE OF TEXAS }  
COUNTY OF \_\_\_\_\_ }

THIS CONTRACT is made and entered into by and between the \_\_\_\_\_, acting herein by and through its governing body, hereinafter called First Party, and \_\_\_\_\_, hereinafter styled Second Party.

I.

First Party agrees to employ and does hereby employ Second Party to enforce by suit or otherwise the collection of all delinquent taxes, penalty and interest owing to First Party, provided current year taxes falling delinquent within the period of this contract shall become subject to its terms on the first day of delinquency.

II.

Second Party is to call to the attention of the collector or other officials any errors, double assessments or other discrepancies coming under his observation during the progress of the work, and is to intervene on behalf of First Party in all suits for taxes hereafter filed by any taxing unit on property located within its corporate limits.

III.

First Party agrees to furnish delinquent tax statements to Second Party on all property within the taxing jurisdiction. Second Party will furnish forms for said statements on request and will assume responsibility for having penalty and interest computed on statements before such statements are mailed to property owners.

IV.

Second Party agrees to file suit on and reduce to judgment and sale the vacant and uninhabited property located within the taxing jurisdiction provided First Party will furnish the necessary data and information as to the name, identity, and location of the necessary parties, and legal description of the property to be sold. Second Party agrees to sue for recovery of the costs as court costs as provided by Article 7345b, Section 6, Revised Civil Statutes of Texas.

V.

Second Party agrees to make progress reports to First Party on request, and to advise First Party of all cases where investigation reveals taxpayers to be financially unable to pay their delinquent taxes.

## VI.

First Party agrees to pay to Second Party as compensation for services required hereunder fifteen (15) percent of the amount collected of all delinquent taxes, penalty and interest of the years covered by this contract, actually collected and paid to the collector of taxes during the term of this contract as and when collected. All compensation above provided for shall become the property of the Second Party at the time payment of taxes, penalty and interest is made to the collector. The collector shall pay over said funds monthly by check.

## VII.

This contract is drawn to cover a period of two years beginning \_\_\_\_\_ and ending \_\_\_\_\_, provided however that Second Party shall have an additional six months to reduce to judgment all suits filed prior to the date last mentioned. In consideration of the terms and compensation herein stated, Second Party hereby accepts said employment and undertakes the performance of this contract as above written.

## VIII.

This contract is executed on behalf of First Party by the presiding officer of its governing body who is authorized to execute this instrument by order heretofore passed and duly recorded in its minutes.

WITNESS the signatures of all parties hereto in duplicate originals this the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 197\_\_\_\_, \_\_\_\_\_ County, Texas.

THE \_\_\_\_\_

BY \_\_\_\_\_

Licensed Attorney at Law"

(c) The Texas Education Agency shall upon request provide copies of the permissive contract set out in Subsection (b), and shall disseminate to all independent school districts information concerning the existence and use of the permissive contract form.

(d) This section is cumulative of other laws and shall be construed to provide an additional method for employment of attorneys by independent school districts for the collection of delinquent taxes.

(e) In the enforced collection of taxes the board of trustees of the independent school district shall perform the duties which devolve in such cases upon the city council of an incorporated city or town; the president of the board of trustees shall perform the duties which devolve in such cases upon the mayor of an incorporated city or town; and the county attorney of the county in which the district is located or the city attorney of the incorporated city in which the district or a part thereof is located shall when instructed perform the duties which in such cases devolve upon the city attorney of an incorporated city or town under the provisions of the law applicable thereto.

[Acts 1969, 61st Leg., p. 2966, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1516, ch. 405, § 46, eff. May 26, 1971.]

[Sections 23.981 to 23.990 reserved for expansion]

## SUBCHAPTER G. INCENTIVE AID PAYMENTS

## § 23.991. Incentive Aid

Independent school districts created after August 22, 1963,<sup>1</sup> through consolidation may qualify for incentive aid payments by the State of Texas; provided, however, no school district may receive such payments for a period of more than 10 years. Such incentive aid payments shall be made only upon application to the Texas Education Agency and in compliance with the terms and conditions contained in this section.

[Acts 1971, 62nd Leg., p. 3013, ch. 994, § 14, eff. Aug. 30, 1971.]

<sup>1</sup> Effective date of source statute: Acts 1963, 58th Leg., p. 931, ch. 361, § 1.

## § 23.992. Amount; Computation

(a) The amount of incentive aid payments shall not exceed the difference between the sum of the Foundation Program Payments which would have been paid to the several districts included in the newly organized district had there been no consolidation, and the amount of Foundation Program Assistance for which the new district qualifies. Where, however, such newly organized district is budget balance (not eligible for Foundation Program Payments) the amount of the incentive aid payments shall not exceed the sum of the Foundation Program Payments for which the several districts included in the newly organized district were eligible in the scholastic year when they were consolidated.

(b) Where there have been, or hereafter may be one, or a series of consolidations at intervals in compliance with and pursuant to the provisions of this subchapter, the lastly created or newly organized independent school district shall be eligible to receive at due times the total sum of the series of incentive aid payments as computed separately at the time of the several consolidations, subject to provisions in this subchapter. With respect to all such consolidations effected before March 22, 1965,<sup>1</sup> the 10-year payment period shall be computed from the date of consolidation, or from March 22, 1965, whichever is the latest.

[Acts 1971, 62nd Leg., p. 3013, ch. 994, § 14, eff. Aug. 30, 1971.]

<sup>1</sup> Effective date of source statute: Acts 1965, 59th Leg., p. 105, ch. 40, § 1.

## § 23.993. Minimum ADA

The new district created through consolidation shall contain not fewer than 750 children in average daily attendance or a majority of the children in average daily attendance in the county containing the majority of the land area involved in the reorganization.

[Acts 1971, 62nd Leg., p. 3013, ch. 994, § 14, eff. Aug. 30, 1971.]

## § 23.994. Use Restricted

The incentive aid payments shall be used exclusively to retire the existing bonded indebtedness of the school districts which have been consolidated, or shall be applied to the cost of constructing new buildings required by the reorganized district.

[Acts 1971, 62nd Leg., p. 3013, ch. 994, § 14, eff. Aug. 30, 1971.]

**§ 23.995. Payments Reduced**

The incentive aid payments shall be reduced in direct proportion to any reduction in the annual average daily attendance of the reorganized school district for the preceding year.

[Acts 1971, 62nd Leg., p. 3013, ch. 994, § 14, eff. Aug. 30, 1971.]

**§ 23.996. Consolidation Defined**

“Consolidation” for purposes of this subchapter shall mean and have application to creation of new districts by election under school district consolidation laws and/or by enlargement of existing districts by annexation thereto of entire contiguous district or districts, other than dormant districts, under annexation laws, and where the district consolidated by election or enlarged by annexation under such laws results as an independent school district.

[Acts 1971, 62nd Leg., p. 3013, ch. 994, § 14, eff. Aug. 30, 1971.]

**§ 23.997. Conditions Precedent to Payment**

As a condition precedent to receiving incentive aid payments (1) the geographical limits of the proposed consolidated district shall be submitted to the Texas Education Agency for approval and the geographical limits so approved shall be set forth in the petition for any consolidation election; and (2) the consolidation of the school districts shall result in the formation of an independent school district.

[Acts 1971, 62nd Leg., p. 3013, ch. 994, § 14, eff. Aug. 30, 1971.]

**§ 23.998. Cost**

The cost of incentive aid payments hereby authorized shall be paid from the Foundation School Fund. Such costs shall be considered and included by the Foundation School Fund Budget Committee in estimating the funds needed for purposes of the Foundation School Program and such incentive aid payments.

[Acts 1971, 62nd Leg., p. 3013, ch. 994, § 14, eff. Aug. 30, 1971.]

**§ 23.999. Consolidation of County-Line Districts**

(a) Hereafter, where two or more contiguous county-line independent school districts, each of which is an accredited 12-grade independent school district, are consolidated and the resulting county-line independent school district so created contains fewer than 750 children in average daily attendance, such a district, subject to approval of the commissioner of education, may qualify and shall be eligible for incentive aid payments authorized by and pursuant to other applicable provisions of the incentive aid law.

(b) Hereafter, where two contiguous independent school districts, each of which is an accredited 12-grade independent school district and only one of which is a county-line district, are consolidated and the resulting county-line independent school district so created contains fewer than 750 children in average daily attendance, such a district, subject to the approval of the commissioner of education, may qualify and shall be eligible for incentive aid payments authorized by and pursuant to other applicable provisions of the incentive aid law.

[Acts 1971, 62nd Leg., p. 3344, ch. 1024, art. 2, § 15, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 569, ch. 242, § 1, eff. June 11, 1973.]

**CHAPTER 24. MUNICIPAL SCHOOL DISTRICTS**

Section	
24.01.	Definition.
24.02.	Classification.
24.03.	Government.
24.04.	Selection of Trustees.
24.05.	General Powers of Trustees.
24.06.	Maintenance Tax.
24.07.	Levy and Collection of taxes.

**§ 24.01. Definition**

The term “municipal school district” includes any independent school district existing under the authority of Article VII, Section 3, or Article XI, Section 10, of the Texas Constitution, which is municipally assumed or controlled; regardless of whether the same is a city or town school district, where the boundaries of the district and the city or town are coterminous, or whether it is an extended independent school district, where the city or town has extended its limits for school purposes only.

[Acts 1969, 61st Leg., p. 2967, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 24.02. Classification**

Municipal school districts, regardless of the manner in which they came into existence and regardless of whether or not the boundaries have been extended for school purposes only, are classified as independent school districts. Once a municipal school district has been established, it shall continue to be an independent school district even though the city or town which assumed or accepted control of the school district abolishes its corporate existence as a municipal corporation. Except as specifically provided otherwise in this chapter, municipal school districts shall be governed and shall function in compliance with the general law relative to independent school districts as provided in Chapter 23 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2967, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.01 et seq.

**§ 24.03. Government**

A municipal school district shall be governed in the general administration of its schools by a board of seven trustees, selected as provided in Section 24.04 of this code.

[Acts 1969, 61st Leg., p. 2967, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 24.04. Selection of Trustees**

(a) The trustees of a municipal school district are elected as provided in Chapter 23 of this code<sup>1</sup> unless a municipal school district qualifies for a different method of choosing trustees under Subsection (b) of this section.

(b) Municipal school districts for which the trustees have heretofore been selected by appointment of the city council or board of aldermen are authorized to continue to choose their trustees by appoint-

ment of either two or three trustees each year, the number depending on that required to maintain a board of seven members, each appointed for a term of three years, unless and until that authority is removed under the provisions of Subsection (c) of this section.

(c) Any municipal school district in which the trustees are appointed by the city council or board of aldermen, as provided in Subsection (b) of this section, may discontinue that method of selection and provide for the election of school trustees by the following procedure:

(1) A petition signed by 25 percent of the voters of the city or town, the number to be ascertained by the ballots cast at the last regular city election, requesting an election to determine whether or not the school affairs of the city or town shall be directed by an elected school board shall be presented to the mayor;

(2) On receipt of such a petition, the mayor shall order an election to be held on the proposition;

(3) The election shall be conducted according to the general law regulating elections in the city or town; and

(4) If a majority of the votes cast at the election favor the selection of school trustees by election, the mayor shall immediately order an election for the purpose of choosing a board of seven trustees; and the election shall be conducted in the manner provided in Section 23.08, governing the election of trustees of independent school districts; and the terms of the elected trustees shall be determined by lot as upon the creation of an independent school district as provided in Section 23.11 of this code.

[Acts 1969, 61st Leg., p. 2967, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 23.01 et seq.

#### § 24.05. General Powers of Trustees

(a) The board of trustees of a municipal school district shall have the general powers and duties prescribed in this section.

(b) The board shall have the exclusive control and management of the schools of the district.

(c) Title to all houses, land, and other property owned, held, set apart, or in any way dedicated to the use and benefit of the public schools of the city or town, whether acquired before or after the establishment of the municipal school district, shall be vested in the board of trustees and their successors in office, in trust for the use and benefit of the public schools in the city or town.

(d) The board shall constitute a body corporate and shall have full power to protect the title, possession, and use of all school property within the limits of the municipal school district, and may bring and maintain suits in law or in equity in any court of competent jurisdiction when necessary to recover the title or possession of any school property adversely held in the district.

(e) Except where specific provision is made with regard to the conducting of the affairs of a municipal school district, the board of trustees of a municipal school district may exercise any power specifically granted or reasonably implied to the board of trustees of an independent school district.

[Acts 1969, 61st Leg., p. 2968, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 24.06. Maintenance Tax

(a) The governing body of any city or town constituting a municipal school district shall upon presentation of a proper petition, signed by 50 or a majority of those entitled to vote at such elections, order such election to determine the proposition of the levy of a maintenance tax and/or the issuance of bonds for purposes of its schools. The provision of the laws applicable to other independent school districts relative to and governing maintenance tax and bonds and the holding of elections therefor shall apply, except as provided by this section.

(b) If the vote of the taxpayers is in favor of the tax, then the governing body of the city annually thereafter shall levy and assess on the taxable property in the limits of the municipal school district, by ordinance duly passed and approved, the school tax, not to exceed the rate voted, for the support and maintenance of the public schools and where bonds are voted, for the erection and equipment of public school buildings, in accordance with the requisition furnished.

(c) The board of trustees of the municipal school district shall determine what amount of the tax, in the limit authorized by law and voted by the people or fixed by special charter, will be necessary for the support of the schools and for the erection and equipment of public school buildings for each fiscal year, and the governing body of the city, on requisition of the board of trustees, annually shall levy and collect the tax, as other taxes are levied and collected.

(d) The school taxes, when collected, shall be placed at the disposal of the school board, and paid monthly to the depository to the account of the board the amount so collected, to be used for maintenance and support of the public school in the municipal district.

[Acts 1969, 61st Leg., p. 2968, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 24.07. Levy and Collection of Taxes

(a) The levy of taxes for school purposes in a municipal school district shall be based upon the same assessment of property upon which the levy for other city purposes is based.

(b) Taxes for a municipal school district may be collected as prescribed by either Subsection (c) or Subsection (d) of this section.

(c) The assessor and collector of taxes for the city or town may assess and collect taxes for the municipal school district, in which event:

(1) The taxes for school purposes shall be assessed and collected at the same time and in the same manner as other city taxes are assessed and collected; and

(2) The city assessor and collector of taxes shall receive no other compensation for collecting school taxes than the compensation paid him for assessing and collecting city taxes.

(d) The board of trustees of a municipal school district may contract with the county assessor-collector of taxes to assess and collect the taxes for the municipal school district on property located in the

county and subject to the municipal district tax under the following terms and conditions:

(1) The board of trustees, on or before August 1 of each year, shall pass a resolution authorizing the county assessor and collector of taxes to perform this function for the district and setting forth the rate of taxation for bonds and for local maintenance;

(2) A maximum fee of one percent for assessing and one percent for collecting may be paid to the county tax assessor and collector; and

(3) The county tax collector shall make monthly reports of all taxes collected to the depository of school funds for the municipal school district and shall make all other reports required of collectors of taxes for independent school districts.

[Acts 1969, 61st Leg., p. 2969, ch. 889, § 1, eff. Sept. 1, 1969.]

**CHAPTER 25. RURAL HIGH SCHOOL DISTRICTS**

Section

- 25.01. Classification.
- 25.02. Applicability of Other Laws.
- 25.03. Government.
- 25.04. Election and Terms of Trustees.
- 25.05. Vacancies on the Board of Trustees.
- 25.06. Organization and Powers of Trustees.
- 25.07. Assessment and Collection of Taxes.
- 25.08. Elementary School Districts.
- 25.09. Consolidated Rural High School District.

**§ 25.01. Classification**

(a) Rural high school districts shall be classified as common school districts, and other districts, whether common or independent, composing the rural high school district, shall be classified and referred to as elementary school districts.

(b) A rural high school district may be converted into an independent school district as provided in Chapter 19 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2970, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.001 et seq.

**§ 25.02. Applicability of Other Laws**

Except as specifically provided in this chapter or in a particular provision of a general statute, all rural high school districts shall operate and function as other common school districts as provided in Chapter 22 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2970, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 22.01 et seq.

**§ 25.03. Government**

The control and management of the schools of each rural high school district shall be vested in a board of seven trustees.

[Acts 1969, 61st Leg., p. 2970, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 25.04. Election and Terms of Trustees**

(a) The trustees of a rural high school district shall be elected in the manner provided for the election of trustees of a common school district except as may be otherwise provided in this chapter.

(b) At least one voting box shall be provided in each elementary district composing the rural high school district.

(c) The trustees shall be elected by the qualified voters of the district at large, but if the district is composed of seven or fewer elementary districts, at least one trustee must be a resident of each original elementary district included in the rural high school district.

(d) In a rural high school district consisting of more than 100 square miles of territory or embracing more than seven districts, the board of trustees shall be elected from the district at large.

(e) In the event a rural high school district is created at a time other than the trustee election time, it shall be the duty of the county governing board to appoint a board of trustees as prescribed herein, to serve until the next regular election day for trustees of common school districts.

(f) Elections shall be held annually. At the first election after the establishment of the rural high school district the trustees shall determine by lot the terms for which they shall serve, and those drawing numbers one, two, and three shall serve for a term of one year, those drawing numbers four and five shall serve for a term of two years, and those drawing numbers six and seven shall serve for a term of three years, or until their successors are elected and qualified. At all subsequent elections either two or three trustees shall be elected to succeed the trustees whose terms expire at that time.

(g) The regular term for trustees of a rural high school district shall be three years.

[Acts 1969, 61st Leg., p. 2970, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 25.05. Vacancies on the Board of Trustees**

Any vacancy on the board of trustees of a rural high school district shall be filled for the unexpired term by appointment by the members of the board remaining after the vacancy.

[Acts 1969, 61st Leg., p. 2970, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 25.06. Organization and Powers of Trustees**

(a) The board of trustees of a rural high school district shall organize by electing a president and a secretary, each of whom shall be a member of the board.

(b) All funds of every nature to which a rural high school district may be entitled shall be paid out on warrants issued by the secretary and signed by the secretary and president of the board and approved by the county superintendent.

(c) The secretary shall keep an itemized account of all receipts and disbursements in a well-bound book owned and acquired by the district, and his accounts shall be approved by the county superintendent.

(d) All funds belonging to a rural high school district shall be deposited in the county depository of the county having jurisdiction of the district.

(e) The board of trustees of a rural high school district shall have those powers granted to the boards of trustees of other common school districts and shall be subject to the same restrictions as other common school districts except as provided herein.

[Acts 1969, 61st Leg., p. 2971, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 25.07. Assessment and Collection of Taxes

(a) Except as provided in this chapter, the taxes for a rural high school district shall be assessed and collected by the county tax assessor-collector in the manner provided for the assessment and collection of taxes for a common school district, but no tax shall be levied and no bonds assumed or issued by the board of trustees of the rural high school district until after election in accordance with the law governing such elections in independent school districts.

(b) The board of trustees of a rural high school district may appoint an assessor of taxes who shall assess the taxable property within the limits of the district and the assessment shall be equalized by a board of equalization composed of three members, legally qualified voters residing in the district, appointed by the board of trustees, in which event:

(1) The tax assessor so appointed shall make a complete list of all assessments made by him and when the list is approved, shall submit it to the county tax collector not later than September 1 of each year, and the tax assessor shall receive compensation for his services as the trustees of the district may allow, not to exceed two percent of the taxes assessed by him;

(2) The board of equalization shall have the same powers and be subject to the same restrictions as apply to such boards in independent school districts; and

(3) The county tax assessor-collector shall collect the taxes and shall deposit the funds so collected in the county depository to the credit of the rural high school district, and he shall be compensated at the rate of one-half of one percent for his services for collecting the taxes.

(c) If a rural high school district has an assessed valuation in excess of \$4,000,000 and an average daily attendance of more than 550 students during the preceding school year, the board of trustees of the rural high school district may, by majority vote, appoint a collector of taxes for the district who shall perform the duties ordinarily required of a county tax collector who collects taxes for a common school district. He shall receive such compensation for his services as the trustees of the district may allow, not to exceed five percent of the total amount of taxes received by him. He shall give bond in the estimated amount of taxes coming annually into his hands. The bond shall be payable to and approved by the president of the board of trustees and conditioned that he will faithfully discharge his duties and will pay over to the depository for the rural high school district all funds coming into his hands by virtue of his office. Any premium on the bond shall be payable out of funds of the district.

(d) If a rural high school district is situated in or subject to the jurisdiction of a county having a population of 350,000 or more, according to the last preceding federal census, the board of trustees of the rural high school district may, by majority vote, choose to have the taxes for the district assessed and collected by an assessor-collector appointed by the board and to have the taxes equalized by the board of equalization of the district. In the event the

board so chooses, the following regulations shall apply:

(1) The assessor-collector appointed by the board shall assess the taxable property within the limits of the district in the time and manner provided by the general law applicable to taxation within the district, insofar as the law is applicable, and collect the taxes;

(2) The assessor-collector shall receive such compensation for his services as the board of trustees may allow;

(3) The assessor-collector shall give bond, fulfilling the qualifications that the bond shall be:

(A) executed by a surety company authorized to do business in the State of Texas;

(B) in an amount determined by the board of trustees to be sufficient adequately to protect the funds of the rural high school district;

(C) payable to the president of the board of trustees of the rural high school district and approved by the board of trustees; and

(D) conditioned that the assessor-collector will faithfully discharge his duties and will deposit in the county depository to the credit of the rural high school district all funds coming into his hands by virtue of his office; and

(4) The board of trustees may also appoint one or more deputy tax assessor-collectors for the district who shall receive for their services such compensation as the board may allow.

(e) Local taxes previously authorized by a district or districts included in a rural high school district shall be continued in force until such time as a tax election in the rural high school district may authorize a uniform tax for the benefit of the rural high school district.

[Acts 1969, 61st Leg., p. 2971, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 25.08. Elementary School Districts

(a) The elementary schools in each rural high school district shall be classified by the county board of school trustees, which shall at the same time designate the number of grades to be taught in the elementary schools. When the classification is made, the board of trustees of the rural high school district shall maintain each elementary school for the same length of term as the other schools in the rural high school district.

(b) The board of trustees of a rural high school district shall have the right to be heard by the county board of school trustees relative to the classification of schools within the district and shall have the right of appeal from that classification to the commissioner of education.

(c) No elementary school district shall be abolished, annexed, or consolidated with any other elementary school district except in the following manner:

(1) An elementary school district may be abolished by the board of trustees of the rural high school district if the district has had an average daily attendance of fewer than 20 pupils during the preceding school year;

(2) An elementary school district whose school(s) have been discontinued may be an-

nexed to any other contiguous elementary school district within the rural high school district by the county board of school trustees acting on the petition of the board of trustees of the rural high school district, in which event:

(A) The annexation shall be for all purposes and the former elementary district so annexed will then be regarded as abolished; and

(B) The board of trustees of the rural high school district shall have authority to move or otherwise dispose of the buildings and other property of the abolished elementary district in any manner deemed by the board to be proper and beneficial to the rural high school district; and

(3) Any number or all of the component elementary districts within a rural high school district may be consolidated by an election following the procedure set out in Subchapter H of Chapter 19 of this code<sup>1</sup> and under the following terms:

(A) If all of the elementary districts within the rural high school district are consolidated into a single elementary school district identical in area with that of the rural high school district, the consolidation shall not affect the status of the district as a rural high school district; and

(B) If fewer than all of the component elementary districts petition for election to consolidate, they must be contiguous elementary districts.

[Acts 1969, 61st Leg., p. 2972, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.231 et seq.

**§ 25.09. Consolidated Rural High School District**

When all the component elementary districts within a rural high school district have been consolidated into a single elementary district and all scholastics in the district are transferred to a central school in the rural high school district where both elementary and high school grades are maintained under one administration, the elementary district and the rural high school district may be consolidated in the manner provided in Subchapter H of Chapter 19 of this code.<sup>1</sup> The consolidated district may maintain its status as a rural high school district or it may be converted into an independent school district in the manner provided in Subchapter G of Chapter 19 of this code.<sup>2</sup>

[Acts 1969, 61st Leg., p. 2973, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Section 19.231 et seq.

<sup>2</sup> Section 19.201 et seq.

**CHAPTER 26. REHABILITATION DISTRICTS FOR HANDICAPPED PERSONS**

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Section

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- 26.12. Creation of District.
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Section

- 26.15. Proposition to be Voted Upon.
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**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 26.01. Definitions**

As used in this chapter:

(1) "Handicapped person" means a physically handicapped person or a mentally retarded person, not including blind, whose educational or vocational opportunities are limited as the result of physical or mental limitations.

(2) "Physically handicapped person" means any person six years of age or over, of reasonably normal educable mentality, whose body functions or members are so impaired that they cannot be safely or adequately educated or trained for gainful employment in regular classes of normal persons or without special training and special services not usually available in public schools or without training cannot enjoy independent living.

(3) "Mentally retarded person" means any person six years of age or older, who, because of retarded intellectual development, cannot be educated safely and adequately in the public schools with normal children or in readily accessible training institutions in the home environs of such person, but who may be expected to benefit from special education or training facilities designed to make him economically useful and socially adjusted.

(4) "District" (unless otherwise indicated by the context) means any rehabilitation district as described in this chapter.

(5) "Trainee" means any handicapped person who is or has been enrolled in a district.

(6) "Board of directors" means the board of directors of any district.

(7) "Independent living" shall mean any degree of improvement achieved by a handicapped person whether by freedom from institutional or attendant care or reduction of such care.

[Acts 1969, 61st Leg., p. 2975, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 26.02 to 26.10 reserved for expansion]

#### SUBCHAPTER B. CREATION OF DISTRICT

##### § 26.11. Purpose

Rehabilitation districts may be created to provide education, training, special services, and guidance to handicapped persons peculiar to their condition and needs, to develop their full capacity for usefulness to themselves and society, and to prevent them from becoming or remaining, in whole or in part, dependent on public or private charity.

[Acts 1969, 61st Leg., p. 2975, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 26.12. Creation of District

A rehabilitation district may be established by voters of a county, or a combination of contiguous counties, containing taxable property, the total assessed valuation of which must be not less than \$200,000,000, according to the most recent tax rolls of the county or combination of counties making up the proposed district, as described in this subchapter.

[Acts 1969, 61st Leg., p. 2975, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 26.13. Petition

A petition signed by a number of qualified property taxpaying voters in each county in the proposed rehabilitation district equal to not less than one percent of the total number of votes cast for governor in such county at the most recent election for governor held therein, must be filed with the commissioners courts of the respective counties. The signatures on the petition must be separated according to the counties in which the signers reside, under appropriate headings indicating the county of residence. If there is more than one county in the proposed district, the petition must be in two or more parts, one part for each county to be included in the district. The name of the proposed district must be set forth in the petition, and must include the words, "Rehabilitation District for Handicapped Persons." The petition must be dated, and must pray for an election, to be held not less than 30 nor more than 60 days after the date of the petition, to determine whether or not there shall be created a rehabilitation district for handicapped persons, with power to levy taxes to acquire or construct residence centers and such other facilities, if any, as the board of directors may deem necessary or proper for the training and guidance of handicapped trainees and to maintain and operate said district.

[Acts 1969, 61st Leg., p. 2976, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 26.14. Election

Promptly on receipt of a petition, each commissioners court must order an election to be held in his county on the date prayed for in the petition. The order must designate polling places, appoint election officers, provide supplies for the election, and set

forth the name of the proposed rehabilitation district as specified in the petition. The election precincts must conform to the regular election precincts of each county. Each commissioners court must cause notice of election to be published once each week for two alternate weeks in one or more newspapers having general circulation in its county, the first publication to be at least 21 days before the election, and must cause notice to be posted in a public place in each commissioners precinct, and at the courthouse door of its county. If a regular session of a commissioners court receiving a petition is not to be held in time to order the election and give notice of it, the county judge of that county must, upon the petition being called to his attention, timely call a special session of the commissioners court for this purpose. Except as herein provided, the election in each county shall be conducted in accordance with the general laws of Texas.

[Acts 1969, 61st Leg., p. 2976, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 26.15. Proposition to be Voted Upon

The proposition shall be submitted at the election in each county, and the ballots shall be printed to provide for voting for or against the proposition:

"The creation of the rehabilitation district for handicapped persons, with power to levy taxes for residence centers and such other facilities, if any, as the board of directors may deem necessary or proper for the training and guidance of such persons and for maintenance and operation of said district."

[Acts 1969, 61st Leg., p. 2976, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 26.16. Voters

Only qualified voters who reside and own taxable property in the county in which they offer to vote and who have duly rendered their property for taxation are eligible to vote.

[Acts 1969, 61st Leg., p. 2976, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 26.17. Results of Election

(a) Within 10 days after the election, each commissioners court must make a canvass of the returns and declare the results of the election. If a majority of those voting in the election in each county vote for the proposition, the establishment of a rehabilitation district is thereby effected. If the proposition fails to carry in any county, the formation of the rehabilitation district in counties in which it passed is not affected, unless the counties in which it passed are not contiguous, or do not have a total assessed valuation of property of \$200,000,000, according to their most recent tax rolls, in which case no rehabilitation district can be established.

(b) If the election does not create a rehabilitation district, no subsequent election for the creation of a rehabilitation district may be had in the affected counties within one year of the date of the election.

[Acts 1969, 61st Leg., p. 2977, ch. 889, § 1, eff. Sept. 1, 1969.]

##### § 26.18. Annexation of New Counties

(a) Any county or combination of counties, contiguous to an existing rehabilitation district may be

annexed to it and become a part of it by following the procedures in and meeting the requirements of Subsections (a), (b), and (d) of this section, with the exceptions as described in this section.

(b) The petition in Section 26.13 of this chapter must be signed by a number of qualified property taxpaying voters in each county in which annexation is desired equal to one percent of the number of votes cast for governor in such county at the most recent general election for governor held therein. The petition must contain the name of the district to which annexation is desired, and must pray for an election to determine whether or not the county shall be annexed to the rehabilitation district.

(c) The proposition shall be voted upon in an election held under this section, and the ballots shall be printed to provide for voting for or against the proposition:

“Annexation to (here insert the name of the rehabilitation district).”

(d) The commissioners court election order in Section 26.14 of this chapter, must set forth the name of the rehabilitation district to which annexation is proposed.

(e) Within 10 days after the election, the commissioners court of each county in which there was an election, must canvass the returns and declare the results of the election in that county, and shall forthwith certify the results of such election to the board of directors of such existing district. In each county, if any, in which a majority of those voting at the election vote for the proposition, the annexation of such county to said rehabilitation district shall be thereby effected.

(f) The provisions of this chapter prescribing the qualifications of electors to vote in elections to create rehabilitation districts shall apply to elections for the annexation of counties to such rehabilitation districts; and all of the provisions of this chapter relating to the number and classes of directors of said rehabilitation district in each county; the manner of their initial and subsequent selection; the manner of determining the initial terms of office, and fixing the regular terms of office of directors, as provided for in this chapter concerning the original district, shall be applicable to each annexed county. [Acts 1969, 61st Leg., p. 2977, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 26.19 to 26.30 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 26.31. Board of Directors

The board of directors of a district shall be composed of one director from each county commissioners precinct located in the district, and one director at large for each county, and in addition, one director at large for each 50,000 inhabitants, or major fraction of such number of inhabitants, in each county in the special school district.

[Acts 1969, 61st Leg., p. 2978, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 26.32. Initial Directors

Within 30 days after the election creating the district:

(1) each county commissioner from each precinct in the district must recommend to the

county judge of his county, one director, and the county judge must appoint the recommended person director; and

(2) the county judge must appoint the directors at large authorized for each county by Section 26.11<sup>1</sup> of this code.

[Acts 1969, 61st Leg., p. 2978, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Probably should read "26.31".

§ 26.33. Term of Office for Initial Directors

(a) The four directors selected from the commissioners precincts of each county must determine by lot, in a manner to be prescribed by the board of directors, which two shall hold office for a long term and which two for a short term.

(b) If there is more than one director at large from any county, half of them must serve a long term and half a short term, as also determined by lot. If there is an odd number of directors at large from any county, the majority of them must serve for the long term and the minority of them for the short term. If there is only one director at large from any county, he shall serve a short term.

(c) The term of office for those directors serving a short term runs until the first Saturday in April of the second calendar year after the calendar year in which they were appointed. The term of office for those directors serving a long term runs until the first Saturday in April of the fourth calendar year after the calendar year in which they were appointed. The term of office for an initial director from an annexed county must be shortened one year, if necessary, to make elections to his office coincide with the elections for directors in the other counties in the district.

(d) The determinations by lot in Subsections (a) and (b) of this section must be accomplished at the first meeting of the initial board of directors of the first meeting after an annexation, or as soon thereafter as is practicable.

(e) The board of directors must cause a permanent record to be made and preserved of the terms of office of each appointed director determined by lot as herein provided.

[Acts 1969, 61st Leg., p. 2978, ch. 889, § 1, eff. Sept. 1, 1969.]

§ 26.34. Subsequent Selection of Directors

(a) At the expiration of the term of office of each director from a commissioners precinct, his successor must be elected at an election held in that commissioners precinct at the same time, and by the same election officers as provided for the election of the county school trustees of that county, except that the names of the candidates for the board of directors shall appear on a ballot in every voting precinct in the commissioners precinct in which the candidate is running, provided that all such elections must be called by the board of directors, who must give public notice of elections in advance thereof, in a manner to be determined by the board of directors, to call the attention of the voting public thereto. The forms of ballots to be used conformable to general law, may also be determined by the board of directors, and at the discretion of the board of directors, the same ballot for the election of county trustees may be used for the election of directors.

If there is no election for county trustees on the first Saturday in April when the election of directors of a district is to be held the election shall nevertheless be called and held for district directors from commissioners precincts whose terms expire on said date. The commissioners court of each county in which any election of directors is held must receive and canvass the returns thereof, and declare the results thereof, at the same time and in the same manner as provided by law in the case of the election of county school trustees, and must forthwith certify the results thereof, at the same time and in the same manner as provided by law in the case of the election of county school trustees, and must forthwith certify the results of the election to the board of directors. The district must pay its pro rata part of the expenses of the election of its directors to the commissioners court of the county affected.

(b) At the expiration of the term of office of each director at large, the county judge of the county from which the director was appointed must appoint his successor.

(c) Vacancies in the offices of directors must be filled by appointment by the original appointing powers that appointed the initial directors for the unexpired term.

[Acts 1969, 61st Leg., p. 2978, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 26.35. Term of Office for Successors

The terms of office of all directors after those initially appointed shall be for four years.

[Acts 1969, 61st Leg., p. 2979, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 26.36. Oath of Office

Every director and every officer, whether appointed or elected, must, before assuming the duties of his office, qualify by taking the official oath prescribed for state officers.

[Acts 1969, 61st Leg., p. 2979, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 26.37. Officers

(a) At the first meeting of the initial board of directors, it must select from among its members, a president and a vice president, and must also select a secretary and a treasurer, who need not be directors. The secretary and treasurer shall have and perform duties and powers as are usually incident to their offices, in the case of private corporation, and such other duties and powers as may be provided by the board of directors. The secretary and treasurer may be the same person.

(b) The treasurer must execute a bond, with good and sufficient surety or sureties, in an amount to be determined by the board of directors, payable to the president of the board of directors, or his successors in office conditioned that the treasurer will faithfully perform the duties of his office, and faithfully account for all sums of money or other property belonging to the district coming into his hands as treasurer. The amount of the bond may, at any time, be increased or decreased by the board of directors, according as they may deem necessary for the protection of the property and funds of the district for which the treasurer is accountable. The premiums, if any, for such bond or bonds shall be payable out of funds of the district.

(c) At the first meeting following each election or appointment of directors, the president and vice president's terms of office shall end, and the board of directors must again select a president and vice president.

(d) The secretary and the treasurer shall hold office at the will and pleasure of the board of directors.

(e) The board of directors may appoint assistant secretaries as it may deem necessary for the proper conduct of the duties of that office.

[Acts 1969, 61st Leg., p. 2979, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 26.38. Compensation

The board of directors may authorize the payment of actual expenses of directors (including travel expenses) incurred by directors in attending regular or special meetings, or otherwise rendering services of the district on the authority and at the direction of the board of directors. The treasurer and secretary, and any assistant secretaries shall receive such compensation, if any, as may be determined by the board of directors.

[Acts 1969, 61st Leg., p. 2980, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 26.39. Meetings

The first meeting of the initial board of directors shall be within 21 days of the time the directors are appointed, at a time and place appointed by the county judge of the county of the district containing the greatest population according to the most recent officially proclaimed federal census. Thereafter, meetings must be held at such times as may be provided in the rules and bylaws of the board of directors. Special meetings may be called by the president, or by any five members of the board.

[Acts 1969, 61st Leg., p. 2980, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 26.40. Rules of Procedure; Quorum

The board of directors may adopt its own rules of procedure, but a majority of the directors shall constitute a quorum, and a majority of those in attendance may transact any business.

[Acts 1969, 61st Leg., p. 2980, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 26.41. Board Office

The board of directors must select and maintain within the district a regular office for its meetings and for the transaction of business, at such place within the district as it may determine.

[Acts 1969, 61st Leg., p. 2980, ch. 889, § 1, eff. Sept. 1, 1969.]

[Sections 26.42 to 26.60 reserved for expansion]

### SUBCHAPTER D. POWERS AND DUTIES

#### § 26.61. Suits

A rehabilitation district may sue and be sued in its name. In any suit against a district, process may be served on the president or vice president.

[Acts 1969, 61st Leg., p. 2980, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 26.62. General Powers of Board of Directors**

(a) In addition to other powers granted herein, the board of directors is empowered and required to govern the district; employ all administrators, teachers, special and/or exceptional children teachers, psychologists, social workers, housekeeping, and other personnel as may be required to carry out the purposes of the district; and to discharge persons so employed. Teachers and other employees of any such rehabilitation district shall be eligible to become members of the Teacher Retirement System of Texas on the same basis and under the circumstances as teachers and employees of an independent school district.

(b) The board shall conduct the business affairs of the district with the same powers and duties provided by law for the board of trustees of independent school districts.

(c) The board shall adopt an official seal and name for the rehabilitation district.

[Acts 1969, 61st Leg., p. 2980, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 26.63. Residential Program; Curriculum; Trainees**

The board shall:

(1) plan the residential program and the curriculum of the district, or have them planned under its direction; but in any event, plans must be approved by the board of directors and also by the state commissioner of education and by the executive director of the Texas Department of Mental Health and Mental Retardation;

(2) make reasonable limitation on the duration of residence and attendance by trainees, according to standards adopted by it; and

(3) by itself, or through an agency established by it for attending to such matters, terminate the training of any trainee who proves to be unadaptable to the training program of the district, or who is so disturbing in conduct to the other trainees as to be detrimental to the district; and the exercise of the termination power is unreviewable.

[Acts 1969, 61st Leg., p. 2981, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 26.64. Admission**

(a) Any handicapped person six years of age or older not subject to the exceptions in the subsections of this section may be admitted into a district for education and training.

(b) No handicapped person shall be admitted into a rehabilitation district whose parent or guardian, or who himself, if without a parent or guardian, does not reside within the district, unless full remuneration be received from his home county, family, or other sources.

(c) No handicapped person in attendance at a regular public school, between the ages of six and 21, shall be admitted to a rehabilitation district without having been referred or assigned to it by the independent school district in which he resides, or by the county school superintendent. If a handicapped person applying to a rehabilitation district for admission is over 16 years of age or under 21 years of age and is in attendance at a regular public school, he shall not be admitted to the rehabilitation district

for education and training without having been referred to it for that purpose by the county school superintendent, if such public school be situated without an independent school district, or by an independent school district if such public school is within such independent school district.

(d) No handicapped person shall be admitted into a district for education or training as such, without application having been made therefor to it and until he has been found acceptable for education and training by the entrance committee of the district which shall set admission standards, such standards having been approved by the board of directors. The finding of the entrance committee, to be created by the board of directors, as to the eligibility or ineligibility of an applicant shall be final except that appeal may be made therefrom to the board of directors according to an appellate procedure prescribed by the board. The decision of the board of directors shall be final and nonappealable.

[Acts 1969, 61st Leg., p. 2981, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1518, ch. 405, § 47, eff. May 26, 1971.]

**§ 26.65. Special Education Personnel**

(a) To provide for the continuance of additional programs of instruction and training for handicapped persons between the ages of 6 and 21, inclusive, the District shall be eligible for and allotted administrative units, special service personnel, exceptional child teacher units, vocational education units, and other special education personnel, to the extent herein provided for independent school districts, directly through the Foundation Program of the Central Education Agency.

(b) The basis for establishing, operating, and the formula to be used for determining allocation of said exceptional teacher units, vocational education units, and other special education personnel, shall be as required by the Central Education Agency of independent school districts except that the district's allocation shall be limited, computed upon, and restricted to include only exceptional children between the ages of 14 and 21, both inclusive. However, no local fund assignment shall be charged to a rehabilitation district.

(c) The cost of approved professional units authorized including the per unit operational cost provided by law shall be considered by the Foundation Program Committee in estimating the funds needed for Foundation Program purposes.

[Acts 1969, 61st Leg., p. 2982, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1518, ch. 405, § 48, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 2810, ch. 912, § 1, eff. Sept. 1, 1971.]

**§ 26.66. Tuition; Fees**

The board may fix such fees and tuition rates as are deemed necessary to supplement other sources of funds for maintaining and operating the district in carrying out its functions, with authority, however, to reduce fees and tuitions or waive them altogether in cases where the parents or guardians of the trainees are able to pay a portion only or none of such tuition or fees, in the judgment of the board of directors, or in the judgment of an agency created by the board of directors, to determine such matters; however, no parent or guardian of a school-age student (6 to 21 years of age) residing in the district shall pay tuition, and any fees charged by the dis-

trict shall be in conformity with Texas laws governing independent school districts.

[Acts 1969, 61st Leg., p. 2982, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1518, ch. 405, § 49, eff. May 26, 1971.]

#### § 26.67. Donations; Gifts; Etc.

The board may accept donations, gifts, and endowments for the district, to be taken in trust and administered by the board of directors for such purposes, and under such directions, limitations, and provisions, if any, as may be prescribed in writing by the donor, not inconsistent with the proper management and objects of the rehabilitation district.

[Acts 1969, 61st Leg., p. 2982, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 26.68. Federal Aid

The board may apply to any agency of the federal government for funds made available, as loans or grants, by the United States Government to carry out the purposes of such rehabilitation district, in the same manner, according to the same procedures, and in all respects as provided for the receipt of such funds by independent school districts; provided, further, that for rehabilitation program purposes only and to receive any funds available for rehabilitation purposes for which the district otherwise may be eligible, the authority of the district shall be restricted and enlarged to include persons not over 25 years of age.

[Acts 1969, 61st Leg., p. 2982, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 26.69. Taxes

(a) The board may levy taxes and make such distribution of such taxes as it may deem necessary for providing needed housing and facilities, and for the support of the rehabilitation program, except that the total annual tax for all district purposes shall not exceed the rate of five cents on each \$100 of assessed valuation of taxable property located in such district.

(b) The tax assessors and collectors of each county in a rehabilitation district must assess and collect taxes on taxable property in the county on levies made and rates fixed by the board of directors of that district, not exceeding the rate of five cents on each \$100 of valuation. The valuations assessed on property for state and county taxes must be used as the valuations for district taxes. Each tax collector must collect district taxes at the same time that he collects state and county taxes. All taxes collected for a rehabilitation district must be accounted for and paid over to the treasurer of the district and the tax collector must receive the same compensation for assessing and collecting rehabilitation district taxes as is provided by law for like services rendered for junior college districts.

[Acts 1969, 61st Leg., p. 2982, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 26.70. Group Residence Centers

Each district may, by itself, or in conjunction with service clubs, women's clubs, or other organizations interested in serving the disabled, cities or counties, or any organization or person deemed equipped by the board of directors, provide for group residence rehabilitation centers within the rehabilitation district. Such group residence centers shall be used as living units, with or without board, for those stu-

dents or trainees of the rehabilitation district, who have become gainfully employable and/or employed, and who, in the opinion of the board of directors, would benefit from group living while adjusting to work and to general society.

[Acts 1969, 61st Leg., p. 2983, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 26.71. Employment of Trainees

Rehabilitation districts shall cooperate with the Texas Employment Commission and the Vocational Rehabilitation Division of the Texas Education Agency in finding employment for their employable trainees.

[Acts 1969, 61st Leg., p. 2983, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 26.72. Additional Powers

All powers relating to the acquisition of land and to the construction or acquisition of facilities except the issuance of bonds, and to taxation, vested by law in independent school districts, shall be applicable to any rehabilitation district, subject to a tax limitation of five cents on each \$100 valuation.

[Acts 1969, 61st Leg., p. 2983, ch. 889, § 1, eff. Sept. 1, 1969.]

### CHAPTER 27. COUNTY INDUSTRIAL TRAINING SCHOOL DISTRICTS

#### Section

- 27.01. Establishment and Location; Purpose.
- 27.02. Petition and Election; Board of Trustees.
- 27.03. Powers and Duties.
- 27.04. Power of District to Levy, Assess and Collect Tax.
- 27.05. Compensation of the Board of Trustees.
- 27.06. Bonds and Revenues of the District.
- 27.07. Restriction of Establishing District in Counties With Vocational or Technical High Schools.
- 27.08. Abolition of Districts.

#### § 27.01. Establishment and Location; Purpose

A district to be known as the "\_\_\_\_\_ County Industrial Training School District" may be established and located in any county of this state to provide vocational training for residents and nonresidents of such county.

[Acts 1969, 61st Leg., p. 2984, ch. 889, § 1, eff. Sept. 1, 1969.]

#### § 27.02. Petition and Election; Board of Trustees

(a) Upon a petition signed by five percent of the resident qualified taxpaying voters in any such county, the commissioners court shall call and cause to be held an election within 30 days after petition has been duly presented for the purpose of electing three members of the board of trustees of such county industrial training school district. The three trustees elected shall then appoint four persons, one each from the following classes:

- (1) a member of the city council of any incorporated city or town located within the county;
- (2) a member of the governing body of any other school district in the county;
- (3) a juvenile judge for that county; and
- (4) the county judge or a member of the commissioners court.

(b) These appointive trustees shall be full voting members of the board of trustees, except as provided in this chapter.

(c) All members of the board shall be residents of the county where the county industrial training school district is established.

(d) The first trustees elected for the district shall by lots divide themselves into three classes: class one, consisting of one member, who shall serve for two years; class two, consisting of one member, who shall serve for four years; and class three consisting of one member, who shall serve for six years. Each trustee elected thereafter shall be elected for a term of six years.

(e) The appointive trustees for the district shall serve terms of two years.

(f) Any vacancy occurring on the board shall be filled for the unexpired term by an appointee decided on by at least two of the elected trustees.

[Acts 1969, 61st Leg., p. 2984, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 27.03. Powers and Duties**

(a) In the management and control of the District, the board of trustees is authorized to exercise the powers and duties as described in this section.

(b) The board of trustees shall select a chairman of the board and define his duties, and shall have the power to remove him when in its judgment the interest of the district shall require it.

(c) The board of trustees shall appoint other officers of the district, the teaching staff, and other employees, and fix their respective salaries, and shall have the power to remove them when in its judgment the interest of the district shall require it.

(d) The board of trustees shall arrange for and operate whatever facilities they deem necessary for the establishment of any vocational school within said district.

(e) The board of trustees shall enact such bylaws, rules, and regulations as may be necessary for the successful management and government of any vocational school within said district.

(f) The board of trustees shall determine what departments of instruction shall be maintained and what subjects of study shall be pursued in the various departments.

(g) The board of trustees shall have the authority to make proper arrangements by contract with other educational institutions, private individuals, corporate institutions, or the state, for the use of facilities and for the services of qualified personnel; and to make such other arrangements as it deems necessary for the proper training and education of students in the district.

(h) The board of trustees shall have general supervision and control of all expenditures of the district.

(i) The board of trustees shall determine the qualifications for admission of students to any school established by the district.

(j) The board of trustees is authorized and empowered to determine the tuition and/or fees, if any, charged students attending any vocational training school established in the district.

(k) The board of trustees is authorized and empowered to grant diplomas for successful completion of any type of vocational training taught.

(l) The board of trustees is authorized to accept donations, gifts, and endowments for the district to be held in trust and administered by the board for such purposes and under such directions, limitations, and provisions as may be declared in writing in the donation, gift or endowment, not inconsistent with the objectives and proper management of the district.

(m) The board of trustees may issue revenue bonds (new or refunding) and notes for the purposes of acquiring, constructing, improving and/or equipping buildings, structures, additions to buildings or structures, and other types of permanent improvements not inconsistent with this chapter. In addition, the board may fix, charge, collect and pledge to the payment of the principal and interest on any such bonds or notes reasonable use fees from the students for the use of any type of building, structure, facility, or property. The laws governing the issuance of bonds (new or refunding) shall be governed by the laws applicable to school districts located in such counties.

[Acts 1969, 61st Leg., p. 2985, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 27.04. Power of District to Levy, Assess and Collect Tax**

The district is hereby authorized and empowered to levy, assess, and have collected through the county tax office, the rate of tax as set by the board and confirmed by a favoring majority vote of the resident qualified taxpaying voters of such county in an election, except that such rate shall not exceed that provided by law relating to school districts located in such counties upon such property values as established for county purposes, and the election shall be held in compliance with provisions governing such elections.

[Acts 1969, 61st Leg., p. 2985, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 27.05. Compensation of the Board of Trustees**

The board of trustees shall serve without compensation:

[Acts 1969, 61st Leg., p. 2986, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 27.06. Bonds and Revenues of the District**

Every such district shall be operated on its bond and/or note revenues, tax revenues, tuition, if any, gifts, donations, and endowments, and shall never become a charge against the state, or require appropriations therefrom.

[Acts 1969, 61st Leg., p. 2986, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 27.07. Restriction of Establishing District in Counties With Vocational or Technical High Schools**

No industrial training school district may be established within any county, if any school district in that county has established or is in the process of establishing a vocational or technical high school.

[Acts 1969, 61st Leg., p. 2986, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 27.08. Abolition of Districts**

(a) Any county industrial training school district may be abolished in the manner provided in this section.

(b) A petition requesting the abolition of the district, signed by at least five percent of the qualified voters residing in the district shall be presented to the county judge of the county in which the district is located. On receipt of such a petition, the county judge shall:

(1) Issue an order designating the time and place within the district and county of his court at which there shall be held an election to determine whether the district shall be abolished;

(2) Appoint to preside an officer who shall select two judges and two clerks to assist in holding the election; and

(3) Cause notice of the election to be given by posting advertisements for at least 10 days prior to the date of the election at three public places within such county.

(c) Except as provided in this section the election shall be held in the manner prescribed by law for holding general elections.

(d) All persons who are legally qualified taxpaying voters of the state and of the county in which the district is situated and who have resided within the county for at least six months next preceding shall be entitled to vote.

(e) The officers holding the election shall make return thereof to the county judge within 10 days after the election is held.

(f) If a majority of the voters voting at the election, shall vote to abolish the district, the county judge shall declare the district abolished and enter an order to that effect upon the minutes of the commissioners court, and from the date of such order, the district shall cease to exist.

(g) Upon abolishment of such district, the commissioners court shall manage, control, and dispose of all property belonging to the abolished district, and all taxes from outstanding bonds or other indebtedness, if any, against the property of the abolished district shall remain in full force and effect and shall be levied and collected by the proper officers of the county until the entire indebtedness is fully paid. The commissioners court shall have the power to do any and all things necessary for the payment of such bonds or other indebtedness, if any, which the district, or the trustees thereof, could have done had such district not been abolished.

(h) Any creditor of the abolished district may, within 60 days after the district has been abolished, and not thereafter, bring suit in any court of competent jurisdiction, to assert any claim against such district. The commissioners court shall institute and defend suits in the name of the abolished district, and may make such settlement of any such litigation as it deems advisable.

[Acts 1969, 61st Leg., p. 2986, ch. 889, § 1, eff. Sept. 1, 1969.]

## CHAPTER 28. COUNTYWIDE VOCATIONAL SCHOOL DISTRICT AND TAX

### Section

- 28.01. Creation of Countywide Vocational School Districts.  
28.02. Taxing Power of School Districts; Election.

### Section

- 28.03. Election: Petition; Order; Notice; Ballots; Conduct; Expenses.  
28.04. Canvass of Returns; Authority to Levy and Assess Tax; Revocation of Tax.  
28.05. Annual Levy and Collection of Tax; Deposit of Funds.  
28.06. Duties of Commissioners Court.  
28.07. Apportionment of Money; Formula Basis.  
28.08. Monthly Settlements With Eligible Independent School Districts.  
28.09. Alteration or Enlargement of Duties and Powers of Commissioners Court.  
28.10. Eligibility to Attend School District Operating Vocational School Program; Tuition; Average Daily Attendance.  
28.11. Changing Duties or Powers of School District Trustees.

### § 28.01. Creation of Countywide Vocational School Districts

This chapter is applicable to every county of this state. For the purpose of levying, assessing, and collecting a countywide vocational school tax for the countywide support of area vocational school programs set forth and authorized in this chapter and for such further administrative functions set forth in this chapter, the territory of each of such counties is hereby created into a school district, described as the countywide vocational school district, this taxing power to be exercised as provided.

[Acts 1969, 61st Leg., p. 2987, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 28.02. Taxing Power of School Districts; Election

There shall be exercised in and for the entire territory of each of such counties to the extent prescribed in this chapter, the taxing power conferred on school districts by Article VII, Section 3 of the Texas Constitution. Such taxing authority shall not be exercised until and unless authorized by the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided.

[Acts 1969, 61st Leg., p. 2987, ch. 889, § 1, eff. Sept. 1, 1969.]

### § 28.03. Election: Petition; Order; Notice; Ballots; Conduct; Expenses

(a) Whenever a petition is presented to the county judge of any such county, signed by at least 100 qualified property taxpaying voters residing therein, asking for an election to be ordered for the purpose of determining whether or not a countywide vocational school tax shall be levied, assessed, and collected on taxable property within that county for the support of area vocational school program(s) so designated by the Texas Central Education Agency pursuant to a state plan for vocational education, and operated by local school district(s) in that county, not exceeding 20 cents on the \$100 of assessed valuation of taxable property, it shall be the duty of the county judge immediately to order an election to be held throughout the county to determine said question. The finding of the county judge that such petition is sufficient and signed by the number of taxpaying voters required by this law shall be conclusive.

(b) The county judge shall give notice of the election by publication of the election order in a newspaper of general circulation in said county once a week for at least two weeks, the date of the first

publication to be not less than 20 days, prior to the date fixed for holding said election. Further notice shall be given by the posting of a copy of said election order within the boundaries of each school district having territory in the county, and one copy of the notice shall be posted at county courthouse door, posted at least 20 days prior to the date fixed for the election.

(c) The ballots for such election shall be printed to provide for voting for or against:

“Countywide vocational school tax.”

(d) Except as otherwise provided in this chapter, the manner of holding the election shall be controlled by the general laws of the state, and only legally qualified property taxpaying voters residing in the county who own taxable property in such county and who have duly rendered the same for taxation shall be qualified to vote at such election. The election shall be held at the regular polling places within the county with duly appointed election officers holding the election. The officers holding the election shall make returns thereof to the county judge within five days after the same is held.

(e) All expenses for the election shall be paid from the general fund of the county.

[Acts 1969, 61st Leg., p. 2987, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 28.04. Canvass of Returns; Authority to Levy and Assess Tax; Revocation of Tax**

(a) The commissioners court shall, within 10 days after holding the election, make a canvass of the results of said election. If a majority of the votes cast shall favor such tax, the court shall declare the results which shall be recorded in the minutes of the commissioners court, and certify same to the county tax assessor-collector. The commissioners court shall be authorized to levy said tax and the county tax assessor-collector shall be authorized to assess and collect the same.

(b) No election to revoke the tax shall be ordered until the expiration of three years from the date of the election at which the tax was adopted.

[Acts 1969, 61st Leg., p. 2988, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 28.05. Annual Levy and Collection of Tax; Deposit of Funds**

(a) It shall be the duty of the commissioners court, after such tax shall have been voted, at the time other taxes are levied in the county, annually to levy a tax under this law of not to exceed 20 cents on the \$100 valuation in the county at the same rate of valuation as is assessed for state and county purposes. Such taxes shall be assessed by the tax assessor and collected by the tax collector as other taxes are assessed and collected.

(b) The county tax assessor-collector shall deposit the money as collected from said tax to a separate fund in the county depository to be known as the county vocational school district fund, to be allocated and distributed for the support of area vocational school programs operated by designated school district or districts in the county. He shall have the same authority and the same laws shall apply as in the collection of other county ad valorem tax.

[Acts 1969, 61st Leg., p. 2988, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 28.06. Duties of Commissioners Court**

As soon as the commissioners court of said county shall determine the total of assessed value of taxable property, which value shall be the same as those fixed by it as the board of equalization for state and county purposes, it shall

(1) determine the estimated total receipts from the levying and collecting of said tax of not exceeding 20 cents on the property in such countywide district according to such valuation;

(2) determine the estimated amount of money apportionable for the ensuing school year to school district or districts under the jurisdiction of the county, which operate designated area vocational school(s), on the formula basis hereinafter prescribed; and

(3) transmit a copy of the order fixing the estimated proportioned amount available, to the president of the board of trustees of each such designated school district of<sup>1</sup> districts eligible therefor.

[Acts 1969, 61st Leg., p. 2989, ch. 889, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> So in enrolled bill; probably should read “or”.

**§ 28.07. Apportionment of Money; Formula Basis**

The money collected from any taxes levied by the commissioners court under this chapter shall be distributed to such designated eligible school district(s) in the county to be apportioned on the following formula basis: The combined average daily membership (ADM) of students in vocational programs of designated area vocational school(s) as determined for the preceding school year divided into the average daily memberships in vocational programs of each such area vocational school; except that for the first year of operation the apportionment will be upon average daily membership (ADM) in grades 9 through 12 inclusive, determined for the preceding year, in all of the school districts operating designated area vocational school programs.

[Acts 1969, 61st Leg., p. 2989, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 28.08. Monthly Settlements With Eligible Independent School Districts**

The tax collector of the county shall make monthly settlements of taxes collected with the independent school districts eligible therefor and situated in such county. Money shall be received and held by the independent school districts and protected in accordance with the existing depository laws. The tax collector shall place to the credit of the common or other school districts using the county depository such money as is apportioned to them.

[Acts 1969, 61st Leg., p. 2989, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 28.09. Alteration or Enlargement of Duties and Powers of Commissioners Court**

Until and unless a countywide vocational school tax has been authorized by an election held in such county, the duties and powers of the commissioners court shall not be considered as having been changed, altered, or enlarged by this chapter.

[Acts 1969, 61st Leg., p. 2989, ch. 889, § 1, eff. Sept. 1, 1969.]

**§ 28.10. Eligibility to Attend School District Operating Vocational School Program; Tuition; Average Daily Attendance**

(a) Irrespective of whether a countywide school district tax has been voted: Any resident of the countywide vocational school district who shall have attained the age of 14 years prior to September 1 shall be considered eligible to attend a school district in his county designated as operating an area vocational school program, provided he is accepted by such district as qualifying under its entrance requirements.

(b) No tuition shall be charged any such eligible resident of the county enrolled in the area vocational school program, if the county has voted and collects a countywide tax to support such program.

(c) Any pupil under 21 years of age on September 1 and who has not completed the 12th grade shall be eligible to be counted in average daily attendance (ADA) for Foundation School Program purposes by the designated area school district in accordance with policies of the Central Education Agency. However, where such a pupil attends school in his home district a part of a day and attends part of a day in vocational class(es) offered only in a designated area vocational school district, his ADA shall be counted for the entire day in the home district; his state per capita, if any, to remain with the home district. Further, such a pupil shall be eligible to be counted by the designated area vocational school district for purposes of vocational teacher unit allotments pursuant to the policies and formulas adopted by the State Board of Education.

(d) Any eligible child residing in a school district which is under agreement with a neighboring school district designated to operate and accept such in its area vocational school program shall, on timely application of his parents for enrollment in the vocational program, be received by the designated area district free of tuition without the necessity of a formal transfer, any existing law to the contrary notwithstanding.

(e) Any eligible child residing in a school district which is not listed under any agreement with a school district designated to operate and accept such in its area vocational school program may, on timely application of his parents for enrollment in its vocational program, be received by a designated area district in his county or in an adjoining county if there is none in his county, on such terms as the receiving district may deem just and proper, without the necessity of a formal transfer, any existing law to the contrary notwithstanding.

(f) Upon certification of the acceptance and vocational program enrollment of such children from one district to another, by the superintendent of the receiving district, the State Department of Education shall adjust its records to pay over directly the state per capita apportionment to the respective district in which such children are received and educated.

[Acts 1969, 61st Leg., p. 2990, ch. 889, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1519, ch. 405, § 50, eff. May 26, 1971.]

**§ 28.11. Changing Duties or Powers of School District Trustees**

(a) This chapter shall not have the effect of changing any duties imposed or powers conferred on

the trustees of any school district of this state except as expressly provided herein; it being the intention of this law that said respective boards of trustees shall continue to administer their lawful duties and powers as now authorized by law, that the countywide vocational school tax herein authorized, if voted, shall be levied by the commissioners court and assessed and collected by the county tax assessor-collector to be distributed and used for the purpose expressed in this chapter.

(b) This law shall not affect the right and duty of the respective local school districts of the counties to levy, assess, and collect local maintenance and/or bond taxes authorized for local school district purposes by the property taxpayers in said respective districts.

[Acts 1969, 61st Leg., p. 2990, ch. 889, § 1, eff. Sept. 1, 1969.]

**CHAPTER 29. SCHOOLS WITHIN THE DEPARTMENT OF CORRECTIONS**

Section

- 29.01. Establishment and Location.
- 29.02. Eligibility of Students.
- 29.03. Board May Accept Grants.
- 29.04. Costs to be Borne by State.
- 29.05. Allocation of Costs.

**§ 29.01. Establishment and Location**

The Board of Corrections may establish and operate schools at the various units of the Department of Corrections.

[Acts 1971, 62nd Leg., p. 1519, ch. 405, § 51, eff. May 26, 1971.]

**§ 29.02. Eligibility of Students**

All persons incarcerated in the Department of Corrections who are not high school graduates are eligible to attend such schools.

[Acts 1971, 62nd Leg., p. 1519, ch. 405, § 51, eff. May 26, 1971.]

**§ 29.03. Board May Accept Grants**

The Board of Corrections may accept grants from both public and private organizations and expend such funds for the purposes of operating the schools.

[Acts 1971, 62nd Leg., p. 1519, ch. 405, § 51, eff. May 26, 1971.]

**§ 29.04. Costs to be Borne by State**

The total cost of operating the schools authorized by this chapter shall be borne entirely by the state and shall be paid from the Foundation School Program Fund. Such costs shall be considered annually by the Foundation School Fund Budget Committee and included in estimating the funds needed for purposes of the Foundation School Program. No part of the operating costs herein provided for shall be charged to any of the school districts of this state.

[Acts 1971, 62nd Leg., p. 1519, ch. 405, § 51, eff. May 26, 1971.]

**§ 29.05. Allocation of Costs**

A formula for the allocation of professional units and other operating expenses shall be developed by the Central Education Agency and approved by the State Board of Education.

[Acts 1971, 62nd Leg., p. 1519, ch. 405, § 51, eff. May 26, 1971.]

**CHAPTER 30. REHABILITATION OF HANDICAPPED AND DISABLED**

**SUBCHAPTER A. GENERAL PROVISIONS**

Section

- 30.01. Purpose.
- 30.02. Definitions.

**SUBCHAPTER B. COMMISSION FOR REHABILITATION—CREATION; ADMINISTRATIVE PROVISIONS**

- 30.11. Creation of Commission; Composition.
- 30.12. Members of Board—Appointment, Terms, Etc.
- 30.13. Meetings.
- 30.14. Expenses.
- 30.15. Advisory Committees.
- 30.16. Commissioner.
- 30.17. Administrative Regulations.
- 30.18. Planning.
- 30.19. Administrative Units; Personnel.
- 30.20. Reports.
- 30.21. Disbursement of Funds.
- 30.22. Other Duties.
- 30.23. Delegation to Employees.

**SUBCHAPTER C. POWERS AND DUTIES**

- 30.41. Commission as Principal Authority.
- 30.42. Agency Functions.
- 30.43. Cooperation With the Federal Government.
- 30.44. Obtaining Federal Funds.
- 30.45. Finances.
- 30.46. Gifts and Donations to the Commission.
- 30.47. Unlawful Use of Lists of Names.
- 30.48. Transfer From Central Education Agency.
- 30.49. Employees Membership in Retirement Systems.

**SUBCHAPTER D. EXTENDED REHABILITATION SERVICES**

- 30.71. Definitions.
- 30.72. Authority.
- 30.73. Administration.
- 30.74. Participant Contributions.
- 30.75. Standards.
- 30.76. Quarterly Payments.
- 30.77. Funds, Rules, and Regulations.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 30.01. Purpose**

It shall be the policy of the State of Texas to provide rehabilitation and related services to eligible handicapped individuals so that they may prepare for and engage in a gainful occupation or achieve maximum personal independence.

[Acts 1971, 62nd Leg., p. 1520, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.02. Definitions**

In this chapter:

- (1) "Agency" or "commission" means the Texas Rehabilitation Commission.
- (2) "Commissioner" means the chief administrative officer of the agency.
- (3) "Handicapped individual" means any individual, except one whose disability is of a visual nature, who has a disability which constitutes a substantial handicap to employment, or to

achieving maximum personal independence, but which is of such a nature that rehabilitation services may reasonably be expected to render him fit to engage in a gainful occupation, including a gainful occupation which is more consistent with his capacities and abilities or render him fit for self-care and independent living; and "handicapped individual" includes such an individual for whom rehabilitation services are necessary for the purposes of the determination of rehabilitation potential. "Handicapped individual" shall include individuals disadvantaged by reason of their youth or advanced age, low educational attainments, ethnic or cultural factors, prison or delinquency records, or other conditions which constitute a barrier to employment, as well as members of their families when the provision of rehabilitation services to family members is necessary for the rehabilitation of a handicapped individual.

(4) "Disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's activities or functioning. It includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental, or other factors. "Disability" includes the disadvantageous condition resulting from low educational attainment, ethnic or cultural factors, youth or advanced age, or other factors which constitute a barrier to employment or self-care and independent living.

(5) "Substantial handicap to employment" means a disability that impedes an individual's occupational performance by preventing his obtaining, retaining, or preparing for a gainful occupation consistent with his capacities and abilities.

(6) "Rehabilitation services" means any goods and services necessary to render a handicapped individual fit to engage in a gainful occupation, or independent living, or to determine his rehabilitation potential, and to provide work adjustment training or adult social services. To render a handicapped individual fit to engage in a gainful occupation or independent living, may require the agency to engage in or contract for some or all of such activities as outreach, diagnosis and appraisal, treatment, training, job placement or self-employment, guidance, and counseling. Services may include maintenance, transportation, and training allowances, not exceeding the estimated cost of subsistence during rehabilitation, for the handicapped individual as well as members of his family when necessary for the rehabilitation of the handicapped individual.

(7) "Gainful occupation" includes employment in the competitive labor market; practice of a profession; self-employment; homemaking, farm or family work (including work for which payment is in kind rather than in cash); sheltered employment; and home industries or other gainful homebound work.

(8) "Establishment of a rehabilitation facility" means (1) the expansion, remodeling, or

alteration of existing buildings, necessary to adopt<sup>1</sup> or to increase the effectiveness of such buildings for rehabilitation facility purposes; (2) the acquisition of initial equipment for such purposes; or (3) the initial staffing of a rehabilitation facility.

(9) "Establishment of a workshop" means the expansion, remodeling, or alteration of existing buildings necessary to adapt such buildings to workshop purposes or to increase the employment opportunities in workshops, and the acquisition of initial equipment necessary for new workshops or to increase the employment opportunities in workshops.

(10) "Construct" includes construction of new buildings, acquisition of existing buildings, and expansion, remodeling, alteration, and renovation of existing buildings, and initial equipment of such new, newly acquired, expanded, remodeled, altered, or renovated buildings.

[Acts 1971, 62nd Leg., p. 1520, ch. 405, § 52, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 88, ch. 51, § 9, eff. Aug. 27, 1973.]

<sup>1</sup> So in enrolled bill.

[Sections 30.03 to 30.10 reserved for expansion]

#### SUBCHAPTER B. COMMISSION FOR REHABILITATION—CREATION; ADMINISTRATIVE PROVISIONS

##### § 30.11. Creation of Commission; Composition

There is hereby created the Texas Rehabilitation Commission which shall consist of the board of the Texas Rehabilitation Commission, a commissioner, and such other officers and employees as may be required to efficiently carry out the purposes of this chapter.

[Acts 1971, 62nd Leg., p. 1521, ch. 405, § 52, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 88, ch. 51, § 10, eff. Aug. 27, 1973.]

##### § 30.12. Members of Board—Appointment, Terms, Etc.

(a) The board of the Texas Rehabilitation Commission shall consist of six members appointed by the governor.

(b) With the advice and consent of the senate, the governor shall biennially appoint two members to serve a term of six years, except that when the six initial appointments are made, the governor shall designate two members to serve for two years, two for four years, and two for six years.

(c) The governor shall also fill by appointment for the unexpired term any vacancy on the board caused by death, resignation, or inability to serve for any reason.

(d) Members shall serve until a successor is appointed and has qualified by taking the oath of office.

(e) Appointees shall be outstanding citizens of the state who have demonstrated a constructive interest in rehabilitation services. No paid employee of any agency carrying on work for the commission shall be eligible for appointment, nor shall any person who owns or is employed by an organization providing rehabilitation services or related services through the commission.

(f) The governor shall designate one board member as chairman.

[Acts 1971, 62nd Leg., p. 1521, ch. 405, § 52, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 88, ch. 51, § 11, eff. Aug. 27, 1973.]

##### § 30.13. Meetings

The board shall meet quarterly in regular session and on call by the chairman when necessary for the transaction of agency business.

[Acts 1971, 62nd Leg., p. 1522, ch. 405, § 52, eff. May 26, 1971.]

##### § 30.14. Expenses

Board members shall serve without pay but they shall be compensated for actual and necessary expenses incurred in the discharge of their official duties.

[Acts 1971, 62nd Leg., p. 1522, ch. 405, § 52, eff. May 26, 1971.]

##### § 30.15. Advisory Committees

(a) The board is authorized to appoint an advisory committee which shall make recommendations for consideration of the board concerning any matter which the advisory committee believes to be pertinent to the purposes of this chapter.

(b) The advisory committee shall have nine members appointed by the board, each of whom shall serve for three years and until a successor is appointed. However, when the initial appointments are made, the board shall designate three members who will be appointed for terms of one year, three members who will be appointed for terms of two years, and three members who will be appointed for terms of three years.

(c) The advisory committee shall meet at least once in each calendar quarter and may meet on call of the board.

(d) The members of the advisory committee shall serve without pay except that they are entitled to be reimbursed for actual and necessary expenses incurred in attending the official meetings of the advisory committee.

(e) The membership of the advisory committee shall be composed of citizens who have demonstrated an active and constructive interest in the rehabilitation of handicapped people.

(f) The board shall also fill, by appointment for the unexpired term, any vacancy on the advisory committee.

(g) The board is also authorized to create from time to time such additional technical advisory committees as it may deem necessary to the purposes of this chapter, the members of which shall serve without compensation unless such is specifically provided for by appropriation.

[Acts 1971, 62nd Leg., p. 1522, ch. 405, § 52, eff. May 26, 1971.]

##### § 30.16. Commissioner

This chapter shall be administered by the commissioner under operational policies established by the board. The commissioner shall be appointed by the board on the basis of his education, training, experience, and demonstrated ability. He shall serve at the pleasure of the board. He shall be secretary to the board, as well as chief administrative officer of the agency.

[Acts 1971, 62nd Leg., p. 1522, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.17. Administrative Regulations**

In carrying out his duties under this chapter, the commissioner shall, with the approval of the board, make regulations governing personnel standards; the protection of records and confidential information; the manner and form of filing applications, eligibility, investigation, and determination therefor for rehabilitation and other services; procedures for hearings; and such other regulations as he finds necessary to carry out the purposes of this chapter. [Acts 1971, 62nd Leg., p. 1522, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.18. Planning**

The commissioner shall, with the approval of the board, make long-range and intermediate plans for the scope and development of the program and make decisions regarding the allocation of resources in carrying out such plans. [Acts 1971, 62nd Leg., p. 1523, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.19. Administrative Units; Personnel**

(a) The commissioner shall, with the approval of the board, establish appropriate subordinate administrative units.

(b) The commissioner shall, under personnel policies adopted by the board, appoint such personnel as he deems necessary for the efficient performance of the functions of the agency. [Acts 1971, 62nd Leg., p. 1523, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.20. Reports**

The commissioner shall prepare and submit to the board annual reports of activities and expenditures and, prior to each regular session of the legislature, estimates of sums required for carrying out the purposes of this chapter; and, with the approval of the board, submit such reports to the governor and the legislature. [Acts 1971, 62nd Leg., p. 1523, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.21. Disbursement of Funds**

The commissioner shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of this chapter. [Acts 1971, 62nd Leg., p. 1523, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.22. Other Duties**

The commissioner shall take such other action as he deems necessary or appropriate to carry out the purposes of this chapter. [Acts 1971, 62nd Leg., p. 1523, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.23. Delegation to Employees**

The commissioner may, with the approval of the board, delegate to any officer or employee of the agency such of his powers and duties, except the making of regulations and the appointment of personnel, as he finds necessary to carry out the purposes of this chapter.

[Acts 1971, 62nd Leg., p. 1523, ch. 405, § 52, eff. May 26, 1971.]

[Sections 30.24 to 30.40 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

**§ 30.41. Commission as Principal Authority**

The Texas Rehabilitation Commission is the principal authority in the state on matters relating to rehabilitation of handicapped and disabled individuals, except for those matters relating to individuals whose handicaps or disabilities are of a visual nature. All other state agencies engaged in rehabilitation activities and related services to individuals whose handicaps or disabilities are not of a visual nature shall coordinate those activities and services with the commission.

[Acts 1971, 62nd Leg., p. 1523, ch. 405, § 52, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 88, ch. 51, § 12, eff. Aug. 27, 1973.]

**§ 30.42. Agency Functions**

The agency shall, to the extent of resources available and priorities established by the board, provide rehabilitation services directly or through public or private resources to individuals determined by the commissioner to be eligible therefor, and in carrying out the purposes of this chapter, the agency is authorized:

- (1) to cooperate with other departments, agencies, political subdivisions, and institutions, both public and private, in providing the services authorized by this chapter to eligible individuals, in studying the problems involved therein, and in planning, establishing, developing, and providing such programs, facilities, and services as may be necessary or desirable, including those jointly administered with state agencies;
- (2) to enter into reciprocal agreements with other states;
- (3) to establish or construct rehabilitation facilities and workshops; to make grants to public agencies; to make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities; and to operate facilities for carrying out the purposes of this chapter;
- (4) to conduct research and compile statistics relating to the provisions of services to or the need for services by disabled individuals;
- (5) to provide for the establishment, supervision, management, and control of small business enterprises to be operated by severely handicapped individuals where their operation will be improved through the management and supervision of the agency; and
- (6) to contract with schools, hospitals, private industrial firms, and other agencies and with doctors, nurses, technicians, and other persons for training, physical restoration, transportation, and other rehabilitation services.

[Acts 1971, 62nd Leg., p. 1523, ch. 405, § 52, eff. May 26, 1971.]

### § 30.43. Cooperation With the Federal Government

The agency shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this chapter or of any federal statutes pertaining to rehabilitation, and to this end may adopt such methods of administration as are found by the federal government to be necessary, and not contrary to existing state laws, for the proper and efficient operation of such agreements, arrangements, or plans for rehabilitation.

[Acts 1971, 62nd Leg., p. 1524, ch. 405, § 52, eff. May 26, 1971.]

### § 30.44. Obtaining Federal Funds

The agency is authorized to comply with such requirements as may be necessary to obtain federal funds in the maximum amount and most advantageous proportion possible.

[Acts 1971, 62nd Leg., p. 1524, ch. 405, § 52, eff. May 26, 1971.]

### § 30.45. Finances

The state treasurer is hereby authorized to receive all monies appropriated by Congress and allotted to Texas for carrying out the purposes of this chapter or agreements, arrangements, or plans authorized thereby; and to make disbursements therefrom upon the certification of the commissioner. All public monies available to the agency shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as provided by law for other public funds in the state treasury. The state auditor shall regularly audit all accounts established by the commission in local depositories, to assure that nonpublic funds made available to the commission through gift or bequest, by local organizations desiring to participate in projects for the handicapped authorized in Article XVI, Section 6, Subsection (b), of the Texas Constitution, or by endowment or otherwise, are expended in a manner consistent with the purposes of this chapter, and the commission shall comply with such reporting procedures as the state auditor might prescribe for the commission's acceptance, holding, investment, and use of nonpublic funds.

[Acts 1971, 62nd Leg., p. 1524, ch. 405, § 52, eff. May 26, 1971.]

### § 30.46. Gifts and Donations to the Commission

The commission is authorized to receive and use gifts and donations for carrying out the purposes of this chapter. No person shall ever receive any payment for solicitation of any funds.

[Acts 1971, 62nd Leg., p. 1525, ch. 405, § 52, eff. May 26, 1971.]

### § 30.47. Unlawful Use of Lists of Names

It shall be unlawful, except for purposes directly connected with the administration of the rehabilitation program and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning, persons applying for or receiving rehabilitation, directly or indirectly derived from the records.

[Acts 1971, 62nd Leg., p. 1525, ch. 405, § 52, eff. May 26, 1971.]

### § 30.48. Transfer From Central Education Agency

All functions of the division of vocational rehabilitation and the division of disability determination of the Central Education Agency, together with all personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available are hereby transferred to the agency on September 1, 1969. Wherever under existing statutes, duties, obligations, and responsibilities are placed upon the division of vocational rehabilitation or the division of disability determination of the Central Education Agency or duties, obligations, and responsibilities relating to vocational rehabilitation of the handicapped individual are imposed upon the State Board for Vocational Education, such duties, obligations, and responsibilities shall hereafter be assumed and carried out by the commission. All contracts and agreements between the Central Education Agency and the Social Security Administration relating to the activities of the division of vocational rehabilitation and the division of disability determination of the Central Education Agency shall be continued for the benefit of the commission.

[Acts 1971, 62nd Leg., p. 1525, ch. 405, § 52, eff. May 26, 1971.]

### § 30.49. Employees Membership in Retirement Systems

Personnel of the division of vocational rehabilitation and the division of disability determination of the Central Education Agency hereby transferred to the commission shall have the option of retaining membership in the Teacher Retirement System of Texas or becoming members of the Employees Retirement System of Texas under the provisions of Chapter 75, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 6228a-2, Vernon's Texas Civil Statutes). Employees hired after the transfer shall be members of the Employees Retirement System of Texas.

[Acts 1971, 62nd Leg., p. 1525, ch. 405, § 52, eff. May 26, 1971.]

[Sections 30.50 to 30.70 reserved for expansion]

## SUBCHAPTER D. EXTENDED REHABILITATION SERVICES

### § 30.71. Definitions

As used in this subchapter:

(1) "Extended rehabilitation services" means supplying rehabilitation services to (A) a mentally or physically handicapped person beyond a period of 18 months from the initial date that eligibility to receive vocational rehabilitation services was determined, or (B) mentally or physically handicapped persons who were not eligible for vocational rehabilitation services under laws and regulations in effect before April 2, 1969, and who could benefit from the provisions of this subchapter.

(2) "Extended sheltered workshop employment" means employment in a sheltered workshop of persons with mental or physical handicaps of such a nature that by reason of such handicap such persons are rendered incapable of competing in the open or customary labor market.

(3) "Extended community residence" means a group living arrangement providing the essentials of community living, such as room, board, clothing, evening and nighttime supervision, recreational activities, and transportation to and from work for persons living therein who are in extended sheltered workshop employment as that term is defined herein, or who, while physically or mentally handicapped, are employed in the open or customary labor market.

(4) "Sheltered workshop" means an occupation-oriented facility operated by a not-for-profit agency, public or private, which except for its staff, employs only mentally or physically handicapped persons.

[Acts 1971, 62nd Leg., p. 1525, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.72. Authority**

The commission is granted the additional authority to plan, institute, support, and maintain the programs of extended rehabilitation, including extended employment in a sheltered workshop and extended community residence, provided for in this subchapter.

[Acts 1971, 62nd Leg., p. 1526, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.73. Administration**

The commission may contract with any not-for-profit agency, public or private, for the provision of any extended rehabilitation services, including extended sheltered workshop employment or extended community residence for persons participating in vocational rehabilitation, and pay for such services purchased for the state.

[Acts 1971, 62nd Leg., p. 1526, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.74. Participant Contributions**

Any handicapped person in vocational rehabilitation and living in an extended community residence facility operated by a not-for-profit agency having a contract under this subchapter shall contribute to such not-for-profit agency from his personal earnings, if any, such portions of his earnings, after deductions for personal use, as he may be able to contribute and as may be required by rules and regulations of the commission. The earnings contributions made under this section by individuals' participation in vocational rehabilitation shall be credited to the state, in arriving at the net sums due to the not-for-profit agency contracting with the state to furnish services.

[Acts 1971, 62nd Leg., p. 1526, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.75. Standards**

The commission shall establish standards of staffing, physical plant, and services required for the operation of facilities of not-for-profit agencies furnishing services under this subchapter by contract with the state. Any contract entered into by the state under this subchapter shall be subject to cancellation by the state for cause at any time by the issuance of written notice of cancellation by the state to the contracting agency at least 30 days in advance of the date of cancellation.

[Acts 1971, 62nd Leg., p. 1526, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.76. Quarterly Payments**

The commission shall pay, from funds available to it for this program, on a quarterly basis to a not-for-profit agency an amount equal to not less than (a) \$3 per six-hour working day per client to a sheltered workshop and/or (b) \$85 per client per month to an extended community residence.

[Acts 1971, 62nd Leg., p. 1526, ch. 405, § 52, eff. May 26, 1971.]

**§ 30.77. Funds, Rules, and Regulations**

The commission may receive and expend funds from any source, public or private, for the purposes set forth in this subchapter, and shall establish rules and regulations for the conduct and control of the programs authorized by this subchapter. Any not-for-profit agency operating an extended community residence facility under this subchapter shall file annually its budget showing salaries paid and expenditures with the office of the state auditor.

[Acts 1971, 62nd Leg., p. 1527, ch. 405, § 52, eff. May 26, 1971.]

**CHAPTER 31. TECHNICAL-VOCATIONAL EDUCATION ACT OF 1969**

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## SUBCHAPTER A. GENERAL PROVISIONS

## § 31.01. Short Title

This chapter may be cited as the Technical-Vocational Education Act of 1969.

[Acts 1971, 62nd Leg., p. 1527, ch. 405, § 53, eff. May 26, 1971.]

## § 31.02. Purpose

The purpose of this chapter is to provide the necessary legal basis to establish a state educational system which will develop trained personnel in the area of technical and vocational skills, and to accommodate the social and economic needs of the people of the State of Texas. Further, it is the purpose of this chapter to comply in all respects with the Vocational Education Act of 1963, as amended,<sup>1</sup> including those advisory functions therein specified. It is further the purpose of this chapter to establish as a part of the total educational system of the State of Texas, one council responsible for the development of a program to train manpower, through education, to further industrial and economic development in the State of Texas.

[Acts 1971, 62nd Leg., p. 1527, ch. 405, § 53, eff. May 26, 1971.]

<sup>1</sup> See 20 U.S.C.A. § 1241 et seq.

## § 31.03. Definitions

In this chapter:

(1) "Advisory council" or "council" means the Advisory Council for Technical-Vocational Education.

(2) "Secondary schools" means those schools supported by the Permanent School Fund or as provided for in Article VII, Section 1, of the Texas Constitution.

(3) "Public junior college" means any public junior college in Texas which may be certified for state appropriations, as provided by Chapter 487, Acts of the 54th Legislature, 1955, as amended (Article 2919e-2, Vernon's Texas Civil Statutes<sup>1</sup>), or as may be subsequently provided for by the legislature.

(4) "Public senior college or university" means any general academic teaching institution, as defined by Chapter 487, Acts of the 54th Legislature, 1955, as amended (Article 2919e-2, Vernon's Texas Civil Statutes), or as may be subsequently provided for.

(5) "Associate commissioner" means the associate commissioner for occupational education and technology.

(6) "Postsecondary education" means education provided in any public junior college, technical institute, or public senior college or university.

(7) "Apprenticeship" means apprentice training, trade extension, and all postsecondary technical and occupational training programs operated by public schools and not being serviced by public junior colleges, technical institutes, senior colleges, or universities.

[Acts 1971, 62nd Leg., p. 1527, ch. 405, § 53, eff. May 26, 1972.]

<sup>1</sup> Repealed; see, now, § 61.001 et seq.

[Sections 31.04 to 31.10 reserved for expansion]

<sup>1</sup> West's Tex.Stats. & Codes—30

## SUBCHAPTER B. ADVISORY COUNCIL—CREATION; ADMINISTRATIVE PROVISIONS

## § 31.11. Creation

There is hereby established a council known as the Advisory Council for Technical-Vocational Education, for which offices shall be provided by the Texas Education Agency in Austin, Texas.

[Acts 1971, 62nd Leg., p. 1528, ch. 405, § 52, eff. May 26, 1971.]

## § 31.12. Membership

(a) The council consists of 21 members appointed by the State Board of Education after recommendation by the governor and subject to confirmation by the Senate.

(b) The membership will be constituted as follows:

(1) one member familiar with vocational needs and the problems of management in the state;

(2) one member familiar with vocational needs and the problems of labor in the state;

(3) two members representing state industrial and economic development agencies;

(4) one member actively engaged in the administration of community or junior college vocational-technical education;

(5) one member actively engaged in technical training institutes;

(6) one member familiar with the administration of state and local technical-vocational education programs;

(7) one member having special knowledge, experience, or qualifications with respect to the administration of state and local technical-vocational education programs but who is not involved directly in the administration of such programs;

(8) one member who represents technical-vocational education at the secondary school level;

(9) one member, representative of local education agencies and school boards;

(10) one member who is familiar with the programs of teachers' training for technical-vocational teachers in the post secondary institutions;

(11) one member who is familiar with post secondary baccalaureate technological degree programs;

(12) one member representative of comprehensive area manpower planning systems of the state;

(13) one member representative of those school systems with large concentrations of academically, socially, economically, or culturally disadvantaged students;

(14) one member having special knowledge, experience, or qualifications with respect to the special educational needs of the physically or mentally handicapped persons;

(15) one member having special knowledge, experience, or qualifications with respect to the

locally administered manpower programs sponsored by organizations having voting representatives of the socio-economically disadvantaged in their policy-making bodies;

(16) four members representing a cross section of industrial, business, professional, agricultural, and health service occupations; and

(17) one member representing the general public.

[Acts 1971, 62nd Leg., p. 1528, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.13. Terms**

Except for the initial appointees, members of the council hold office for staggered terms of six years. Initial appointment of the council shall be made on or immediately following September 1, 1969. Seven appointments will be made for the term which shall expire August 31, 1971; seven appointments will be made for the term which will expire August 31, 1973, and seven appointments will be made for the term which shall expire August 31, 1975, or at the time their successors are appointed and qualified.

[Acts 1971, 62nd Leg., p. 1529, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.14. Chairman; Officers**

The council shall elect annually from among its members a chairman and any other officers it considers necessary.

[Acts 1971, 62nd Leg., p. 1529, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.15. Meetings**

(a) The majority of the membership of the council shall constitute a quorum at meetings.

(b) The first meeting of the council shall be called by the governor as soon as the membership of the council is complete. Thereafter, the council will hold regular quarterly meetings, in the city of Austin, and at other times and places as shall be scheduled by it in formal session, as provided by the statutes of the State of Texas or as shall be called by the chairman of the council.

(c) Agenda for the meetings, in sufficient detail to indicate the items on which final action is contemplated, will be made available to the public and interested parties at least 30 days prior to each meeting.

[Acts 1971, 62nd Leg., p. 1529, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.16. Expenses**

Members of the council shall serve without pay, but shall be reimbursed for their actual expenses while attending meetings or for such work of the council as is approved by the chairman of the council.

[Acts 1971, 62nd Leg., p. 1529, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.17. Committees**

The chairman of the council may appoint such committees of the council or such advisory committees as the council shall deem necessary, from time to time.

[Acts 1971, 62nd Leg., p. 1529, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.18. Procedural Rules; Hearings**

(a) The council shall adopt and publish rules of procedure for the orderly transaction of its business and shall establish and publish rules and regulations in accordance with, and under the conditions applied to other agencies, by Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes), to effectuate the provisions of this chapter.

(b) The council shall grant any educational institution within its purview a hearing upon request and after reasonable notice.

[Acts 1971, 62nd Leg., p. 1529, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.19. Staff; Consultants**

The council shall employ such professional and clerical personnel and consultants as are necessary to perform the duties assigned by this chapter.

[Acts 1971, 62nd Leg., p. 1529, ch. 405, § 53, eff. May 26, 1971.]

[Sections 31.20 to 31.30 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

**§ 31.31. Principal Functions and Purposes**

(a) It is the purpose of the advisory council to cause to be established a climate conducive to the development of technical, vocational, and manpower training in educational institutions in the State of Texas to meet the needs of industrial and economic development of the state.

(b) The council is responsible for planning, recommending, and evaluating educational programs in the vocational, technical, adult education, and manpower training areas at the state level in the public secondary and postsecondary educational institutions and other institutions; and other boards or agencies will act upon these matters after receiving recommendations from the council except as may be precluded by the constitution or the laws of the State of Texas.

(c) The council shall perform only such functions as are herein enumerated and those as may be assigned to it by the legislature or the governor.

(d) It will be the function of this council to recommend the coordination and implementation of programs of training consistent with the purpose of this chapter, and subject to the approval of the State Board for Vocational Education.

[Acts 1971, 62nd Leg., p. 1530, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.32. Replacement of Prior Council**

The council replaces and supersedes the State Advisory Council on Vocational Education appointed by the State Board of Education.

[Acts 1971, 62nd Leg., p. 1530, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.33. Duties**

The council shall be the advisory council to the State Board for Vocational Education and shall:

(1) recommend and evaluate the role and scope of secondary institutions, public junior colleges, community colleges, technical training

institutes, and public senior colleges and universities in a comprehensive plan for developing manpower education and training in the State of Texas;

(2) recommend the appropriate subjects to be taught at each level of training and in each of the above types of institutions;

(3) recommend a state plan designating the method and the criteria to be utilized in establishing area technical schools which will be consistent with the Vocational Educational Act of 1963, as amended,<sup>1</sup> the Manpower Development and Training Act of 1962, as amended,<sup>2</sup> and other federal statutes;

(4) recommend and evaluate a list of courses offered by these types of institutions eligible to be funded by the legislature or through the allocation of federal funds. These courses shall be freely transferable among the public institutions in the State of Texas, with credit for such courses to be given on the same basis as if they had been taken at the receiving institutions;

(5) recommend to the governor and the legislature methods of funding existing programs and propose methods for funding new programs;

(6) suggest and evaluate pilot projects and present recommendations to the governor and the legislature for implementing cooperative programs among the several types of institutions named hereinabove, which will provide a more effective and efficient method of supplying business and industry with trained manpower;

(7) recommend the establishment of the responsibility of public schools, public junior colleges, community colleges, technical training institutes, and public senior colleges and universities in adult basic education, adult technical education, and adult vocational education;

(8) recommend, encourage, and evaluate cooperative programs between educational institutions and industry, and, with the assistance of industry, assist in the development of new curricula and instructional materials as may be required for new and emerging occupational categories as may be prescribed by industry;

(9) provide up-to-date statistical data on employment opportunities in the Texas economy to persons trained in these institutions through cooperation with the Texas Employment Commission and other appropriate research agencies at both the state and national levels;

(10) recommend a state plan for the development of a comprehensive manpower program in conjunction with the Manpower Development and Training Act of 1962, as amended;

(11) recommend the state plan, training institutions, and means of coordination of manpower training as provided in the Manpower Development and Training Act of 1962, as amended; and

(12) recommend research projects as may be necessary to implement and improve a statewide system of technical, vocational, and manpower training from funds provided by appropriations from the United States Congress or private gifts, grants, or awards;

(13) recommend and evaluate a program of teacher certification for instructors of occupational training courses; and

(14) recommend and evaluate a statewide plan for the development of a comprehensive program of apprenticeship training.

[Acts 1971, 62nd Leg., p. 1530, ch. 405, § 53, eff. May 26, 1971.]

<sup>1</sup> See 20 U.S.C.A. § 1241 et seq.

<sup>2</sup> 42 U.S.C.A. § 2571 et seq.

### § 31.34. Studies; Reports

(a) The council shall make certain studies on its own initiative regarding a system of technical, vocational, adult education, and manpower training in the State of Texas and shall furnish reports and make such studies as may be requested by the governor or the Legislative Budget Board.

(b) The council shall make a report of its activities to the governor annually, and to the legislature not later than December 1 prior to the regular session of the legislature.

[Acts 1971, 62nd Leg., p. 1531, ch. 405, § 53, eff. May 26, 1971.]

### § 31.35. Public-Private Cooperation

The council shall encourage cooperation between public and private institutions wherever possible.

[Acts 1971, 62nd Leg., p. 1531, ch. 405, § 53, eff. May 26, 1971.]

### § 31.36. Assistance of State Agencies

The Texas Education Agency, the Coordinating Board, Texas College and University System, the Texas Employment Commission, and all other state boards and agencies are directed to cooperate with the advisory council and to supply such information and material as requested by the council.

[Acts 1971, 62nd Leg., p. 1531, ch. 405, § 53, eff. May 26, 1971.]

### § 31.37. Contracts

In achieving the goals outlined in this chapter and the performing of functions assigned to it, the council may contract with any other state governmental agency as authorized by law, with any agency of the United States government, and with corporations and individuals. The council shall propose, foster, and encourage the use of interagency contracts among the educational institutions to reduce duplication and to achieve better utilization of personnel and facilities.

[Acts 1971, 62nd Leg., p. 1531, ch. 405, § 53, eff. May 26, 1971.]

### § 31.38. Gifts, Grants

The council may accept gifts, grants, or donations of personal property from any individual, group, association, or corporation or the United States government, subject to such limitations or conditions as may be provided by law, and provided that gifts, grants, or donations of money shall be deposited with the state treasury and expended in accordance with the specific purpose for which given under such conditions as may be imposed by the donor and as provided by law.

[Acts 1971, 62nd Leg., p. 1532, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.39. Status of Recommendations**

(a) It is recognized that the State Board for Vocational Education is vested with the final authority to accept or reject the recommendations of the advisory council.

(b) Recommendations of the advisory council submitted to the State Board for Vocational Education must be acted upon, and either accepted or rejected.

(c) Any recommendations which are rejected must be returned immediately to the advisory council. [Acts 1971, 62nd Leg., p. 1532, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.40. Allocation of State and Federal Funds**

The State Board for Vocational Education shall have the authority to allocate, as provided herein, funds appropriated by the legislature and funds of the United States government received by the State of Texas under the Vocational Education Act of 1963, as amended,<sup>1</sup> and the Manpower Development and Training Act of 1962, as amended,<sup>2</sup> or other such federal statutes, as may come under its jurisdiction. Only institutions and programs approved by the State Board of Education or the Coordinating Board, Texas College and University System, will be eligible for the distribution of such funds; such program approvals shall include all those previously approved including industrial arts.

[Acts 1971, 62nd Leg., p. 1532, ch. 405, § 53, eff. May 26, 1971.]

<sup>1</sup> See 20 U.S.C.A. § 1241 et seq.

<sup>2</sup> 42 U.S.C.A. § 2571 et seq.

**§ 31.41. Financial Reporting**

All financial reporting for postsecondary institutions shall be the same as that prescribed in the Uniform Reporting System provided in Chapter 487, Acts of the 54th Legislature, 1955, as amended (Article 2919e-2, Vernon's Texas Civil Statutes<sup>1</sup>), adopted by the Coordinating Board, Texas College and University System. The council will obtain student enrollment data and instructional data and financial data gathered by the Uniform Reporting System established by the Coordinating Board, Texas College and University System, or by the Texas Education Agency, whichever may be applicable.

[Acts 1971, 62nd Leg., p. 1532, ch. 405, § 53, eff. May 26, 1971.]

<sup>1</sup> Repealed; see, now, §§ 61.001 et seq., 61.065.

[Sections 31.42 to 31.70 reserved for expansion]

**SUBCHAPTER D. ASSOCIATE COMMISSIONER FOR OCCUPATIONAL EDUCATION AND TECHNOLOGY**

**§ 31.71. Associate Commissioner**

(a) There is hereby created the position of associate commissioner for occupational education and technology within the Texas Education Agency.

(b) The associate commissioner shall be a person of high professional qualifications, having a thorough background of training and experience in the fields of technical, vocational, adult, and manpower education and training, and shall possess such other qualifications as the commissioner of education may prescribe.

(c) The associate commissioner shall be selected by the commissioner of education with the advice and consent of the State Board of Education.

(d) The associate commissioner will publish annually and make available to public institutions of education provided for in this chapter a certified list of courses for which funds may be made available in accordance with the appropriations of the legislature. Only those courses which appear on the certified list will be approved for appropriations or allocations of funds.

[Acts 1971, 62nd Leg., p. 1532, ch. 405, § 53, eff. May 26, 1971.]

[Sections 31.72 to 31.80 reserved for expansion]

**SUBCHAPTER E. JOINT COMMITTEE**

**§ 31.81. Creation of Joint Committee; Purpose**

There is hereby created a joint committee for the purpose of advising the two participating boards, the State Board for Vocational Education and the Coordinating Board, Texas College and University System, in coordinating approval and funding of vocational-technical-occupational programs and vocational-technical teacher education programs offered or proposed to be offered in the colleges and universities of this state.

[Acts 1971, 62nd Leg., p. 1533, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.82. Composition**

The committee is to be composed of three members from the State Board for Vocational Education appointed by the chairman of the board, three members from the Coordinating Board, Texas College and University System, appointed by the chairman of the coordinating board, and three members from the advisory council appointed by the chairman of the advisory council, so that program approval and program funding may be compatible endeavors.

[Acts 1971, 62nd Leg., p. 1533, ch. 405, § 53, eff. May 26, 1971.]

**§ 31.83. Duties**

The committee shall hold regularly scheduled meetings for the purpose of coordinating and developing planning efforts of the two boards, their staffs, and advisory personnel through the exchange of information and through the development of suggestions and recommendations.

[Acts 1971, 62nd Leg., p. 1533, ch. 405, § 53, eff. May 26, 1971.]

**CHAPTER 32. TEXAS PROPRIETARY SCHOOL ACT**

**SUBCHAPTER A. TITLE AND PURPOSE**

- Section 32.01. Short Title.
- 32.02. Purpose and Objectives.

**SUBCHAPTER B. GENERAL PROVISIONS**

- 32.11. Definitions.
- 32.12. Exemptions.

## SUBCHAPTER C. GENERAL POWERS AND DUTIES

## Section

- 32.21. Central Education Agency.
- 32.22. The State Board of Education.
- 32.23. Proprietary School Advisory Commission.
- 32.24. Duties of Administrator.

## SUBCHAPTER D. AUTHORIZED OPERATION OF SCHOOLS

- 32.31. Certificate of Approval.
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## SUBCHAPTER E. APPEAL

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- 32.51. Class Action.
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## SUBCHAPTER H. FEES

- 32.71. Certificate and Registration Fees.

## SUBCHAPTER I. FUNDING

- 32.81. Funding.

## SUBCHAPTER A. TITLE AND PURPOSE

## § 32.01. Short Title

This Act shall be known as the "Texas Proprietary School Act."

[Acts 1971, 62nd Leg., p. 2006, ch. 620, § 1, eff. June 4, 1971.]

## § 32.02. Purpose and Objectives

The aim in adopting this Chapter is to provide certification and regulation of proprietary schools in Texas.

[Acts 1971, 62nd Leg., p. 2006, ch. 620, § 1, eff. June 4, 1971.]

[Sections 32.03 to 32.10 reserved for expansion]

## SUBCHAPTER B. GENERAL PROVISIONS

## § 32.11. Definitions

The following words, terms, and phrases shall have the meaning ascribed to them in this section.

(1) "Proprietary School," referred to as "school," means any business enterprise operated for a profit, or on a nonprofit basis, which maintains a place of business within the State of Texas, or solicits business within the State of Texas, and which is not specifically exempted by the provisions of this Chapter and;

(A) which offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course or courses of instruction or study is available through classroom instruction or by correspondence, or both, to a person or persons for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement, except as hereinafter excluded.

(2) "Owner" of a school means:

(A) in the case of a school owned by an individual, that individual;

(B) in the case of a school owned by a partnership, all full, silent, and limited partners;

(C) in the case of a school owned by a corporation, the corporation, its directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least ten per cent (10%) of the total of the issued and outstanding shares.

(3) "School employee" means any person, other than an owner, who directly or indirectly receives compensation from the school for services rendered.

(4) "Representative" means a person employed by the school as defined herein, whether the school is located within or without the State of Texas, to act as an agent, solicitor, broker, or independent contractor to directly procure students or enrollees for the school by solicitation within or without this State at any place.

(5) "Administrator" means the State Commissioner of Education or a person, knowledgeable in the administration of regulating proprietary schools, designated by the Commissioner to administer the provisions of this chapter.

(6) "Notice to the school" means written correspondence sent to the address of record for legal service contained in the application for a certificate of approval. "Date of Notice" means the date the notice is mailed by the administrator.

(7) "Support" or "supported" means the primary source and means by which a school derives revenue to perpetuate its operation.

(8) "Person" means any individual, firm, partnership, association, corporation, or other private entity or combination thereof.

(9) "Unearned tuition" means refunds due former students under Section 32.39, total tuition and fees collected from students currently enrolled, and total tuition and fees collected from prospective students.

[Acts 1971, 62nd Leg., p. 2007, ch. 620, § 1, eff. June 4, 1971; Acts 1973, 63rd Leg., p. 1264, ch. 463, § 1, eff. June 14, 1973.]

## § 32.12. Exemptions

(a) The following schools or educational institutions are specifically exempt from the provisions of this chapter and are not within the definition of "proprietary school."

(1) a school or educational institution supported by taxation from either a local or State source;

(2) nonprofit schools owned, controlled, operated, and conducted by bona fide religious, denominational, eleemosynary, or similar public institutions exempt from property taxation under the laws of this State, but such schools may choose to apply for a certificate of approval hereunder, and upon approval and issuance, shall be subject to the provisions of this chapter as determined by the administrator;

(3) a school or training program which offers instruction of purely avocational or recreational subjects as determined by the administrator;

(4) a course or courses of instruction or study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student;

(5) a course or courses of study or instruction sponsored by a recognized trade, business, or professional organization for the instruction of the members of the organization with a closed membership;

(6) private colleges or universities which award a recognized baccalaureate, or higher degree, and which maintain and operate educational programs for which a majority of the credits given are transferable to a college, junior college, or university supported entirely or partly by taxation from either a local or State source;

(7) a school which is otherwise regulated and approved under and pursuant to any other law of the State;

(8) aviation schools or instructors approved by and under the supervision of the Federal Aviation Administration;

(9) a school which offers intensive review courses designed to prepare students for law school aptitude tests or bar examinations.

(b) Schools offering a course or courses of special study or instruction financed and/or subsidized by local, state or federal funds or any person, firm, association, or agency other than the student involved, on a contract basis and having a closed enrollment may apply to the Administrator for exemption of such course or courses from the provisions of this Chapter and such course or courses may be declared exempt by the Administrator where he finds the course or courses to be outside the purview of this Chapter.

[Acts 1971, 62nd Leg., p. 2007, ch. 620, § 1, eff. June 4, 1971; Acts 1972, 62nd Leg., 4th C.S., p. 15, ch. 1, § 1, eff. Oct. 17, 1972; Acts 1973, 63rd Leg., p. 1264, ch. 463, § 2, eff. June 14, 1973.]

[Sections 32.13 to 32.20 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES

§ 32.21. Central Education Agency

The Central Education Agency shall exercise jurisdiction and control of the system of schools, and it shall be the duty of the Commissioner of Education to carry out supervision of the provisions of this chapter, and to enforce minimum standards for ap-

proval of schools under the operating regulations and policies hereinafter set forth and as may from time to time be adopted pursuant to the provisions of this chapter.

[Acts 1971, 62nd Leg., p. 2008, ch. 620, § 1, eff. June 4, 1971.]

§ 32.22. The State Board of Education

The State Board of Education shall adopt policies, regulations and rules necessary for carrying out the provisions of this chapter after consultation with the Proprietary School Advisory Commission.

[Acts 1971, 62nd Leg., p. 2008, ch. 620, § 1, eff. June 4, 1971.]

§ 32.23. Proprietary School Advisory Commission

(a) The Proprietary School Advisory Commission is created. The Commission shall be composed of nine members appointed by the State Board of Education for staggered terms of six (6) years expiring on January 31 of each odd-numbered year. In making the initial appointments, the Board shall designate three (3) members for terms expiring in 1973, three for terms expiring in 1975, and three for terms expiring in 1977. If one of the commission members resigns or is otherwise unable to serve, a new member shall be appointed by the State Board of Education to fill the unexpired terms. Four members of the Commission shall be "owners" or shall be "employees" employed in a managerial or executive capacity by the schools as defined in Section 32.11 of this Code and shall include at least one member from each of the following school areas: (1) trade and technical schools, (2) business schools and (3) correspondence schools; of these four members, one shall be a person who owns or operates not more than two (2) proprietary schools in Texas; three members shall be public school officials; and two members shall be distinguished citizens of Texas with an interest in providing vocational-technical training in Texas. All members shall have been recommended by the Administrator to the State Board of Education. In making his recommendations, the Administrator shall consider any recommendations made to him by parties interested in the composition of the Advisory Commission.

(b) The commission shall elect one member as chairman of the commission. A majority of the appointed members at the call of the chair shall organize and elect the other officers that the commission deems necessary.

(c) The commission shall meet regularly in Austin at 10:00 a. m. on the second Tuesday of January, May, and September, and shall conduct special meetings at the call of the chair, the administrator, or upon the written petition of at least four members of the commission.

(d) A member of the commission serves without compensation but upon presentation of a voucher signed by the chairman of the commission and approved by the administrator is entitled to receive reimbursement for actual expenses incurred while traveling on official commission business in accordance with the policy and regulations of the State of Texas.

(e) A majority of the commission is a quorum for the conduct of business; provided, however, that no less than four voting members must concur in any matter before the commission.

(f) The commission shall be advisory in nature. It shall act with the advice and assistance of the administrator and may hold hearings upon substantive changes in rules, regulations and minimum standards. The advice of the commission with respect to the policies, regulations, minimum standards, and rules for carrying out the provisions of this chapter, shall be forwarded by the administrator to the State Board of Education.

[Acts 1971, 62nd Leg., p. 2008, ch. 620, § 1, eff. June 4, 1971.]

#### § 32.24. Duties of Administrator

(a) The administrator shall carry out the policies of this chapter and enforce the rules and regulations adopted by the State Board of Education. He shall also certify the names of those schools meeting the requirements for a certificate of approval.

(b) The administrator may adopt and enforce temporary rules and regulations pursuant to the provisions of this chapter but the temporary rules and regulations are valid only until the next meeting of the State Board of Education.

[Acts 1971, 62nd Leg., p. 2009, ch. 620, § 1, eff. June 4, 1971.]

[Sections 32.25 to 32.30 reserved for expansion]

#### SUBCHAPTER D. AUTHORIZED OPERATION OF SCHOOLS

#### § 32.31. Certificate of Approval

(a) No school shall maintain, advertise, solicit for, or conduct any course of instruction in Texas without first obtaining a certificate of approval from the administrator.

(b) Any contract entered into with any person for a course of instruction after the effective date of this chapter by or on behalf of any person operating any school to which a certificate of approval has not been issued pursuant to the provisions of this chapter, shall be unenforceable in any action brought thereon.

[Acts 1971, 62nd Leg., p. 2009, ch. 620, § 1, eff. June 4, 1971.]

#### § 32.32. Application for Certificate of Approval

Every proprietary school desiring to operate in the State of Texas or do business in the State shall make written application to the administrator for a certificate of approval. Such application shall be verified, be in such form as may be prescribed by the State Board of Education, and shall furnish the administrator such information as he may require.

[Acts 1971, 62nd Leg., p. 2009, ch. 620, § 1, eff. June 4, 1971.]

#### § 32.33. Criteria

The administrator may approve the application of such proprietary school when the school is found, upon investigation, to have met the following criteria:

(a) The courses, curriculum, and instruction are of such quality, content, and length as may reasonably and adequately achieve the stated objective for which the courses, curriculum or instruction are offered.

(b) There is in the school adequate space, equipment, instructional material and instructor personnel to provide training of good quality.

(c) Educational and experience qualifications of directors, administrators and instructors are adequate.

(d) The school maintains a written record of the previous education and training of the applicant student and clearly indicates that appropriate credit has been given by the school for previous education and training, with the new training period shortened where warranted through use of appropriate skills or achievement tests and the student so notified.

(e) A copy of the course outline; schedule of tuition, fees, refund policy, and other charges; regulations pertaining to absence, grading policy, and rules of operation and conduct will be furnished the student prior to enrollment.

(f) Upon completion of training, the student is given a certificate by the school indicating the course and that training was satisfactorily completed.

(g) Adequate records as prescribed by the administrator are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress and conduct are enforced.

(h) The school complies with all local, city, county, municipal, state and federal regulations, such as fire, building and sanitation codes. The administrator may require such evidence of compliance as is deemed necessary.

(i) The school is financially sound and capable of fulfilling its commitments for training.

(j) The school's administrators, directors, owners, and instructors are of good reputation and character.

(k) The school has, maintains and publishes in its catalogue and enrollment contract, the proper policy for the refund of the unused portion of tuition, fees and other charges in the event the student enrolled by the school fails to take the course or withdraws or is discontinued therefrom at any time prior to completion.

(l) The school does not utilize erroneous or misleading advertising, either by actual statement, omission, or intimation as determined by the State Board of Education.

(m) Such additional criteria as may be required by the State Board of Education.

(n) The school does not use a name like or similar to an existing tax supported school in the same area.

[Acts 1971, 62nd Leg., p. 2010, ch. 620, § 1, eff. June 4, 1971.]

#### § 32.34. Issuance of Certificate of Approval: Renewal

(a) The administrator, upon review of an application for a certificate of approval duly submitted in accordance with the provisions of Section 32.32 and meeting the requirements of Section 32.33 of this chapter, shall issue a certificate of approval to the applicant school. The certificate of approval shall be in a form recommended by the commission and approved by the State Board of Education and shall state in a clear and conspicuous manner at least the following information:

(1) date of issuance, effective date, and term of approval;

- (2) correct name and address of the school;
- (3) authority for approval and conditions of approval, if any, referring specifically to the approved catalogue or bulletin published by the school;
- (4) signature of the administrator or such person as may have been designated by him to administer the provisions of this chapter; and
- (5) any other fair and reasonable representations that are consistent with this chapter and deemed necessary by the administrator.

(b) The term for which a certificate of approval shall be issued shall not exceed one year.

(c) The certificate of approval shall be issued to the owner of the applicant school and shall be non-transferable. In the event of a change in ownership of the school, a new owner must, at least thirty (30) days prior to the change in ownership, apply for a new certificate of approval.

(d) At least thirty (30) days prior to expiration of a certificate of approval, the school shall forward to the administrator an application for renewal. The administrator shall reexamine the school and either renew or cancel the school's certificate of approval.

(e) A school not yet in operation when its application for certificate of approval is filed may not begin operation until receipt of certificate of approval. [Acts 1971, 62nd Leg., p. 2010, ch. 620, § 1, eff. June 4, 1971.]

**§ 32.35. Denial of Certificate of Approval**

(a) If the administrator, upon review and consideration of an application for certificate of approval, shall determine the applicant to be unacceptable, the administrator shall set forth the reasons for denial, in writing, to the applicant.

(b) Any applicant whose certificate of approval is denied shall have the right of appeal under Subchapter E of this chapter.<sup>1</sup>

[Acts 1971, 62nd Leg., p. 2011, ch. 620, § 1, eff. June 4, 1971; Acts 1973, 63rd Leg., p. 1265, ch. 463, § 3, eff. June 14, 1973.]

<sup>1</sup>Section 32.41 et seq.

**§ 32.36. Revocation of Certificate of Approval**

(a) The Administrator may revoke an issued certificate of approval or place reasonable conditions upon the continued approval represented by the certificate. Prior to revocation or imposition of conditions upon a certificate of approval, the Administrator shall notify the holder of the certificate, in writing, of the impending action and set forth the grounds for the action.

(b) A certificate of approval may be revoked or made conditional if the Administrator has reasonable cause to believe that the school is guilty of a violation of this chapter or of any rules and regulations promulgated hereunder.

[Acts 1971, 62nd Leg., p. 2011, ch. 620, § 1, eff. June 4, 1971.]

**§ 32.37. Registration of Representatives**

(a) All representatives employed by a school shall register with the administrator. Application for registration may be made at any time and shall be based on information submitted in accordance with the provisions of Section 32.32 of this chapter.

(b) Registration of a representative shall be effective upon receipt of notice from the administrator and shall remain in effect for a period not in excess of twelve (12) calendar months. Renewal of representative registration shall be in accordance with the renewal application form forwarded to the school by the administrator.

(c) Denial or revocation of registration of a representative by the administrator shall be in accordance with the provisions of this chapter applicable to denial or revocation of a certificate of approval; provided, however, the administrator may deny, suspend or revoke the registration of a representative who has been convicted of a felony, whether within or without the State of Texas.

(d) Schools domiciled, or having their principal place of business outside of the State of Texas that engage representatives to canvass, solicit or contract with any person within the State of Texas, shall be subject to the requirements for registration of representatives.

[Acts 1971, 62nd Leg., p. 2011, ch. 620, § 1, eff. June 4, 1971.]

**§ 32.38. Bond Requirements**

(a) Before a certificate of approval is issued under this chapter, a bond shall be provided by the school for the period during which the certificate of approval is issued, and the obligation of the bond shall be that neither a provision of this chapter nor any rule or regulation adopted pursuant thereto shall be violated by the school or any of its officers, agents, or employees. The bond shall be in the penal sum of \$25,000 except a bond in the penal sum of \$5,000 may be provided if the school submits evidence acceptable to the administrator that the total unearned tuition of the school will not exceed \$5,000 at any given time during the period of the certificate of approval. The bond shall be a corporate surety bond issued by a company authorized to do business in the State, conditioned that the parties thereto shall pay all damages or expenses which the State or any governmental subdivision thereof, or any student or potential student may sustain resulting from a violation. The bond shall be to the State for the use and benefit of any student or potential student or governmental subdivision of the State which may suffer expenses or damage by breach thereof. The bond shall be filed with the administrator and shall be in such form as shall be approved by the administrator.

(b) Before a representative may be registered under this Chapter, a bond in the penal sum of \$1,000.00 shall be provided by or for each representative for a period running concurrently with that of the school's certificate of approval, and the obligation of the bond shall be that neither a provision of this chapter nor any rule or regulation adopted pursuant thereto shall be violated, nor shall fraud or misrepresentation in securing the enrollment of a student be committed by the representative. The bond shall be a corporate surety bond issued by a company authorized to do business in the State, conditioned that the parties thereto shall pay all damages or expenses which the State, any governmental subdivision thereof, or any student or potential student may sustain resulting from a violation. The bond shall be to the State for the use and benefit of any student or potential student or gov-

ernmental subdivision of the State which may suffer expense or damage by breach thereof. The bond shall be filed with the administrator and shall be in such form as shall be approved by the administrator.

(c) In lieu of the corporate surety bond required in subsections (a) and (b) of this Section, the school may, in the alternative, provide any other similar certificate or evidence of indebtedness as may be acceptable to the Administrator, provided that the Certificate or evidence of indebtedness meets all the requirements applicable to the corporate surety bond.

(d) Schools domiciled, or having their principal place of business, outside of the State of Texas, that engage representatives to canvass, solicit, or contract with any person within the State of Texas, shall be subject to the bond requirements for both the school and its representatives.

(e) The administrator, for good cause shown, as recommended by the commission and approved by the State Board of Education, may waive and suspend the requirements set forth in Subsections (a), (b), and (c) of this Section with respect to schools operating wholly or in part under a federal grant where no tuition fee is charged to the student. [Acts 1971, 62nd Leg., p. 2012, ch. 620, § 1, eff. June 4, 1971; Acts 1973, 63rd Leg., p. 1265, ch. 463, § 4, eff. June 14, 1973.]

### § 32.39. Refund Policy

(a) As a condition for granting certification each school must maintain a cancellation and settlement policy which must provide a full refund of all monies paid by a student if:

(1) the student cancels the enrollment agreement or contract within 72 hours (until midnight of the third day excluding Saturdays, Sundays, and legal holidays) after the enrollment contract is signed by the prospective student;

(2) the enrollment of the student was procured as the result of any misrepresentation in advertising, promotional materials of the school, or representations by the owner or representatives of the school.

(b) As a condition for granting certification, each school must maintain a policy for the refund of the unused portion of tuition, fees, and other charges in the event the student, after expiration of the 72-hour cancellation privilege, fails to enter the course, or withdraws, or is discontinued therefrom at any time prior to completion, and such policy must provide:

(1) refunds for resident courses will be based on the period of enrollment computed on the basis of course time expressed in clock hours;

(2) the effective date of the termination for refund purposes in residence schools will be the earliest of the following:

(A) the last date of attendance, if the student is terminated by the school;

(B) the date of receipt of written notice from the student;

(C) ten school days following the last date of attendance;

(3) if tuition is collected in advance of entrance, and if, after expiration of the 72-hour

cancellation privilege, the student does not enter the residence school, not more than \$50 shall be retained by the school;

(4) for the student who enters a residence course of not more than 12 months in length, terminates or withdraws, the school may retain \$50 of tuition and fees and the minimum refund of the remaining tuition will be:

(A) during the first week or one-tenth of the course, whichever is less, 90 percent of the remaining tuition;

(B) after the first week or one-tenth of the course, whichever is less, but within the first quarter of the course, 75 percent of the remaining tuition;

(C) during the second quarter of the course, 50 percent of the remaining tuition;

(D) during the third quarter of the course, 25 percent of the remaining tuition;

(E) during the last quarter of the course, the student may be considered obligated for the full tuition.

(5) for residence courses more than 12 months in length, the refund shall be applied to each 12-month period, or part thereof separately;

(6) refunds of items of extra expense to the student, such as instructional supplies, books, student activities, laboratory fees, service charges, rentals, deposits, and all other such ancillary miscellaneous charges, where these items are separately stated and shown in the data furnished the student before enrollment, will be made in a reasonable manner acceptable to the administrator;

(7) refunds based on enrollment in residence schools will be totally consummated within 30 days after the effective date of termination;

(8) refunds for correspondence courses will be computed on the basis of the number of lessons in the course;

(9) the effective date of the termination for refund purposes in correspondence courses will be the earliest of the following:

(A) the date of notification to the student if the student is terminated;

(B) the date of receipt of written notice from the student;

(C) the end of the third calendar month following the month in which the student's last lesson assignment was received unless notification has been received from the student that he wishes to remain enrolled.

(10) if tuition is collected before any lessons have been completed, and if, after expiration of the 72-hour cancellation privilege, the student fails to begin the course, not more than \$50 shall be retained by the school;

(11) in cases of termination or withdrawal after the student has begun the correspondence course, the school may retain \$50 of tuition and fees, and the minimum refund policy must provide that the student will be refunded the pro rata portion of the remaining tuition fees and other charges that the number of lessons completed and serviced by the school bears to the total number of lessons in the course;

(12) refunds based on enrollment in correspondence schools will be totally consummated within 30 days after the effective date of termination.

(c) In lieu of the refund policy herein set forth, for programs of instruction not regularly offered to the general public, the State Board of Education may, for good cause shown, amend, modify, substitute and/or alter the terms of such policy due to the specialized nature and objective of the subject school's course of instruction.

(d) If a course of instruction is discontinued by the school and this prevents the student from completing the course, all tuition and fees paid are then due and refundable.

[Acts 1971, 62nd Leg., p. 2013, ch. 620, § 1, eff. June 4, 1971; Acts 1973, 63rd Leg., p. 1266, ch. 463, § 5, eff. June 14, 1973.]

[Section 32.40 reserved for expansion]

SUBCHAPTER E. APPEAL

§ 32.41. Hearing

Should the applicant be dissatisfied with the denial of a certificate of approval by the Administrator, the applicant shall have the right to appeal the decision of the Administrator and request a hearing with the Administrator within fifteen (15) days after receipt of notice. Upon receipt of the request for a hearing, the Administrator shall set a time and place for said hearing and then send notice to the school of said time and place. Said hearing shall be held within thirty (30) days from the receipt of the request for a hearing. At said hearing, an applicant may appear in person or by counsel and present evidence to the Administrator in support of the granting of the permit specified herein. All interested persons may also appear and present oral and documentary evidence to the Administrator, concerning the issuance of a certificate of approval to the applicant school. Within ten (10) days after the hearing, the Administrator shall send notice to the school either affirming or revoking the denial of the certificate of approval.

[Acts 1971, 62nd Leg., p. 2014, ch. 620, § 1, eff. June 4, 1971.]

§ 32.42. Appeal

(a) If the results of the hearing affirm the denial of a certificate of approval, the applicant may request a hearing before the State Board of Education. Said hearing must be requested within fifteen (15) days after receipt of notice of affirmation of denial. The State Board of Education shall, within thirty (30) days after receipt of the request for hearing, set a time and place for said hearing, and send proper notice to the school of this time and place. At said hearing before the State Board of Education, the applicant may appear in person or by counsel and present arguments to the State Board of Education in support of the granting of the certificate of approval specified herein. The State Board of Education shall consider the appeal from the decision of the administrator on the basis of the record made in the hearing before the administrator.

The State Board of Education shall, within ten (10) days of such hearing, issue an order granting or

denying a certificate of approval for the operation of a proprietary school and shall state in such order the reasons for its decision.

(b) Upon the granting or denial of a certificate of approval, the State Board of Education shall serve a copy of its order upon the school by registered mail within ten (10) days of the entry of such order by said Board. Such order may be appealed to any District Court of competent jurisdiction by the filing of a lawsuit therein within fifteen (15) days after receipt by such school of the copy of such order served by registered mail as herein provided. Venue in such lawsuits shall lie in Travis County, Texas.

(c) Unless stayed by the Court upon a showing of good cause, the Order of the State Board of Education shall not be superseded during such appeal; if the Court is of the opinion that justice will be served thereby.

(d) Upon the filing of such lawsuit, citation shall be served upon the administrator as agent for the State Board of Education. Whereupon, the administrator shall cause to be made a complete record of all proceedings had before the administrator and before the State Board of Education, and shall certify a copy of such proceedings to the Court. Trial before the Court shall be upon the basis of the record made before the administrator and the State Board of Education, and the Court shall make its decision based upon such record. The decision of the State Board of Education shall be affirmed by the Court if the Court finds substantial evidence in the record to justify the decision of the State Board of Education, unless the Court finds such order to be:

- (1) arbitrary and capricious, or
- (2) in violation of the Constitution or laws of the State of Texas, or
- (3) in violation of rules and regulations promulgated by the State Board of Education pursuant to the provisions of the Act.

(e) The decision of the trial court shall be subject to appeal in like manner as any other civil lawsuit under the Texas Rules of Civil Procedure.

(f) Appeals concerning revocation of certificates of approval shall be prosecuted in the same manner and under the same provisions as herein provided for appeals from denial of such certificates.

[Acts 1971, 62nd Leg., p. 2014, ch. 620, § 1, eff. June 4, 1971.]

[Sections 32.43 to 32.50 reserved for expansion]

SUBCHAPTER F. CLASS ACTION SUITS

§ 32.51. Class Action

Any person or persons who shall be injured by any act taken or permitted in violation of this Act may, on behalf of himself or themselves and others similarly situated, maintain an action in any District Court of competent jurisdiction, regardless of the amount in controversy, for temporary or permanent injunctive relief, declaratory relief, or other relief, including damages, such action to be pursued in accordance with the provisions of Rule 42 of the Texas Rules of Civil Procedure; provided, however, that venue for any such action shall be in Austin, Travis County, Texas. A party filing such an action must give prompt notice to the Attorney General,

who shall be permitted to join, upon application within 30 days, as a party plaintiff.

[Acts 1971, 62nd Leg., p. 2015, ch. 620, § 1, eff. June 4, 1971.]

#### § 32.52. Notice

In any class action permitted under this Act, the Court shall direct the defendant to serve upon each member of the class the best possible notice; and if required in the interest of justice, the Court may direct that individual notice be served upon all members of the class who can be identified through reasonable efforts. Such notice shall inform the recipient that he is thought to be a member of the class and, if so, he may enter an appearance and join in the suit, either for himself or through counsel.

[Acts 1971, 62nd Leg., p. 2015, ch. 620, § 1, eff. June 4, 1971.]

#### § 32.53. Judgment and Costs

The Court shall enter judgment in each class action brought under the provisions hereof in such form as shall be justified by the facts and the law applicable thereto. Damages shall be awarded only to those members of the class who joined as parties plaintiff, but all other relief granted by the Court shall inure to the benefit of all members of the class. Should a plaintiff prevail in such a class action, he shall be awarded court costs and a reasonable counsel fee in the judgment. A legal aid society or legal services program which represents the plaintiff or plaintiffs in such an action shall be awarded a service fee in lieu of a counsel fee.

[Acts 1971, 62nd Leg., p. 2015, ch. 620, § 1, eff. June 4, 1971.]

[Sections 32.54 to 32.60 reserved for expansion]

### SUBCHAPTER G. PROHIBITED ACTS

#### § 32.61. Prohibitions

(a) No person shall:

(1) operate a school without a certificate of approval issued by the Administrator;

(2) solicit prospective students without being bonded as required by this Chapter;

(3) accept contracts or enrollment applications from a representative who is not bonded as required by this Chapter;

(4) utilize advertising designed to mislead or deceive prospective students;

(5) fail to notify the Administrator of the discontinuance of the operation of any school within 72 hours of cessation of classes and make available accurate records as required by this Chapter;

(6) fail to secure and file within 30 days an increased bond as required by this Chapter;

(7) negotiate any promissory instrument received as payment of tuition or other charge prior to completion of 75 percent of the course, provided that prior to such time, the instrument may be transferred by assignment to a purchaser who shall be subject to all the defenses available against the school named as payee;

(8) violate any provision of this Chapter.

(b) A person who violates Subsection (a) of this Section is guilty of a misdemeanor and upon conviction, shall be subject to a fine not to exceed Five Hundred Dollars (\$500.00) and each day that any prohibited act continues shall constitute a separate offense.

[Acts 1971, 62nd Leg., p. 2015, ch. 620, § 1, eff. June 4, 1971; Acts 1973, 63rd Leg., p. 1267, ch. 463, § 6, eff. June 14, 1973.]

#### § 32.62. Injunctions

Whenever the Administrator has probable cause to believe that any school has committed any acts that would be in violation of this Chapter, the Administrator shall have the duty to make application to a court of competent jurisdiction for an injunction restraining the commission of such acts.

[Acts 1971, 62nd Leg., p. 2016, ch. 620, § 1, eff. June 4, 1971.]

[Sections 32.63 to 32.70 reserved for expansion]

### SUBCHAPTER H. FEES

#### § 32.71. Certificate and Registration Fees

Certificate and registration fees shall be collected by the Administrator and deposited with the State Treasurer in accordance with the following schedule:

(1) the initial fee for a school is Two Hundred Fifty Dollars (\$250.00);

(2) the annual renewal fee for a school is Two Hundred Dollars (\$200.00);

(3) the initial registration fee for a representative is Twenty Dollars (\$20.00);

(4) the annual renewal fee for a representative is Ten Dollars (\$10.00).

[Acts 1971, 62nd Leg., p. 2016, ch. 620, § 1, eff. June 4, 1971; Acts 1973, 63rd Leg., p. 1268, ch. 463, § 7, eff. June 14, 1973.]

[Sections 32.72 to 32.80 reserved for expansion]

### SUBCHAPTER I. FUNDING

#### § 32.81. Funding

(a) The cost of administration of this Chapter shall be included in the State budget allowance for the State Board of Education.

(b) Fees collected by the Administrator and deposited with the State Treasurer shall be used to help defray the cost and expense of administering the provisions of this Chapter.

[Acts 1971, 62nd Leg., p. 2016, ch. 620, § 1, eff. June 4, 1971.]

## TITLE 3. HIGHER EDUCATION

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- 51.905. State-Owned Museum Buildings.

Enactment

*Title 3 of the Texas Education Code was added by Acts 1971, 62nd Leg., p. 3319, ch. 1024, art. 1, § 1, effective September 1, 1971. Sections 2 and 4 of Article 1 provide:*

*"Sec. 2. Legislative intent. This is intended as a recodification only and no substantive changes are intended by this legislation.*

*"Sec. 4. Effective date. This article takes effect on September 1, 1971."*

*Chapter 51 originally was entitled "Public Junior Colleges" and consisted of Sections 51.001 to 51.203 as enacted by Acts 1969, 61st Leg., p. 2735, ch. 889, § 1, the provisions of which were transferred to Chapter 130 entitled "Junior College Districts" and renumbered as Sections 130.001 to 130.133 by Acts 1971, 62nd Leg., p. 3278, ch. 1024, art. 1, § 1.*

*Article 2 of the 1971 Act, which by sections 1 to 44 incorporated the provisions of certain acts passed during the 62nd legislative session into the Code, provided in sections 45 to 48:*

*"Sec. 45. Each section of this article takes effect only if and when the legislation on which it is based takes effect, but not earlier than September 1, 1971.*

*"Sec. 46. All provisions of the Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) apply to this article.*

*"Sec. 47. This article is intended as a codification only, and nothing in this article is intended to effect any substantive change in the law.*

*"Sec. 48. As each section of this article takes effect, the Act on which it is based is repealed."*

### Conversion Table

*A conversion table is provided at the end of this Code to enable the user to trace the disposition in the Texas Education Code of the subject matter of repealed articles of the Civil Statutes and the Penal Code.*

#### SUBCHAPTER A. CONTROL OF FUNDS BY CERTAIN INSTITUTIONS

##### § 51.001. Institutions to which Applicable

Subject to Section 51.008 of this code, the provisions of this subchapter apply to:

- (1) each institution and branch of The University of Texas System;
- (2) each institution, agency, and service of The Texas A & M University System;
- (3) Texas A & I University;
- (4) Texas Tech University;
- (5) East Texas State University;
- (6) North Texas State University;
- (7) Sam Houston State University;
- (8) Stephen F. Austin State University;
- (9) Southwest Texas State University;
- (10) Sul Ross State University;
- (11) West Texas State University;
- (12) Tyler State College; and
- (13) each public junior college to the extent possible.

[Acts 1971, 62nd Leg., p. 3076, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1656, ch. 601, § 1, eff. June 15, 1973.]

##### § 51.002. Funds Subject to Control

(a) The governing board of each institution listed in Section 51.001 of this code may retain control of the following sums of money collected at the institution, subject to Section 51.008 of this code.

- (1) student fees of all kinds;
- (2) charges for use of rooms and dormitories;
- (3) receipts from meals, cafes, and cafeterias;
- (4) fees on deposit refundable to students under certain conditions;
- (5) receipts from school athletic activities;
- (6) income from student publications and other student activities;
- (7) receipts from the sale of publication products and miscellaneous supplies and equipment;
- (8) students' voluntary deposits of money for safekeeping;
- (9) all other fees and local institutional income of a strictly local nature arising out of and by virtue of the educational activities, research, or demonstrations carried on by the institution; and
- (10) donations and gifts to the institution.

(b) The provisions of this subchapter do not apply to any income derived from the permanent university fund.

[Acts 1971, 62nd Leg., p. 3077, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 51.003. Depositories

(a) The governing board of each institution may select depository banks as places of deposit for the funds enumerated in Section 51.002 of this code.

(b) The funds shall be deposited in the depository bank or banks within seven days from the date of collection.

(c) The governing board shall require adequate surety bonds or securities to be posted to secure the deposits and may require additional security at any time it deems the deposits inadequately secured. The depository banks selected may pledge their securities to protect the funds.

(d) A depository shall pay interest on the deposits at a rate agreed on by the depository and the governing board.

(e) Any surety bond furnished under the provisions of this section shall be payable to the governor and his successors in office. Venue for a suit to recover an amount claimed by the state to be due on a surety bond is in Travis County.

[Acts 1971, 62nd Leg., p. 3077, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 51.004. Separate Accounts; Trust Funds; Interest

(a) Separate accounts shall be kept on the books of the institution showing the sources of all sums collected and the purposes for which disbursements are made.

(b) All trust funds, including gifts, grants, and bequests received, establishing or adding to endowment funds, loan and scholarship funds, and funds for other current restricted purposes, shall be credited to separate accounts and shall not be commingled with the general income from student fees or other institutional income.

(c) If the governing board so elects, deposits of all funds not specifically required to be deposited to special accounts may be deposited in a single bank account if the records of the institution clearly reflect the balances attributable to general funds and various categories of trust funds.

(d) Interest received from depository banks for funds on deposit may be credited to an appropriate account in either general funds or trust funds in relation to the sources of temporary investments in time deposits, if the disposition of the earnings was not specified by the grantor. Interest received from the trust funds time deposits shall be available for loans, scholarships, fellowships, institutional research, faculty aid, and other lawful purposes.

[Acts 1971, 62nd Leg., p. 3077, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 51.005. Reports

(a) True and full accounts shall be kept by the governing board and by the employees of the institution of all funds collected from all sources and of all sums paid out and the persons to whom and the purposes for which the sums are paid; and the governing board shall biennially, or more often if the board so orders, print a complete report of all the sums collected, all expenditures, and all sums remaining on hand.

(b) The report shall be printed in even-numbered years between September 1 and January 1. It shall

show the true condition of all funds as of the August 31 preceding as well as the collections and expenditures for the preceding two years.

(c) The governing board shall furnish copies of the report to the governor, state treasurer, comptroller of public accounts, state auditor, and attorney general. At least three copies of the report shall be furnished to the State Board of Control. Each member of the House Appropriations Committee, the Senate Finance Committee, and the house and senate committees on education of each regular session of the legislature shall be furnished a copy of the report within a week after the selection of each committee.

[Acts 1971, 62nd Leg., p. 3078, ch. 1024, art. 1, § 1, eff. Sept. 1, 1972.]

**§ 51.006. Funds not to be Used to Increase Salaries**

No part of any of the funds listed in Section 51.002 of this code shall ever be used to increase any salary beyond the sum fixed by the legislature in the general appropriations act, and the provisions of this subchapter are subordinate to the general appropriations act for the support of each institution.

[Acts 1971, 62nd Leg., p. 3078, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.007. Penalty**

Any state officer, agent, employee, or member of a governing board of any of the above named institutions, or any other person who violates any provision of this subchapter shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$50 nor more than \$500, and in addition may be sentenced to not less than 15 days nor more than three months in the county jail. Failure to print and furnish to the officers above named, the reports above specified, shall subject all of the members of the governing board of the institutions above mentioned to the penalties provided for in this section. Every day in excess of the number of days hereinabove provided for that any sum of money belonging to any of the funds enumerated in this subchapter, whether depositable in special depositories or whether those that should be deposited in the state treasury, shall be withheld from deposit at its proper place of deposit, shall constitute a separate offense and each day of such withholding shall subject the officer, agent, employee, or person so withholding said sum to the penalties herein provided for.

[Acts 1971, 62nd Leg., p. 3078, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.008. Certain Receipts to be Deposited in State Treasury**

(a) The governing board of every state institution of higher education is directed to designate special depository banks, subject to the approval of the state treasurer, for the purpose of receiving and keeping certain receipts of the institution separate and apart from funds now deposited in the state treasury. The receipts here referred to are described in Subsection (b) of this section. The state treasurer is directed to deposit the receipts, or funds representing such receipts, enumerated herein, in the special depository bank or banks nearest the institution credited with the receipts, so far as is practicable, and is authorized to withdraw such funds on drafts or checks prescribed by the state

treasurer. The state treasurer is authorized to promulgate rules and regulations to require collateral security for the protection of such funds pursuant to the provisions of Articles 2529 and 2530, Revised Civil Statutes of Texas, 1925, as amended. For the purpose of facilitating the clearance and collection of the receipts herein enumerated, the state treasurer is hereby authorized to deposit such receipts in any state depository bank and transfer funds representing such receipts enumerated herein to the respective special depository banks. Banks so designated as special depository banks are hereby authorized to pledge their securities to protect such funds.

(b) The governing board of every state institution of higher education shall deposit in the state treasury all cash receipts accruing to any college or university under its control that may be derived from all sources except auxiliary enterprises, noninstructional services, agency and restricted funds, endowment funds, student loan funds, and Constitutional College Building Amendment funds. The state treasurer is directed to credit such receipts deposited by each such institution to a separate fund account for the institution depositing the receipts, but he shall not be required to keep separate accounts of types of funds deposited by each institution. For the purpose of facilitating the transferring of such institutional receipts to the state treasury, each institution shall open in a local depository bank a clearing account to which it shall deposit daily all such receipts, and shall, not less often than every seven days, make remittances therefrom to the state treasurer of all except \$500 of the total balance in said clearing account, such remittances to be in the form of checks drawn on the clearing account, such remittances to be in the form of checks drawn on the clearing account<sup>1</sup> by the duly authorized officers of the institution, and no disbursements other than remittances to the state treasury shall be made from such clearing account. All money so deposited in the state treasury shall be paid out on warrants drawn by the comptroller of public accounts as provided by law.

(c) The legislature is authorized to create revolving funds for the handling of funds of institutions of higher education, as enumerated herein, by making provision in each biennial appropriation bill enacted by the legislature.

(d) Nothing in this section affects the provisions of Title 47, Revised Civil Statutes of Texas, 1925,<sup>2</sup> usually referred to as the State Depository Law. However, the limitation of deposits contained in Article 2532, Revised Civil Statutes of Texas, 1925, as amended, shall not apply insofar as the specific funds enumerated in this section are concerned.

(e) This section prevails over Sections 51.001-51.007 of this code to the extent of any conflict.

[Acts 1971, 62nd Leg., p. 3078, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Duplication of "such remittances to be in the form of checks drawn on the clearing account" so in enrolled bill.  
<sup>2</sup> Civil Statutes, Art. 2525 et seq.

[Sections 51.009 to 51.050 reserved for expansion]

SUBCHAPTER B. GENERAL PROPERTY DEPOSITS: INVESTMENT AND USES

**§ 51.051. Investment of General Property Deposits**

The governing board of each institution of higher education may invest in United States government

securities or may place on time deposit with a bank located in the state not more than 85 percent of the funds received as general property deposits authorized in Section 54.502 of this code. If the funds are placed on time deposit, they shall be secured by United States government securities.

[Acts 1971, 62nd Leg., p. 3080, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.052. Student Deposit Fund; Composition and Uses

(a) The student deposit fund consists of the income from the investment or time deposits of general property deposits and of forfeited general property deposits. Any general property deposit which remains without call for refund for a period of four years from the date of last attendance of the student making the deposit shall be forfeited and become a part of the student deposit fund. Nothing in this section shall be construed to prohibit refund of any balance remaining in a general property deposit when made on proper demand and within the four-year limitation period. The board may require that no student withdraw his deposit until he has been graduated or has apparently withdrawn from school.

(b) The student deposit fund shall be used, at the discretion of the board, either for the purpose of making scholarship awards to needy and deserving students or for the support of a general student union program, or for both purposes. The board shall administer the scholarship awards for the institution, including the selection of recipients and the amounts and conditions of the awards. The recipients of the scholarships must be residents of the state as defined for tuition purposes. Any use of the funds for the support of student union programs shall be approved as to amount and purpose by the board. The student deposit funds for The University of Texas at Austin, Texas A & M University, and Texas Tech University shall be available for scholarship purposes only. Direct expenses for the administration of the funds shall be paid from the funds. [Acts 1971, 62nd Leg., p. 3080, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 51.053 to 51.100 reserved for expansion]

### SUBCHAPTER C. FACULTY DEVELOPMENT LEAVES OF ABSENCE

#### § 51.101. Definitions

In this subchapter:

(1) "Institution of higher education" has the meaning assigned to it in Section 61.003 of this code, except that Texas State Technical Institute is included and the Rodent and Predatory Animal Control Service is excluded for the purposes of this subchapter.

(2) "Governing board" means the body charged with policy direction of an institution of higher education.

(3) "Faculty member" means a person who is employed by an institution of higher education on a full-time basis as a member of the faculty or staff and whose duties include teaching, research, administration, including professional librarians, or the performance of professional services. However, the term does not include a

person employed in a position which is in the institution's classified personnel system or a person employed in a similar type of position if the institution does not have a classified personnel system.

[Acts 1971, 62nd Leg., p. 3080, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.102. Legislative Findings and Purpose

The legislature finds that higher education is vitally important to the welfare, if not the survival, of Texas and the United States at this stage in history and that the quality of higher education is dependent upon the quality of college and university faculties. The legislature finds, therefore, that money spent on recognized means for producing an excellent system of public higher education is money spent to serve a public purpose of great importance. The legislature finds further that a sound program of faculty development leaves of absence designed to enable the faculty member to engage in study, research, writing, and similar projects for the purpose of adding to the knowledge available to himself, his students, his institution, and society generally is a well-recognized means for improving a state's program of public higher education. The legislature's purpose in establishing the faculty development leave program provided for by this subchapter is to improve further the higher education available to the youth at the state-supported colleges and universities and to establish this program of faculty development leaves as part of the plan of compensation for the faculty of these colleges and universities.

[Acts 1971, 62nd Leg., p. 3081, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.103. Granting Leaves of Absence; Procedures

(a) On the application of a faculty member, the governing board of an institution of higher education may grant a faculty development leave of absence for study, research, writing, field observations, or other suitable purpose, to a faculty member if it finds that he is eligible by reason of service, that the purpose for which he seeks a faculty development leave is one for which a faculty development leave may be granted, and that granting leave to him will not place on faculty development leave a greater number of faculty members than that authorized.

(b) The governing board by regulation shall establish a procedure whereby the applications for faculty development leaves of absence are received by a committee elected by the general faculty for evaluation and whereby this faculty committee then makes recommendations to the chief administrative officer of the institution of higher education, who shall then make recommendations to the governing board as to which applications should be granted.

[Acts 1971, 62nd Leg., p. 3081, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.104. Service Required

A faculty member is eligible by reason of service to be considered for a faculty development leave when he has served as a member of the faculty of the same institution of higher education for at least two consecutive academic years. This service may be as an instructor or as an assistant, associate, or full professor, or an equivalent rank, and must be

full-time academic duty but need not include teaching.

[Acts 1971, 62nd Leg., p. 3081, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.105. Duration and Compensation**

(a) The governing board may grant to a faculty member a faculty development leave either for one academic year at one-half of his regular salary or for one-half academic year at his full regular salary. Payment of salary to the faculty member on faculty development leave may be made from the funds appropriated by the legislature specifically for that purpose, or from such other funds as might be available to the institution.

(b) A faculty member on faculty development leave may accept a grant for study, research, or travel from any institution of higher education or from a charitable, religious, or educational corporation or foundation, or from any federal, state, or local governmental agency. A faculty member on faculty development leave may not accept employment from any other person, corporation, or government, unless the governing board determines that it would be in the public interest to do so and expressly approves the employment.

[Acts 1971, 62nd Leg., p. 3082, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3351, ch. 1024, art. 2, § 27, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1640, ch. 597, § 1, eff. Aug. 27, 1973.]

**§ 51.106. Number on Leave at One Time**

Not more than six percent of the faculty members of any institution of higher education may be on faculty development leave at any one time.

[Acts 1971, 62nd Leg., p. 3082, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.107. Rights Retained**

(a) A faculty member on faculty development leave shall continue to be a member of the Teacher Retirement System of Texas or of the Optional Retirement Program of the institution of higher education, or of both, just as any other member of the faculty on full-time duty.

(b) The institution of higher education shall cause to be deducted from the compensation paid to a member of the faculty on faculty development leave the deposit and membership dues required to be paid by him to the Teacher Retirement System of Texas or to the Optional Retirement Program, or both, the contribution for Old Age and Survivors Insurance, and any other amounts required or authorized to be deducted from the compensation paid any faculty member.

(c) A member of the faculty on faculty development leave is a faculty member for purposes of participating in the programs and of receiving the benefits made available by or through the institution of higher education or the state to faculty members.

[Acts 1971, 62nd Leg., p. 3082, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.108. Regulations Concerning Absence**

(a) The governing board of each college or university supported in whole or in part by state funds shall issue regulations concerning the authorized and unauthorized absence from duty of faculty members, including teaching assistants and research assistants.

(b) Each governing board shall file a copy of these regulations with the Coordinating Board, Texas College and University System. Each governing board shall file any amendment to its regulations with the coordinating board not later than 30 days after the effective date of the amendment.

[Acts 1971, 62nd Leg., p. 3352, ch. 1024, art. 2, § 28, eff. Sept. 1, 1971.]

[Sections 51.109 to 51.150 reserved for expansion]

SUBCHAPTER D. INFORMATION NETWORK ASSOCIATIONS

**§ 51.151. Definitions**

In this subchapter:

(1) "Association" means the Western Information Network Association or any other regional network association created and named by the Coordinating Board, Texas College and University System.

(2) "Member" means one of the institutions of higher education which compose an association.

(3) "Associate member" means an organization other than an institution of higher education admitted to associate membership in an association.

(4) "Board" means the board of directors of an association.

(5) "Director" means a member of a board.

[Acts 1971, 62nd Leg., p. 3082, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.152. Purpose**

The purpose of this subchapter is to promote the educational programs of state-supported institutions of higher education in Texas by authorizing the establishment and operation of a cooperative system for communication and information retrieval and transfer between the institutions and between the institutions and private educational institutions, industry, and the public. The system, employing two-way, closed-circuit television and other electronic communication facilities, is to provide a means of effecting the interchange of ideas, talents, faculties, libraries, and data processing equipment and a means of carrying out an approved program of instructional television.

[Acts 1971, 62nd Leg., p. 3083, ch. 1024 art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.153. Western Information Network Association**

(a) The Western Information Network Association is an agency of the state composed of the following state-supported member institutions of higher education: Amarillo College, Angelo State University, Clarendon Junior College, Frank Phillips College, Howard County Junior College, Midwestern University, Odessa College, South Plains College, Sul Ross State University, Texas Tech University, The University of Texas at El Paso, and West Texas State University.

(b) The board by a majority vote may admit other state-supported institutions of higher education to membership in the association on the approval of the

Coordinating Board, Texas College and University System.

(c) The board by unanimous vote may admit private institutions of higher education to membership in the association on the approval of the Coordinating Board, Texas College and University System.

(d) The board by unanimous vote may admit other organizations to associate membership in the association.

[Acts 1971, 62nd Leg., p. 3083, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.154. Board of Directors

The association is governed by a board of directors. The chief administrative officer, or a person designated by the chief administrative officer, of each institution of higher education holding membership in the association shall serve as a director of the board. Service on the board is an additional duty of employment of the chief administrative officers or the persons designated by the chief administrative officers of state-supported institutions and is not an additional position of honor, trust, or profit. The legislature finds that this service is necessary in accomplishing the purpose of this subchapter; is compatible with their employment; and will benefit the educational program of the institution and of the state.

[Acts 1971, 62nd Leg., p. 3083, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.155. Director's Expenses

A director is entitled to receive reimbursement for actual expenses incurred in attending meetings of the board and in attending to the business of the association which is authorized by a resolution of the board.

[Acts 1971, 62nd Leg., p. 3083, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.156. Meetings of the Board; Quorum; Action by Board

(a) The board shall hold a meeting at least once each quarter and may hold meetings at other times at the call of the chairman of the board or at the request of a majority of the other directors.

(b) A majority of the membership of the board constitutes a quorum at a meeting of the board.

(c) Action may be taken by the board by the affirmative vote of the majority of the directors present at a meeting at which a quorum is present.

[Acts 1971, 62nd Leg., p. 3084, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.157. Chairman, Vice Chairman

The board shall select a director to serve as chairman and a director to serve as vice chairman of the board. The chairman shall preside at meetings of the board. If the chairman is not present, or is unable to act, the vice chairman shall preside at the meeting.

[Acts 1971, 62nd Leg., p. 3084, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.158. General Manager, Employees

The board may employ a general manager who shall serve as the chief executive officer of the association. The board may employ other employees

it considers necessary in carrying on the association's duties and functions.

[Acts 1971, 62nd Leg., p. 3084, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.159. Delegation of Authority

The board may delegate any of the powers, duties, or functions of the association to the general manager or to any other employee.

[Acts 1971, 62nd Leg., p. 3084, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.160. Bond of Officer, Agent, or Employee

(a) The general manager and every agent or employee of the association charged with the collection, custody, or payment of any money of the association shall execute a bond conditioned on the faithful performance of his duties.

(b) The board shall approve the form, amount, and surety of the bond.

(c) The surety may be a surety company authorized to do business in this state.

(d) The association shall pay the premium on the bond.

[Acts 1971, 62nd Leg., p. 3084, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.161. Powers and Duties of Association

(a) The association may acquire, operate, and maintain, or obtain by contracting with any communications common carrier in accordance with its tariffs, a multichannel, two-way communications system, including closed-circuit television, linking classrooms, libraries, computer facilities, information retrieval systems, and communications facilities located at the member institutions.

(b) The association may lease, acquire, operate, and maintain, or obtain by contracting with any communications common carrier in accordance with its tariffs, any facilities in addition to those described in Subsection (a) of this section, which the board considers necessary or desirable in carrying out the purposes of this subchapter.

(c) The association is authorized to lease, as lessor or lessee, acquire, operate, maintain, and equip a dormitory or dormitories located on or near the campus of any member institution of the association that is a state-supported institution of higher education, and to issue its revenue bonds therefor as provided in this subchapter.

(d) The association may interchange educational information with private educational institutions, school districts, the United States government, and other parties engaged in education or participating in educational projects, and use the facilities of the association only in the exchange, retrieval, and transfer of information and the interchange of approval course offering and instruction between member-institutions and other parties engaged in education or participating in educational projects. Any dormitories leased, acquired, operated, and maintained by the association shall not be subject to the use limitation of this subsection that applies to all other facilities of the association.

[Acts 1971, 62nd Leg., p. 3084, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.162. Gifts and Grants**

The association may accept gifts, grants, or donations of real or personal property from any individual, group, association, or corporation. It may accept grants from the United States government subject to the limitations or conditions provided by law. [Acts 1971, 62nd Leg., p. 3085, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.163. Information Network Association Fund**

The Information Network Association Fund is a special fund in the state treasury. All money deposited in the treasury by the Western Information Network Association or any other regional network association created by the Coordinating Board, Texas College and University System, shall be credited to the special fund and disbursed as provided by legislative appropriation.

[Acts 1971, 62nd Leg., p. 3085, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.164. Rules and Regulations**

The association shall adopt and publish rules to govern the conduct of its business.

[Acts 1971, 62nd Leg., p. 3085, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.165. Principal Office**

The board for Western Information Network Association shall maintain its principal office in Lubbock, at or near Texas Tech University. The boards for other regional information network associations created by the Coordinating Board, Texas College and University System, shall maintain their principal offices at locations designated by the Coordinating Board, Texas College and University System.

[Acts 1971, 62nd Leg., p. 3085, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.166. Facilities**

Each member institution shall furnish suitable space to the association for a classroom-studio, a lecture studio, and a control room. It may also furnish any additional physical plant facility needed by the association in carrying on its functions at the institution. The facilities may with the approval of the association board and the governing body of the state-supported member institutions be located in a dormitory owned and operated by the association.

[Acts 1971, 62nd Leg., p. 3085, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.167. Designation of Regions for Additional Associations**

(a) In addition to the Western Information Network Association, the Coordinating Board, Texas College and University System, shall at such times as the board shall determine, divide the state into information network association regions consisting of state-supported institutions of higher education located within geographical boundaries prescribed by the coordinating board.

(b) The coordinating board shall give due consideration to the geographical proximity and number of institutions of higher education to be included within a proposed region.

[Acts 1971, 62nd Leg., p. 3086, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.168. Creation of Additional Associations**

(a) The coordinating board shall create and name an information network association within an information network region if:

(1) a majority of the institutions of higher education within a region apply to create an association; and

(2) the institutions applying show good cause for creating an association.

(b) The coordinating board may not create more than one information network association in an information network region.

(c) Each information network association created is an agency of the state.

[Acts 1971, 62nd Leg., p. 3086, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.169. Provisions Applicable to Additional Associations**

Except for Subsection (a), Section 51.153 of this Code, the provisions of this subchapter apply to any additional information network association created by the coordinating board.

[Acts 1971, 62nd Leg., p. 3086, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.170. Revenue Bonds**

(a) The board may issue its revenue bonds for the purpose of providing funds to lease, as lessor or lessee, acquire, purchase, construct, improve, enlarge, or equip any property, buildings, structures, or other facilities, including but not limited to dormitories, for and on behalf of the association.

(b) The bonds shall be payable from and secured by liens on and pledges of all or any part of the revenues from any lease rentals, rentals, charges, fees, or other resources of the board or association.

(c) The bonds may be issued to mature serially or otherwise within not more than 40 years from their date. The board may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under the terms and conditions set forth in the resolution authorizing the issuance of the bonds.

(d) The bonds, and any interest coupons appertaining to them, are negotiable instruments. The bonds may be issued registrable as to principal alone or as to both principal and interest. They shall be executed, and may be made redeemable prior to maturity, may be issued in the form, denominations, and manner, and under the terms, conditions, and details, may be sold in the manner, at the price, and under the terms, and shall bear interest at the rate or rates, as is determined and provided by the board in the resolution authorizing the issuance of the bonds.

(e) Proceeds from the sale of the bonds may be used for paying interest on the bonds during the period of the acquisition or construction of any facilities to be provided through the issuance of the bonds and for providing a reserve for the payment of the principal of and interest on the bonds. The proceeds may be placed on time deposit or invested until needed to the extent and in the manner provided in the bond resolution.

(f) The board shall fix and collect lease rentals, rentals, rates, charges, and fees, or any combination

of them, from students or others for the occupancy, use, or availability of all or any of its property, buildings, structures, or other facilities in amounts which will be sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with any bonds issued under this section, and, to the extent required by the resolution authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the issuance of the bonds and for the payment of operation, maintenance, and other expenses in connection with the property, buildings, structures, or facilities.

(g) Fees for the use or availability of all or any property, buildings, structures, or facilities may be pledged to the payment of the bonds, and shall be fixed and collected in the manner determined and provided by the board in the resolution authorizing the issuance of the bonds. The board may pledge to the payment of the bonds all or any part of any resources of the board or association to the extent that the resources are permitted to be pledged to the payment of the revenue bonds. Each board may pledge to the payment of the bonds all or any part of any grant, donation, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

[Acts 1971, 62nd Leg., p. 3086, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.171. Revenue Refunding Bonds

Any revenue bonds issued by the board under this subchapter may be refunded, and in that case all pertinent and appropriate provisions of this subchapter are applicable to the refunding bonds. In refunding any of the bonds the board may, in the same authorizing proceedings, refund bonds issued under this subchapter and may combine all the refunding bonds with any other additional new bonds to be issued under this subchapter into one or more issues or series of bonds, and may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under terms and conditions set forth in the authorizing proceedings.

[Acts 1971, 62nd Leg., p. 3087, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.172. Approval of Bonds; Registration

All bonds issued under this subchapter shall be submitted to the attorney general for examination. If he finds that the bonds have been authorized in accordance with law, he shall approve them, and thereupon they shall be registered by the comptroller of public accounts. After the approval and registration the bonds are incontestable for any reason and are valid and binding obligations in accordance with their terms for all purposes. If the bonds recite that they are secured partially or otherwise by a pledge of the proceeds of a contract or lease made between the board and another party or parties, public agencies, or otherwise, a copy of the contract or lease and of the proceedings authorizing it may or may not be submitted to the attorney general along with the bond records. If submitted, then the approval by the attorney general of the bonds shall constitute an approval of the contract or lease, and thereafter the contract or lease shall be incontestable.

[Acts 1971, 62nd Leg., p. 3087, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.173. Bonds as Legal Investments

All bonds issued under this subchapter are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the State of Texas, and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. The bonds are eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant to them.

[Acts 1971, 62nd Leg., p. 3088, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 51.174 to 51.200 reserved for expansion]

### SUBCHAPTER E. PROTECTION OF BUILDINGS AND GROUNDS

#### § 51.201. Applicability of Criminal Laws

All the general and criminal laws of the state are declared to be in full force and effect within the areas under the control and jurisdiction of the state institutions of higher education of this state.

[Acts 1971, 62nd Leg., p. 3088, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.202. Rules and Regulations; Penalty

(a) The governing board of each state institution of higher education, including public junior colleges, may promulgate rules and regulations for the safety and welfare of students, employees, and property, and other rules and regulations it may deem necessary to carry out the provisions of this subchapter and the governance of the institution, providing for the operation and parking of vehicles on the grounds, streets, drives, alleys, and any other institutional property under its control, including but not limited to the following:

- (1) limiting the rate of speed;
- (2) assigning parking spaces and designating parking areas and their use and assessing a charge for parking;
- (3) prohibiting parking as it deems necessary;
- (4) removing vehicles parked in violation of institutional rules and regulations or law at the expense of the violator; and
- (5) instituting a system of registration for vehicle identification, including a reasonable charge.

(b) A person who violates any provision of this subchapter or any rule or regulation promulgated under the authority of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$200.

[Acts 1971, 62nd Leg., p. 3088, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.203. Campus Security Personnel**

The governing boards of each state institution of higher education may employ campus security personnel for the purpose of carrying out the provisions of this subchapter and may commission them as peace officers. Any officer commissioned under this section is vested with all the powers, privileges, and immunities of peace officers while on the property under the control and jurisdiction of the institution of higher education or otherwise in the performance of his duties. Any officer assigned to duty and commissioned shall take and file the oath required of peace officers, and shall execute and file a good and sufficient bond in the sum of \$1,000, payable to the governor and his successors in office, with two or more good and sufficient sureties, conditioned that he will fairly, impartially, and faithfully perform all the duties that may be required of him by law. The bond may be sued on from time to time in the name of any person injured until the whole amount of the bond is recovered.

[Acts 1971, 62nd Leg., p. 3089, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.204. Trespass, Damage, Etc.**

It is unlawful for any person to trespass on the grounds of any state institution of higher education of this state or to damage or deface any of the buildings, statues, monuments, memorials, trees, shrubs, grasses, or flowers on the grounds of any state institutions of higher education.

[Acts 1971, 62nd Leg., p. 3089, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.205. Parking; Blocking or Impeding Traffic**

It is unlawful for any person to park a vehicle on any property under the control and jurisdiction of a state institution of higher education of this state except in the manner designated by the institution and in the spaces marked and designated by the governing board, or to block or impede traffic through any driveway of that property. All laws regulating traffic on highways and streets apply to the operation of vehicles within the property of the institution, except as may be modified in this subchapter.

[Acts 1971, 62nd Leg., p. 3089, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.206. Parking and Traffic Tickets; Summons; Arrest Warrants**

In connection with traffic and parking violations, only the officers authorized to enforce the provisions of this subchapter have the authority to issue and use traffic tickets and summons of the type used by the Texas Highway Patrol, with any changes that are necessitated by reason of this subchapter. On the issuance of any parking or traffic ticket or summons, the same procedures shall be followed as prevail in connection with the use of parking and traffic violation tickets by the cities of this state and the Texas Highway Patrol. Nothing in this subchapter restricts the application and use of regular arrest warrants.

[Acts 1971, 62nd Leg., p. 3089, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.207. Vehicle Identification Insignia**

Each institution may provide for the issuance and use of suitable vehicle identification insignia. The institution may bar or suspend the permit of any vehicle from driving or parking on any institutional property for the violation of any rule or regulation promulgated by the board as well as for any violation of this subchapter. Reinstatement of the privileges may be permitted and a reasonable fee assessed.

[Acts 1971, 62nd Leg., p. 3089, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.208. Courts Having Jurisdiction**

The judge of a municipal court or any justice of the peace of any city or county where property under the control and jurisdiction of a state institution of higher education is located is each separately vested with all jurisdiction necessary to hear and determine criminal cases involving violations of this subchapter or rules or regulations promulgated under this subchapter for which the punishment does not exceed a fine of \$200.

[Acts 1971, 62nd Leg., p. 3090, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.209. Unauthorized Persons: Refusal of Entry, Ejection, Identification**

The governing board of a state institution of higher education or its authorized representatives may refuse to allow persons having no legitimate business to enter on property under the board's control, and may eject any undesirable person from the property on his refusal to leave peaceably on request. Identification may be required of any person on the property.

[Acts 1971, 62nd Leg., p. 3090, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.210. Enforcement of Rules and Regulations**

Notwithstanding any of the provisions of this subchapter, all officers commissioned by the governing board of a state institution of higher education may be empowered by the board to enforce rules and regulations promulgated by the board. Nothing in this subchapter is intended to limit or restrict the authority of each institution to promulgate and enforce appropriate rules and regulations for the orderly conduct of the institution in carrying out its purposes and objectives or the right of separate jurisdiction relating to the conduct of its students and personnel.

[Acts 1971, 62nd Leg., p. 3090, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.211. Cumulative Effect**

The provisions of this subchapter are cumulative of all other laws.

[Acts 1971, 62nd Leg., p. 3090, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.212. Security Officers at Private Institutions**

(a) The governing boards of private institutions of higher education, including private junior colleges, are authorized to employ and commission campus security personnel for the purpose of enforcing the law of this state on the campuses of private institutions of higher education. Any officer commissioned

under the provisions of this section is vested with all the powers, privileges, and immunities of peace officers while on the property under the control and jurisdiction of the respective private institution of higher education or otherwise in the performance of his assigned duties. Any officer assigned to duty and commissioned shall take and file the oath required of peace officers, and shall execute and file a good and sufficient bond in the sum of \$1,000, payable to the governor, with two or more good and sufficient sureties, conditioned that he will fairly, impartially, and faithfully perform the duties as may be required of him by law. The bond may be sued on from time to time in the name of the person injured until the whole amount is recovered.

(b) The governing boards of private institutions of higher education are authorized to hire and pay on a regular basis law-enforcement officers commissioned by an incorporated city. The officers shall be under the supervision of the hiring institution, but shall be subject to dismissal and disciplinary action by the city. An incorporated city is authorized to contract with a private institution of higher education for the use and employment of its commissioned officers in any manner agreed to, provided that there is no expense incurred by the city.

[Acts 1971, 62nd Leg., p. 3090, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 51.213 to 51.230 reserved for expansion]

#### SUBCHAPTER E-1. MAINTAINING CAMPUS ORDER DURING PERIODS OF DISRUPTION

*Acts 1971, 62nd Leg., p. 2752, ch. 893, effective August 30, 1971, classified as Penal Code, art. 295d, was repealed by Acts 1973, 63rd Leg., p. 90, ch. 51, § 19, which by § 6 thereof incorporated the provisions of the 1971 Act into the Education Code by adding this Subchapter E-1, consisting of Sections 51.231 to 51.244.*

#### § 51.231. Definition of Periods of Disruption

For purposes of this subchapter a period of disruption is any period in which it reasonably appears that there is a threat of destruction to institutional property, injury to human life on the campus or facility, or a threat of willful disruption of the orderly operation of the campus or facility.

[Acts 1973, 63rd Leg., p. 84, ch. 51, § 6, eff. Aug. 27, 1973.]

#### § 51.232. Identification of Persons on Campus

(a) During periods of disruption, as determined by the chief administrative officer of a state-supported institution of higher education, the chief administrative officer, or an officer or employee of the institution designated by him to maintain order on the campus or facility of the institution, may require that any person on the campus or facility present evidence of his identification, or if the person is a student or employee of the institution, his student or employee official institutional identification card, or other evidence of his relationship with the institution.

(b) If any person refuses or fails upon request to present evidence of his identification, or if the person is a student or employee of the institution, his student or employee official identification card, or

other evidence of his relationship with the institution, and if it reasonably appears that the person has no legitimate reason to be on the campus or facility, the person may be ejected from the campus or facility.

[Acts 1973, 63rd Leg., p. 84, ch. 51, § 6, eff. Aug. 27, 1973.]

#### § 51.233. Withdrawal of Consent to Remain on Campus

(a) During periods of disruption, the chief administrative officer of a campus or other facility of a state-supported institution of higher education, or an officer or employee of the institution designated by him to maintain order on the campus or facility, may notify a person that consent to remain on the campus or facility under the control of the chief administrative officer has been withdrawn whenever there is reasonable cause to believe that the person has willfully disrupted the orderly operation of the campus or facility and that his presence on the campus or facility will constitute a substantial and material threat to the orderly operation of the campus or facility.

(b) In no case shall consent be withdrawn for longer than 14 days from the date on which consent was initially withdrawn.

(c) Notification shall be in accordance with procedures set out in Section 51.234 of this code.

[Acts 1973, 63rd Leg., p. 84, ch. 51, § 6, eff. Aug. 27, 1973.]

#### § 51.234. Notice of Withdrawal of Consent

When the chief administrative officer of a campus or other facility of a state-supported institution of higher education, or an officer or employee of the institution designated by him to maintain order on the campus or facility, decides to withdraw consent for any person to remain on the campus or facility, he shall notify that person in writing that consent to remain is withdrawn. The written notice must contain all of the following:

(1) that consent to remain on the campus has been withdrawn and the number of days for which consent has been withdrawn, not to exceed 14;

(2) the name and job title of the person withdrawing consent, along with an address where the person withdrawing consent can be contacted during regular working hours;

(3) a brief statement of the activity or activities resulting in the withdrawal of consent; and

(4) notification that the person from whom consent has been withdrawn is entitled to a hearing on the withdrawal not later than three days from the date of receipt by the chief administrative officer of a request for a hearing.

[Acts 1973, 63rd Leg., p. 85, ch. 51, § 6, eff. Aug. 27, 1973.]

#### § 51.235. Report to Chief Administrative Officer

Whenever consent is withdrawn by any authorized officer or employee other than the chief administrative officer, the officer or employee shall submit a written report to the chief administrative officer within 24 hours, unless the authorized officer or employee has reinstated consent for the person to remain on the campus. The report must contain all of the following:

(1) the description of the person from whom consent was withdrawn, including, if available,

the person's name, address, and phone number; and

(2) a statement of the facts giving rise to the withdrawal of consent.

[Acts 1973, 63rd Leg., p. 85, ch. 51, § 6, eff. Aug. 27, 1973.]

**§ 51.236. Confirmation of Withdrawal of Consent**

(a) If the chief administrative officer or, in his absence, a person designated by him for this purpose, upon reviewing the written report described in Section 51.235, finds that there was reasonable cause to believe that the person has willfully disrupted the orderly operation of the campus or facility, and that his presence on the campus or facility will constitute a substantial and material threat to the orderly operation of the campus or facility, he may enter written confirmation upon the report of the action taken by the officer or employee.

(b) If the chief administrative officer, or in his absence, the person designated by him, does not confirm the action of the officer or employee within 24 hours after the time that consent was withdrawn, the action of the officer or employee shall be deemed void and of no force or effect, except that any arrest made during the period shall not for this reason be deemed not to have been made for probable cause. [Acts 1973, 63rd Leg., p. 85, ch. 51, § 6, eff. Aug. 27, 1973.]

**§ 51.237. Request for Hearing**

(a) A person from whom consent has been withdrawn may submit a written request for a hearing on the withdrawal to the chief administrative officer within the 14-day period. The written request must state the address to which notice of hearing is to be sent. The chief administrative officer shall grant a hearing not later than three days from the date of receipt of the request and shall immediately mail a written notice of the time, place, and date of the hearing to the person.

(b) The hearing shall be held before a duly designated discipline committee or authorized hearing officer of the institution in accordance with Section 51.243. In no instance shall the person issuing the withdrawal notice or causing it to be issued serve on any committee where the validity of his order of withdrawal is in question. [Acts 1973, 63rd Leg., p. 85, ch. 51, § 6, eff. Aug. 27, 1973.]

**§ 51.238. Reinstatement of Consent to Remain on Campus**

The chief administrative officer shall reinstate consent whenever he has reason to believe that the presence of the person from whom consent was withdrawn will not constitute a substantial and material threat to the orderly operation of the campus or facility. [Acts 1973, 63rd Leg., p. 86, ch. 51, § 6, eff. Aug. 27, 1973.]

**§ 51.239. Entering or Remaining on Campus After Withdrawal of Consent**

(a) Any person who has been notified by the chief administrative officer of a campus or facility of a state-supported institution of higher education, or by an officer or employee designated by the chief administrative officer to maintain order on the campus or facility, that consent to remain on the campus or facility has been withdrawn pursuant to Section 51.233, who has not had consent reinstated, and who

willfully and knowingly enters or remains upon the campus or facility during the period for which consent has been withdrawn, is guilty of a misdemeanor, and is subject to punishment as set out in Section 51.244.

(b) This section does not apply to any person who enters or remains on the campus or facility for the sole purpose of applying to the chief administrative officer or authorized officer or employee for the reinstatement of consent or for the sole purpose of attending a hearing on the withdrawal. [Acts 1973, 63rd Leg., p. 86, ch. 51, § 6, eff. Aug. 27, 1973.]

**§ 51.240. Authority to Suspend, Dismiss, or Expel Students or Employees Not Affected**

This subchapter does not affect the power of the duly constituted authorities of a state-supported institution of higher education to suspend, dismiss, or expel any student or employee at the university or college. [Acts 1973, 63rd Leg., p. 86, ch. 51, § 6, eff. Aug. 27, 1973.]

**§ 51.241. Students and Employees Barred From Campus After Suspension or Dismissal**

(a) Every student or employee who has been suspended or dismissed from a state-supported institution of higher education after a hearing, in accordance with procedures established by the institution, for disrupting the orderly operation of the campus or facility of the institution, as a condition of the suspension or dismissal, may be denied access to the campus or facility, or both, of the institution for the period of suspension, and in the case of dismissal, for a period not to exceed one year.

(b) A person who has been notified by personal service of the suspension or dismissal and condition and who willfully and knowingly enters upon the campus or facility of the institution to which he has been denied access, without the express written permission of the chief administrative officer of the campus or facility, is guilty of a misdemeanor and is subject to punishment as set out in Section 51.244.

(c) Knowledge shall be presumed if personal service has been given as prescribed in Subsection (b) of this section. [Acts 1973, 63rd Leg., p. 86, ch. 51, § 6, eff. Aug. 27, 1973.]

**§ 51.242. Refusing or Failing to Leave Building Closed to Public**

No person may refuse or fail to leave a building under the control and management of a public agency, including a state-supported institution of higher education, during those hours of the day or night when the building is regularly closed to the public, upon being requested to do so by a guard, watchman, or other employee of a public agency, including a state-supported institution of higher education, controlling and managing the building or property, if the surrounding circumstances are such as to indicate to a reasonable person that the individual or individuals have no apparent lawful business to pursue. [Acts 1973, 63rd Leg., p. 87, ch. 51, § 6, eff. Aug. 27, 1973.]

**§ 51.243. Required Hearing Procedures**

A person from whom consent to remain on the campus of a state-supported institution of higher education has been withdrawn in accordance with

Section 51.233 is entitled, in addition to the procedures set out in Section 51.234, to the following:

- (1) to be represented by counsel;
- (2) to the right to call and examine witnesses and to cross-examine adverse witnesses;
- (3) to have all matters upon which the decision may be based introduced into evidence at the hearing in his presence;
- (4) to have the decision based solely on the evidence presented at the hearing;
- (5) to prohibit the introduction of statements made against him unless he has been advised of their content and the names of the persons who made them, and has been given the opportunity to rebut unfavorable inferences that might otherwise be drawn; and
- (6) to have all findings made at the hearing be final, subject only to his right to appeal to the president and the governing board of the institution.

[Acts 1973, 63rd Leg., p. 87, ch. 51, § 6, eff. Aug. 27, 1973.]

#### § 51.244. Penalties

A person who violates Section 51.239, 51.241, or 51.242 of this code is guilty of a misdemeanor and upon conviction is subject to a fine of not more than \$500 or imprisonment in the county jail for not more than six months, or both.

[Acts 1973, 63rd Leg., p. 87, ch. 51, § 6, eff. Aug. 27, 1973.]

[Sections 51.245 to 51.300 reserved for expansion]

### SUBCHAPTER F. REQUIRED AND ELECTIVE COURSES

#### § 51.301. Government or Political Science

Every college and university receiving state support or state aid from public funds shall give a course of instruction in government or political science which includes consideration of the Constitution of the United States and the constitutions of the states, with special emphasis on that of Texas. This course shall have a credit value of not less than six semester hours or its equivalent. No college or university receiving state support or state aid from public funds may grant a baccalaureate degree or a lesser degree or academic certificate to any person unless he has credit for such a course. The college or university may determine that a student has satisfied this requirement in whole or in part on the basis of credit granted to him by the college or university for a substantially equivalent course completed at another accredited college or university or on the basis of the student's successful completion of an advanced standing examination administered on the conditions and under the circumstances common for the college or university's advanced standing examinations. The college or university may grant as much as three semester hours of credit or its equivalent toward satisfaction of this requirement for substantially equivalent work completed by the student in the program of an approved senior R.O.T.C. unit. Credit for the advanced standing examination referred to above shall never exceed three semester hours.

[Acts 1971, 62nd Leg., p. 3091, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.302. American or Texas History

No college or university receiving state support or state aid from public funds may grant a baccalaureate degree or a lesser degree or academic certificate to any person unless he has credit for six semester hours or its equivalent in American History. A student is entitled to submit as much as three semester hours of credit or its equivalent in Texas History in partial satisfaction of this requirement. The college or university may determine that a student has satisfied this requirement in whole or part on the basis of credit granted to him by the college or university for a substantially equivalent course completed at another accredited college or university, or on the basis of the student's successful completion of an advanced standing examination administered on the conditions and under the circumstances common for the college or university's advanced standing examinations. The college or university may grant as much as three semester hours of credit or its equivalent toward satisfaction of this requirement for substantially equivalent work completed by a student in the program of an approved senior R.O.T.C. unit. Credit for the advanced standing examination referred to above shall never exceed three semester hours.

[Acts 1971, 62nd Leg., p. 3091, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.303. Elective Courses in Dactylogy

(a) In this section, "dactylogy" means the art of communicating ideas by signs made with the fingers, as in the manual alphabets of deaf-mutes.

(b) Any state college or university offering a fully accredited program for teachers of the deaf may offer a three-hour elective course in dactylogy.

[Acts 1971, 62nd Leg., p. 3092, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.304. Courses in Military and Naval Training

The governing board of any state-supported institution of higher education may request the United States Department of Defense to establish and maintain courses in military and naval training qualifying men student graduates of the courses for reserve commission awards as a part of its curriculum. The board may enter into mutually agreeable contracts for that purpose. The work of the students enrolling in the courses may be credited toward degree requirements under regulations prescribed by the board.

[Acts 1971, 62nd Leg., p. 3092, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 51.305 to 51.350 reserved for expansion]

### SUBCHAPTER G. OPTIONAL RETIREMENT SYSTEM

#### § 51.351. Legislative Findings and Purpose

The legislature finds that higher education is vitally important to the welfare, if not the survival, of Texas and the United States at this stage in history and that the quality of higher education is dependent upon the quality of college and university faculties. The legislature finds, therefore, that money spent on recognized means for producing an excellent system of public higher education is money

spent to serve a public purpose of great importance. The legislature finds further that a sound faculty retirement program that provides full and complete retirement benefits to teachers and administrators who have given faithful service to state-supported institutions of higher education is a well-recognized means for improving a state's program of public higher education. The legislature's purpose in establishing the retirement program provided for by this subchapter is to improve further the higher education available to the youth at the state-supported colleges and universities and to establish this retirement program as part of the plan of compensation for the faculty of these colleges and universities.

[Acts 1971, 62nd Leg., p. 3092, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.352. Definitions**

In this subchapter:

(1) "State Board of Trustees" means the State Board of Trustees of the Teachers Retirement System of Texas.

(2) "Retirement system" means the Teachers Retirement System of Texas.

(3) "Institution of higher education" has the same meaning as is assigned to it in Section 61.003 of this code, except that for the purposes of this subchapter, the Coordinating Board, Texas College and University System, and Texas State Technical Institute are included within, and the Rodent and Predatory Animal Control Service is excluded from, the meaning of the term.

(4) "Faculty member" means a person who is employed by an institution of higher education on a full-time basis as a member of the faculty or staff and whose duties include teaching, research, administration, including professional librarians, or the performance of professional services, but does not mean a person employed in a position which is in the institution's classified personnel system or a person employed in a similar type of position if the institution does not have a classified personnel system.

(5) "Governing board" means the body charged with policy direction of an institution of higher education.

(6) "Optional Retirement Program" means the program under this Subchapter to provide fixed or variable retirement annuities which meet the requirements of Sections 403(b) and 401(g) of the Internal Revenue Code of 1954, as amended,<sup>1</sup> and the benefits of such annuities are to be available only upon termination of employment in the Texas public institutions of higher education, retirement, death or total disability of the participating faculty member.

[Acts 1971, 62nd Leg., p. 3092, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1368, ch. 521, § 1, eff. June 14, 1973.]

<sup>1</sup> 26 U.S.C.A. (I.R.C.1954) §§ 403(b), 401(g).

**§ 51.353. Establishment; Participation**

(a) There is hereby established an optional retirement program. Participation in the optional retirement program is in lieu of active membership in the retirement system. The governing boards of all

institutions of higher education shall make available to all faculty members in their component institutions, agencies, and units the optional retirement program which shall provide for the vesting of benefits after one year of participation in one or more plans operating pursuant to this Act in one or more institutions of higher education.

(b) All faculty members are eligible to participate in the optional retirement program, subject to such rules as may be prescribed by the governing board of the institution of higher education at which they are employed.

[Acts 1971, 62nd Leg., p. 3093, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3357, ch. 1024, art. 2, § 35, eff. Sept. 1, 1971.]

**§ 51.354. Administration**

In administering the optional retirement program a governing board may provide for the purchase of annuity contracts from any insurance or annuity company qualified and admitted to do business in this state. Any life insurance or annuity company qualified and admitted to do business in this state shall be exempt from the payment of all franchise or premium taxes as to all annuity or group insurance contracts made pursuant to a benefit program authorized by the governing board of an institution of higher education, or by any private nonprofit educational institution of higher learning, which benefit program is paid for in whole or in part from the funds of such institution. Where a governing board has more than one component institution, agency, or unit under its jurisdiction, it may provide a separate optional retirement program for each component institution, agency, or unit, or place two or more component institutions, agencies, or units under a single program.

[Acts 1971, 62nd Leg., p. 3093, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.355. Options**

A faculty member who becomes eligible to participate in the optional retirement program and who is a member of the retirement system is hereby extended the option of continuing his membership in the retirement system or participating in the optional retirement program as hereinafter set forth. A faculty member who is eligible to participate in the optional retirement program on the date the optional retirement program becomes available at the institution of higher education at which he is employed, no later than the 1st day of August of the calendar year following the date on which the optional retirement program becomes available at the institution of higher education at which he is employed, shall elect to participate or not to participate in the optional retirement program. A faculty member who becomes eligible to participate in the optional retirement program subsequent to the date on which the optional retirement program becomes available at the institution of higher education at which he is employed shall make such election within 90 days following the date on which he becomes eligible to participate in the optional retirement program. A faculty member exercising the option to participate in the optional retirement program shall not thereafter be eligible for membership in the retirement system unless he ceases to be employed by an institution of higher education and

becomes employed by the Texas Public School System other than in an institution of higher education. A faculty member not exercising the option to participate in the optional retirement program shall be deemed to have chosen to continue membership in the retirement system in lieu of exercising the option to participate in the optional retirement program.

[Acts 1971, 62nd Leg., p. 3094, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.356. Withdrawal of Contributions to Retirement System

A faculty member who elects or who has elected to participate in the optional retirement program as provided under Section 51.355 of this code may further elect to withdraw from the retirement system his accumulated contributions as defined in Chapter 3 of this code,<sup>1</sup> upon application in writing as prescribed by the State Board of Trustees, and the applicable amounts shall be paid within 12 months from the date the application is received. Upon such withdrawal of funds, the faculty member shall thereby forfeit and relinquish all accrued rights as a member of the retirement system.

[Acts 1971, 62nd Leg., p. 3094, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Section 3.01 et seq. See § 3.02(a)(14).

#### § 51.357. Contributions

(a) With respect to a faculty member who has elected in accordance with Section 51.355 of this code to participate in the optional retirement program, the following amounts shall be disbursed and credited each fiscal year to the benefit of the faculty member in the optional retirement program:

(1) by the faculty member the amount that he would have been required to deposit during that year as a member of the retirement system; and

(2) by the state the amount that it would have been required to allocate and contribute during that year to the retirement system to the credit of the faculty member as a member of the retirement system.

(b) A faculty member participating in the optional retirement program and the institution of higher education with which he is employed, acting through its governing board, may enter into an agreement under which the salary paid to the faculty member is reduced by the amount of the faculty member's contribution required to be disbursed and credited under Subdivision (1) of Subsection (a), and under which the institution contributes an equal amount to the purchase of an annuity contract under the optional retirement program established by the respective governing board. Not more than one salary reduction agreement shall be entered into in any calendar year. Each salary reduction agreement shall be legally binding and irrevocable with respect to amounts earned while the agreement is in effect, if the agreement so provides by its terms. A salary reduction agreement may be terminable with respect to amounts not yet earned. To the extent that a salary reduction agreement is in force with a faculty member, there shall be no deduction from the salary of the faculty member, and the amounts provided in this section shall be disbursed and credited to the benefit of the faculty member as provided in Subdivision (1) of Subsection (a).

(c) The contributions of faculty members participating in the optional retirement program in each institution of higher education shall be deducted as provided by law applicable to the system or reduced under an agreement described in Subsection (b) of this section. The contribution of the state for faculty members participating in the optional retirement program in each institution of higher education shall be paid by the Comptroller of Public Accounts of the State of Texas to the applicable institution of higher education. The disbursing officer of such institution of higher education shall pay the total of such contributions from both the faculty member and the state to the company providing the optional retirement program for that institution. Each institution of higher education shall certify estimates to the comptroller of funds required for payments under its optional retirement program as required by law for the system.

[Acts 1971, 62nd Leg., p. 3094, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 51.358. Termination of Participation

Participation in the Optional Retirement Program shall terminate and the benefits of such annuities will be available only if the participant

(1) Dies;

(2) Terminates his employment due to total disability;

(3) Accepts retirement;

(4) Terminates employment in the Texas public institutions of higher education as defined in Section 61.003 of the Texas Education Code including those organizations included in the definition in Section 51.352(3). Transfers between such institutions mentioned in this section and changes in carriers shall not constitute termination of employment. An institution of higher education shall accept the transfer of any participant's Optional Retirement Program.

Nothing herein shall be construed to preclude the election by a participant to withdraw from the retirement system his accumulated contributions under the provisions of Section 51.356 of this code.

[Acts 1973, 63rd Leg., p. 1368, ch. 521, § 2, eff. June 14, 1973.]

[Sections 51.359 to 51.900 reserved for expansion]

### SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

#### § 51.901. Liability Insurance for Operators of Atomic Energy Reactors

(a) The governing boards of the state institutions of higher education, as state agencies, which are or will be constructing and operating atomic energy reactors, or otherwise performing experiments in the field of nuclear science, in cooperation with and licensed by the Atomic Energy Commission, or its successor in function, or any other governmental agency, may purchase liability insurance in any amount not to exceed \$250,000, and may pay the premium from funds appropriated for that purpose.

(b) The defense of sovereign immunity shall not be available to or asserted by the insurer in any claim against it or in any cause of action arising or growing out of a nuclear incident.

[Acts 1971, 62nd Leg., p. 3095, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.902. Contracts for Teacher Training**

The governing board of any state-supported institution of higher education which trains teachers may contract with the trustees of any independent school district for the use of the public schools of the school district as laboratory schools for the training of teachers. The available local funds of the institution or the local funds of the school district may be used in the performance of the contracts.

[Acts 1971, 62nd Leg., p. 3095, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.903. Archives; Certified Copies**

(a) The commissioners court of any county or any other custodian of public records may lend to the library of any state-supported institution of higher education, for any period and on any conditions it may determine, any parts of its archives or records that have become mainly of historical value. The librarian shall give a receipt for any archives or records received. The librarian may make copies for historical study.

(b) The librarian and the archivist of any state-supported institution of higher education are authorized to make certified copies of public records in the custody of the institution. These certified copies are valid in law and have the same force and effect for all purposes as if certified by the county clerk or other custodian as otherwise provided by law. In making a certified copy, the librarian or archivist shall certify that the foregoing is a true and correct copy of the document, and after signing the certificate shall swear to it before any officer authorized to take oaths under the laws of this state.

(c) Nothing in this section affects the authority of the Texas State Librarian concerning public records as currently or later granted by law.

[Acts 1971, 62nd Leg., p. 3096, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 51.904. Street Closing**

The governing body of a state-supported college or university in a county having a population in excess of 1,500,000 may vacate, abandon, and close a street or alley running through the campus if the state-supported college or university owns all of the real property abutting the street or alley.

[Acts 1971, 62nd Leg., p. 3338, ch. 1024, art. 2, § 5, eff. Sept. 1, 1971.]

**§ 51.905. State-Owned Museum Buildings**

(a) The governing board of each state-supported institution of higher education commonly referred to as a senior college shall formulate and adopt reasonable rules and regulations for the use of a state-owned museum building located on its campus, including the designation of rooms or areas in honor of donors or other benefactors, if appropriate, and shall administer the expenditure of all state funds appropriated for construction, equipment, operation, maintenance, or improvement of such museum, including restoration or refurbishing of collections.

(b) A historical society or group incorporated as a nonprofit organization may not house an exhibit or collection in a state-owned museum building located

on a campus referred to in Subsection (a) of this section if a member of a governing group elected by the board of directors of the nonprofit corporation to administer the affairs of the corporation is elected to succeed himself after serving two consecutive one-year terms.

(c) If state funds appropriated for construction, equipment, operation, maintenance, or improvement of a museum located on a college or university campus referred to in Subsection (a) of this section are used or expended conjunctively with funds belonging to a historical society or group incorporated as a nonprofit organization, the state auditor is granted authority and it shall be his duty to perform an audit of all accounts, books, and other financial records of the state government and the nonprofit corporation pertaining to the expenditure of funds which have been used or expended jointly for constructing, equipping, operating, maintaining, or improving such museum. The state auditor shall prepare a written report or reports of such audit or audits to the legislative audit committee and the governing board of the state-supported institution of higher education.

(d) No employee of a museum located on a campus referred to in Subsection (a) of this section, who is paid in whole or in part by state funds may be employed or discharged except with the approval and consent of the governing board of the state-supported institution on which campus the museum is located.

[Acts 1971, 62nd Leg., p. 3361, ch. 1024, art. 2, § 42, eff. Sept. 1, 1971.]

**CHAPTER 52. STUDENT LOAN PROGRAM**

**SUBCHAPTER A. ADMINISTRATION**

- Section
- 52.01. Administration.
- 52.02. Delegation of Powers and Duties.

**SUBCHAPTER B. BONDS**

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- 52.12. Refunding Bonds.
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**SUBCHAPTER C. STUDENT LOANS**

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- 52.51. Advisory Committees.
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- 52.55. Audit.
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## SUBCHAPTER A. ADMINISTRATION

## § 52.01. Administration

The Coordinating Board, Texas College and University System, or its successors, shall administer the student loan program authorized by this chapter pursuant to Article III, Section 50b, of the Texas Constitution. Personnel and other expenses required to properly administer this chapter shall be provided in the general appropriations acts.

[Acts 1971, 62nd Leg., p. 3097, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 52.02. Delegation of Powers and Duties

The board may delegate to the commissioner of higher education the powers, duties, and functions authorized by this chapter, except those relating to the sale of bonds and the letting of contracts for insurance.

[Acts 1971, 62nd Leg., p. 3097, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 52.03 to 52.10 reserved for expansion]

## SUBCHAPTER B. BONDS

## § 52.11. Issuance of Bonds

(a) The board may from time to time provide by resolution for the issuance of negotiable bonds in a total aggregate amount not exceeding \$285 million.

(b) All bonds shall be on a parity and shall be called the Texas College Student Loan Bonds.

(c) The proceeds from the sale of bonds shall be placed in the Texas Opportunity Plan Fund.

(d) To assure the orderly and economical marketing of the bonds and the reasonable availability of money in the Texas Opportunity Plan Fund, the bonds may be issued in installments.

(e) The bonds of each issue shall be dated and shall bear interest at rates prescribed by the board, subject to the limitations imposed by law. At the option of the board, the interest may be payable annually or semiannually.

(f) The bonds shall mature serially or otherwise not later than 40 years from their date and may be redeemable before maturity, at the option of the board, at a price or prices and under terms and conditions fixed by the board in the resolution providing for the issuance of the bonds.

(g) The board shall determine the form of the bonds, including the form of any interest coupon to be attached to the bonds, and shall fix the denomination or denominations of the bonds and the place or places for the payment of the principal and interest.

(h) The bonds shall be executed on behalf of the coordinating board, or its successor, as general obligations of the State of Texas in the following manner: They shall be signed by the chairman or vice chairman and the secretary of the board, and the seal of the board shall be impressed on them. They shall be signed by the governor and attested by the secretary of state and the seal of the state impressed on them. The resolution authorizing the issuance of any installment or series of bonds may prescribe the extent to which facsimile signatures and facsimile

seals may be used in executing the bonds and appurtenant coupons. Interest coupons may be signed with the facsimile signatures of the chairman or vice chairman and the secretary of the board. In the event any officer whose manual or facsimile signature appears on any bond or coupon ceases to hold that office before the delivery of the bond or coupon, the signature will nevertheless be valid and sufficient for all purposes as if he had remained in office until the delivery had been made.

(i) The resolution may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa.

(j) Before any of the bonds issued are delivered to the purchasers, the record pertaining to the bonds shall be examined by the attorney general and the records and the bonds shall be approved by him. After approval by the attorney general, the bonds shall be registered in the office of the comptroller of public accounts. When approved, registered, and delivered to the purchasers, the bonds are incontestable and constitute general obligations of the State of Texas.

(k) The performance of official duties prescribed by Article III, Section 50b, of the Texas Constitution, in reference to the provision for the payment and the payment of the bonds may be enforced in any court of competent jurisdiction through mandamus or other appropriate proceedings.

(l) All bonds issued in accordance with the provisions of this chapter are negotiable instruments under the laws of this state.

(m) The board may provide for the replacement of any bond which is mutilated, lost, or destroyed. [Acts 1971, 62nd Leg., p. 3097, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 52.12. Refunding Bonds

(a) The board may provide by resolution for the issuance of refunding bonds for the purpose of refunding any bonds issued under the provisions of this chapter and then outstanding, together with accrued interest on them.

(b) The issuance of the refunding bonds, and maturities, and all other details of the bonds, the rights of the holders, and the duties of the board with respect to the bonds, shall be governed by the applicable provisions of Section 52.11 of this code.

(c) The refunding bonds may be exchanged for the outstanding bonds or may be sold and the proceeds used to retire the outstanding bonds.

[Acts 1971, 62nd Leg., p. 3099, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 52.13. Bonds as Investments

All bonds issued pursuant to the provisions of this chapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and all other political subdivisions and public agencies of the State of Texas. The bonds, when accompanied by all unmatured coupons appurtenant to them, are lawful and sufficient security for all deposits of state funds and of all funds of any agency or political subdivision of the state, and of counties, school

districts, cities, and all other municipal corporations or subdivisions at the par value of the bonds. The bonds and the income from them, including the profits made on their sale, shall at all times be free from taxation in this state.

[Acts 1971, 62nd Leg., p. 3099, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 52.14. Sale of Bonds**

When the board has authorized the issuance of a series of bonds and has determined to call for bids on the bonds, it shall publish an appropriate notice of the sale at least one time not less than 20 days before the date of the sale. The publication shall be made in a daily newspaper of general statewide circulation which is published not less than seven times weekly. The notice shall also be published for a number of times determined by the board in one or more recognized financial publications of general circulation published in the state and one or more of these publications published outside the state. The board shall demand of bidders, other than the administrators of the state funds, that each bid be accompanied by an exchange or bank cashier's check for a sum considered adequate by the board to be a forfeit guaranteeing the acceptance of and payment for all bonds covered by each bid accepted by the board.

[Acts 1971, 62nd Leg., p. 3099, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 52.15. Competitive Bids**

No installment or series of bonds may be sold for an amount less than the face value of all the bonds comprising the installment or series with accrued interest from their date, and all bonds shall be sold after competitive bidding to the highest and best bidder. The board may reject any and all bids.

[Acts 1971, 62nd Leg., p. 3099, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 52.16. Proceeds from Bond Sale**

All proceeds from the sale of bonds shall be deposited in the state treasury in the Texas Opportunity Plan Fund.

[Acts 1971, 62nd Leg., p. 3100, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 52.17. Interest and Sinking Fund**

(a) Each fiscal year a sufficient portion of the funds received by the board as repayment of student loans granted under this chapter and as interest on the loans shall be deposited in the state treasury in the Texas College Student Loan Bonds Interest and Sinking Fund, referred to in this chapter as the interest and sinking fund, to pay the interest and principal coming due during the ensuing fiscal year and to establish and maintain a reserve in the interest and sinking fund equal to the average annual principal and interest requirements of all outstanding bonds issued under this chapter.

(b) If in any year funds are received in excess of the foregoing requirements, then the excess shall be deposited in the Texas Opportunity Plan Fund and may be used for the same purposes and upon the same terms and conditions prescribed for the proceeds derived from the sale of the Texas College Student Loan Bonds.

(c) In the event that funds received by the board in any fiscal year as repayment of student loans and as interest on the loans are insufficient to pay the interest coming due and the principal maturing on the bonds during the ensuing fiscal year, the state treasurer shall transfer into the interest and sinking fund out of the first money coming into the treasury, which is not otherwise appropriated by the constitution, an additional amount sufficient to pay the interest coming due and the principal maturing on the bonds during the ensuing fiscal year.

(d) The resolution authorizing the issuance of the bonds may provide for the deposit, from bond proceeds, of not more than 24 months' interest, and may provide for the use of bond proceeds as a reserve for the payment of principal of and interest on the bonds.

[Acts 1971, 62nd Leg., p. 3100, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 52.18. Duties of Comptroller and Treasurer**

The comptroller of public accounts shall make the transfers required under the provisions of this chapter, and the state treasurer shall pay or cause to be paid the principal of and interest on the bonds as they mature and come due.

[Acts 1971, 62nd Leg., p. 3100, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 52.19. Investment of Funds**

All money standing to the credit of the reserve portion of the interest and sinking fund and any money in the Texas Opportunity Plan Fund in excess of the amount necessary for student loans may be invested by the board in direct obligations of or obligations the principal and interest of which are guaranteed by the United States of America or invested in direct obligations of or participation certificates guaranteed by the Federal Intermediate Credit Bank, federal land banks, Federal National Mortgage Association, federal home loan banks, banks for cooperatives, and in certificates of deposit of any bank or trust company the deposits of which are fully secured by a pledge of securities of any of the kind previously specified in this section, or in bonds of the State of Texas, or of the several counties or municipalities or other political subdivisions of the State of Texas. However, money in the interest and sinking fund, except for that which is in the reserve portion of the fund, may be invested only in obligations which are scheduled to mature prior to the date money must be available for use for its intended purpose. All the bonds and obligations owned in the interest and sinking fund or in the Texas Opportunity Plan Fund are defined as "securities." The board may sell any securities owned in the interest and sinking fund or in the Texas Opportunity Plan Fund at the prevailing market price. Income from these investments shall be deposited in the interest and sinking fund.

[Acts 1971, 62nd Leg., p. 3100, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 52.20 to 52.30 reserved for expansion]

SUBCHAPTER C. STUDENT LOANS

**§ 52.31. Participating Institutions**

A participating higher educational institution is any institution of higher education, public or private

nonprofit, including a junior college, which is recognized or accredited by the Texas Education Agency or the Coordinating Board, Texas College and University System, or its successors, and which complies with the provisions of this chapter and the rules and regulations of the board promulgated in accordance with this chapter.

[Acts 1971, 62nd Leg., p. 3101, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 52.32. Qualifications for Loans

(a) The board may authorize loans from the Texas Opportunity Plan Fund to qualified students at any participating institution of higher education in Texas if the applicant:

(1) is a resident of Texas as defined by the board in accordance with Subchapter B, Chapter 54 of this code;<sup>1</sup>

(2) has been accepted for enrollment;

(3) has established that he has insufficient resources to finance his college education;

(4) has been recommended by reputable persons in his home community; and

(5) has complied with other requirements established by rules and regulations adopted by the board in conformity with this chapter.

(b) In no event may a higher standard of academic performance be required of an applicant than the minimum standard required for enrollment in the participating institution. The student must be meeting the minimum academic requirements of the institution in the semester any loan is made.

[Acts 1971, 62nd Leg., p. 3101, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup>Section 54.051 et seq.

#### § 52.33. Amount of Loan

The amount of the loan to any qualified applicant shall be limited to the difference between the financial resources available to him, including but not limited to his income from parents and other sources, scholarships, gifts, grants, other financial aid, and the amount he can reasonably be expected to earn, and the amount necessary to pay his reasonable expenses as a student at the participating institution of higher education where he has been accepted for enrollment, under the rules and regulations adopted by the board. The total loan to any individual student may never be more than the amount he can reasonably be expected to repay in a maximum period of five years after he is last enrolled in a participating institution, except as otherwise provided for in this chapter.

[Acts 1971, 62nd Leg., p. 3101, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 52.34. Payments to Student

No payment may be made to any student until he has executed a note payable to the Texas Opportunity Plan Fund for the full amount of the authorized loan plus interest. For the purposes of this chapter, a student has the capacity to contract and is bound by any contract executed by him, and the defense that he was a minor at the time he executed the note is not available to him in any action arising on the note. Payments to students executing notes may be made annually, semiannually, quarterly, monthly, or for each semester as the board may

determine, depending on the demonstrated capacity of the student to manage his financial affairs. Disbursements may be made by the board or by the participating institution pursuant to a contract between the board and the institution executed in conformity with this chapter. No funds may be distributed to a participating institution except to make payments to a student under a loan authorized by this chapter.

[Acts 1971, 62nd Leg., p. 3102, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 52.35. Term of Loans

The term of all authorized loans must be for the shortest possible period, as determined by the board. However, no loan may be made to any student for a period longer than 10 years from the date he is last enrolled in a participating institution, except as a longer period is authorized for medical students, dental students, and students seeking professional or graduate degrees as authorized under the provisions of Section 52.38 of this code.

[Acts 1971, 62nd Leg., p. 3102, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3339, ch. 1024, art. 2, § 7, eff. Sept. 1, 1971.]

#### § 52.36. Loan Interest

The board shall annually, not later than September 1, fix the interest to be charged for any student loan at a rate sufficient to pay the interest on outstanding bonds plus any expenses incident to their issuance, sale, and retirement. Interest shall be postponed by the board as long as a student is enrolled at a participating institution and may be postponed at the board's discretion as long as a student is enrolled at any other higher educational institution, provided that the total interest paid is to be equal to that fixed at the time the note evidencing the loan is executed.

[Acts 1971, 62nd Leg., p. 3102, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 52.37. Insurance

The board may contract with any insurance company or companies licensed to do business in Texas for insurance on the life of any student borrower in an amount sufficient to retire the principal and interest owed under a loan made under the provisions of this chapter. The cost of the insurance shall be paid by the student borrower. No contract for insurance as provided for in this section may be approved except by the board during a regular meeting attended by a quorum of the total board membership.

[Acts 1971, 62nd Leg., p. 3102, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 52.38. Repayment of Loans

Repayment of any loan and interest authorized under this chapter shall be made monthly and shall begin not later than nine months after the date the student borrower is last enrolled in a participating institution or any other institution of higher education and in no event later than five years from the date the first note evidencing a loan under this chapter is executed. The board may, however, authorize a longer period before beginning repayment of loans to medical students, dental students, and other students seeking professional or graduate de-

grees. The board may extend the time for beginning repayment for unusual financial hardships, with the approval of the attorney general. Repayment shall be made directly to the board or to a participating institution pursuant to a contract executed by the board in accordance with its rules and regulations.

[Acts 1971, 62nd Leg., p. 3103, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3339, ch. 1024, art. 2, § 7, eff. Sept. 1, 1971.]

**§ 52.39. Default; Suit**

When any person who has received a loan authorized by this chapter has failed or refused to make as many as six monthly payments due in accordance with an executed note, then the full amount of the remaining principal and interest becomes due and payable immediately, and the amount due, the person's name and his last known address, and other necessary information shall be reported by the board to the attorney general. Suit for the remaining sum shall be instituted by the attorney general, or any county or district attorney acting for him, in the county of the person's residence, the county in which is located the institution at which the person was last enrolled, or in Travis County, unless the attorney general finds reasonable justification for delaying suit and so advises the board in writing.

[Acts 1971, 62nd Leg., p. 3103, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 52.40 to 52.50 reserved for expansion]

SUBCHAPTER D. GENERAL PROVISIONS

**§ 52.51. Advisory Committees**

The board may appoint advisory committees from outside its membership as it deems necessary to assist it in achieving the purposes of this chapter.

[Acts 1971, 62nd Leg., p. 3103, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 52.52. Contracts**

In achieving the goals outlined in this chapter and the performance of functions assigned to it, the board may contract with any other state governmental agency as authorized by law, with any agency of the United States, and with corporations, associations, partnerships, and individuals.

[Acts 1971, 62nd Leg., p. 3103, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 52.53. Gifts and Grants**

The board may accept gifts, grants, or donations of real or personal property from any individual, group, association, or corporation or the United States, subject to limitations or conditions set by law. The gifts, grants, or donations of money shall be deposited in the Texas Opportunity Plan Fund, separately accounted for, and expended in accordance with the specific purpose for which given and under such conditions as are imposed by the donor and as provided by law.

[Acts 1971, 62nd Leg., p. 3103, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 52.54. Rules and Regulations**

(a) The board shall adopt and publish rules and regulations to effectuate the purposes of this chapter in accordance with and under the conditions applied to other agencies by Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes).

(b) The board may adopt rules and regulations necessary for participation in the federal guaranteed loan program provided by the Higher Education Act of 1965 (Public Law 89-329).<sup>1</sup>

[Acts 1971, 62nd Leg., p. 3104, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3340, ch. 1024, art. 2, § 7, eff. Sept. 1, 1971.]

<sup>1</sup> See 20 U.S.C.A. § 421 et seq.

**§ 52.55. Audit**

All transactions under the provisions of this chapter are subject to audit by the state auditor.

[Acts 1971, 62nd Leg., p. 3104, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 52.56. Annual Report**

(a) The board shall make a report of the operations of the Texas Opportunity Plan to the governor annually and to the legislature not later than December 1 prior to the regular session of the legislature.

(b) The report shall include, for the state as a whole and for each participating institution, the following information:

- (1) the number of loans;
- (2) the maximum loan;
- (3) the minimum loan;
- (4) the total amount of loans made;
- (5) a list of persons who have failed or refused to make as many as six monthly payments on any note, showing the amount due and the person's last known address; and
- (6) any other information that will describe the effectiveness of the loan program.

[Acts 1971, 62nd Leg., p. 3104, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**CHAPTER 53. HIGHER EDUCATION AUTHORITIES**

SUBCHAPTER A. GENERAL PROVISIONS

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## SUBCHAPTER A. GENERAL PROVISIONS

## § 53.01. Short Title

This chapter may be cited as the Higher Education Authority Act.

[Acts 1971, 62nd Leg., p. 3105, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 53.02. Definitions

In this chapter:

(1) "City" means an incorporated city or town in this state.

(2) "Governing body" means the council, commission, or other governing body of a city.

(3) "Authority" means a higher education authority created under this chapter.

(4) "Board" means the board of directors of an authority.

(5) "Institution of higher education" means a degree-granting college or university nonprofit corporation accredited by the Texas Education Agency.

(6) "Educational facility" means a classroom building, laboratory, science building, faculty or administrative office building, or other facility used exclusively for the conduct of the educational and administrative functions of an institution of higher education.

(7) "Housing facility" means a single- or multi-family residence used exclusively for housing or boarding, or housing and boarding students, faculty, or staff members of an institution of higher learning. The term includes infirmary and student union building, but does not include a housing or boarding facility for the use of a fraternity, sorority, or private club.

(8) "Bond resolution" means the resolution authorizing the issuance of revenue bonds.

(9) "Trust indenture" means the mortgage, deed of trust, or other instrument pledging revenue of property, or creating a mortgage lien on property, or both, to secure the revenue bonds issued by the authority.

(10) "Trustee" means the trustee under the trust indenture.

[Acts 1971, 62nd Leg., p. 3105, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 53.03 to 53.10 reserved for expansion]

## SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

## § 53.11. Creation of Authority

When the governing body of a city finds that it is to the best interest of the city and its inhabitants to

create a higher education authority, it shall pass an ordinance creating the authority and designating the name by which it shall be known. If the governing bodies of two or more cities find that it is to the best interest of the cities to create an authority to include those cities, each governing body shall pass an ordinance creating the authority and designating the name by which it shall be known.

[Acts 1971, 62nd Leg., p. 3106, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 53.12. Territory

The authority comprises only the territory included within the boundaries of the city or cities creating it.

[Acts 1971, 62nd Leg., p. 3106, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 53.13. Corporate Powers

An authority is a body politic and corporate having the power of perpetual succession. It shall have a seal; it may sue and be sued; and it may make, amend, and repeal its bylaws.

[Acts 1971, 62nd Leg., p. 3106, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 53.14. Board of Directors

(a) The authority shall be governed by a board of directors consisting of not less than 7 nor more than 11 members to be determined at the time of creating the authority. Except as otherwise provided by this section, the first directors shall be appointed by the governing body of the city or by the governing bodies of the cities, and they shall serve until their successors are appointed as provided by this section. If the authority includes more than one city, each governing body shall appoint an equal number of directors unless otherwise agreed by the cities.

(b) When the authority issues its revenue bonds, the resolution authorizing the issuance of the bonds or the trust indenture securing them may prescribe the method of selecting and the term of office of a majority of the members of the board. The remaining members of the board shall be appointed by the governing body of the city or the governing bodies of the cities for two-year terms. The trust indenture may also provide that, in event of default as defined in the trust indenture, the trustee may appoint all of the directors, in which event the terms of the directors then in office shall automatically terminate.

(c) Unless and until provision is made in the bond resolution or indenture in connection with the issuance of bonds for the appointment by other means of part of the directors, all the directors shall be appointed by the governing body of the city or each of the cities, as the case may be, for terms not to exceed two years, but the terms of directors appointed prior to the issuance of the first issue of revenue bonds shall be subject to the exercise of the provision made by this section for appointment of a majority of the members of the board in connection with the issuance of the bonds.

(d) No officer or employee of any such city is eligible for appointment as a director. Directors are not entitled to compensation for services but are entitled to reimbursement for expenses incurred in performing such service.

(e) In the event the authority purchases from a nonprofit corporation an educational facility or a housing facility for students, faculty, or staff members, which facility or facilities are then in existence or in process of construction, the first members of the board of directors and their successors shall be determined as provided in the contract of purchase. [Acts 1971, 62nd Leg., p. 3106, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.15. Organization of Board; Quorum; Employees; Counsel**

(a) The board shall elect from among its members a president and vice president, and shall elect a secretary and a treasurer who may or may not be directors, and may elect other officers as authorized by the authority's bylaws. The offices of secretary and treasurer may be combined.

(b) The president has the same right to vote on all matters as other members of the board.

(c) A majority constitutes a quorum, and when a quorum is present action may be taken by a majority vote of directors present.

(d) The board may employ a manager or executive director of the facilities and other employees, experts, and agents as it sees fit. It may delegate to the manager the power to employ and discharge employees.

(e) The board may employ legal counsel. [Acts 1971, 62nd Leg., p. 3107, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 53.16 to 53.30 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

**§ 53.31. No Taxing Power**

An authority has no power to tax. [Acts 1971, 62nd Leg., p. 3107, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.32. No Power of Eminent Domain**

The authority does not have the power of eminent domain. [Acts 1971, 62nd Leg., p. 3107, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.33. Facilities: Construction, Acquisition, Etc.**

The authority may acquire by purchase, purchase contract, or lease, or may construct, enlarge, extend, or improve educational facilities or housing facilities. It may acquire land for those purposes, furnish and equip the facilities, and provide by contract, lease, or otherwise for the operation and maintenance of the facilities. The facilities need not be located within the city limits of the city or cities. [Acts 1971, 62nd Leg., p. 3107, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.34. Revenue Bonds**

The authority may issue revenue bonds to provide funds for any of its purposes. The bonds shall be payable from and secured by a pledge of the net revenue to be derived from the operation of the facility or facilities and any other revenue resulting from the ownership of the educational facilities properties. The bonds may be additionally secured

by a mortgage or deed of trust on real property of the authority or by a chattel mortgage on its personal property, or by both. [Acts 1971, 62nd Leg., p. 3108, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.35. Issuance of Bonds; Procedures; Etc.**

The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the board, and shall be signed by the president or vice president and countersigned by the secretary, or either or both of their facsimile signatures may be printed on them. The seal of the authority shall be impressed or printed on the bonds. The bonds shall mature serially or otherwise in not to exceed 50 years and may be sold at a price and under terms determined by the board to be the most advantageous reasonably obtainable, provided that the rate of interest to be borne by the bonds shall not exceed six and one-half percent per annum and that the bonds shall not be sold at less than 90 percent of their par or face value, plus accrued interest. Within the discretion of the board, the bonds may be made callable prior to maturity at any times and prices prescribed in the resolution authorizing the bonds, and may be made registrable as to principal or as to both principal and interest.

[Acts 1971, 62nd Leg., p. 3108, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.36. Bond Resolution; Notice; Election**

(a) Before authorizing the issuance of bonds, other than refunding bonds, the board shall cause a notice to be issued stating that it intends to adopt a resolution authorizing the issuance of the bonds, the maximum amount thereof, and the maximum maturity thereof. The notice shall be published once each week for two consecutive weeks in a newspaper or newspapers having general circulation in the authority. The first publication shall be at least 14 days prior to the day set for adopting the bond resolution.

(b) If, prior to the day set for the adoption of the bond resolution, there is presented to the secretary or president of the board a petition signed by not less than 10 percent of the qualified voters residing in the city or cities comprising the authority, who own taxable property in the authority and who have duly rendered it for taxation to the city in which such property is located or situated, requesting an election on the proposition for the issuance of the bonds, the bonds shall not be issued unless an election is held and a majority vote is in favor of the bonds. The election shall be called and held in accordance with the procedure prescribed in Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> with the board and the president and secretary performing the functions there assigned to the governing body of the city, the mayor and city secretary, respectively. If no such petition is filed, the bonds may be issued without an election. However, the board may call an election on its own motion without the filing of the petition.

[Acts 1971, 62nd Leg., p. 3708, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Civil Statutes, Art. 701 et seq.

**§ 53.37. Junior Lien Bonds; Parity Bonds**

Bonds constituting a junior lien on the net revenue or properties may be issued unless prohibited by

the bond resolution or trust indenture. Parity bonds may be issued under conditions specified in the bond resolution or trust indenture.

[Acts 1971, 62nd Leg., p. 3109, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.38. Reserves for Operating and Other Expenses**

Money for the payment of not more than two years' interest on the bonds and an amount estimated by the board to be required for operating expenses during the first year of operation may be set aside for those purposes out of the proceeds from the sale of the bonds.

[Acts 1971, 62nd Leg., p. 3109, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.39. Refunding Bonds**

Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this chapter for other bonds, and may be exchanged by the comptroller of public accounts or sold and the proceeds applied in accordance with the procedure prescribed by Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes).

[Acts 1971, 62nd Leg., p. 3109, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.40. Approval of Bonds; Registration; Negotiability**

Bonds issued under this chapter and the record relating to their issuance shall be submitted to the attorney general, and if he finds that they have been issued in accordance with this chapter and constitute valid and binding obligations of the authority and are secured as recited therein he shall approve them, and they shall be registered by comptroller of public accounts who shall certify the registration thereon. Thereafter they are incontestable. The bonds shall be negotiable and shall contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

[Acts 1971, 62nd Leg., p. 3109, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.41. Authorized Investments**

All bonds issued under this chapter are legal and authorized investments for all banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies of all kinds and types, and for the interest and sinking funds and other public funds of any issuer. The bonds are also eligible and lawful security for all deposits of public funds of the State of Texas and of any issuer, to the extent of the value of the bonds, when accompanied by any unmatured interest coupons appurtenant to them.

[Acts 1971, 62nd Leg., p. 3109, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.42. Investment of Funds; Security**

To the extent it is applicable, the law as to the security for and the investment of funds, applicable to cities, controls the investment of funds belonging to authority. The bond resolution or the indenture or both may further restrict the making of investments. The authority may invest the proceeds of its bonds, until the money is needed, in the direct obli-

gations of or obligations unconditionally guaranteed by the United States, to the extent authorized in the bond resolution or indenture or in both.

[Acts 1971, 62nd Leg., p. 3109, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.43. Depositories**

The authority may select a depository or depositories according to the procedures provided by law for the selection of city depositories, or it may award its depository contract to the same depository or depositories selected by the city or cities and on the same terms.

[Acts 1971, 62nd Leg., p. 3110, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.44. Operation of Facilities; Rates Charged; Reserve Funds**

(a) The facilities may be operated by the authority without the intervention of private profit for the use and benefit of the public, or may be leased to an institution of higher education, or may be operated by the institution under a contract with the authority, the lease or contract to be in effect until any revenue bonds issued in connection with it have been finally retired.

(b) The board shall charge rates for the use of the facilities, or for their lease or operation, that are fully sufficient to pay all expenses in connection with the ownership, operation, and upkeep of the facilities, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds and reserves that may be provided in the bond resolution or trust indenture. The bond resolution or trust indenture may prescribe systems, methods, routines, and procedures under which the facilities shall be operated.

[Acts 1971, 62nd Leg., p. 3110, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.45. Transactions with Other Agencies and Persons**

The authority may borrow money and accept grants from, and enter into contracts, leases, or other transactions with the United States, the State of Texas, any municipal corporation in the state, and any public or private person or corporation resident or authorized to do business in the state.

[Acts 1971, 62nd Leg., p. 3110, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 53.46. Authority Exempt from Taxation**

Because the property owned by authority will be held for educational purposes only and will be devoted exclusively to the use and benefit of the students, faculty, and staff members of an accredited institution of higher education, it is exempt from taxation of every character.

[Acts 1971, 62nd Leg., p. 3110, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**CHAPTER 54. TUITION AND FEES**

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Section

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- 54.004. Retention and Use of Funds.
- 54.005. Right to Collect Special Fees.

SUBCHAPTER B. TUITION RATES

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SUBCHAPTER E. OTHER FEES AND DEPOSITS

- 54.501. Laboratory Fees.
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SUBCHAPTER A. GENERAL PROVISIONS

§ 54.001. Definitions

In this chapter:

- (1) "Institution of higher education" has the same meaning as is assigned to it by Section 61.003 of this code.
- (2) "Governing board" has the same meaning as is assigned to it by Section 61.003 of this code.

[Acts 1971, 62nd Leg., p. 3112, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 54.002. Applicability of Chapter

The provisions of this chapter apply to all institutions of higher education, except that as to junior colleges this chapter applies only to the extent provided by Section 130.003(b) of this code.

[Acts 1971, 62nd Leg., p. 3112, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 54.003. Tuition and Charges to be Authorized by Law

No institution of higher education may collect from students attending the institution any tuition, fee, or charge of any kind except as permitted by law, and no student may be refused admission to or discharged from any institution for the nonpayment of any tuition, fee, or charge except as permitted by law.

[Acts 1971, 62nd Leg., p. 3112, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 54.004. Retention and Use of Funds

All tuition, local funds, and fees collected by an institution of higher education shall be retained and expended by the institution and accounted for annually as provided in the general appropriations act. [Acts 1971, 62nd Leg., p. 3112, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 54.005. Right to Collect Special Fees

The provisions of this subchapter requiring the governing board of each institution of higher education to collect tuition fees do not deprive the board of the right to collect special fees authorized by law. [Acts 1971, 62nd Leg., p. 3112, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 54.006 to 54.050 reserved for expansion]

SUBCHAPTER B. TUITION RATES

§ 54.051. Tuition Rates

(a) The governing board of each institution of higher education shall cause to be collected from students registering at the institution tuition or registration fees at the rates prescribed in this section.

(b) Tuition for resident students, except as otherwise hereinafter provided, is \$4 per semester credit hour, but the total of such charge shall be not less than \$50 per semester or 12-week summer session, and not less than \$25 per 6-week summer term.

(c) Tuition for nonresident students, except as otherwise hereinafter provided, is \$40 per semester credit hour.

(d) Resident or nonresident students registered for thesis or dissertation credit only, in those instances where such credit is the final credit hour requirement for the degree in progress, shall pay a sum proportionately less than herein prescribed but not more than \$50.

(e) Tuition for resident students registered in a medical or dental branch, school or college is \$400 per academic year of 12 months.

(f) Tuition for nonresident students registered in a medical or dental branch, school or college is \$1,200 per academic year of 12 months.

(g) Resident or nonresident students registered for a course or courses in art, architecture, drama, speech, or music, where individual coaching or instruction is the usual method of instruction, shall pay a fee in addition to the regular tuition, said fee to be designated by the governing board of such institution; but in no event shall such fees be more per course per semester of four and one-half months or per summer session than \$75.

(h) Tuition for students who are citizens of any country other than the United States of America is \$14 per semester credit hour, but the total of such charge shall be not less than \$200 per semester or 12-week summer session, and not less than \$100 per 6-week summer term.

(i) Tuition for students who are citizens of any country other than the United States of America registered in a medical or dental branch, school or college is \$800 per academic year of 12 months.

(j) Tuition for nonresident students registered in a public junior college is as provided in Subsection (b), Section 130.003 of the Texas Education Code.

(k) Tuition for students registered in a school of nursing as a nursing student is \$50 per semester and per 12-week summer session.

(l) Tuition for students registered in a school of nursing as a nursing student for less than 12 semester credit hours of work or for less than a full semester credit hour or term hour load during a summer session shall pay an amount proportionately less than the amount provided in Subsection (k) of this section, but not less than \$20.

(m) Twenty-five cents out of each hourly charge in Subsection (b) and \$1.50 out of each hourly charge in Subsection (c) of this section shall be placed in a scholarship fund at each institution to be administered by that institution to award scholarships to needy students. Standards for determining need shall be formulated by each institution. No more than 10 percent of said scholarship funds may be allocated to out-of-state students.

(n) Notwithstanding the preceding provisions of this section, any nonresident student who is enrolled for the spring semester of 1971 in an institution covered by this section may continue to enroll at the same institution at the same tuition rate that was effective at the time of his original enrollment until one of the following conditions first occurs:

(1) he receives the degree at the degree level (i. e., the baccalaureate, master's, or doctoral degree) toward which he is working during the spring semester of 1971; or

(2) he voluntarily withdraws from the institution or the institution involuntarily withdraws the student for disciplinary reasons or for failing to meet the academic standards of the institution; or

(3) the termination of the spring semester of 1975.

(o) A teaching assistant, research assistant, or other student employee of any institution covered by this section is entitled to register himself, his spouse, and their children in a state institution of higher education by paying the tuition fees and other fees or charges required for Texas residents, without regard to the length of time he has resided in Texas; provided that said student employee is employed at least one-half time in a position which relates to his degree program under rules and regulations established by the employer institution. This exemption shall continue for students employed two consecutive semesters through the summer session following such employment if the institution is unable to provide employment and, as determined under standards established by the institution, if the employee has satisfactorily completed his employment.

(p) A nonresident student holding a competitive scholarship of at least \$200 for the academic year or summer for which he is enrolled is entitled to pay the fees and charges required of Texas residents without regard to the length of time he has resided in Texas, provided that he must compete with other students, including Texas residents, for the scholarship and that the scholarship must be awarded by a scholarship committee officially recognized by the administration of the institution of higher education.

[Acts 1971, 62nd Leg., p. 3112, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3352, art. 2, § 29, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 88, ch. 51, § 8, eff. Aug. 27, 1973.]

#### § 54.052. Residents; Nonresidents; General Rules

(a) The term "residence," as used in this subchapter, means "domicile." The term "resided in" means "domiciled in." For the purposes of this subchapter, the status of a student as a resident or nonresident student is determined as prescribed by this section, subject to the other applicable provisions of this subchapter.

(b) An individual under 21 years of age who is living away from his family and whose family resides in another state or has not resided in Texas for the 12-month period immediately preceding the date of registration shall be classified as a nonresident student.

(c) An individual 21 years of age or under whose family has not resided in Texas for the 12-month period immediately preceding the date of registration shall be classified as a nonresident student, regardless of whether he has become the legal ward of residents of Texas or has been adopted by residents of Texas while he is attending an educational institution in Texas, or within a 12-month period before his attendance, or under circumstances indicating that the guardianship or adoption was for the purpose of obtaining status as a resident student.

(d) An individual 21 years of age or over who has come from outside Texas and who is gainfully employed in Texas for a 12-month period immediately preceding registration in an educational institution shall be classified as a resident student as long as he continues to maintain a legal residence in Texas.

(e) An individual 21 years of age or over who resides out of the state or who has come from outside Texas and who registers in an educational institution before having resided in Texas for a 12-month period shall be classified as a nonresident student.

[Acts 1971, 62nd Leg., p. 3113, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 54.053. Regulations of Coordinating Board

The governing board of each institution required by this chapter to charge a nonresident tuition or registration fee is subject to the rules, regulations, and interpretations issued by the Coordinating Board, Texas College and University System, for the administration of the nonresident tuition provisions of this subchapter. The rules, regulations, and interpretations promulgated by the coordinating board shall be furnished to the presidents or administrative heads of all Texas public senior and junior colleges and universities.

[Acts 1971, 62nd Leg., p. 3114, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 54.054. Nonresident Status: Presumption; Reclassification

A nonresident student classification is presumed to be correct as long as the residence of the individual in the state is primarily for the purpose of attending an educational institution. After residing in Texas for at least 12 months, a nonresident student may be reclassified as a resident student as provided in the rules and regulations adopted by the Coordinating Board, Texas College and University System. Any individual reclassified as a resident student is entitled to pay the tuition fee for a resident of Texas at any subsequent registration as long as he contin-

ues to maintain his legal residence in Texas. Before February 15, 1972, the Coordinating Board, Texas College and University System, shall promulgate such rules and regulations.

[Acts 1971, 62nd Leg., p. 3114, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3353, ch. 1024, art. 2, § 29, eff. Sept. 1, 1971.]

**§ 54.055. Parents, Change of Residence to Another State**

An individual 21 years of age or under whose parents were formerly residents of Texas is entitled to pay the resident tuition fee following the parents' change of legal residence to another state, as long as the individual remains continuously enrolled in a regular session in a state-supported institution of higher education.

[Acts 1971, 62nd Leg., p. 3114, ch. 1024, art. 1, § 1, eff. Sept. 1, 1972; Acts 1971, 62nd Leg., p. 3354, ch. 1024, art. 2, § 29, eff. Sept. 1, 1971.]

**§ 54.056. Effect of Marriage**

A nonresident who marries and remains married to a resident of Texas, classified as such under this chapter at the time of the marriage and at the time the nonresident registers, is entitled to pay the resident tuition fee regardless of the length of time he has lived in Texas; and any student who is a resident of Texas and who marries a nonresident is entitled to pay the resident tuition fee as long as he does not adopt the legal residence of the spouse in another state.

[Acts 1971, 62nd Leg., p. 3114, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 54.057. Aliens**

An alien who is living in this country under a visa permitting permanent residence or who has filed with the proper federal immigration authorities a declaration of intention to become a citizen has the same privilege of qualifying for resident status for fee purposes under this Act as has a citizen of the United States. A resident alien residing in a junior college district located immediately adjacent to Texas boundary lines shall be charged the resident tuition by that junior college.

[Acts 1971, 62nd Leg., p. 3115, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3354, ch. 1024, art. 2, § 29, eff. Sept. 1, 1971.]

**§ 54.058. Military Personnel and Dependents**

(a) Military personnel are classified as provided by this section.

(b) An officer, enlisted man or woman, selectee, or draftee of the Army, Army Reserve, Army National Guard, Air National Guard, Texas State Guard, Air Force, Air Force Reserve, Navy, Navy Reserve, Marine Corps, Marine Corps Reserve, Coast Guard, or Coast Guard Reserve of the United States, who is assigned to duty in Texas is entitled to register himself, his spouse, and their children in a state institution of higher education by paying the tuition fee and other fees or charges required of Texas residents, without regard to the length of time he has been assigned to duty or resided in the state. However, out-of-state Army National Guard or Air National Guard members attending training with Texas Army or Air National Guard units under National Guard Bureau regulations may not be ex-

empted from nonresident tuition by virtue of that training status nor may out-of-state Army, Air Force, Navy, Marine Corps, or Coast Guard Reserves training with units in Texas under similar regulations be exempted from nonresident tuition by virtue of that training status. It is the intent of the legislature that only those members of the Army or Air National Guard, Texas State Guard, or other reserve forces mentioned above be exempted from the nonresident tuition fee and other fees and charges only when they become members of Texas units of the military organizations mentioned above.

(c) As long as they reside continuously in Texas, the spouse and children of a member of the Armed Forces of the United States who has been assigned to duty elsewhere immediately following assignment to duty in Texas are entitled to pay the tuition fees and other fees or charges provided for Texas residents.

(d) Repealed by Acts 1973, 63rd Leg., p. 1632, ch. 591, § 1, eff. June 15, 1973.

(e) A Texas institution of higher education may charge to the United States government the nonresident tuition fee for a veteran enrolled under the provisions of a federal law or regulation authorizing educational or training benefits for veterans.

(f) The spouse and children of a member of the Armed Forces of the United States who dies or is killed are entitled to pay the resident tuition fee if the wife and children become residents of Texas within 60 days of the date of death.

(g) If a member of the Armed Forces of the United States is stationed outside Texas and his spouse and children establish residence in Texas by residing in Texas and by filing with the Texas institution of higher education at which they plan to register a letter of intent to establish residence in Texas, the institution of higher education shall permit the spouse and children to pay the tuition, fees, and other charges provided for Texas residents without regard to length of time that they have resided in the state.

[Acts 1971, 62nd Leg., p. 3115, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1632, ch. 591, § 1, eff. June 15, 1973.]

**§ 54.059. Faculty, Staff, Dependents**

A teacher, professor, or other employee of an institution of higher education is entitled to register himself, his spouse, and their children in an institution of higher education by paying the tuition fee and other fees or charges required for Texas residents without regard to the length of time he has resided in Texas. A teacher, professor, or other employee of an institution of higher education is any person employed at least one-half time on a regular monthly salary basis by an institution of higher education.

[Acts 1971, 62nd Leg., p. 3116, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 54.060. Resident of Bordering State: Tuition at Junior College**

The nonresident tuition fee prescribed in this chapter does not apply to a nonresident student who is a resident of a state situated adjacent to Texas and who registers in any Texas public junior college situated immediately adjacent to the state in which

the nonresident student resides. The nonresident student described in this section shall pay an amount equivalent to the amount charged a Texas student registered at a similar school in the state in which the nonresident student resides.

[Acts 1971, 62nd Leg., p. 3116, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 54.061. Penalty for Noncompliance with Rules

The governing board of an institution of higher education may assess and collect from each nonresident student who fails to comply with the rules and regulations of the board concerning nonresident fees a penalty not to exceed \$10 a semester.

[Acts 1971, 62nd Leg., p. 3116, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 54.062 to 54.100 reserved for expansion]

### SUBCHAPTER C. TUITION SCHOLARSHIPS

#### § 54.101. Tuition Scholarships

(a) The governing boards of the several state-supported institutions are hereby authorized and directed to have reserved and set apart in a separate account on the books of the respective institutions out of the fees levied and collected from students under Section 54.051 of this code an amount to be determined by the legislature for each institution in the biennial appropriation act, for the purpose of creating a special fund to be used in awarding tuition scholarships to needy resident students enrolled in such respective institutions, and a separate account on the books of the respective institutions out of the fees levied and collected from students under Section 54.051 of this code, an amount to be determined by the legislature for each institution in the biennial appropriation act, for the purpose of creating a special fund to be used in awarding tuition scholarships to needy alien students enrolled in such respective institutions.

(b) Such tuition scholarships shall be awarded to students with the approval of the president or other administrative head of each such respective institution in accordance with such rules and regulations governing the award of such tuition scholarships as may be promulgated by the governing boards of said respective institutions. Rules and regulations shall be subject to the provisions of this section.

(c) Eligibility shall be based primarily on financial need. In determining need, consideration should be given to the student's own efforts to finance his education as evidenced by part-time jobs, loans from private sources, or financial capacity of the parents.

(d) Awards shall be based on character and satisfactory scholastic record.

(e) Recipients of such tuition scholarships must be classified as either "resident students" under the provisions of Subchapter B of this chapter<sup>1</sup> or "alien students." For the purpose of this subsection, an "alien student" is any student who is not a citizen of the United States and who is not entitled to resident status for purposes of payment of tuition under Section 54.057 of this code.

(f) Tuition scholarships shall be awarded in an amount of \$25 per semester or \$50 per long session for each resident student and \$100 per semester or \$200 per long session for each alien student. The

amount of such awards shall be credited to the student recipient as partial payment of his tuition fees. Students otherwise entitled to a refund shall receive the refund based only on that portion of the tuition actually paid by the student.

(g) Tuition scholarships shall be awarded in an amount not to exceed \$125 per semester or \$250 per long session for each full-time resident medical or dental student. The amount of such awards shall be credited to the student as partial payment of his tuition fees. Students otherwise entitled to a refund of tuition shall receive the refund based only on that portion of the tuition actually paid by the student.

(h) Not later than 30 days after the close of each fiscal year, each institution shall transfer any unused balances in the fund set up for scholarship awards to the tuition income account from which the scholarship fund was established.

[Acts 1971, 62nd Leg., p. 3116, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3354, ch. 1024, art. 2, § 29, eff. Sept. 1, 1971.]

<sup>1</sup>Section 54.051 et seq.

#### § 54.102. Nursing Students

The governing boards of Texas Woman's University, The University of Texas System, Prairie View Agricultural and Mechanical College, and West Texas State University may grant nursing tuition scholarships to students enrolled in a baccalaureate nursing program. Each scholarship shall be granted only after a review of the economic circumstances and need of the individual student and may be in an amount deemed necessary to cover any part, or all, of the tuition of the student. Each governing board may prescribe rules, regulations, and the conditions of general effect applicable to the awarding of nursing tuition scholarships.

[Acts 1971, 62nd Leg., p. 3361, ch. 1024, art. 2, § 41, eff. Sept. 1, 1971.]

[Sections 54.103 to 54.200 reserved for expansion]

### SUBCHAPTER D. EXEMPTIONS FROM TUITION

#### § 54.201. Highest Ranking High School Graduates

The governing board of each institution of higher education may issue scholarships each year to the highest ranking graduate of each accredited high school of this state, exempting the graduates from the payment of tuition during both semesters of the first regular session immediately following their graduation. This exemption may be granted for any one of the first four regular sessions following the individual's graduation from high school when in the opinion of the institution's president the circumstances of an individual case, including military service, merit the action.

[Acts 1971, 62nd Leg., p. 3117, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 54.202. High School Graduates of State Homes

The governing board of each institution of higher education shall exempt each citizen of Texas who at the time of his admission is a high school graduate of a state home from the payment of all dues, fees, and charges, including fees for correspondence courses. The exemption does not apply either to

general property deposits, which may be required as security for the return of or proper care of property loaned for the use of a student, or to charges for lodging, board, or clothing. The governing board shall require every applicant who claims this exemption to submit satisfactory evidence that he is a citizen of Texas and is otherwise entitled to the exemption.

[Acts 1971, 62nd Leg., p. 3117, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 54.203. Veterans, Dependents, Etc.

(a) The governing board of each institution of higher education shall exempt the following persons from the payment of all dues, fees, and charges, including fees for correspondence courses but excluding property deposit fees, student services fees, and any fees or charges for lodging, board, or clothing, provided the persons seeking the exemptions were citizens of Texas at the time they entered the services indicated and have resided in Texas for at least the period of 12 months before the date of registration:

(1) all nurses and honorably discharged members of the armed forces of the United States who served during the Spanish-American War or during World War I;

(2) all nurses, members of the Women's Army Auxiliary Corps, members of the Women's Auxiliary Volunteer Emergency Service, and all honorably discharged members of the armed forces of the United States who served during World War II except those who were discharged from service because they were over the age of 38 or because of a personal request on the part of the person that he be discharged from service;

(3) all honorably discharged men and women of the armed forces of the United States who served during the national emergency which began on June 27, 1950, and which is referred to as the Korean War; and

(4) all persons who were honorably discharged from the armed forces of the United States after serving on active military duty, excluding training, for more than 180 days during the Cold War which began on the date of the termination of the national emergency cited in Subdivision (3) of this subsection.

(b) The exemptions provided for in Subsection (a) of this section also apply and inure to the benefit of the children of members of the armed forces of the United States who were killed in action or died while in service during World War II, the national emergency which began on June 27, 1950, or the Cold War, and to the benefit of orphans of members of the Texas National Guard and the Texas Air National Guard killed since January 1, 1946, while on active duty either in the service of their state or the United States. However, to qualify for this exemption a person must be a citizen of Texas and must have resided in the state for at least 12 months immediately preceding the date of his registration.

(c) The governing board of each institution of higher education granting exemptions shall require every applicant claiming the benefit of an exemption to submit satisfactory evidence that he fulfills the necessary citizenship and residency requirements.

(d) The exemption from fees provided for in Subsection (a) of this section does not apply to a person if at the time of his registration he is eligible for educational benefits under federal legislation in effect at the time of his registration. A person is covered by the exemptions if his right to benefits under federal legislation is extinguished at the time of his registration.

(e) The governing board of each institution of higher education may enter into contracts with the United States government, or any of its agencies, to furnish instruction to ex-servicemen and ex-service women at a tuition rate which covers the estimated cost of the instruction or, in the alternative, at a tuition rate of \$100 a semester, as may be determined by the governing board. If the rates specified are prohibited by federal law for any particular class of ex-servicemen or ex-service women, the tuition rate shall be set by the governing board, but shall not be less than the established rate for civilian students. If federal law provides as to any class of veterans that the tuition payments are to be deducted from subsequent benefits to which the veteran may be entitled, the institution shall refund to any veteran who is a resident of Texas within the meaning of this section the amount by which any adjusted compensation payment is actually reduced because of tuition payments made to the institution by the federal government for the veteran.

[Acts 1971, 62nd Leg., p. 3117, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 54.204. Children of Disabled Firemen and Peace Officers

(a) In this section:

(1) "Eligible employee" means a full-paid or volunteer fireman, or a full-paid municipal, county, or state peace officer, or a custodial employee of the Texas Department of Corrections, or a game warden, who has a child under 21 years of age.

(2) "Disability" means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be under a disability unless he furnishes such proof of its existence as may be required.

(b) The governing board of each institution of higher education shall exempt from the payment of all tuition and laboratory fees any person whose parent is an eligible employee who has suffered an injury, resulting in death or disability, sustained in the line of duty according to the regulations and criteria then in effect governing the department or agency in which he was employed. The exemption does not apply to general property deposits or to fees or charges for lodging, board, or clothing.

(c) A person is not entitled to the exemption if he:

(1) does not apply initially for the exemption before he becomes 21 years of age;

(2) does not meet all entrance requirements of the institution; or

(3) does not maintain a scholastic average sufficient to remain in good standing.

(d) A person loses his right to an exemption after eight consecutive semesters, not including summer

semesters, beginning with the first semester for which he registers.

(e) A person entitled to an exemption under the provisions of this section may use the exemption:

(1) only at the public senior college or university which he first attends under the provisions of this section; or

(2) only at the public junior college which he first attends, and upon successful completion of four consecutive semesters at the public junior college he may continue to use the exemption for four consecutive semesters only at the public senior college or university which he subsequently first attends.

(f) A person entitled to an exemption under the provisions of this section shall, when transferring from a public junior college to a public senior college or university, meet the standard entrance requirements required by the senior college or university of an applicant for admission not covered by the provisions of this section.

(g) An eligible employee whose injury results in a disability shall submit to a physical examination by a physician designated by the United States Social Security Administration to conduct physical examinations and to make disability reports to the Social Security Administration. If the physician decides the injury received has resulted in a disability, he shall certify this fact to the head of the department which employs the employee.

(h) The head of the department which employed the eligible employee at the time he sustained the injury shall file a certificate with the Coordinating Board, Texas College and University System, on a form prepared by the board for the purpose. The head of the department shall attach the certificate of the examining physician if an examination is required by Subsection (g) of this section. A copy of the certificate on file with the coordinating board is sufficient evidence for the institution to grant the exemption.

[Acts 1971, 62nd Leg., p. 3119, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 54.205. Blind, Deaf Students

(a) In this section:

(1) "Resident" has the same meaning as is assigned it in Subchapter B of this chapter.<sup>1</sup>

(2) "Blind person" means a person who is a "blind disabled individual" as defined in Section 5, Chapter 291, Acts of the 59th Texas Legislature, Regular Session, 1965 (Article 3207c, Vernon's Texas Civil Statutes), and who is eligible for the rehabilitation services of the State Commission for the Blind.

(3) "Deaf person" means a person whose sense of hearing is nonfunctional, after all necessary medical treatment, surgery, and use of hearing aids, for understanding normal conversation and who is eligible for the services of the Division of Vocational Rehabilitation of the Texas Education Agency.

(4) "Tuition fees" includes all dues, fees, and enrollment charges whatsoever for which exemptions may be lawfully made, including fees for correspondence courses, general property deposit fees, and student services fees, but does

not include fees or charges for lodging, board, or clothing.

(b) A deaf or blind person who is a resident is entitled to exemption from the payment of tuition fees at any institution of higher education utilizing public funds if he presents:

(1) certification by the appropriate state vocational rehabilitation agency that he is a "blind person" or a "deaf person" as defined in Subsection (a) of this section and is a client of the agency, which certification shall be deemed conclusive;

(2) a high school diploma or its equivalent;

(3) proof of good moral character, which may be evidenced by a letter of recommendation from the principal of the high school attended by the deaf or blind individual or, if the high school no longer exists or if the principal cannot be located, a letter of recommendation from the individual's clergyman, a public official, or some other responsible person who knows the deaf or blind individual and is willing to attest to his good moral character; and

(4) proof that he meets all other entrance requirements of the institution.

(c) The governing board of an institution may establish special entrance requirements to fit the circumstances of deaf and blind persons. In order to obtain the maximum vocational benefits of their college training, all deaf students applying for a tuition exemption under this legislation shall cooperate with the Commission for Rehabilitation, and all blind students applying for a tuition exemption under this section shall cooperate with the State Commission for the Blind. The Commission for Rehabilitation and the State Commission for the Blind shall utilize all available and appropriate resources at the institutions of higher education to insure that deaf or blind students receive the maximum benefits from college training for which tuition fee exemptions are claimed under this Act. The Commission for Rehabilitation, the State Commission for the Blind, and the Coordinating Board, Texas College and University System, may develop any rules and procedures that these agencies determine necessary for the efficient implementation of this section.

[Acts 1971, 62nd Leg., p. 3120, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 425, ch. 192, §§ 1, 2, eff. May 25, 1973.]

<sup>1</sup> Section 54.051 et seq.

#### § 54.206. Low-Income Families

(a) This section may be cited as the Connally-Carillo Act.

(b) In this section, "family income" means the combined gross income of the applicant and his parents, if he is single, or the combined gross income of the applicant, his parents, and his spouse, if he is married.

(c) The governing board of each institution of higher education shall exempt from the payment of tuition fees and charges each person:

(1) who is a citizen of Texas under 25 years of age on the date of registration and who has resided in the state for a period of not less than 12 months before the date of registration;

(2) who was graduated in the top 25 percent of his graduating class of an accredited high school in 1967 or later or was graduated from an accredited high school in 1967 or later and scored in the top 20 percent on a nationally standardized college admission examination; and

(3) whose family income was not more than \$4,800, as determined by the gross income on the last applicable federal income tax return (or returns) or financial statement which shall be sworn to by the applicant's parents or guardian at the time of registration.

(d) The exemption is limited to the payment of tuition, fees, and charges, including fees for correspondence courses, and does not apply to property deposits or fees or charges for lodging, board, or clothing. The exemption is limited to a maximum of six years for each qualified citizen.

(e) The exemption is not applicable in the case of any person whose tuition, fees, and charges are being or will be paid to the educational institution by the United States government, or one of its agencies, or in the case of any person whose tuition, fees, and charges are paid from funds, either public or private, other than his own or those of his family or his guardian.

(f) The governing board of the institution shall require every applicant claiming an exemption to submit satisfactory evidence that he is entitled to the exemption.

[Acts 1971, 62nd Leg., p. 3121, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 54.207. Students from Other Nations of the American Hemisphere**

(a) The governing boards of the institutions of higher education may annually exempt from the payment of tuition fees the following students:

(1) 200 native-born students from the other nations of the American hemisphere; and

(2) 35 native-born students from a Latin American country designated by the United States Department of State.

(b) Ten students from each nation, as authorized in Subsection (a)(1) of this section, shall be exempt as provided in this subsection. In the event any nation fails to have 10 students available and qualified for exemption, additional students from the other nations may be exempted, subject to the approval of the State Board of Education and allocation by it. However, not more than 235 students from all the nations shall be exempt each year. In the event the nation designated in Subsection (a)(2) of this section fails to have 35 students available and qualified for exemption within a reasonable time, additional students from other nations may be exempt, subject to the approval of the State Board of Education.

(c) Every applicant desiring the exemption shall furnish satisfactory evidence, certified by the proper authority of his native country, that he is a bona fide native-born citizen and resident of the country which certifies his application and that he is scholastically qualified for admission.

(d) The State Board of Education, after consultation with representatives of the governing boards of the institutions of higher education, shall formulate

and prescribe a plan governing the admission and distribution of all applicants desiring to qualify under the provisions of this section.

(e) No student shall be exempted under this section who is not a native-born citizen of the country certifying his qualifications and who has not lived in one of the nations of this hemisphere for a period of at least five years. No member of the Communist Party and no student from Cuba shall be eligible for benefits under this section.

[Acts 1971, 62nd Leg., p. 3121, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 54.208. Firemen Enrolled in Fire Science Courses**

The governing boards of the state institutions of collegiate rank supported in whole or in part by public funds shall exempt from the payment of tuition and laboratory fees any person who is employed as a fireman by any political subdivision of the state and who enrolls in a course or courses offered as part of a fire science curriculum. The exemption provided does not apply to deposits which may be required in the nature of security for the return or proper care of property loaned for the use of students.

[Acts 1971, 62nd Leg., p. 3345, ch. 1024, art. 2, § 16, eff. Sept. 1, 1971.]

**§ 54.209. Children of Prisoners of War or Persons Missing in Action**

(a) In this section:

(1) "Dependent child" means a person under 21 years of age, or a person under 25 years of age who receives the majority of his support from his parent or parents.

(2) "Tuition and fees" includes tuition, service fees, lab fees, building use fees, and all other fees except room, board, or clothing fees, or deposits in the nature of security for the return or proper care of property.

(b) The governing body of each institution of higher education, on presentation of satisfactory evidence, shall exempt from the payment of tuition and fees the dependent child of any person who is a domiciliary of Texas on active duty as a member of the armed forces of the United States, and who at the time of the registration is classified by the Department of Defense as a prisoner of war or as missing in action.

[Acts 1971, 62nd Leg., p. 3356, ch. 1024, art. 2, § 33, eff. Sept. 1, 1971.]

[Sections 54.210 to 54.500 reserved for expansion]

SUBCHAPTER E. OTHER FEES AND DEPOSITS

**§ 54.501. Laboratory Fees**

An institution of higher education may make and collect a laboratory charge in an amount sufficient to cover in general the cost of laboratory materials and supplies used by a student. The laboratory charge shall be not less than \$2 nor more than \$8 for any one semester or summer term for any student in any one laboratory course, but shall not exceed the cost of actual materials and supplies used by the student.

[Acts 1971, 62nd Leg., p. 3122, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 54.502. General Property Deposits

An institution of higher education may collect a reasonable deposit not to exceed \$10 from each student to insure the institution against losses, damages, and breakage in libraries and laboratories. The deposit shall be returned on the withdrawal or graduation of a student, less any loss, damage, or breakage caused by the student. The medical and dental units of The University of Texas System shall collect a breakage or loss deposit no greater than \$30.

[Acts 1971, 62nd Leg., p. 3122, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 54.503. Student Services Fees

(a) For the purposes of this section, "student services" means textbook rentals, recreational activities, health and hospital services, automobile parking privileges, intramural and intercollegiate athletics, artists and lecture series, cultural entertainment series, debating and oratorical activities, student publications, student government, and any other student activities and services specifically authorized and approved by the appropriate governing board.

(b) The governing board of an institution of higher education may charge and collect from students registered at the institution fees to cover the cost of student services which the board deems necessary or desirable in carrying out the educational functions of the institution. The fee or fees may be either voluntary or compulsory as determined by the governing board. The total of all compulsory student services fees collected from a student for any one semester or summer session shall not exceed \$30. All compulsory student services fees charged and collected under this section by the governing board of an institution of higher education, other than a public junior college, shall be assessed in proportion to the number of semester credit hours for which a student registers. No fee for parking services or facilities may be levied on a student unless the student desires to use the parking facilities provided.

(c) The governing board may fix and collect a reasonable fee or fees for the enforcement and administration of parking or traffic regulations approved by the board for the institution.

(d) The provisions of this section do not affect the building use fees or other special fees authorized by the legislature for any institution for the purpose of financing revenue bond issues.

(e) All money collected as student services fees shall be reserved and accounted for in an account or accounts kept separate and apart from educational and general funds of the institution and shall be used only for the support of student services. All the money shall be placed in a depository bank or banks designated by the governing board and shall be secured as required by law. Each year the governing board shall approve for the institution a separate budget for student activities and services financed by fees authorized in this section. The budget shall show the fees to be assessed, the purpose or functions to be financed, the estimated income to be derived, and the proposed expenditures to be made. Copies of the budgets shall be filed annually with the coordinating board, the governor, the legislative budget board, the state auditor, and the state library.

(f) The governing board may waive all or part of any compulsory fee or fees authorized by this section in the case of any student for whom the payment of the fee would cause an undue financial hardship, provided the number of the students does not exceed 10 percent of the total enrollment. The board may limit accordingly the participation of a student in the activities financed by the fee so waived.

[Acts 1971, 62nd Leg., p. 3123, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1759, ch. 641, § 2, eff. Aug. 27, 1973.]

## CHAPTER 55. FINANCING PERMANENT IMPROVEMENTS

### SUBCHAPTER A. GENERAL PROVISIONS

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55.01. Definitions.

### SUBCHAPTER B. REVENUE BONDS AND FACILITIES

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- 55.12. Contracts for Joint Construction.
- 55.13. Authority to Issue Revenue Bonds.
- 55.14. Terms and Conditions.
- 55.15. Disposition of Bond Proceeds.
- 55.16. Rentals, Rates, Charges, and Fees.
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- 55.18. Bonds not Obligations of the State.
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### SUBCHAPTER C. REFUNDING CONSTITUTIONAL BONDS AND NOTES

55.41. Refunding Bonds.

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 55.01. Definitions

In this chapter:

(1) "Institution of higher education" or "institution" has the meaning assigned to it by Section 61.003(7) of this code, except that "public junior college" is excluded.

(2) "Governing board" or "board" means the board having management and control of an institution of higher education.

[Acts 1971, 62nd Leg., p. 3124, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 55.02 to 55.10 reserved for expansion]

### SUBCHAPTER B. REVENUE BONDS AND FACILITIES

#### § 55.11. General Authority

Each board is authorized to acquire, purchase, construct, improve, enlarge, equip, operate, and/or maintain any property, buildings, structures, activities, services, operations, or other facilities, for and

on behalf of its institution or institutions, or any branch or branches thereof.

[Acts 1971, 62nd Leg., p. 3125, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 55.12. Contracts for Joint Construction

Each board may enter into contracts with municipalities or school districts for the joint construction of museums, libraries, or other buildings.

[Acts 1971, 62nd Leg., p. 3125, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 55.13. Authority to Issue Revenue Bonds

For the purpose of providing funds to acquire, purchase, construct, improve, enlarge, and/or equip any property, buildings, structures, activities, services, operations, or other facilities, for and on behalf of its institution or institutions, or any branch or branches thereof, each board may issue its revenue bonds from time to time and in one or more issue or series, to be payable from and secured by liens on and pledges of all or any part of any of the revenues, income, or receipts of the board and its institution or institutions, or any branch or branches thereof, including, without limitation, any rentals, rates, charges, fees, or other resources, in the manner provided by this subchapter.

[Acts 1971, 62nd Leg., p. 3125, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 55.14. Terms and Conditions

(a) The bonds may be issued to mature serially or otherwise within not to exceed 50 years from their date, and each board may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under any terms or conditions that may be set forth in the resolution authorizing the issuance of the bonds.

(b) The bonds, and any interest coupons appertaining thereto, are and shall constitute negotiable instruments within the meaning and for all purposes of the Texas Uniform Commercial Code (provided that the bonds may be issued registrable as to principal alone or as to both principal and interest), and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and may be sold in such manner, at such price, and under such terms, and said bonds shall bear interest at such rates, all as shall be determined and provided by the board in the resolution authorizing the issuance of the bonds.

[Acts 1971, 62nd Leg., p. 3125, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 55.15. Disposition of Bond Proceeds

Proceeds from the sale of the bonds may be used for paying interest on the bonds during the period of the acquisition or construction of any facilities to be provided through the issuance of the bonds, and for providing a reserve for the payment of the principal of and interest on the bonds, and such proceeds may be placed on time deposit or invested, until needed, to the extent, and in the manner provided, in the bond resolution.

[Acts 1971, 62nd Leg., p. 3125, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 55.16. Rentals, Rates, Charges, and Fees

Each board shall be authorized to fix and collect rentals, rates, charges, and/or fees from students and others for the occupancy, services, use, and/or availability of all or any of its property, buildings, structures, activities, operations, or other facilities, in such amounts and in such manner as may be determined by the board; provided, however, that all student use fees shall be fixed and collected in proportion to the number of semester credit hours for which a student registers, and the board may waive all or any part of any such student use fees in the case of any student for whom the payment of such student use fee would cause an undue economic hardship, except that the number of such students for whom such waivers are granted shall not exceed 5% of the total enrollment; but further provided that no student use fees heretofore pledged to the payment of presently outstanding revenue bonds issued by a board shall ever be fixed and collected in a way that would impair any pledge or covenant made by the board with respect to such bonds.

[Acts 1971, 62nd Leg., p. 3126, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1759, ch. 641, § 1, eff. Aug. 27, 1973.]

#### § 55.17. Pledges; Parietal Rules; Types of Fees; Additional Pledge of Resources; Acquisition, etc. of Property; Revenue Bonds

(a) Each board may pledge all or any part of its revenues, income, or receipts from such rentals, rates, charges, and/or fees, or other resources to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged rentals, rates, charges, and/or fees shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds and, to the extent required by the resolution authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds and for the payment of operation, maintenance, and other expenses in connection with the aforesaid property, buildings, structures, activities, services, operations, or other facilities.

(b) Each board may establish and enforce parietal rules for students and others, and enter into agreements regarding occupancy, use, and availability of facilities, and the amounts and collection of pledged revenues, income, receipts, rentals, rates, charges, fees, or other resources, that will assure making all the required payments and deposits.

(c) Fees for the use by or availability to the students of all or any property, buildings, structures, activities, services, operations, or other facilities, may be pledged to the payment of the bonds, and shall be fixed and collected from all or any designated part of the students enrolled in the institution or institutions, or any branch or branches thereof, in the amounts and in the manner as determined and provided by the board in the resolution authorizing the issuance of the bonds; and said fees may be collected in the full amounts required or permitted herein, without regard to actual use, availability, or existence of any facility, commencing at any time designated by the board. Said fees may be fixed and collected for the use or availability of any spe-

cifically described property, buildings, structures, activities, services, operations, or other facilities; or said fees may be fixed and collected as general fees for the general use or availability of the institution or institutions, or any branch or branches thereof. Such specific and/or general fees may be fixed and collected, and pledged to the payment of any issue or series of bonds issued by the board, in the full amounts required or permitted herein, in addition to, and regardless of the existence of, any other specific or general fees at the institution or institutions, or any branch or branches thereof; provided that each board may restrict its power to pledge such additional specific or general fees in any manner that may be provided in any resolution authorizing the issuance of bonds, and provided that no such additional specific fees shall be pledged if prohibited by any resolution which authorized the issuance of any then outstanding bonds.

(d) Additionally, each board may pledge irrevocably to the payment of the bonds, out of the tuition charges required or permitted by law to be imposed at its institution or institutions, or any branch or branches thereof, an amount not exceeding \$5 from each enrolled student for each regular semester and \$2.50 from each enrolled student for each summer term. Each board also may pledge to the payment of the bonds all or any part of any grant, donation, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise. A board also may pledge to the payment of the bonds all or any part of any revenues, income, receipts, or other resources of said board, including, without limitation, student charges, to the extent that such revenues, income, receipts, or other resources are permitted to be pledged to the payment of revenue bonds authorized to be issued by the board by any other law. Further, in issuing bonds pursuant to this subchapter, each board additionally may pledge to the payment of outstanding bonds, issued pursuant to any other law, all or any part of the revenues, income, receipts, or resources of the board authorized to be pledged to the payment of bonds issued pursuant to this subchapter.

(e) (1) The board of regents of Texas Tech University, acting separately and independently for and on behalf of Texas Tech University and separately and independently for and on behalf of the Texas Tech University School of Medicine at Lubbock, is hereby granted full and final authority and responsibility to acquire, purchase, construct, improve, enlarge, and/or equip property, buildings, structures, and/or facilities for the Texas Tech University School of Medicine at Lubbock.

(2) The board of regents of Texas Tech University, acting separately and independently for and on behalf of Texas Tech University and separately and independently for and on behalf of the Texas Tech University School of Medicine at Lubbock, may pledge irrevocably to the payment of its revenue bonds all or any part of the aggregate amount of student tuition charges required or authorized by law to be imposed on students enrolled at Texas Tech University and/or at the Texas Tech University School of Medicine at Lubbock; and the amount of any pledge so made shall never be reduced or abrogated while such bonds are outstanding; provid-

ed, however, that such tuition charges shall not be pledged pursuant to the authority granted by this Subsection (e)(2) except to the payment of bonds issued in an aggregate principal amount of not to exceed \$35 million for the purpose of providing funds to acquire, purchase, construct, improve, enlarge, and/or equip property, buildings, structures, and facilities for the Texas Tech University School of Medicine at Lubbock.

(f) (1) The board of regents of The University of Texas System is hereby granted full and final authority and responsibility to acquire, purchase, construct, improve, enlarge, and/or equip property, buildings, structures, and/or facilities for The University of Texas at Dallas, The University of Texas of the Permian Basin, The University of Texas at San Antonio, The University of Texas Medical School at Houston, The University of Texas Dental School at San Antonio, The University of Texas (Undergraduate) Nursing School at El Paso, and The University of Texas (Clinical) Nursing School at San Antonio.

(2) The board of regents of The University of Texas System may pledge irrevocably to the payment of its revenue bonds all or any part of the aggregate amount of student tuition charges required or authorized by law to be imposed on students enrolled at each and every institution, branch, and school operated by or under the jurisdiction of said board of regents of The University of Texas System; and the amount of any pledge so made shall never be reduced or abrogated while such bonds are outstanding; provided, however, that such tuition charges shall not be pledged pursuant to the authority granted by this Subsection (f)(2) except to the payment of bonds issued in an aggregate principal amount of not to exceed \$150 million for the purpose of providing funds to acquire, purchase, construct, improve, enlarge, and/or equip property, buildings, structures, and facilities for The University of Texas at Dallas, The University of Texas of the Permian Basin, The University of Texas at San Antonio, The University of Texas Medical School at Houston, The University of Texas Dental School at San Antonio, The University of Texas (Undergraduate) Nursing School at El Paso, and The University of Texas (Clinical) Nursing School at San Antonio.

(g) Subsections (a) through (f) of this section are cumulative of all other laws on the subject, but they shall be wholly sufficient authority for the issuance of the bonds and the performance of the acts and procedures, and the exercise of the powers granted and authorized thereby, regardless of any restrictions or limitations contained in any other laws; and when any bonds are being issued or any acts or procedures are being undertaken, or any powers being exercised pursuant to those subsections, then to the extent of any conflict or inconsistency between any provisions of those subsections, and any provision of any other law, the provisions of those subsections shall prevail and control.

[Acts 1971, 62nd Leg., p. 3127, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3335, ch. 1024, art. 2, § 1, eff. Sept. 1, 1971.]

**§ 55.171. Specific Institutions**

(a) The board of regents of the University of Houston may acquire, purchase, construct, improve, enlarge, and equip property, buildings, structures, and facilities for the University of Houston at Clear Lake City, and for these purposes may issue revenue bonds pursuant to this subchapter. The board may pledge irrevocably to the payment of these revenue bonds all or any part of the aggregate amount of student tuition charges required or authorized by law to be imposed on students enrolled at the University of Houston or the University of Houston at Clear Lake City, or both; and the amount of any pledge so made shall never be reduced or abrogated while the bonds are outstanding. However, the tuition charges shall not be pledged pursuant to the authority granted by this subsection except to the payment of bonds issued in an aggregate principal amount not to exceed \$40 million for the purpose of providing funds to acquire, purchase, construct, improve, enlarge, and equip property, buildings, structures, and facilities for the University of Houston at Clear Lake City.

(b) The board of directors of the Texas A & M University System may acquire, purchase, construct, improve, enlarge, and equip property, buildings, structures, and facilities for the Texas Maritime Academy and Moody College of Marine Sciences and Maritime Resources, and for these purposes may issue revenue bonds pursuant to this subchapter. The board may pledge irrevocably to the payment of these revenue bonds all or any part of the aggregate amount of student tuition charges required or authorized by law to be imposed on students enrolled at Texas A & M University and the Texas Maritime Academy and Moody College of Marine Sciences and Maritime Resources; and the amount of any pledge so made shall never be reduced or abrogated while the bonds are outstanding. However, the tuition charges shall not be pledged pursuant to the authority granted by this subsection except to the payment of bonds issued in an aggregate principal amount not to exceed \$7.5 million for the purpose of providing funds to acquire, purchase, construct, improve, enlarge, and equip property, buildings, structures, and facilities for the Texas Maritime Academy and Moody College of Marine Sciences and Maritime Resources.

(c) Tuition revenue of Prairie View A & M College and Tarleton State College is specifically exempted from being pledged under the provisions of this bill.

(d) It is provided, however, that no bonds shall be issued hereunder and no tuition shall be pledged thereto unless and until the specific terms and provisions of said bonds and pledge have been first approved by the Coordinating Board, Texas College and University System, in accordance with rules and regulations regarding that subject adopted, published and heard in accordance with Section 61.027 of this code.

[Acts 1973, 63rd Leg., p. 345, ch. 145, § 1, eff. Aug. 27, 1973.]

**§ 55.172. Pan American University**

The board of regents of Pan American University may construct and equip academic buildings, structures and facilities for Pan American University, following approval for such construction by the Co-

ordinating Board, Texas College and University System, and for these purposes may issue revenue bonds pursuant to this subchapter. The board may pledge irrevocably to the payment of these revenue bonds all or any part of the aggregate amount of student tuition charges required or authorized by law to be imposed on students enrolled at Pan American University; and the amount of any pledge so made shall never be reduced or abrogated while the bonds are outstanding. However, the tuition charges shall not be pledged pursuant to the authority granted by this subsection except to the payment of bonds issued in an aggregate principal amount not to exceed \$10 million for the purpose of providing funds to construct and equip academic buildings, structures, and facilities for Pan American University.

It is provided, however, that no bonds shall be issued hereunder and no tuition shall be pledged thereto unless and until the specific terms and provisions of said bonds and pledge have been first approved by the Coordinating Board, Texas College and University System, in accordance with rules and regulations regarding that subject adopted, published and heard in accordance with Section 61.027 of this code.

[Acts 1973, 63rd Leg., p. 488, ch. 212, § 1, eff. Aug. 27, 1973.]

**§ 55.18. Bonds not Obligations of the State**

Bonds issued by a board are payable solely from the revenues, income, receipts, or other resources of the board, as provided in this subchapter, and such bonds shall never be an obligation of the State of Texas.

[Acts 1971, 62nd Leg., p. 3127, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 55.19. Refunding Bonds**

Any bonds or notes at any time issued by a board may be refunded or otherwise refinanced by the issuance by the board of refunding bonds for such purpose, under such terms, conditions, and details as may be determined by resolution of the board. All pertinent and appropriate provisions of this subchapter shall be applicable to such refunding bonds, and they shall be issued in the manner provided herein for other bonds authorized under this subchapter; provided that such refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest, and redemption premium, if any, of bonds or notes to be funded or refunded, at maturity or on any redemption date. Also, such refunding bonds may be issued to be exchanged for the bonds or notes being refunded thereby. In the latter case, the Comptroller of Public Accounts of the State of Texas shall register the refunding bonds and deliver the same to the holder or holders of the bonds or notes being refunded thereby, in accordance with the provisions of the resolution authorizing the refunding bonds; and any such exchange may be made in one delivery, or in several installment deliveries. Bonds issued at any time by a board also may be refunded in the manner provided by any other applicable law.

[Acts 1971, 62nd Leg., p. 3127, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 55.20. Approval and Registration of Bonds**

All bonds issued by any board, and the appropriate proceedings authorizing their issuance, shall be sub-

mitted to the Attorney General of the State of Texas for examination. If he finds that such bonds have been authorized in accordance with law he shall approve them, and thereupon they shall be registered by the comptroller; and after such approval and registration such bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

[Acts 1971, 62nd Leg., p. 3127, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 55.21. Bonds are Authorized Investments and Security for Deposits

All bonds issued by any board are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the State of Texas, and for all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and for all other kinds and types of districts, public agencies, and bodies politic. Said bonds also shall be eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of said bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

[Acts 1971, 62nd Leg., p. 3128, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 55.22. Validation of Bonds and Proceedings

All revenue bonds heretofore approved by the attorney general and registered by the comptroller, which were issued, sold, and delivered by any board, and which are payable from or secured by a pledge of any revenues, income, receipts, or other resources of such board, are hereby validated in all respects, together with all proceedings authorizing the issuance thereof, and said bonds and proceedings are and shall be valid and binding obligations in accordance with their terms and conditions for all purposes, as though they had been duly and legally issued and authorized originally.

[Acts 1971, 62nd Leg., p. 3128, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 55.23. Cumulative Effect of Subchapter

This subchapter shall be cumulative of all other law on the subject, but this subchapter shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized hereby, without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds are being issued under this subchapter, then to the extent of any conflict or inconsistency between any provisions of this subchapter and any provision of any other law, the provisions of this subchapter shall prevail and control; provided, however, that any board shall have the right to use the provisions of any other laws, not in conflict with the provisions hereof, to the extent convenient or necessary to carry out any

power or authority, express or implied, granted by this subchapter.

[Acts 1971, 62nd Leg., p. 3128, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 55.24. Pledges Under Previous Laws to Remain in Effect

Where any revenues, income, receipts, or other resources of any board have been pledged to the payment of principal of and interest on any bonds or notes issued and delivered pursuant to any other law, the repeal of such law by virtue of the enactment of Title 3 of this code shall not affect any such pledge or any covenants with respect to such bonds or notes, or any bonds issued to refund same, and all such pledges and covenants shall remain in full force and effect in accordance with the terms and provisions thereof.

[Acts 1971, 62nd Leg., p. 3128, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 55.25 to 55.40 reserved for expansion]

### SUBCHAPTER C. REFUNDING CONSTITUTIONAL BONDS AND NOTES

#### § 55.41. Refunding Bonds

The governing board of any institution which has heretofore issued or which hereafter issues bonds or notes pursuant to the authority of Article VII, Section 17, of the Texas Constitution, as amended, may issue refunding bonds to refinance or refund any or all of the bonds or notes by the issuance of its refunding bonds; and the governing board may pledge all or any part of the funds allotted pursuant to that section of the constitution to any institution governed by the board to secure the refunding bonds issued pursuant to this section. The refunding bonds shall be issued in the amounts, and bear interest at the rates, determined by the governing board, provided that such interest rates shall not exceed any constitutional limit; and shall mature serially or otherwise in not more than 10 years. The refunding bonds shall be examined and approved by the attorney general, and when so approved shall be incontestable, and all bonds shall be registered by the comptroller of public accounts. The refunding bonds may be exchanged for bonds or notes issued pursuant to the section of the constitution or may be sold and the proceeds used to call and redeem the outstanding bonds and notes.

[Acts 1971, 62nd Leg., p. 3129, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### SUBTITLE B. STATE COORDINATION OF HIGHER EDUCATION

#### CHAPTER 61. COORDINATING BOARD, TEXAS COLLEGE AND UNIVERSITY SYSTEM

##### SUBCHAPTER A. GENERAL PROVISIONS

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SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- Section  
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 61.022. Members of Board; Appointment; Terms of Office.  
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- 61.091. Definitions.  
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- 61.201. Definitions.  
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SUBCHAPTER A. GENERAL PROVISIONS

§ 61.001. Short Title

This chapter may be cited as the Higher Education Coordinating Act of 1965.

[Acts 1971, 62nd Leg., p. 3131, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 61.002. Purpose

The purpose of this chapter is to establish in the field of public higher education in the State of Texas an agency to provide leadership and coordination for the Texas higher education system, institutions, and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants.

[Acts 1971, 62nd Leg., p. 3131, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 61.003. Definitions

In this chapter:

(1) "Board" means the Coordinating Board, Texas College and University System.

(2) "Public junior college" means any junior college certified as required by law, including but not limited to the following as long as they retain certification: Alvin Junior College; Amarillo Junior College; Blinn Junior College, Brenham; Cisco Junior College; Clarendon Junior College; Cooke County Junior College, Gainesville; Del Mar Junior College, Corpus Christi; Frank Phillips Junior College, Borger; Grayson County Junior College, Denison; Henderson County Junior College, Athens; Hill County Junior College, Hillsboro; Howard County Junior College, Big Spring; Kilgore Junior College; Laredo Junior College; Lee Junior College, Baytown; Navarro County Junior College, Corsicana; Odessa Junior College; Panola County Junior College, Carthage; Paris Junior College; Ranger Junior College; San Antonio Junior College; San Jacinto Junior College, Pasadena; South Plains Junior College, Levelland; Southwest Texas Joint Counties Junior College, Uvalde; Temple Junior College; Texarkana Junior College; Texas Southmost College, Brownsville; Tyler Junior College; Victoria Junior College; Weatherford Junior College; and Wharton County Junior College, Wharton.

(3) "General academic teaching institution" means The University of Texas at Austin; The University of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A & M University, Main University; The University of Texas at Arlington; Tarleton State College; Prairie View Agricultural and Mechanical College; Texas Maritime Academy; Texas Tech University; North Texas State University; Lamar University; Texas A & I University; Texas Woman's University; Texas Southern University; Midwestern University; University of Houston; Pan American University; East Texas State University; Sam Houston State University; Southwest Texas State University; West Texas State University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; Tyler State College; and any other college, university, or institution so classified as provided in this chapter or created and so classified, expressly or impliedly, by law.

(4) "Public senior college or university" means a general academic teaching institution as defined above.

(5) "Medical and dental unit" means The University of Texas Medical Branch at Galveston; Southwestern Medical School; The University of Texas Medical School at San Antonio; The University of Texas Dental Branch at Houston; The University of Texas M. D. Anderson Hospital and Tumor Institute at Houston; The University of Texas Graduate School of Biomedical Sciences at Houston; The University of Texas Dental School at San Antonio; The University of Texas Medical School at Houston; the component institutions of The University of Texas Nursing School (Systemwide); and The University of Texas School of Public Health at Houston; and such other medical or dental schools as may be established by statute or as provided in this chapter.

(6) "Other agency of higher education" means The University of Texas System, System Administration; Texas Western University Museum; Texas A & M University System, Administrative and General Offices; Texas Agricultural Experiment Station; Texas Agricultural Extension Service; Rodent and Predatory Animal Control Service (a part of the Texas Agricultural Extension Service); Texas Engineering Experiment Station (including the Texas Transportation Institute); Texas Engineering Extension Service; Texas Forest Service; Texas Tech University Museum; Sam Houston Memorial Museum; Panhandle-Plains Historical Museum; Cotton Research Committee of Texas; Water Resources Institute of Texas; and any other unit, division, institution, or agency which shall be so designated by statute or which may be established to operate as a component part of any public senior college or university, or which may be so classified as provided in this chapter.

(7) "Institution of higher education" means any public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in this section.

(8) "Governing board" means the body charged with policy direction of any public junior college, public senior college or university, medical or dental unit, or other agency of higher education, including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards insofar as they are charged with policy direction of a public junior college.

(9) "University system" means the association of one or more public senior colleges or universities, medical or dental units, or other agencies of higher education under the policy direction of a single governing board.

(10) "Degree program" means any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle him to a degree from a public senior college or university or a medical or dental unit.

(11) "Certificate program" means a grouping of subject-matter courses which, when satisfactorily completed by a student, will entitle him to

a certificate, associate degree from a junior college, or documentary evidence, other than a degree, of completion of a course of study from an institution of higher education, provided that programs approved by or subject to the approval of the State Board of Vocational Education are excluded from this definition.

(12) "Recognized accrediting agency" means the Southern Association of Colleges and Schools and any other association or organization so designated by the board.

(13) "Educational and general buildings and facilities" means buildings and facilities essential to or commonly associated with teaching, research, or the preservation of knowledge. Excluded are auxiliary enterprise buildings and facilities, including but not limited to dormitories, cafeterias, student union buildings, stadiums, and alumni centers.

[Acts 1971, 62nd Leg., p. 3131, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1657, ch. 601, § 3, eff. June 15, 1973.]

[Sections 61.004 to 61.020 reserved for expansion]

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

##### § 61.021. Establishment of Coordinating Board: Functions

The Coordinating Board, Texas College and University System, is an agency of the state. It shall have its office in Austin. It shall perform only the functions which are enumerated in this chapter and which the legislature may assign to it. Functions vested in the governing boards of the respective institutions of higher education not specifically delegated to the coordinating board shall be performed by the governing boards. The coordinating functions and other duties delegated to the board in this chapter shall apply to all public institutions of higher education.

[Acts 1971, 62nd Leg., p. 3133, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 61.022. Members of Board; Appointment; Terms of Office

The board shall consist of 18 members appointed by the governor so as to provide representation from all areas of the state with the advice and consent of the senate, and as the constitution provides. Of the initial appointments to the board six shall be for terms which shall expire August 31, 1967, six for terms which shall expire August 31, 1969, and six for terms which shall expire on August 31, 1971, or at such time as their successors are appointed and have qualified. Thereafter, the governor shall appoint members for terms of six years. Members of the Texas Commission on Higher Education are eligible for appointment to the board. No member may be employed professionally for remuneration in the field of education during his term of office.

[Acts 1971, 62nd Leg., p. 3133, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 61.023. Board Officers

The governor shall designate a chairman and vice chairman of the board. The board shall appoint a secretary of the board whose duties may be prescribed by law and by the board.

[Acts 1971, 62nd Leg., p. 3133, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.024. Compensation and Expenses of Members**

Members of the board shall serve without pay but shall be reimbursed for their actual expenses incurred in attending meetings of the board or in attending to other work of the board when that other work is approved by the chairman of the board.

[Acts 1971, 62nd Leg., p. 3134, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.025. Quorum; Meetings; Agenda**

A majority of the membership of the board constitutes a quorum. The board shall hold regular quarterly meetings in the city of Austin, and other meetings at places and times scheduled by it in formal sessions and called by the chairman. An agenda for the meetings in sufficient detail to indicate the items on which final action is contemplated shall be mailed to the chairman of each governing board and to the chief administrative officer of each state institution of higher education at least 30 days prior to the meeting.

[Acts 1971, 62nd Leg., p. 3134, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.026. Committees and Advisory Committees**

The chairman may appoint committees from the board's membership as he or the board may find necessary from time to time. The board may appoint advisory committees from outside its membership as it may deem necessary.

[Acts 1971, 62nd Leg., p. 3134, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.027. Rules of Procedures; Hearings; Notice; Minutes**

The board shall adopt and publish rules and regulations in accordance with and under the conditions applied to other agencies by Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes), to effectuate the provisions of this chapter. The board shall grant any institution of higher education a hearing upon request and after reasonable notice. Minutes of all meetings shall be available in the board's office for public inspection.

[Acts 1971, 62nd Leg., p. 3134, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.028. Commissioner of Higher Education; Personnel; Consultants**

The board shall appoint a commissioner of higher education, who shall select and supervise the board's staff and perform other duties delegated to him by the board. The commissioner shall serve at the pleasure of the board. The commissioner shall be a person of high professional qualifications having a thorough background by training and experience in the fields of higher education and administration and shall possess such other qualifications as the board may prescribe. The commissioner shall employ professional and clerical personnel and consultants as necessary to assist the board and the commissioner in performing the duties assigned by this chapter. The number of employees, their compensation and the other expenditures of the board shall be

within the limits and in compliance with the appropriation made for those purposes by the legislature and within budgets that shall be approved from time to time by the board.

[Acts 1971, 62nd Leg., p. 3134, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 61.029 to 61.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

**§ 61.051. Coordination of Institutions of Public Higher Education**

(a) The board shall represent the highest authority in the state in matters of public higher education.

(b) The board shall define a junior college, a senior college, a university, and a university system; provided, that nothing in this section may be construed to authorize the board to establish or create any university system or to alter any university system presently existing by virtue of statute or the constitution of this state.

(c) The board shall develop and publish criteria to be used as a basis for determining the need for changing the classification of any public institution of higher education and for determining the need for new public junior colleges, public senior colleges, universities, or university systems.

(d) The board shall classify and prescribe the role and scope for each public institution of higher education in Texas, shall make such changes in classification or role and scope of each institution as it deems necessary, and shall hear applications from the institutions for changes in classification or role and scope.

(e) The board shall review periodically all degree and certificate programs offered by the institutions of higher education to assure that they meet the present and future needs of the state. The board shall also order the initiation, consolidation, or elimination of degree or certificate programs where that action is in the best interests of the institutions themselves or the general requirements of the State of Texas, or when that action offers hope of achieving excellence by a concentration of available resources. No new department, school, degree program, or certificate program may be added at any institution of higher education after September 1, 1965, except with specific prior approval of the board.

(f) The board shall encourage and develop in cooperation with the State Board of Vocational Education new certificate programs in technical and vocational education in institutions of higher education as the needs of technology and industry may demand and shall recommend the elimination of certificate programs for which a need no longer exists.

(g) The board shall develop and promulgate a basic core of general academic courses which, when offered at a junior college during the first two years of collegiate study, shall be freely transferable among all public institutions of higher education in Texas which are members of recognized accrediting agencies on the same basis as if the work had been taken at the receiving institution.

(h) The board shall make continuing studies of the needs of the state for research and for extension and public services and designate the institutions of higher education to perform research, public service, and extension programs, including limitation of extension programs for credit to specific geographic areas. The board shall also maintain an inventory of all institutional and programmatic research, extension, and public service activities being conducted by the various institutions, whether state-financed or not. Once a year, on dates prescribed by the board, each institution of higher education shall report to the board all research conducted at that institution during the last preceding year. All reports required by this subsection shall be made subject to the limitations imposed by security regulations governing defense contracts for research.

(i) The board shall develop and promote one or more degree or certificate programs to the highest attainable quality at each institution of higher education for which the particular institution is uniquely suited and for which there is marked promise of excellence.

[Acts 1971, 62nd Leg., p. 3135, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.052. List of Courses: Annual Submission to Board**

Each governing board shall submit to the board once each year on dates designated by the board a comprehensive list by department, division, and school of all courses, together with a description of content, scope, and prerequisites of all these courses, that will be offered by each institution under the supervision of that governing board during the following academic year. The board may order the deletion or consolidation of any courses so submitted after giving due notice with reasons for that action and after providing a hearing if one is requested by the governing board involved.

[Acts 1971, 62nd Leg., p. 3136, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.053. Board Orders; Notice**

(a) Any order of the board affecting the classification, role and scope, and program of any institution of higher education may be entered only after:

(1) a written factual report and recommendations from the commissioner of higher education covering the matter to be acted on have been received by the board and distributed to the governing board and the administrative head of the affected institution;

(2) the question has been placed upon the agenda for a regularly-scheduled quarterly meeting; and

(3) the governing board of the affected institution has had an opportunity to be heard.

(b) Notice of the board's action shall be given in writing to the governing board concerned not later than four months preceding the fall term in which the change is to take effect.

[Acts 1971, 62nd Leg., p. 3136, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.054. Expenditures for Programs Disapproved by Board**

No funds appropriated to any institution of higher education may be expended for any program which

has been disapproved by the board, unless the program is subsequently specifically approved by the legislature.

[Acts 1971, 62nd Leg., p. 3136, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.055. Initiation of New Departments, Schools, and Programs**

No new department, school, or degree or certificate program approved by the board or its predecessor, the Texas Commission on Higher Education, may be initiated by any institution of higher education until the board has made a written finding that the department, school, or degree or certificate program is adequately financed by legislative appropriation, by funds allocated by the board, or by funds from other sources.

[Acts 1971, 62nd Leg., p. 3136, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.056. Review of Legislation Establishing Additional Institutions**

Any proposed statute which would establish an additional institution of higher education, except a public junior college, shall be submitted, either prior to introduction or by the standing committee considering the proposed statute, to the board for its opinion as to the state's need for the institution. The board shall report its findings to the governor and the legislature. A recommendation that an additional institution is needed shall require the favorable vote of at least two-thirds of the members of the board. A recommendation of the board shall not be considered a condition precedent to the introduction or passage of any proposed statute.

[Acts 1971, 62nd Leg., p. 3136, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.057. Promotion of Teaching Excellence**

To achieve excellence in the teaching of students at institutions and agencies of higher education, the board shall:

(1) develop and recommend:

(A) minimum faculty compensation plans, basic increment programs, and incentive salary increases;

(B) minimum standards for faculty appointment, advancement, promotion, and retirement;

(C) general policies for faculty teaching loads, and division of faculty time between teaching, research, administrative duties, and special assignments;

(D) faculty improvement programs, including a plan for sabbatical leaves, appropriate for the junior and senior colleges and universities, respectively; and

(E) minimum standards for academic freedom, academic responsibility, and tenure;

(2) pursue vigorously and continuously a goal of having all college and university academic classes taught by persons holding the minimum of an earned master's degree or its equivalent in academic training, creative work, or professional accomplishment;

(3) explore, promote, and coordinate the use of educational television among institutions of

higher education and encourage participation by public and private schools and private institutions of higher education in educational television;

(4) conduct, and encourage the institutions of higher education to conduct, research into new methods, materials, and techniques for improving the quality of instruction and for the maximum utilization of all available teaching techniques, devices, and resources, including but not limited to large classes, team teaching, programmed instruction, interlibrary exchanges, joint libraries, specially-designed facilities, visual aids, and other innovations that offer promise for superior teaching or for meeting the need for new faculty members to teach anticipated larger numbers of students; and

(5) assume initiative and leadership in providing through the institutions of higher education in the state those programs and offerings which will achieve the objectives set forth in Section 61.002 of this code.

[Acts 1971, 62nd Leg., p. 3137, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.058. Construction Funds and Development of Physical Plants**

To assure efficient use of construction funds and the orderly development of physical plants to accommodate projected college student enrollments, the board shall:

(1) determine formulas for space utilization in all educational and general buildings and facilities at institutions of higher education;

(2) devise and promulgate methods to assure maximum daily and year-round use of educational and general buildings and facilities, including but not limited to maximum scheduling of day and night classes and maximum summer school enrollment;

(3) consider plans for selective standards of admission when institutions of higher education approach capacity enrollment;

(4) require, and assist the public senior colleges and universities, medical and dental units, and other agencies of higher education in developing, long-range plans for campus development;

(5) endorse, or delay until the next succeeding session of the legislature has the opportunity to approve or disapprove, the proposed purchase of any real property by an institution of higher education, except a public junior college;

(6) develop and publish standards, rules, and regulations to guide the institutions and agencies of higher education in making application for the approval of new construction and major repair and rehabilitation of educational and general buildings and facilities; and

(7) approve or disapprove all new construction and repair and rehabilitation of educational and general buildings and facilities at institutions of higher education financed from any source other than ad valorem tax receipts of the public junior colleges, provided that:

(A) the board's consideration and determination shall be limited to the purpose for

which the new or remodeled buildings are to be used and their gross dimensions to assure conformity with approved space utilization standards and the institution's approved programs and role and scope;

(B) the requirement of approval for new construction financed from other than appropriated funds applies only to projects the total cost of which is in excess of \$100,000;

(C) the requirement of approval for major repair and rehabilitation of buildings and facilities applies only to projects the total cost of which is in excess of \$25,000; and

(D) the requirement of approval or disapproval by the board does not apply to construction, repair, or rehabilitation involving the use of constitutional funds which are authorized by Article VII, Section 11, 17, or 18, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 3137, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.059. Appropriations Recommendations**

(a) To finance a system of higher education and to secure an equitable distribution of state funds deemed to be available for higher education, the board shall perform the functions described in this section.

(b) The board shall devise, establish, and periodically review and revise formulas for the use of the governor and the Legislative Budget Board in making appropriations recommendations to the legislature. Not later than March 1 of every even-numbered calendar year, the board shall notify the governing boards and the chief administrative officers of the respective institutions of higher education and university systems, the governor, and the Legislative Budget Board of the formulas designated by the board to be used by the institutions in making appropriation requests for the next succeeding biennium and shall certify to the governor and the Legislative Budget Board that each institution has prepared its appropriation request in accordance with the designated formulas and in accordance with the uniform system of reporting provided in this chapter. The board shall furnish any other assistance to the governor and the Legislative Budget Board in the development of appropriations recommendations as either or both of them may request. However, nothing in this chapter shall prevent or prohibit the governor, the Legislative Budget Board, the board, or the governing board of any institution of higher education from requesting or recommending deviations from any applicable formula or formulas prescribed by the board and advancing reasons and arguments in support of them.

(c) The board shall recommend to the governor and the Legislative Budget Board supplemental contingent appropriations to provide for increases in enrollment at the institutions of higher education. Contingent appropriations may be made directly to the institutions or to the board, as the legislature may direct in each biennial appropriations act. In the event the contingent appropriation is made to the board, the funds shall be allocated and distributed by the board to the institutions as it may determine, subject only to such limitations or conditions as the legislature may prescribe.

(d) The board shall recommend to the governor and the Legislative Budget Board tuition policies for public junior colleges, public senior colleges and universities, medical and dental units, and other agencies of higher education and vocational and technical programs receiving support from state funds.

(e) The board shall distribute funds appropriated to the board for allocation for specified purposes under limitations prescribed by law and the rules and regulations of the board in conformity therewith, provided that no distribution or allocation may be made to any institution of higher education which has failed or refused to comply with any order of the board as long as that failure or refusal continues.

(f) The board shall make continuing studies on its own initiative or upon the request of the governor or the Legislative Budget Board of the financial needs of public higher education and all services and activities of the institutions of higher education and issue reports to the governor and the Legislative Budget Board that result from its studies.

[Acts 1971, 62nd Leg., p. 3138, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 61.060. Control of Public Junior Colleges

The board shall exercise, under the acts of the legislature, general control of the public junior colleges of this state, on and after September 1, 1965. All authority not vested by this chapter or other laws of the state in the board is reserved and retained locally in each respective public junior college district or the governing board of each public junior college as provided in the applicable laws.

[Acts 1971, 62nd Leg., p. 3139, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 61.061. Policies, Rules, and Regulations Respecting Junior Colleges

The board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon it by the legislature. The commissioner of higher education is responsible for carrying out these policies and enforcing these rules and regulations.

[Acts 1971, 62nd Leg., p. 3139, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 61.062. Powers Respecting Junior Colleges

(a) The board may authorize the creation of public junior college districts as provided in the applicable laws. In the exercise of this authority the board shall give particular attention to the need for a public junior college in the proposed district, and the ability of the district to provide adequate local financial support.

(b) The board may dissolve any public junior college district which has failed to establish and maintain a junior college in the district within three years from the date of its authorization.

(c) The board may adopt standards for the operation of public junior colleges and prescribe rules and regulations for them.

(d) The board may require of each public junior college whatever reports it deems necessary in accordance with its rules and regulations.

(e) The board may establish advisory commissions composed of representatives of public junior colleges

and other citizens of the state to provide advice and counsel to the board with respect to public junior colleges.

[Acts 1971, 62nd Leg., p. 3140, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 61.063. Listing and Certification of Junior Colleges

The commissioner of higher education shall file with the state auditor and the state comptroller on or before October 1 of each year a list of the public junior colleges in this state. The commissioner shall certify the names of those colleges that have complied with the standards, rules, and regulations prescribed by the board. Only those colleges which are so certified shall be eligible for and may receive any appropriation made by the legislature to public junior colleges.

[Acts 1971, 62nd Leg., p. 3140, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 61.0631. Teacher Training Programs for Teachers of Disadvantaged Students

(a) The board shall plan, initiate, and finance programs of teacher training for the teaching of educationally, economically, socially, and culturally disadvantaged students in the public junior colleges, to be provided at selected institutions in the state which prepare people to teach in the public junior colleges.

(b) The board shall sponsor and finance:

(1) summer institutes for junior college teachers on how to teach the disadvantaged student; and

(2) regional in-service training workshops in different parts of the state for those teachers currently teaching remedial-compensatory courses and programs for disadvantaged students.

(c) The board shall serve as a central clearing-house of information on remedial-compensatory education courses and programs for all public junior colleges in order to provide a statewide coordinated effort in the development of these courses and programs.

(d) The legislature shall appropriate funds to implement the provisions of this section.

[Acts 1973, 63rd Leg., p. 1738, ch. 630, § 1, eff. June 16, 1973.]

#### § 61.064. Cooperative Undertakings with Private Colleges and Universities

The board shall:

(1) enlist the cooperation of private colleges and universities in developing a statewide plan for the orderly growth of the Texas system of higher education;

(2) encourage cooperation between public and private institutions of higher education wherever possible and may enter into cooperative undertakings with those institutions on a shared-cost basis as permitted by law;

(3) consider the availability of degree and certificate programs in private institutions of higher education in determining programs for public institutions of higher education; and

(4) cooperate with these private institutions, within statutory and constitutional limitations, to achieve the purposes of this chapter.

[Acts 1971, 62nd Leg., p. 3140, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.065. Reporting; Accounting**

After consultation with the governor, the state auditor, and the Legislative Budget Board, the board shall prescribe a uniform system of reporting for institutions of higher education, including definitions of the elements of cost on the basis of which appropriations shall be made and financial records shall be maintained. Financial reports of the institutions of higher education shall classify accounts in accordance with the recommendation of the National Committee on the Preparation of a Manual on College and University Business Administration as set forth in Volume I of *College and University Business Administration* published by the American Council on Education with a copyright date of 1952, and subsequent published revisions, with such modifications as may be developed as provided by this chapter or as may be required to conform with specific provisions of the biennial appropriations acts of the legislature. The accounts of the institutions shall be maintained and audited in accordance with the approved reporting system.

[Acts 1971, 62nd Leg., p. 3140, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.066. Studies and Recommendations; Reports**

The board shall make studies and recommendations directed toward the achievement of excellence or toward improved effectiveness and efficiency in any phase of higher education in Texas and shall report on their studies and recommendations to the governor and the legislature. The officials of the institutions of higher education shall comply with requests for reports or information made by the board or the commissioner. To assure that the institutions of higher education timely file various reports with the appropriate agencies, the board shall receive and distribute the reports required by statute to be filed with the governor, the Legislative Budget Board, the state auditor, the state library, and any other state agency.

[Acts 1971, 62nd Leg., p. 3141, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.067. Contracts**

In achieving the goals outlined in this chapter and in performing the functions assigned to it, the board may contract with any other state governmental agency as authorized by law, with any agency of the United States, and with corporations and individuals. The board shall propose, foster, and encourage the use of interagency contracts among the institutions of higher education to reduce duplication and achieve better use of personnel and facilities.

[Acts 1971, 62nd Leg., p. 3141, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.068. Gifts, Grants, Donations**

The board may accept gifts, grants, or donations of personal property from any individual, group, association, or corporation, or the United States, subject to such limitations or conditions as may be provided by law. Gifts, grants, or donations of money shall be deposited in the state treasury and expended in accordance with the specific purpose for which given, under such conditions as may be imposed by the donor and as provided by law.

[Acts 1971, 62nd Leg., p. 3141, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.069. Board Report**

The board shall make a report of its activities to the governor annually and to the legislature not later than December 1 prior to the regular session of the legislature.

[Acts 1971, 62nd Leg., p. 3141, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.070. Duties of Central Education Agency not Affected**

None of the duties or functions assigned by statute to the central education agency, except those relating to public junior colleges, are affected by this chapter.

[Acts 1971, 62nd Leg., p. 3141, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 61.071. Contract with United States for New Medical School**

The board may negotiate and contract with the appropriate agency or agencies of the United States for the establishment, operation, and maintenance of a medical school to be located at or in connection with any Veterans Administration facility that may be made available for the purpose. In any such contract, the board shall designate one of the two university systems or another appropriate state-supported institution of higher education under whose governing board the medical school shall be operated.

[Acts 1971, 62nd Leg., p. 3362, ch. 1024, art. 2, § 43, eff. Sept. 1, 1971.]

[Sections 61.072 to 61.090 reserved for expansion]

SUBCHAPTER D. CONTRACTS WITH BAYLOR COLLEGE OF MEDICINE AND BAYLOR UNIVERSITY COLLEGE OF DENTISTRY

**§ 61.091. Definitions**

In this subchapter:

(1) "Bona fide Texas resident" means a person defined as a "resident student" in Subchapter B, Chapter 54 of this code,<sup>1</sup> and rules, regulations, and interpretations promulgated under that subchapter by the board or the Commission on Higher Education.

(2) "Established public medical schools" means The University of Texas Medical Branch and Southwestern Medical School.

(3) "Undergraduate medical student" means a person enrolled for a regular schedule of courses in pursuit of a Doctor of Medicine degree.

(4) "Scholastic year of disbursement" means the period of time commencing on September 1 of each calendar year and terminating on August 31 of the next succeeding calendar year. The first scholastic year of disbursement commences on September 1, 1970, and terminates on August 31, 1971.

(5) "Average annual state tax support per undergraduate medical student enrolled at the established public medical schools" means an

amount calculated by dividing the net general revenue appropriations to the established public medical schools for the fiscal year next preceding the scholastic year of disbursement by the total number of undergraduate medical students enrolled in those schools on October 15 of the fiscal year.

[Acts 1971, 62nd Leg., p. 3142, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup>Section 54.051 et seq.

#### § 61.092. Contracts with Baylor College of Medicine

The board may contract with Baylor College of Medicine for the administration, direction, and performance of all services and the provision, maintenance, operation, and repair of all buildings, facilities, structures, equipment, and materials necessary or proper to the education, training, preparation, or instruction of bona fide Texas resident undergraduate medical students. However, nothing in this subchapter may be construed to empower the board to limit, alter, modify, or in any other manner change or approve, or negotiate for changes in or approval of, the administration, direction, and performance of these services or the provision, maintenance, operation, and repair of buildings, facilities, structures, equipment, or materials.

[Acts 1971, 62nd Leg., p. 3142, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 61.093. Disbursements

(a) In the exercise of the authority described in Section 61.092 of this code, the board may disburse to Baylor College of Medicine, during each scholastic year of disbursement, an amount equal to the average annual state tax support per undergraduate medical student at the established public medical schools, multiplied by the number of bona fide Texas resident undergraduate medical students enrolled at Baylor College of Medicine. However, the board may never disburse an amount exceeding the amount appropriated by the legislature for this purpose.

(b) Subject to the limitations described in Subsection (a) of this section, the board may establish, by contract with Baylor College of Medicine, the method by which the disbursement shall be accomplished, and may prescribe reasonable rules and regulations necessary to ascertain the average annual state tax support per undergraduate medical student at the established public medical schools.

[Acts 1971, 62nd Leg., p. 3142, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 61.094. Contracts with Baylor University College of Dentistry

The board may contract with the Baylor University College of Dentistry, to the extent it is owned by a nonprofit corporation distinct from the Baptist Church, for the education, training, preparation, or instruction of bona fide Texas resident undergraduate dental students enrolled for a regular schedule of courses in pursuit of a Doctor of Dentistry degree, in the same manner as provided in this subchapter for medical students, including all powers with respect to medical students, and all powers with respect to the Board and the Baylor University College of Medicine granted in this subchapter. For the

purposes of this section, The University of Texas Dental Branch at Houston shall be used to calculate the average annual state tax support per undergraduate dental student.

[Acts 1971, 62nd Leg., p. 3143, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 61.095. Restrictions

The rights, powers, and authority granted in this subchapter shall not be subject to restriction, limitation, obligation, or requirement provided in Section 61.058 of this code or Articles 665 through 678m, inclusive, of Vernon's Texas Civil Statutes, notwithstanding any other provision in this subchapter.

[Acts 1971, 62nd Leg., p. 3143, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 61.096 to 61.200 reserved for expansion]

### SUBCHAPTER E. CONTRACTS WITH THE TEXAS COLLEGE OF OSTEOPATHIC MEDICINE

#### § 61.201. Definitions

In this subchapter, unless context otherwise requires:

(1) "Bona fide Texas resident" means a person defined as a "resident student" in Subchapter B, Chapter 54, of this code,<sup>1</sup> and rules, regulations, and interpretations promulgated thereunder by the coordinating board or the Commission on Higher Education.

(2) "Established public medical schools" means The University of Texas Medical Branch and Southwestern Medical School.

(3) "Undergraduate medical student" means a person enrolled for a regular schedule of courses in pursuit of a Doctor of Medicine degree or Doctor of Osteopathy degree.

(4) "Scholastic year of disbursement" means a period of time commencing on September 1 of each calendar year and terminating on August 31 of the next succeeding calendar year. The first scholastic year of disbursement shall commence on September 1, 1971, and shall terminate on August 31, 1972.

(5) "Average annual state support per undergraduate medical student enrolled at the established public medical schools" means an amount calculated by dividing the state appropriations for undergraduate medical education to the established public medical schools for the fiscal year next preceding the scholastic year of disbursement by the total number of undergraduate medical students enrolled in those schools on October 15 of said fiscal year.

[Acts 1971, 62nd Leg., p. 3338, ch. 1024, art. 2, § 6, eff. Sept. 1, 1971.]

<sup>1</sup>Section 54.051 et seq.

#### § 61.202. Contracts with Texas College of Osteopathic Medicine

So long as there is no public school of osteopathic medicine in this state, the coordinating board is hereby vested with the right, power, and authority to contract with Texas College of Osteopathic Medicine for the preparation or instruction of bona fide Texas resident undergraduate medical students as Doctors of Osteopathic Medicine.

[Acts 1971, 62nd Leg., p. 3339, ch. 1024, art. 2, § 6, eff. Sept. 1, 1971.]

**§ 61.203. Disbursements**

(a) In the exercise of the rights, powers, and authority described in Section 61.202 of this code, the Coordinating Board may disburse to Texas College of Osteopathic Medicine, during each scholastic year of disbursement, an amount equal to the average annual state support per undergraduate medical student at the established public medical schools, as certified pursuant to Section 61.201(5) of this code, multiplied by the number of bona fide Texas resident undergraduate medical students enrolled at Texas College of Osteopathic Medicine; provided, however, that the coordinating board shall never disburse an amount exceeding the amount appropriated by the legislature for this purpose. Expenditures by the Texas College of Osteopathic Medicine of any state funds received by it shall be limited to the payment of instructional costs, general administration and student services, faculty salaries, departmental operating expense, and library. Any payment paid in whole or in part from funds appropriated for this purpose shall conform to the practices and limitations common to established public medical schools in Texas and shall be set forth in writing annually by the board of regents of The University of Texas System in substantially the same form as applicable to such public medical schools by such board of regents, and made a part of each disbursement contract.

(b) Subject to the limitations described in this section, the coordinating board is hereby granted the right, power, and authority to establish, by contract, with Texas College of Osteopathic Medicine the method by which the above-described disbursement shall be accomplished, and may prescribe such reasonable rules and regulations as are necessary to carry out the provisions of this section including, but not limited to, a prior consultation on the annual budget and a post audit of expenditures in a manner acceptable to the state auditor.

[Acts 1971, 62nd Leg., p. 3339, ch. 1024, art. 2, § 6, eff. Sept. 1, 1971.]

**§ 61.204. Restrictions**

The rights, powers, and authority granted herein shall not be subject to restriction, limitation, obligation, or requirement provided in Section 61.058 of this code or Chapter 4, Title 20, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> notwithstanding any other provision hereof.

[Acts 1971, 62nd Leg., p. 3339, ch. 1024, art. 2, § 6, eff. Sept. 1, 1971.]

<sup>1</sup> Civil Statutes, Art. 665 et seq.

[Sections 61.205 to 61.220 reserved for expansion]

SUBCHAPTER F. TUITION EQUALIZATION GRANTS

*Acts 1971, 62nd Leg., p. 2529, ch. 828, effective August 30, 1971, classified as Civil Statutes, art. 2654h, was repealed by Acts 1973, 63rd Leg., p. 90, ch. 51, § 19, which by § 1 thereof incorporated the provisions of the 1971 Act into the Education Code by adding this Subchapter F, consisting of Sections 61.221 to 61.229.*

**§ 61.221. Tuition Equalization Grants Authorized**

In order to provide the maximum possible utilization of existing educational resources and facilities within this state, both public and private, the Coordinating Board, Texas College and University System, is authorized to provide tuition equalization grants to Texas residents enrolled in any approved private Texas college or university, based on student financial need, but not to exceed a grant amount of more than that specified in the appropriation by the legislature.

[Acts 1973, 63rd Leg., p. 78, ch. 51, § 1, eff. Aug. 27, 1973.]

**§ 61.222. Approved Institutions**

The coordinating board shall approve only those private or independent colleges, universities, associations, agencies, institutions, and facilities as are located within this state, which meet program standards and accreditation comparable to public institutions as determined by the board.

[Acts 1973, 63rd Leg., p. 78, ch. 51, § 1, eff. Aug. 27, 1973.]

**§ 61.223. Nondiscrimination Regulations**

The coordinating board shall make such regulations as may be necessary to insure compliance with the Civil Rights Act of 1964, Title VI (Public Law 88-352),<sup>1</sup> in regard to nondiscrimination in admissions or employment.

[Acts 1973, 63rd Leg., p. 78, ch. 51, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> 42 U.S.C.A. § 2000d et seq.

**§ 61.224. Application of General Appropriations Act Riders**

Those riders in the General Appropriations Act that apply to expenditure of state funds at state-supported colleges and universities shall also apply to expenditure of state funds at any college or university which any student receiving aid under this subchapter may attend.

[Acts 1973, 63rd Leg., p. 78, ch. 51, § 1, eff. Aug. 27, 1973.]

**§ 61.225. Qualifications For Grant**

To be eligible for a tuition equalization grant, a person must:

- (1) be a Texas resident as defined by the coordinating board and meet, at a minimum, the resident requirements defined by law for Texas resident tuition in fully state-supported institutions of higher education;
- (2) be enrolled as a full-time student in an approved college or university;
- (3) be required to pay more tuition than is required at a public college or university;
- (4) establish financial need in accordance with procedures and regulations of the coordinating board;
- (5) not be a recipient of any form of athletic scholarship; and
- (6) have complied with other requirements adopted by the coordinating board under this subchapter.

[Acts 1973, 63rd Leg., p. 78, ch. 51, § 1, eff. Aug. 27, 1973.]

**§ 61.226. Application of Laws to Receiving Institutions**

Any college or university receiving any benefit under the provisions of this subchapter, either di-

rectly or indirectly, shall be subject to all present or future laws enacted by the legislature.

[Acts 1973, 63rd Leg., p. 78, ch. 51, § 1, eff. Aug. 27, 1973.]

#### § 61.227. Payment of Grant; Amount

(a) On receipt of a student application, enrollment report, and certification of the amount of financial need from an approved institution, the coordinating board shall certify the amount of the tuition equalization grant based on financial need but not to exceed a grant amount of more than that specified in the appropriation by the legislature, or more than the difference between the tuition at the private institution attended and the tuition at public colleges and universities.

(b) The proper amount of the tuition grant shall be paid to the student through the college or university in which he is enrolled.

(c) In no event shall a tuition equalization grant paid pursuant to this subchapter exceed the sum of \$600 in behalf of any student during any one fiscal year.

[Acts 1973, 63rd Leg., p. 78, ch. 51, § 1, eff. Aug. 27, 1973.]

#### § 61.228. Implementation of Grant Program

This subchapter applies to freshmen (first year) students beginning in the fall semester of 1971; to freshmen and sophomores in 1972; to freshmen, sophomores, and juniors in 1973; and to all students attending approved private institutions in 1974 and thereafter.

[Acts 1973, 63rd Leg., p. 78, ch. 51, § 1, eff. Aug. 27, 1973.]

#### § 61.229. Promulgation and Distribution of Regulations

(a) The coordinating board may make reasonable regulations, consistent with the purposes and policies of this subchapter, to enforce the requirements, conditions, and limitations expressed in this subchapter.

(b) The coordinating board shall make such regulations as may be necessary to comply with the provisions of Article I, Section 7, Article III, Section 51, and other parts of the Texas Constitution.

(c) The coordinating board shall distribute copies of all regulations adopted pursuant to this subchapter to each eligible institution.

[Acts 1973, 63rd Leg., p. 78, ch. 51, § 1, eff. Aug. 27, 1973.]

### SUBTITLE C. THE UNIVERSITY OF TEXAS SYSTEM

## CHAPTER 65. ADMINISTRATION OF THE UNIVERSITY OF TEXAS SYSTEM

### SUBCHAPTER A. GENERAL PROVISIONS

#### Section

- 65.01. Definitions.  
65.02. Organization.

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 65.11. Board of Regents.  
65.12. Qualifications; Terms.  
65.13. Board Officers.  
65.14. Expenses.  
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### SUBCHAPTER C. POWERS AND DUTIES OF BOARD

#### Section

- 65.31. General Powers and Duties.  
65.32. Removal of Officers, Etc.  
65.33. Eminent Domain.  
65.34. Contracts.  
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65.36. Donations for Professorships and Scholarships.  
65.37. Funds Received for Trust Services.  
65.38. Nonsectarian.  
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65.40. Environmental Science Park.

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 65.01. Definitions

In this chapter:

(1) "System" or "university system" means The University of Texas System.

(2) "Board" means the board of regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3144, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 65.02. Organization

(a) The University of Texas System is composed of the following institutions and entities:

(1) The University of Texas at Arlington, including The University of Texas Institute of Urban Studies at Arlington;

(2) The University of Texas at Austin, including

(A) The University of Texas Marine Science Institute; and

(B) The University of Texas McDonald Observatory at Mount Locke;

(3) The University of Texas at Dallas;

(4) The University of Texas at El Paso;

(5) The University of Texas of the Permian Basin;

(6) The University of Texas at San Antonio, including The University of Texas Institute of Texan Cultures at San Antonio;

(7) The University of Texas Health Science Center at Dallas, including

(A) The University of Texas Southwestern Medical School at Dallas;

(B) The University of Texas Graduate School of Biomedical Sciences at Dallas; and

(C) The University of Texas School of Allied Health Sciences at Dallas;

(8) The University of Texas Medical Branch at Galveston, including

(A) The University of Texas Medical School at Galveston;

(B) The University of Texas Graduate School of Biomedical Sciences at Galveston;

(C) The University of Texas School of Allied Health Sciences at Galveston;

(D) The University of Texas Marine Biomedical Institute at Galveston; and

(E) The University of Texas Hospitals at Galveston;

(9) The University of Texas Health Science Center at Houston, including

- (A) The University of Texas Medical School at Houston;
- (B) The University of Texas Dental Branch at Houston;
- (C) The University of Texas Graduate School of Biomedical Sciences at Houston;
- (D) The University of Texas School of Allied Health Sciences at Houston;
- (E) The University of Texas School of Public Health at Houston; and
- (F) The University of Texas Speech and Hearing Institute at Houston;

(10) The University of Texas Health Science Center at San Antonio, including

- (A) The University of Texas Medical School at San Antonio;
- (B) The University of Texas Dental School at San Antonio;
- (C) The University of Texas Graduate School of Biomedical Sciences at San Antonio; and
- (D) The University of Texas School of Allied Health Sciences at San Antonio;

(11) The University of Texas System Cancer Center, including

- (A) The University of Texas M.D. Anderson Hospital and Tumor Institute at Houston; and
- (B) The University of Texas Environmental Science Park at Smithville;

(12) The University of Texas System School of Nursing, including

- (A) The University of Texas School of Nursing at Austin;
- (B) The University of Texas School of Nursing at El Paso;
- (C) The University of Texas School of Nursing at Fort Worth;
- (D) The University of Texas School of Nursing at Galveston;
- (E) The University of Texas School of Nursing at Houston; and
- (F) The University of Texas School of Nursing at San Antonio.

(b) The University of Texas System shall also be composed of such other institutions and entities as from time to time may be assigned by specific legislative act to the governance, control, jurisdiction, or management of The University of Texas System. [Acts 1973, 63rd Leg., p. 1186, ch. 435, § 1, eff. Aug. 27, 1973.]

[Sections 65.03 to 65.10 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 65.11. Board of Regents

The government of the university system is vested in a board of nine regents appointed by the governor with the advice and consent of the senate. The board may arrange the administration, organization, and names of the institutions and entities in The

University of Texas System in such a way as will achieve the maximum operating efficiency of such institutions and entities, provided, however, that no institution or entity of The University of Texas System not authorized by specific legislative act to offer a four-year undergraduate program as of the effective date of this Act shall offer any such four-year undergraduate program without prior recommendation and approval by a two-thirds vote of the Coordinating Board, Texas College and University System, and a specific act of the Legislature.

[Acts 1971, 62nd Leg., p. 3144, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1188, ch. 435, § 2, eff. Aug. 27, 1973.]

§ 65.12. Qualifications; Terms

Each member of the board shall be a qualified voter; and the members shall be selected from different portions of the state. The members hold office for staggered terms of six years, with the terms of three expiring every two years.

[Acts 1971, 62nd Leg., p. 3144, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 65.13. Board Officers

The board shall elect a chairman from its members to serve at the will of the board. The state treasurer shall be the treasurer of the university system.

[Acts 1971, 62nd Leg., p. 3144, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 65.14. Expenses

The reasonable expenses incurred by members of the board in the discharge of their duties shall be paid from the available university fund.

[Acts 1971, 62nd Leg., p. 3144, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 65.15. Seal

The board may make and use a common seal and may alter it at will.

[Acts 1971, 62nd Leg., p. 3145, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 65.16 to 65.30 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

§ 65.31. General Powers and Duties

(a) The board is authorized and directed to govern, operate, support, and maintain each of the component institutions that are now or may hereafter be included in a part of The University of Texas System.

(b) The board is authorized to prescribe for each of the component institutions courses and programs leading to such degrees as are customarily offered in outstanding American universities, and to award all such degrees. It is the intent of the legislature that such degrees shall include baccalaureate, master's, and doctoral degrees, and their equivalents, but no new department, school, or degree-program shall be instituted without the prior approval of the Coordinating Board, Texas College and University System.

(c) The board has authority to promulgate and enforce such other rules and regulations for the operation, control, and management of the universi-

ty system and the component institutions thereof as the board may deem either necessary or desirable. The board is specifically authorized and empowered to determine and prescribe the number of students that shall be admitted to any course, department, school, college, degree-program, or institution under its governance.

(d) The board is specifically authorized to make joint appointments in the component institutions under its governance. The salary of any person who receives such joint appointment shall be apportioned to the appointing institutions on the basis of services rendered.

(e) The board is specifically authorized, upon terms and conditions acceptable to it, to accept and administer gifts, grants, or donations of any kind, from any source, for use by the system or any of the component institutions of the system.

(f) No component institution which is not authorized to offer a four-year undergraduate program shall offer a four-year undergraduate program without the specific authorization of the legislature.

[Acts 1971, 62nd Leg., p. 3145, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3360, ch. 1024, art. 2, § 37, eff. Sept. 1, 1971.]

#### § 65.32. Removal of Officers, Etc.

The board may remove any officer, member of the faculty, or employee connected with the system when in its judgment the interest of the system requires the removal.

[Acts 1971, 62nd Leg., p. 3145, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 65.33. Eminent Domain

(a) The board has the power of eminent domain to acquire for the use of the university system any land that may be necessary and proper for carrying out its purposes in the manner prescribed in Title 52, Revised Civil Statutes of Texas, 1925, as amended.<sup>1</sup>

(b) Whenever the board has been made trustees by a will, instrument in writing, or otherwise of a trust for a scientific, educational, philanthropic, or charitable purpose, or other trust for a public purpose, it may act by a quorum of the board or a majority of all members. Unless otherwise directed by the terms of the will or instrument, as trustees the board may exercise for the purpose of the trust the power of eminent domain and may condemn land and other property as provided by Title 52, Revised Civil Statutes of Texas, 1925, as amended.

(c) The taking of the property is declared to be for the use of the state. The board shall not be required to deposit a bond or the amount equal to the award of damages by the commissioners as provided in Paragraph 2, Article 3268, Revised Civil Statutes of Texas, 1925.

[Acts 1971, 62nd Leg., p. 3145, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Civil Statutes, Art. 3264 et seq.

#### § 65.34. Contracts

(a) All contracts with architects, plan makers, landscapers, or draftsmen, or with any other person, firm, or corporation of whatever name or designation shall be absolutely void unless approved by the signed written vote of a majority of the board in regular or called meeting assembled.

(b) All contracts for the construction or erection of permanent improvements shall be absolutely void unless made after receiving sealed competitive bids after advertisement by the chairman of the board of regents for four consecutive weeks in one or more newspapers of general circulation in the State of Texas, and the bids are considered and awards made to the lowest responsible bidder by the signed written vote of a majority of the board in a regular or called meeting assembled. The bids and awards shall be made only after the publication.

[Acts 1971, 62nd Leg., p. 3146, p. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 65.35. Expenditures

All expenditures may be made by the order of the board and shall be paid on warrants from the comptroller based on vouchers approved by the chairman of the board or his delegate, or by the institutional head or his delegate of the component institution making the expenditures.

[Acts 1971, 62nd Leg., p. 3146, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 65.36. Donations for Professorships and Scholarships

(a) Donations of property may be made and accepted by the board for the purpose of establishing or assisting in the establishment of a professorship or scholarship in the university system or any of its component institutions, or for creating in the university system or any of its component institutions any trust for any lawful, educational, or charitable purpose, either temporarily or permanently, and the donations or trusts thereby created will be governed by the rules prescribed by this section.

(b) The legal title to the property shall be vested in the board acting as an entity, or the State of Texas, to be held in trust for the purpose under any directions, limitations, and provisions that may be declared in writing in the donation or trust agreement, not inconsistent with the objectives and proper management of the system or its component institutions.

(c) The donor may declare and direct the manner in which the title to the property shall thereafter be transmitted from the trustee in continued succession, to be held for and appropriated to the declared purposes.

(d) The donor may declare and direct the person or class of persons who shall receive the benefit of the donation and the manner of their selection.

(e) The declarations, directions, and limitations shall not be inconsistent with the objects and proper management of the system or its institutions.

(f) In case of failure to transmit the title to the property or to bestow its use in the manner declared and directed in the donation, or in case the uses, or either of them, become impracticable from the change of circumstances, the title to the property, unless otherwise expressly directed by the donor, shall vest in this state to be held in trust to carry into effect the purposes of the donation as nearly as practicable by such agencies as may be provided therefor.

(g) The title to the property donated shall be received, and the trust conferred in the donation shall be assumed, subject to laws that may be passed

and carried into effect from time to time which may be necessary to prevent the loss of, or damage to, the property donated, or an abuse or neglect of the trust so as to defeat, materially change, or prevent the objects of the donation.

(h) Copies of the donation shall be filed with the board or the branch to which the donation applies; and the board shall report the condition and management of the property and the manner in which the trust is being administered as part of the matters reported pertaining to the institution.

[Acts 1971, 62nd Leg., p. 3146, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1577, ch. 568, § 1, eff. Aug. 27, 1973.]

**§ 65.37. Funds Received for Trust Services**

The board may deposit in an appropriate university account all funds received as administrative fees or charges for services rendered in the management and administration of any trust estate under the control of the university system or any institution of the system. The funds so received as administrative fees or charges may be expended by the board for any educational purpose of the university system.

[Acts 1971, 62nd Leg., p. 3147, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 65.38. Nonsectarian**

No religious qualification shall be required for admission to any office or privilege in the university system. No course of instruction of a sectarian character shall be taught in the system.

[Acts 1971, 62nd Leg., p. 3147, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 65.39. Management of Lands other than Permanent University Fund Lands**

The board of regents of The University of Texas System has the sole and exclusive management and control of the lands set aside and appropriated to, or acquired by, The University of Texas System. The board may sell, lease, and otherwise manage, control, and use the lands in any manner and at prices and under terms and conditions the board deems best for the interest of The University of Texas System, not in conflict with the constitution. However, the land shall not be sold at a price less per acre than that at which the same class of other public land may be sold under the statutes. No grazing lease shall be made for a period of more than 10 years.

[Acts 1971, 62nd Leg., p. 3147, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 65.40. Environmental Science Park**

(a) The board is hereby authorized to establish, maintain, and support an environmental science park in Bastrop County, Texas, on lands owned or controlled by it, the administration and business management of which shall be delegated to The University of Texas M. D. Anderson Hospital and Tumor Institute at Houston.<sup>1</sup>

(b) The board shall have authority to cooperate with agencies, institutions, instrumentalities, and subdivisions of this state, other states, and the federal government; and with private institutes, institutions, foundations, and organizations, in the furtherance of this section, and the promotion of educational and environmental science programs.

(c) The board is specifically authorized upon terms and conditions acceptable to it, to accept and administer, gifts, grants, or donations, of any kind, from any source, to aid in the establishment, operation, maintenance, or administration of the environmental science park.

[Acts 1971, 62nd Leg., p. 3336, ch. 1024, art. 2, § 2, eff. Sept. 1, 1971.]

<sup>1</sup> See § 73.101 et seq.

**CHAPTER 66. PERMANENT UNIVERSITY FUND**

**SUBCHAPTER A. COMPOSITION, INVESTMENT, AND USE**

Section

- 66.01. Permanent University Fund.
- 66.02. Available University Fund.
- 66.03. Apportionment and Use of Available Fund.
- 66.04. Validity of Bonds Purchased by Board.
- 66.05. Reports.

**SUBCHAPTER B. PERMANENT UNIVERSITY FUND BONDS AND NOTES**

- 66.21. Registration.
- 66.22. Refunding Bonds and Notes.
- 66.23. Refunding Bonds and Notes: Approval; Registration.
- 66.24. Authorized Investments; Security for Deposits.
- 66.25. Tax Exempt.

**SUBCHAPTER C. MANAGEMENT OF UNIVERSITY LANDS**

- 66.41. Management of University Lands.
- 66.42. Duty of Land Commissioner.
- 66.43. University Lands: Surveys; Personnel.
- 66.44. Management of Minerals Other than Oil and Gas.

**SUBCHAPTER D. BOARD FOR LEASE OF UNIVERSITY LANDS**

- 66.61. Definition.
- 66.62. Board for Lease.
- 66.63. Oil and Gas Subject to Sale.
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- 66.71. Prorated or Reduced Production Contracts.
- 66.72. Extension of Producing Lease.
- 66.73. Assignment; Relinquishment.
- 66.74. Royalty Payments; Inspection of Records.
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- 66.76. Forfeiture; Other Remedies; Lien.
- 66.77. Filing of Records.
- 66.78. Payments; Disposition.
- 66.79. Forms; Contracts; Regulations.
- 66.80. Expenses of Executing this Subchapter.

**SUBCHAPTER A. COMPOSITION, INVESTMENT, AND USE**

**§ 66.01. Permanent University Fund**

The composition, investment, purposes, and use of the permanent university fund are governed by Article VII, Sections 10, 11, 11a, 15, and 18, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 3149, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 66.02. Available University Fund**

The dividends, interest, and other income from the permanent university fund shall constitute the avail-

able university fund. All income derived from the permanent university fund shall be deposited in the State Treasury to the credit of the available university fund within five days after receipt by any state officer, agent, or employee.

[Acts 1971, 62nd Leg., p. 3149, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.03. Apportionment and Use of Available Fund

(a) The reference in Article VII, Section 18 of the Texas Constitution, to "Chapter 42 of the Acts of the Regular Session of the 42nd Legislature of the State of Texas" shall be construed to mean this section.

(b) The board of regents of The University of Texas System shall expend as much of the available university fund as is appropriated by the legislature for the administration of the university lands and of the permanent university fund, the expenses to be apportioned between the two systems in proportion to their receipts of available university funds under the terms of this section.

(c) The board of directors of The Texas A&M University System shall expend one-third of all the available university fund received from the permanent university fund arising from the 1,000,000 acres of land appropriated by the constitution and the land appropriated by the Act of 1883, except income from grazing leases on university lands (less its proportion of expenses of administration and excluding any expenses of administration from grazing leases); and the board of regents of The University of Texas System shall expend the balance of the available fund, including all the income from grazing leases on university lands (less its proportion of expenses of administration).

[Acts 1971, 62nd Leg., p. 3149, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.04. Validity of Bonds Purchased by Board

Whenever the board has purchased the bonds of any city, county, or municipality, approved by the attorney general, the certificate of the attorney general attesting their validity shall be admitted and received as prima facie evidence of the validity of the bonds; and in all cases in which the proceeds of the sale of these bonds have been received by the proper officers of the city, municipality, or county, or by the party acting for them in negotiating the sale of the bonds, the city, municipality, or county is thereafter estopped from denying the validity of the bonds and they shall be held to be valid and binding obligations. In the case of any bonds bought under this section, premium or discount shall be distributed over the life of the bonds.

[Acts 1971, 62nd Leg., p. 3149, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.05. Reports

(a) Before December 1 of each year the board of regents of The University of Texas System shall prepare a written report disclosing all details concerning the investments made and income realized from the permanent university fund during the year ending August 31 preceding the publication of the report.

(b) The report shall contain a summary of all investments and an itemized list of all securities held

for the fund on August 31, a summary of investment changes during the preceding year, and a summary of all income realized from the various components of the fund. The report shall also contain any other information needed to clearly indicate the nature and extent of investments made of the fund and all income realized from the components of the fund.

(c) The report shall be distributed to the governor, state treasurer, state comptroller of public accounts, state auditor, attorney general, commissioner of higher education, and to the members of the legislature by the 1st day of January each year. The board shall furnish copies of the report to any interested person on request.

[Acts 1971, 62nd Leg., p. 3347, ch. 1024, art. 2, § 20, eff. Sept. 1, 1971.]

[Sections 66.06 to 66.20 reserved for expansion]

### SUBCHAPTER B. PERMANENT UNIVERSITY FUND BONDS AND NOTES

#### § 66.21. Registration

All bonds and notes issued pursuant to the provisions of Article VII, Section 18, of the Texas Constitution, as originally adopted or as amended, shall be registered by the comptroller of public accounts after they have been approved by the attorney general.

[Acts 1971, 62nd Leg., p. 3150, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.22. Refunding Bonds and Notes

Any bonds or notes issued pursuant to the constitutional provisions described in Section 66.21 of this code, or issued pursuant to this subchapter, may be refunded by the governing board which issued the bonds or notes, upon such terms and conditions, including interest rates and maturities, as may be determined by that board, provided that such terms and conditions shall not be inconsistent with the applicable constitutional provisions. Any such bonds or notes may be so refunded by the issuance of refunding bonds or notes, either to be exchanged for the bonds or notes being refunded and cancelled, or to be sold, with the proceeds to be used for the redemption and cancellation of the bonds or notes being refunded.

[Acts 1971, 62nd Leg., p. 3150, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.23. Refunding Bonds and Notes: Approval; Registration

All refunding bonds or notes authorized to be issued under this subchapter and the records relating to their issuance, including any proceedings relating to the redemption of any outstanding bonds or notes, shall be submitted to the attorney general for examination, and if he finds that they have been issued in accordance with law, he shall approve them, and then they shall be registered by the comptroller of public accounts, and after such approval and registration they shall be incontestable. When any such refunding bonds or notes are issued to be exchanged for any outstanding bonds or notes, the comptroller of public accounts shall register and deliver such refunding bonds on surrender for cancellation of the bonds or notes being refunded. When any such refunding bonds or notes are sold, with the proceeds to be used for redeeming any outstanding bonds or notes, the comptroller of public accounts shall regis-

ter such refunding bonds or notes, even though the bonds or notes to be redeemed shall not have been surrendered for redemption or cancellation.

[Acts 1971, 62nd Leg., p. 3150, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 66.24. Authorized Investments; Security for Deposits**

All bonds and notes, whether original or refunding, issued pursuant to the constitutional provisions or issued pursuant to this subchapter, shall be fully negotiable instruments, and all bonds and notes are declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and all other political corporations or subdivisions of the State of Texas; and the bonds and notes shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, and all other political corporations or subdivisions of the State of Texas; and the bonds and notes shall be lawful and sufficient security for those deposits to the extent of their par value when accompanied by all unmatured coupons appurtenant to them.

[Acts 1971, 62nd Leg., p. 3150, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 66.25. Tax Exempt**

The carrying out of the purposes of the constitutional provisions and of this subchapter will be performing an essential public function under the constitution, and all bonds and notes, whether original or refunding, heretofore or hereafter issued pursuant to the constitutional provisions or this subchapter, and their transfer and the income from them, including the profits made on their sale, shall at all times be free from taxation of this state.

[Acts 1971, 62nd Leg., p. 3151, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 66.26 to 66.40 reserved for expansion]

SUBCHAPTER C. MANAGEMENT OF UNIVERSITY LANDS

**§ 66.41. Management of University Lands**

The board of regents of The University of Texas System has the sole and exclusive management and control of the lands set aside and appropriated to, or acquired by, the permanent university fund. The board may sell, lease, and otherwise manage, control, and use the lands in any manner and at prices and under terms and conditions the board deems best for the interest of the permanent university fund, not in conflict with the constitution. However, the land shall not be sold at a price less per acre than that at which the same class of other public land may be sold under the statutes. No grazing lease shall be made for a period of more than 10 years.

[Acts 1971, 62nd Leg., p. 3151, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 66.42. Duty of Land Commissioner**

The commissioner of the general land office shall:

- (1) furnish to the board of regents complete and accurate maps and all other data necessary

to show the location and condition of every tract of the university lands;

- (2) furnish to the board any additional information it may require; and

- (3) render to the board any possible assistance it may request in the discharge of its duties under this chapter.

[Acts 1971, 62nd Leg., p. 3151, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 66.43. University Lands: Surveys; Personnel**

(a) The board of regents shall cause to be done such surveying or resurveying of the blocks and subdivisions of the university lands as may be necessary to enable the lines of the blocks and sections and fractional sections to be determined and identified and have such corners as may be necessary to that end permanently marked. When it is impracticable to establish such lines and corners as originally surveyed, or when such sections have not been actually surveyed on the ground, the blocks shall be surveyed or resurveyed and divided into surveys of sections and fractional sections, and as many corners thereof as may be necessary for the identification shall be permanently marked. The surveyors to do such surveying shall be employed by the board. The field notes of such surveys shall be returned to the general land office, and when correct and in accordance with law shall be approved by the commissioner of the general land office, filed in the general land office, and become archives therein.

(b) The board of regents may employ and compensate personnel the board deems necessary in connection with performance of any duties under this section or under Subchapter D of this chapter.<sup>1</sup>

[Acts 1971, 62nd Leg., p. 3151, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Section 66.61 et seq.

**§ 66.44. Management of Minerals Other than Oil and Gas**

The board of regents has the sole and exclusive management and control of all minerals, other than oil and gas, in lands set aside and appropriated to, or acquired by the permanent university fund. The board may sell, lease, and otherwise manage and control the minerals, other than oil and gas, in those lands as may seem best to it for the interests of the permanent university fund. The board may also explore and have explored and developed the minerals and may make any contract or contracts with any person, association of persons, firm, or corporation for the exploration, development, mining, production, disposition, and sale of the minerals in those lands.

[Acts 1971, 62nd Leg., p. 3152, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 66.45 to 66.60 reserved for expansion]

SUBCHAPTER D. BOARD FOR LEASE OF UNIVERSITY LANDS

**§ 66.61. Definition**

As used in this subchapter, "board" means the Board for Lease of University Lands.

[Acts 1971, 62nd Leg., p. 3152, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.62. Board for Lease

(a) The Board for Lease of University Lands is composed of the commissioner of the general land office and two members of the board of regents selected by the board of regents. In the event that a regent member of the Board for Lease of University Lands is unable to attend any meeting of that board, the chairman of the board of regents shall appoint another member of the board of regents as a substitute member of the Board for Lease of University Lands to attend the meeting that the regular regent member is unable to attend. The substitute regent member of the Board for Lease of University Lands shall exercise all the powers, duties, and responsibilities of the absent regent member during the conduct of the meeting for which he was appointed. Any substitute regent member of the Board for Lease of University Lands is subject to the provisions of this subchapter.

(b) Neither regent member may be directly or indirectly employed by, or be an officer of or an attorney for, an oil or gas company.

(c) A majority of the board has the power to act for the board.

(d) The board shall perform the duties prescribed by this subchapter and shall keep a public record of all its proceedings.

[Acts 1971, 62nd Leg., p. 3152, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1578, ch. 569, § 1, eff. June 15, 1973.]

#### § 66.63. Oil and Gas Subject to Sale

The oil and gas in the university lands are subject to sale under the regulations, at the times, and on the terms provided in this subchapter, and under the rules and regulations adopted by the board as authorized by this subchapter, not inconsistent with the provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 3152, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.64. Placing Oil and Gas on Market; Public Auction; Advertisement

(a) Whenever there is a demand for the purchase of oil and gas in any university land that will reasonably insure that the oil and gas may be sold advantageously, the board shall place the oil and gas in the land on the market in separate tracts of such area and extent as the board may determine most suitable for profitable marketing; but in no event shall any tract in which oil and gas is offered for as a unit exceed in area of 6,000 acres.

(b) The sale of the oil and gas shall be made at public auction held in Austin at any hour between 10 a. m. and 5 p. m.

(c) The board shall cause an advertisement to be made of the sale in two or more newspapers of general circulation in this state. The advertisement shall state the method, time, and place of sale; the primary term of the lease proposed to be executed covering any sale; the royalty to be paid; that lists describing the land to be sold may be obtained from the board; and other matters that in the judgment of the board are deemed advisable. In addition to the foregoing mandatory provisions, the board may

cause the advertisement to be placed in oil and gas journals in and out of the state and to be mailed generally to persons it thinks might be interested.

[Acts 1971, 62nd Leg., p. 3152, p. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.65. Royalty; Bonus; Annual Rental; Special Fee

(a) The oil and gas in each tract shall be offered for sale for a bonus in addition to the stipulated royalty. Each tract shall be offered separately.

(b) Each bid is subject to the royalty specified in the official advertisement preceding the sale, but in no event less than one-eighth of the gross production of oil and gas in the land; and shall further be subject to the payment of an annual rental after the first year of not less than 10 cents per acre, payable each year in advance, unless the royalties received from the land during the preceding year equal or exceed the amount of the annual rental payment.

(c) Each bid is also subject to the payment of a special fee equal to one percent of the total sum bid, which special payment shall constitute a special fund from which the board for lease shall defray the expenses of the sale, including the payment for the services of the auctioneer crying the sale and the payment of the general operating expenses in geologizing, oil field supervision, and auditing oil and gas production of university lands, including salaries and traveling expenses of persons employed by the board of regents for those purposes, and for the purpose of acquiring, constructing, and equipping a building in the city of Midland or adjacent area to house the administrative staff of the offices of University Lands, Geology and Land Agent, and such other related agencies necessary for the management and development of university lands in West Texas.

(d) The board for lease may also direct the comptroller of The University of Texas System to transmit to the state treasurer for deposit to the credit of the permanent university fund any unexpended balances remaining in the special fund after reserving a sufficient amount in it for the payment of current expenses as set out in Subsection (c) of this section.

(e) The highest successful bidder shall pay to the commissioner of the general land office on the day the bid is accepted the full amount of bonus bid and the special fee.

[Acts 1971, 62nd Leg., p. 3153, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.66. Withdrawal of Lands Before Bids Received

The board may withdraw any lands advertised for lease before the hour set for receiving bids.

[Acts 1971, 62nd Leg., p. 3154, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.67. Award of Lease

(a) If any one of the bidders at the sale at public auction has offered a reasonable and proper price for any tract offered, not less than the price fixed by the board, the land advertised may be leased for oil and gas purposes under the terms of this subchapter and any regulations the board may prescribe, not inconsistent with the provisions of this subchapter. All bids may be rejected by the board.

(b) If the board determines that a satisfactory bid has been offered for the oil and gas, it shall make an award to the bidder offering the highest price, and a lease shall be executed by the commissioner of the general land office. A duplicate copy of the lease shall be filed in the general land office.

[Acts 1971, 62nd Leg., p. 3154, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.68. Provisions of Lease

(a) Each lease executed under this subchapter shall contain, and each valid and subsisting oil and gas lease previously executed by the commissioner under the source statute for this subchapter, on the application of the lessee and payment of a sum of money equal to one year's annual rental under the lease, shall be amended by written instrument to contain, the provisions prescribed by this section.

(b) Each lease shall provide that the primary term of the lease, as determined by the board prior to the promulgation of the advertisement, shall in no case exceed five years.

(c) Each lease shall provide that if oil and/or gas is being produced in paying quantities from the leased premises before the termination of the primary term, such lease shall not terminate but shall continue in force and effect as long as oil and/or gas is being so produced.

(d) Each lease shall provide that in the event production of oil or gas on the leased premises, after once obtained, shall cease for any cause within 60 days before the expiration of the primary term of such lease or at any time or times thereafter, such lease shall not terminate, if the lessee commences additional drilling or reworking operations within 60 days thereafter, and such lease shall remain in full force and effect so long as such operations continue in good faith and in workmanlike manner, without interruptions, totaling more than 60 days during any one such operation; and if such drilling or reworking operations result in the production of oil and/or gas, such lease shall remain in full force and effect so long as oil or gas is produced therefrom in paying quantities or payment of shut-in gas well royalty or compensatory royalties is made as hereinafter provided in this subchapter.

(e) Each lease shall provide that if at the expiration of the primary term or at any time thereafter there is located on the leased premises a well or wells capable of producing gas in paying quantities and such gas is not produced for lack of a suitable market and such lease is not being otherwise maintained in force and effect, the lessee may pay as royalty \$1,200 per annum for each well on the lease capable of producing gas in paying quantities, such payment to be made to the commissioner of the general land office at Austin, Texas, prior to the expiration of the primary term of the lease, or if the primary term has expired, within 60 days after lessee ceases to produce gas from such well or wells; and if such payment is made, the lease shall be considered to be a producing lease and such shut-in gas well royalty payment shall extend the term of the lease for a period of one year from the end of the primary term or from the first day of the month next succeeding the month in which production ceased; and thereafter if no suitable market for such gas exists, the lessee may extend the lease for two additional and successive periods of one year

each by the payment of a like sum of money each year on or before the expiration of the extended term. Provided, however, that if, while such lease is being maintained in force and effect by payment of such shut-in gas well royalty, gas should be sold and delivered in paying quantities from a well situated within 1,000 feet of the leased premises and completed in the same producing reservoir or in any case where drainage is occurring, the right to further extend the lease by such shut-in gas well royalty payments shall cease, but such lease shall remain in force and effect for the remainder of the current one year period for which the shut-in gas well royalty has been paid, and for an additional period not to exceed a combined total of three years from the expiration of the primary term or from the first day of the month next succeeding the month in which production ceased by the payment by the lessee of compensatory royalty, at the royalty rate provided for in such university lease as would be due on an equivalent amount of like quality gas produced and delivered from the well completed in the same producing reservoir from which gas is being sold and delivered and which is situated within 1,000 feet of, or draining, the leased premises on which shut-in gas well is situated, such compensatory royalty to be paid monthly to the Commissioner of the General Land Office at Austin, Texas, beginning on or before the last day of the month next succeeding the month in which such gas is sold and delivered from the well situated within 1,000 feet of, or draining, the leased premises and completed in the same producing reservoir; provided further, that in the event such compensatory royalties paid in any 12-month period are in a sum less than the annual shut-in gas well royalties provided for in this section, the lessee shall pay an additional sum equal to the difference within 30 days from the end of such 12-month period; provided further, that nothing herein shall relieve the lessee of the obligation of reasonable development, nor of the obligation to drill offset wells required by Section 66.75 of this code.

(f) Each lease shall provide that if, at the expiration of the primary term, production of oil and/or gas has not been obtained in paying quantities on the leased premises but drilling operations are being conducted thereon in good faith and in good and workmanlike manner, the lessee may, on or before the expiration of the primary term, file in the general land office written application to the commissioner for a 30-day extension of such lease, such application to be accompanied by a payment of \$7.50 per acre for each acre in the lease, and the commissioner shall, in writing, extend such lease for a 30-day period from and after the expiration of the primary term and so long thereafter as oil or gas is produced in paying quantities from the premises; provided further, that the lessee may, so long as such drilling operations are being conducted in good faith, make like application and payment during any 30-day extended period for an additional extension of 30 days not to exceed a combined total of 180 days; provided, however, lessee may, so long as such drilling operations are being conducted in good faith, make written application to the commissioner, on or before the expiration of the initial extended period of 180 days for an additional extension of 180 days, such application to be accompanied by a payment of \$50 per acre for each acre in the lease, and the commissioner shall, in writing, extend such lease for an

additional 180-day period from and after the expiration of the initial extended period of 180 days, and so long thereafter as oil or gas is produced in paying quantities from the premises; provided, that no lease shall be extended under the provisions of this section for more than a total of 360 days from and after the expiration of the primary term unless production in paying quantities has been obtained.

(g) Each lease shall contain a provision enabling the board, at its election, to require that payment of royalty as stipulated in the lease be in kind. Such option may be exercised from time to time at the discretion of the board upon not less than six months' notice to the lessee. The board shall have all powers necessary to negotiate and execute sales contracts or any other instruments necessary for the disposition of any royalty taken in kind. Such other reasonable provisions, not inconsistent with this subchapter, as will facilitate the efficient and equitable payment of royalty in kind may be included in this lease by the board.

[Acts 1971, 62nd Leg., p. 3154, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 621, ch. 265, § 1, eff. June 11, 1973.]

#### § 66.69. Lease: Additional Provisions

Each oil and gas lease issued on university lands under this subchapter shall include any additional provisions and regulations, not inconsistent with the provisions of this subchapter, that the board may prescribe to preserve the interest of the state and safeguard the university funds.

[Acts 1971, 62nd Leg., p. 3156, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.70. Compensatory Royalties in Lieu of Offset Wells

(a) Subject to the provisions of this section, the commissioner of the general land office may execute agreements on behalf of the permanent university fund that provide for the payment by university land oil and gas lessees of compensatory royalty in lieu of drilling offset wells that may be required to protect a university oil and gas lease from drainage from a well or wells located on non-university lands or university lands leased at a lesser royalty situated within 1,000 feet of or draining the university-leased premises.

(b) Agreements providing for the payment of compensatory royalty must be approved by the board for lease of university lands.

(c) Any such agreement must be found by the commissioner and the board for lease to be in the best interest of the state and necessary to prevent economic waste.

(d) Nothing in an agreement shall relieve the lessee of the obligation of reasonable development or of the obligation to drill offset wells as required by Section 66.75 of this code as to other producing horizons.

(e) Beginning on the date fixed in the agreement, the lessee shall pay the compensatory royalty monthly to the commissioner at the land office in Austin.

(f) The agreement with respect to the interest of the state shall remain in force and effect as long as oil and gas, or either of them, is produced from a well located on university or non-university acreage and draining the university-leased premises.

(g) The agreement may contain other provisions the commissioner and the board for lease deem necessary to protect the interests of the permanent university fund.

[Acts 1971, 62nd Leg., p. 3154, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.71. Prorated or Reduced Production Contracts

Whenever in the discretion of the board it is to the best interest of the university and its permanent fund that production from any lease for a limited period of time should be prorated or reduced, the board may execute the necessary contract or contracts with the lessee or lessees and their assignees to effectuate the same and to carry out the intention of this subchapter.

[Acts 1971, 62nd Leg., p. 3156, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.72. Extension of Producing Lease

If oil or gas is discovered in paying quantities on any tract covered by a lease, then the lease as to that tract shall remain in force as long as oil and gas is produced in paying quantities from the tract, provided that the other provisions of this subchapter are complied with by the lessee.

[Acts 1971, 62nd Leg., p. 3157, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.73. Assignment; Relinquishment

(a) All rights purchased may be assigned in quantities of not less than 40 acres, unless there are less than 40 acres remaining out of the tract originally leased under this subchapter, in which case the lesser area may be assigned. All assignments shall be filed in the general land office within 100 days after the date of the first acknowledgment thereof, accompanied by 10 cents an acre for each acre assigned; and if not so filed and payment made, the assignment shall be ineffective.

(b) All rights to any entire lease and to any assigned portion thereof may be relinquished to the state at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated and filed in the land office accompanied by \$1 for each area assigned; but such assignment shall not release the owners of any past due obligations theretofore accrued thereon.

[Acts 1971, 62nd Leg., p. 3157, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 66.74. Royalty Payments; Inspection of Records

(a) Royalty as stipulated in the sale shall be paid to the general land office at Austin for the benefit of the university permanent fund on or before the last day of each month for the preceding month during the life of the rights purchased; and it shall be accompanied by the sworn statement of the owner, manager, or other authorized agent showing the gross amount of oil produced and saved since the last report, the amount of gas produced and sold off the premises, and the market value of the oil and gas, together with a copy of gas meter readings, pipeline receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipelines, tanks, or pools and gas lines or gas storage.

(b) The books and accounts, receipt and discharges of all wells, tanks, pools, meters, pipelines, and all contracts and other records pertaining to the production, transportation, sale, and marketing of the oil and gas shall at all times be subject to inspection and examination by the commissioner of the general land office, the attorney general, the governor, or any member of the board of regents, or the representative of either.

[Acts 1971, 62nd Leg., p. 3157, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 66.75. Protection from Drainage**

In every case where the area in which the oil and gas sold shall be contiguous or adjacent to land not university land, the acceptance of the bid and the sale made thereby shall constitute an obligation on the lessee to adequately protect the land leased from drainage from adjacent lands. In cases where the area in which the oil and gas is sold is contiguous to other university lands leased or sold, at a lesser royalty, the lessee shall likewise protect the state from drainage from the land so leased or sold for a lesser royalty. On failure to protect the land from drainage, the sale and all rights thereunder may be forfeited by the board in the manner provided in this subchapter for forfeitures.

[Acts 1971, 62nd Leg., p. 3157, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 66.76. Forfeiture; Other Remedies; Lien**

(a) If the owner of the rights acquired under this subchapter fails or refuses to make the payment of any sum due thereon, either as rental or royalty on the production, within 30 days after same becomes due, or if the owner or his authorized agent makes any false return or false report concerning production, royalty, or drilling, or if the owner fails or refuses to drill any offset well or wells in good faith, as required by his lease, or if the owner or his agent refuses the proper authority access to the records and other data pertaining to the operations under this subchapter, or if the owner or his authorized agent fails or refuses to give correct information to the proper authorities, or fails or refuses to furnish the log of any well within 30 days after production is found in paying quantities, or if any of the material terms of the lease are violated, the lease is subject to forfeiture by the board by an order entered upon the minutes of the board reciting the facts constituting the default and declaring the forfeiture.

(b) The board may have suit instituted for forfeiture through the attorney general.

(c) On proper showing by the forfeiting owner, within 30 days after the declaration of forfeiture, the lease may, at the discretion of the board and on such terms as it may prescribe, be reinstated.

(d) In case of violation by the owner of the lease contract, the remedy of the state by forfeiture is not the exclusive remedy, but suit for damages or specific performance, or both, may be instituted.

(e) The state shall have a first lien upon all oil and gas produced upon the leased area and upon all rigs, tanks, pipeline, telephone lines, and machinery and appliances used in the production and handling of oil and gas produced thereon, to secure any amount due from the owner of the lease.

[Acts 1971, 62nd Leg., p. 3158, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 66.77. Filing of Records**

All surveys, files, records, copies of sale and lease contracts, and all other records pertaining to the sales and leases hereby authorized, shall be filed in the general land office and constitute archives thereof.

[Acts 1971, 62nd Leg., p. 3158, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 66.78. Payments; Disposition**

Payments under this subchapter shall be made to the commissioner of the general land office at Austin, who shall:

(1) transmit to the state treasurer for deposit to the credit of the permanent university fund all bonus and royalty payments;

(2) transmit to the state treasurer for deposit to the credit of the available university fund all payments for delay in drilling, all filing, assignment, and relinquishment fees, and all other payments except those described in Subdivision (3) of this section; and

(3) transmit to the comptroller of The University of Texas System the special one percent fee payment prescribed by Section 66.65(c) of this code, which shall be disbursed by the comptroller for the authorized purposes after approval thereof by the board.

[Acts 1971, 62nd Leg., p. 3158, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 66.79. Forms; Contracts; Regulations**

The board shall adopt forms and contracts and shall promulgate rules and regulations, not inconsistent with the terms of this subchapter, that in its judgment will best effectuate the purpose of this subchapter and will best protect the university, its lands, and the income from the lands.

[Acts 1971, 62nd Leg., p. 3159, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 66.80. Expenses of Executing this Subchapter**

The expenses of executing the provisions of this subchapter shall be paid monthly by warrants drawn by the comptroller on the state treasury.

[Acts 1971, 62nd Leg., p. 3159, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**CHAPTER 67. THE UNIVERSITY OF TEXAS AT AUSTIN**

**SUBCHAPTER A. GENERAL PROVISIONS**

Section

67.01. Definitions.

67.02. The University of Texas at Austin.

**SUBCHAPTER B. POWERS AND DUTIES OF BOARD**

67.21. Special Fees.

67.22. Military Training.

67.23. Texas Memorial Museum.

67.24. Research and Experimentation for Highway Department.

**SUBCHAPTER C. THE UNIVERSITY OF TEXAS McDONALD OBSERVATORY AT MOUNT LOCKE**

67.51. Unit of University.

67.52. Programs.

SUBCHAPTER D. THE UNIVERSITY OF TEXAS MARINE  
SCIENCE INSTITUTE AT PORT ARANSAS

Section

- 67.61. Unit of University.  
67.62. Programs, Courses, Facilities.

SUBCHAPTER A. GENERAL PROVISIONS

§ 67.01. Definitions

In this chapter:

(1) "University" means the University of Texas at Austin.

(2) "Board" means the board of regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3159, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 67.02. The University of Texas at Austin

The University of Texas at Austin is a coeducational institution of higher education within The University of Texas System. It is under the management and control of the board of regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3160, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 67.03 to 67.20 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES  
OF BOARD

§ 67.21. Special Fees

(a) The board may levy and collect special fees from each student as a prerequisite to registration in the university as provided by this section.

(b) The board may levy and collect from each student a compulsory group hospitalization fee of \$4 for each regular semester and \$2 for each term of each summer session.

(c) The board may levy and collect from each student a compulsory fee for operating, maintaining, improving, equipping, and/or constructing additions to the existing Texas Union building near Guadalupe Street, of not to exceed \$10 for each regular semester and \$5 for each term of each summer session, with such fees to be deposited to an account known as the Texas Union Fee Account. The activities of said Texas Union building financed in whole or in part by this fee shall be limited to those activities in which the entire student body is eligible to participate, and in no event shall any of the activities so financed be held outside of the territorial limits of the campus of The University of Texas at Austin.

(d) The fees thus collected and placed in the Texas Union Fee Account shall be placed under the control of and subject to the order of the board of directors of the Texas Union building, which board shall annually submit a complete and itemized budget to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving the same, and shall then levy the fees in such amounts as will be sufficient to meet the budgetary needs of said Texas Union building, within the limits herein fixed.

<sup>1</sup> West's Tex. Stats. & Codes—34

(e) The power and authority conferred by this section does not and shall not constitute in any way a limitation or restriction upon the power and authority of the board of regents under Chapter 55 of this code.

[Acts 1971, 62nd Leg., p. 3160, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 67.22. Military Training

No student of the university shall ever be required to take a military training course as a condition for entrance into the university or for graduation from the university.

[Acts 1971, 62nd Leg., p. 3160, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 67.23. Texas Memorial Museum

The board has the management and control of the Texas Memorial Museum. It shall be maintained as a museum and shall be an integral part of The University of Texas at Austin.

[Acts 1971, 62nd Leg., p. 3160, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 67.24. Research and Experimentation for Highway Department

The state comptroller of public accounts may draw proper warrants in favor of the university based on vouchers or claims submitted by the university through the State Highway Department covering reasonable fees and charges for services rendered by members of the staff of the university system to the State Highway Department and for equipment and materials necessary for research and experimentation in all phases of highway activity, economics, materials, specifications, design of roadways, construction, maintenance, pavement and structures, drainage, traffic control, safety, the economics of highway design and construction, and other fields of highway design, construction, maintenance, or operation, based on an agreement between the State Highway Department and the university in accordance with the provisions of Texas Highway Department Minute Order Number 52742, dated May 24, 1963; and the state treasurer shall pay warrants so issued against any funds appropriated by the legislature to the State Highway Department for the construction and maintenance of highways, roads, and bridges. The payments made to the university shall be credited and deposited to local institutional funds under its control.

[Acts 1971, 62nd Leg., p. 3161, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 67.25 to 67.50 reserved for expansion]

SUBCHAPTER C. THE UNIVERSITY OF TEXAS  
McDONALD OBSERVATORY AT  
MOUNT LOCKE

§ 67.51. Unit of University

The University of Texas McDonald Observatory at Mount Locke is a part of and under the direction and control of The University of Texas at Austin.

[Acts 1971, 62nd Leg., p. 3161, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 67.52. Programs**

The observatory shall conduct basic research in astronomy, along with optical and radio astronomy research, toward the establishment of a highly developed astronomy and space-science program, including the acquisition and support of the technical and maintenance staffs and facilities essential to the operation of an observatory of the first class, and may assist in the conduct of a comprehensive instructional program in astronomy and space science. [Acts 1971, 62nd Leg., p. 3361, ch. 1024, art. 2, § 40, eff. Sept. 1, 1971.]

[Sections 67.53 to 67.60 reserved for expansion]

**SUBCHAPTER D. THE UNIVERSITY OF TEXAS  
MARINE SCIENCE INSTITUTE AT  
PORT ARANSAS**

**§ 67.61. Unit of University**

The University of Texas Marine Science Institute is a part of and under the direction and control of The University of Texas at Austin. [Acts 1971, 62nd Leg., p. 3161, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 481, ch. 208, § 1, eff. May 26, 1973.]

**§ 67.62. Programs, Courses, Facilities**

The institute shall conduct a comprehensive instructional program in marine science, resources, and engineering at the graduate level and offer undergraduate courses for those students interested in the marine environment, and perform basic and applied research in the marine environment; and may provide shore-based facilities, including, but not limited to laboratories, boats, classrooms, dormitories, and a cafeteria for faculty and students who are engaged in studies of the marine environment. [Acts 1971, 62nd Leg., p. 3361, ch. 1024, art. 2, § 39, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 481, ch. 208, § 1, eff. May 26, 1973.]

**CHAPTER 68. THE UNIVERSITY OF  
TEXAS AT ARLINGTON**

**SUBCHAPTER A. GENERAL PROVISIONS**

Section

- 68.01. Definitions.
- 68.02. The University of Texas at Arlington.
- 68.03. Buildings.
- 68.03. Role and Scope; Courses and Degrees.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 68.01. Definitions**

In this chapter:

- (1) "University" means The University of Texas at Arlington.
- (2) "Board" means the board of regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3162, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 68.02. The University of Texas at Arlington**

The University of Texas at Arlington is a four-year and graduate-level coeducational institution of

higher education within The University of Texas System. It is under the management and control of the board of regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3162, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 68.03. Buildings**

[Text as added by Acts 1971, 62nd Leg., p. 3162, ch. 1024, art. 1, § 1]

It is the intent of the legislature that future building needs of The University of Texas at Arlington shall be financed from some source or sources other than The University of Texas' share of the principal and/or interest of and from the Permanent University Fund.

[Acts 1971, 62nd Leg., p. 3162, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

*For text as added by Acts 1971, 62nd Leg., p. 3360, ch. 1024, art. 2, § 38, see § 68.03, post.*

**§ 68.03. Role and Scope; Courses and Degrees**

[Text as added by Acts 1971, 62nd Leg., p. 3360, ch. 1024, art. 2, § 38]

The board is authorized to maintain, operate, and administer The University of Texas at Arlington as a general academic institution of higher education offering a standard four-year undergraduate program. The board shall have the authority to prescribe courses leading to such customary degrees as are offered at leading American universities and to award such degrees. It is the intent of the legislature that such degrees shall include baccalaureate, master's, and doctoral degrees and their equivalents; but no department, school, or degree program shall be instituted except with the prior approval of the Coordinating Board, Texas College and University System.

[Acts 1971, 62nd Leg., p. 3360, ch. 1024, art. 2, § 38, eff. Sept. 1, 1971.]

*For text as added by Acts 1971, 62nd Leg., p. 3162, ch. 1024, art. 1, § 1, see § 68.03, ante.*

**CHAPTER 69. THE UNIVERSITY OF  
TEXAS AT EL PASO**

**SUBCHAPTER A. GENERAL PROVISIONS**

Section

- 69.01. Definitions.
- 69.02. The University of Texas at El Paso.

**SUBCHAPTER B. POWERS AND DUTIES OF BOARD**

- 69.21. Acquisition of Land.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 69.01. Definitions**

In this chapter:

- (1) "University" means The University of Texas at El Paso.
- (2) "Board" means the board of regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3163, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 69.02. The University of Texas at El Paso

The University of Texas at El Paso is a coeducational institution of higher education within The University of Texas System. It is under the management and control of the board of regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3163, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 69.03 to 69.20 reserved for expansion]

#### SUBCHAPTER B. POWERS AND DUTIES OF BOARD

### § 69.21. Acquisition of Land

The board may acquire by purchase, exchange, or otherwise any tract or parcel of land in El Paso County that is contiguous or adjacent to the campus of the university when the board deems the land necessary for campus expansion.

[Acts 1971, 62nd Leg., p. 3163, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## CHAPTER 70. THE UNIVERSITY OF TEXAS AT DALLAS

#### Section

- 70.01. University Authorized.
- 70.02. Location.
- 70.03. Courses and Degrees.
- 70.04. Rules and Regulations; Joint Appointments.
- 70.05. Programs at Other Universities.
- 70.06. Limitations on Enrollment.
- 70.07. Grants and Gifts.

### § 70.01. University Authorized

The Board of Regents of The University of Texas System shall establish and maintain a state-supported general academic institution of higher education to be known as The University of Texas at Dallas.

[Acts 1971, 62nd Leg., p. 3164, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 70.02. Location

The board shall locate The University of Texas at Dallas on a site, to be selected in Dallas County, consisting of not less than 250 acres of land that shall be donated for that purpose without cost to the State of Texas. The site may extend into any county adjacent to Dallas County.

[Acts 1971, 62nd Leg., p. 3164, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 70.03. Courses and Degrees

(a) The board may prescribe courses leading to customary degrees offered at leading American universities and may award those degrees. It is the intent of the legislature that those degrees include bachelor's, master's, and doctor's degrees, and their equivalents.

(b) No department, school, or degree program shall be instituted except with the prior approval of the Coordinating Board, Texas College and University System, or its successor.

(c) Initial programs and departments shall be limited to those which existed in the Southwest Center

for Advanced Studies on September 1, 1969. Approval of these programs, their expansion, and initiation of other programs shall be recommended by the board of regents and approved by the coordinating board.

[Acts 1971, 62nd Leg., p. 3164, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 70.04. Rules and Regulations; Joint Appointments

The board may adopt other rules and regulations for the operation, control, and management of the university that are necessary for the conduct of the university as one of the first class. The board is specifically authorized to make joint appointments in the university and in other institutions under its governance. The salary of any person who receives a joint appointment shall be apportioned to the appointing institutions on the basis of services rendered.

[Acts 1971, 62nd Leg., p. 3164, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 70.05. Programs at Other Universities

It is the intent of the legislature that existing programs leading to undergraduate and graduate degrees at North Texas State University, Texas Woman's University, East Texas State University, and The University of Texas at Arlington shall never be placed at a disadvantage, curtailed, or restricted from orderly and proper expansion for any cause attributable to the establishment of, or the curricular objectives for, The University of Texas at Dallas; and that these universities shall not, as a result of the establishment of The University of Texas at Dallas, be handicapped in realizing their full potentials in quantity or quality for developing additional undergraduate and graduate programs which may from time to time be authorized by the coordinating board.

[Acts 1971, 62nd Leg., p. 3165, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 70.06. Limitations on Enrollment

(a) The board may not permit the enrollment of freshman or sophomore undergraduate students at any time.

(b) The board may not permit the enrollment of junior or senior undergraduate students prior to September 1, 1975.

(c) The board may provide for the enrollment of graduate students and the awarding of graduate degrees after September 1, 1969.

[Acts 1971, 62nd Leg., p. 3165, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 70.07. Grants and Gifts

The board may accept and administer, on terms and conditions satisfactory to it, grants or gifts of property, including real estate or money, that may be tendered to it in aid of the planning, establishment, conduct, and operation of The University of Texas at Dallas, and in aid of the research and teaching at the university. The board may accept from the federal government or any foundation, trust fund, corporation, or individual donations, gifts, and grants, including real estate, buildings, libraries, laboratories, apparatus, equipment,

records, or money for the use and benefit of the university.

[Acts 1971, 62nd Leg., p. 3165, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**CHAPTER 71. THE UNIVERSITY OF TEXAS AT SAN ANTONIO**

Section

- 71.01. The University of Texas at San Antonio.
- 71.02. Organization and Control.
- 71.03. Courses and Degrees.
- 71.04. Other Rules and Regulations.
- 71.05. Joint Appointments.
- 71.06. Board may Accept Grants and Gifts.

**§ 71.01. The University of Texas at San Antonio**

The University of Texas at San Antonio is a coeducational institution of higher education in Bexar County. The site of the university shall be on land selected by the board of regents and provided or donated for that purpose.

[Acts 1971, 62nd Leg., p. 3165, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 71.02. Organization and Control**

The organization and control of The University of Texas at San Antonio is vested in the Board of Regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3166, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 71.03. Courses and Degrees**

The board may prescribe courses leading to such customary degrees as are offered at leading American universities and may award those degrees. It is the intent of the legislature that those degrees include bachelor's, master's, and doctor's degrees and their equivalents, and that there be established a standard four-year undergraduate program; but no department, school, or degree program may be instituted except with the prior approval of the Coordinating Board, Texas College and University System.

[Acts 1971, 62nd Leg., p. 3166, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 71.04. Other Rules and Regulations**

The board shall make other rules and regulations for the operation, control, and management of the university, including the determination of the number of students that shall be admitted to any school, college, or degree-granting program, as may be necessary for the conduct of the university as one of the first class.

[Acts 1971, 62nd Leg., p. 3166, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 71.05. Joint Appointments**

The board is specifically authorized to make joint appointments in the university and in other institutions under its governance. The salary of any such person who receives a joint appointment shall be apportioned to the appointing institutions on the basis of services rendered.

[Acts 1971, 62nd Leg., p. 3166, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 71.06. Board may Accept Grants and Gifts**

The board may accept and administer, on terms and conditions satisfactory to it, grants or gifts of property, including real estate or money, that may be tendered to it in aid of the planning, establishment, conduct, and operation of The University of Texas at San Antonio, and in aid of research and teaching at the university. The board may accept from the federal government or any foundation, trust fund, corporation, or individual donations, gifts, and grants, including real estate, buildings, libraries, laboratories, apparatus, equipment, records, or money for the use and benefit of the university.

[Acts 1971, 62nd Leg., p. 3166, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**CHAPTER 72. THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN**

Section

- 72.01. Establishment.
- 72.02. Courses and Degrees.
- 72.03. Other Rules and Regulations.
- 72.04. Joint Appointments.
- 72.05. Board may Accept Grants and Gifts.
- 72.06. Location.

**§ 72.01. Establishment**

The Board of Regents of The University of Texas System shall establish and maintain a fully state-supported coeducational institution of higher education to be known as The University of Texas of the Permian Basin. The institution shall be organized to accept only junior-, senior-, and graduate-level students, with at least 60 semester hours of accredited college or university study.

[Acts 1971, 62nd Leg., p. 3167, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 72.02. Courses and Degrees**

The board of regents may prescribe courses leading to such customary degrees as are offered at leading American universities of this concept and may award those degrees. It is the intent of the legislature that those degrees include bachelor's and master's degrees and their equivalents, and that there be established a standard program for this type of institution, but no department, school, or degree program may be instituted except with the prior approval of the Coordinating Board, Texas College and University System.

[Acts 1971, 62nd Leg., p. 3167, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 72.03. Other Rules and Regulations**

The board of regents shall make other rules and regulations for the operation, control, and management of the university, including the determination of the number of students that shall be admitted to any school, college, or degree-granting program, as may be necessary for the conduct of the university as one of the first class.

[Acts 1971, 62nd Leg., p. 3167, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 72.04. Joint Appointments**

The board of regents is specifically authorized to make joint appointments in the university and in

other institutions under its governance. The salary of any such person who receives a joint appointment shall be apportioned to the appointing institution on the basis of services rendered.

[Acts 1971, 62nd Leg., p. 3167, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 72.05. Board may Accept Grants and Gifts

The board of regents may accept and administer, on terms and conditions satisfactory to it, grants or gifts of property, including real estate or money, or any part of existing junior college facilities that may be tendered to it in aid of the planning, establishment, conduct, and operation of The University of Texas of the Permian Basin, and in aid of research and teaching at the university. The board of regents may accept from the federal government or any foundation, trust fund, corporation, or individual donations, gifts, and grants, including real estate, buildings, libraries, laboratories, apparatus, equipment, records, or money for the use and benefit of the university.

[Acts 1971, 62nd Leg., p. 3168, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 72.06. Location

(a) The board of regents shall establish The University of Texas of the Permian Basin at a site consisting of at least 200 acres, unless otherwise specifically acceptable to the board.

(b) The site shall, within a reasonable length of time, be accessible to roads, and shall be accessible to required utilities at the perimeter of the site. The site shall be accessible to, and within a reasonable distance of, the present site of the Odessa College Campus in Odessa.

(c) The board shall select a site which is in Ector County; however, the site may extend into an adjoining county. If, within the discretion of the board, those sites made available within the provisions of this chapter are not suitable and other sites are suitable, then the board may accept and acquire a similar site wholly or partly in an adjoining county; however, that site may not be outside a 12-mile radius from the present campus of Odessa College in Odessa.

(d) The board is authorized to accept and acquire and shall accept and acquire a site for such college within the provisions of this chapter and the land for the site shall be deeded by proper conveyance free and clear of debt, to the state.

(e) The board shall in no event delay the acquisition of land for the institution created by the provisions of this chapter later than December 31, 1969.

(f) The board must follow the provisions of this chapter with respect to site and any decision reached to the contrary shall be null and void and all laws to the contrary are hereby expressly repealed.

[Acts 1971, 62nd Leg., p. 3168, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## CHAPTER 73. THE UNIVERSITY OF TEXAS AT HOUSTON

### SUBCHAPTER A. GENERAL PROVISIONS

#### Section

73.001. Composition.

### SUBCHAPTER B. THE UNIVERSITY OF TEXAS MEDICAL SCHOOL AT HOUSTON

#### Section

- 73.051. Short Title.
- 73.052. Establishment; Scope.
- 73.053. Transfer of Division of Continuing Education.
- 73.054. Courses and Degrees; Rules and Regulations.
- 73.055. Affiliation Agreements; Joint Appointments.
- 73.056. Gifts and Grants.
- 73.057. Teaching Hospital.

### SUBCHAPTER C. THE UNIVERSITY OF TEXAS M. D. ANDERSON HOSPITAL AND TUMOR INSTITUTE AT HOUSTON

- 73.101. Location.
- 73.102. Purpose.
- 73.103. President.
- 73.104. Medical Staff.
- 73.105. Diagnostic and Treatment Substations.
- 73.106. Patients.
- 73.107. Admission: Rules and Regulations; Approval of President.
- 73.108. Application.
- 73.109. Fee Schedule.
- 73.110. Gifts and Grants.
- 73.111. Acceptance of Land in Medical Center.

### SUBCHAPTER D. THE UNIVERSITY OF TEXAS GRADUATE SCHOOL OF BIOMEDICAL SCIENCES AT HOUSTON

- 73.151. Dean.
- 73.152. Scope; Degree Programs; Rules and Regulations.
- 73.153. Gifts and Grants.
- 73.154. Research and Graduate Instruction; Joint Appointments.
- 73.155. Affiliation and Cooperation with other Units.
- 73.156. Division of Continuing Education.
- 73.157. Division of Communicative Disorders.

### SUBCHAPTER E. THE UNIVERSITY OF TEXAS SCHOOL OF PUBLIC HEALTH AT HOUSTON

- 73.201. Location.
- 73.202. Gifts and Donations.

### SUBCHAPTER F. THE UNIVERSITY OF TEXAS DENTAL BRANCH AT HOUSTON

- 73.301. Composition, Location.
- 73.302. Purpose.
- 73.303. Faculty.
- 73.304. Courses and Degrees; Rules and Regulations.
- 73.305. Gifts and Grants.

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 73.001. Composition

The University of Texas at Houston is composed of the following component institutions under the management and control of the board of regents of The University of Texas System:

- (1) The University of Texas Medical School at Houston;
- (2) The University of Texas Dental Branch at Houston;
- (3) The University of Texas M. D. Anderson Hospital and Tumor Institute at Houston;
- (4) The University of Texas Graduate School of Biomedical Sciences at Houston;
- (5) The University of Texas School of Public Health at Houston; and
- (6) other institutions and activities assigned to it from time to time.

[Acts 1971, 62nd Leg., p. 3170, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 73.002 to 73.050 reserved for expansion]

SUBCHAPTER B. THE UNIVERSITY OF TEXAS  
MEDICAL SCHOOL AT HOUSTON

§ 73.051. Short Title

This subchapter may be cited as the Brooks-Bass Medical Training Act of 1969.

[Acts 1971, 62nd Leg., p. 3170, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 73.052. Establishment; Scope

The board of regents shall establish and maintain The University of Texas Medical School at Houston, a component institution of the university system located in Harris County. The board may provide for the training and teaching of medical students, medical technicians, and other technicians in the practice of medicine.

[Acts 1971, 62nd Leg., p. 3170, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 73.053. Transfer of Division of Continuing Education

The board may transfer the division of continuing education from The University of Texas Graduate School of Biomedical Sciences at Houston to The University of Texas Medical School at Houston. After the transfer, all appropriations, assets, funds, property, and equipment owned or held by the division of continuing education shall be owned, held, and controlled by The University of Texas Medical School at Houston.

[Acts 1971, 62nd Leg., p. 3171, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 73.054. Courses and Degrees; Rules and Regulations

The board may prescribe courses leading to customary degrees offered in other leading American medical schools, may award the degrees, and may make other rules and regulations for the operation, control, and management of the school, including the determination of the number of students that shall be admitted to any degree-granting program, that are necessary for the conduct of a professional school of the first class.

[Acts 1971, 62nd Leg., p. 3171, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 73.055. Affiliation Agreements; Joint Appointments

The board may execute and carry out with any entity or institution affiliation or coordinating agreements that are reasonably necessary or desirable for the conduct and operation of a professional school of the first class; and the board may make joint appointments in other institutions under its governance. The salary of any person who receives a joint appointment shall be apportioned to the appointing institutions on the basis of services rendered.

[Acts 1971, 62nd Leg., p. 3171, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 73.056. Gifts and Grants

The board may accept and administer, on terms and conditions satisfactory to it, grants or gifts of property, including real estate and money, that may be tendered to it in aid of the planning, establishment, conduct, and operation of the school and in aid of research and teaching at the school. The board may accept from the federal government or any foundation, trust fund, corporation, or individual donations, gifts, and grants, including real estate, buildings, libraries, laboratories, apparatus, equipment, records, or money, for the use and benefit of the school.

[Acts 1971, 62nd Leg., p. 3171, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 73.057. Teaching Hospital

A complete teaching hospital for the school shall be furnished at no cost or expense to the state, and the state shall never contribute any funds for the construction, maintenance, or operation of a teaching hospital for the school.

[Acts 1971, 62nd Leg., p. 3171, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 73.058 to 73.100 reserved for expansion]

SUBCHAPTER C. THE UNIVERSITY OF TEXAS  
M. D. ANDERSON HOSPITAL AND TUMOR  
INSTITUTE AT HOUSTON

§ 73.101. Location

The University of Texas M. D. Anderson Hospital and Tumor Institute at Houston is located in the Texas Medical Center in the city of Houston.

[Acts 1971, 62nd Leg., p. 3172, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 73.102. Purpose

The institution and its substations shall be devoted to the diagnosis, teaching, study, prevention, and treatment of neoplastic and allied diseases.

[Acts 1971, 62nd Leg., p. 3172, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 73.103. President

(a) The board of regents shall appoint a president of the institution.

(b) To be qualified for appointment as president, a person must be a licensed physician possessing an M.D. degree with at least five years of experience practicing medicine.

(c) The president has charge of the operation and conduct of the institution and has any other powers and duties conferred on him by the board.

[Acts 1971, 62nd Leg., p. 3172, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 73.104. Medical Staff

The medical staff of the institution shall be selected and employed by the board on the recommendation of the president, and may be discharged in like manner.

[Acts 1971, 62nd Leg., p. 3172, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.105. Diagnostic and Treatment Substations**

The board may establish and maintain diagnostic and treatment substations as deemed expedient from time to time. The location, erection, operation, and management of the substations are under the control and direction of the board, subject to the other provisions of this subchapter. The substations and the main institution shall conform to the standards of the American College of Surgeons and the American Medical Association.

[Acts 1971, 62nd Leg., p. 3172, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.106. Patients**

Except to the extent of any conflict with this subchapter, the provisions of Chapter 152, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 3196a, Vernon's Texas Civil Statutes), govern the admission of patients to the institution and its substations, the support of patients, and other matters relating to patients.

[Acts 1971, 62nd Leg., p. 3172, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.107. Admission: Rules and Regulations; Approval of President**

(a) Admission to the institution and its substations is subject to rules and regulations promulgated from time to time by the president.

(b) No person shall be admitted until the president is satisfied that all requirements of this subchapter and the rules and regulations of the president have been met.

[Acts 1971, 62nd Leg., p. 3172, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.108. Application**

(a) Admission is subject to the written application of the patient, the guardian of the patient, or some friend or relative of the patient.

(b) The written application shall be on forms prescribed by the president and shall include:

- (1) the patient's name, age, sex, and national origin;
- (2) the patient's residence address or addresses for at least the two-year period preceding the date of the application;
- (3) the patient's occupation, trade, profession, or employment;
- (4) the names and addresses of the patient's parents, children, brothers, sisters, and other responsible relatives, if any;
- (5) the names, addresses, and ages of any relatives who are or who may have been similarly afflicted;
- (6) a complete statement of the location, description, and value of any real or personal property owned, possessed, or held by the patient or his guardian;
- (7) the name of each person legally liable for the support of the patient and a statement of the location, description, and value of any real or personal property owned, possessed, or held by that person; and
- (8) any other information or statements that may be required by the president.

(c) Each application shall be accompanied by a written request for the patient's admission by his attending physician which includes:

(1) a statement that he has adequately examined the patient and that the patient has, or is suspected of having, a neoplasm or allied disease;

(2) a statement indicating the duration of the disease, if known, and indicating any accompanying bodily disorder or disorders the patient may have at the time of the application; and

(3) any other information that may be required by the president.

[Acts 1971, 62nd Leg., p. 3173, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.109. Fee Schedule**

The president shall establish a schedule of minimum fees and charges conforming to the fees and charges customarily made for similar services in the community in which the services are rendered.

[Acts 1971, 62nd Leg., p. 3173, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.110. Gifts and Grants**

The board may accept gifts and grants of money from other than state sources for the benefit of the institution and its substations.

[Acts 1971, 62nd Leg., p. 3173, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.111. Acceptance of Land in Medical Center**

The board may accept for and in behalf of the State of Texas title by proper conveyance or conveyances to any land located in the Texas Medical Center for the operation and maintenance of the program of the institution.

[Acts 1971, 62nd Leg., p. 3173, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 73.112 to 73.150 reserved for expansion]

SUBCHAPTER D. THE UNIVERSITY OF TEXAS  
GRADUATE SCHOOL OF BIOMEDICAL  
SCIENCES AT HOUSTON

**§ 73.151. Dean**

(a) The University of Texas Graduate School of Biomedical Sciences at Houston is under the direction of a dean appointed by the board of regents.

(b) To be qualified for appointment as dean, a person must have a doctor of medicine degree or a doctor of philosophy degree in one of the biomedical sciences.

(c) The dean is responsible through the chancellor or other executive officer of the system to the board.

[Acts 1971, 62nd Leg., p. 3174, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.152. Scope; Degree Programs; Rules and Regulations**

(a) The board of regents may prescribe courses and conduct graduate and postdoctoral programs at the master's and doctoral levels in the sciences and other academic areas directly related to medical education and research, but the board shall not

operate this institution as a general academic graduate school. The degree programs to be offered by the graduate school are subject to approval by the Coordinating Board, Texas College and University System.

(b) The board of regents may make rules and regulations necessary for the operation, control, and management of the graduate school.

[Acts 1971, 62nd Leg., p. 3174, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.153. Gifts and Grants**

The board may accept and administer grants and gifts from any source for the benefit of the graduate school.

[Acts 1971, 62nd Leg., p. 3174, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.154. Research and Graduate Instruction; Joint Appointments**

(a) The board may expend funds appropriated by the legislature to the graduate school and grant, gift, and contract funds of the school in support of research and graduate instruction, within approved areas and programs, to be carried out either in its own facilities or in the facilities of other component units of The University of Texas at Houston.

(b) The board may make joint appointments in the graduate school and in one or more of the other component units of The University of Texas System. The salary of a person who is receiving a joint appointment shall be apportioned to the different units on the basis of services rendered.

[Acts 1971, 62nd Leg., p. 3174, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.155. Affiliation and Cooperation with other Units**

The graduate school shall maintain the closest possible affiliation with the science programs at The University of Texas at Austin and with the other medical units of The University of Texas System. It shall cooperate with other institutions, private and public, in furtherance of research in the biomedical sciences and related fields.

[Acts 1971, 62nd Leg., p. 3174, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.156. Division of Continuing Education**

The board may establish as a part of the graduate school a separate division of continuing education for physicians.

[Acts 1971, 62nd Leg., p. 3175, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.157. Division of Communicative Disorders**

(a) The board may acquire by donation the facilities of the Houston Speech and Hearing Center, a Texas nonprofit corporation of Houston, all of which are located within the Texas Medical Center, including a leasehold interest in land. The board is further authorized to execute any and all agreements necessary to carry out the purpose and intent of this section.

(b) If and when such center is accepted, there shall be established within The University of Texas Graduate School of Biomedical Sciences at Houston

a division which shall be known as the Division of Communicative Disorders for the purpose of observing, testing, analyzing, diagnosing, and treating those persons afflicted with hearing and speech abnormalities, defects, and afflictions, and as a center for research studies and training relating to speech and hearing afflictions, abnormalities, and defects, and for all programs incidental thereto. The facilities of the Division of Communicative Disorders shall be available to all persons and institutions, subject only to necessary limitations with respect to space, funding, and qualifications of such users.

(c) The board may accept gifts and grants from any source in aid of the conduct and operation of the Division of Communicative Disorders.

[Acts 1971, 62nd Leg., p. 3351, ch. 1024, art. 2, § 26, eff. Sept. 1, 1971.]

[Sections 73.158 to 73.200 reserved for expansion]

SUBCHAPTER E. THE UNIVERSITY OF TEXAS SCHOOL OF PUBLIC HEALTH AT HOUSTON

**§ 73.201. Location**

The University of Texas School of Public Health at Houston is located in the Texas Medical Center in the city of Houston.

[Acts 1971, 62nd Leg., p. 3175, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.202. Gifts and Donations**

The board of regents may accept gifts and donations for the benefit of the school.

[Acts 1971, 62nd Leg., p. 3175, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 73.203 to 73.300 reserved for expansion]

SUBCHAPTER F. THE UNIVERSITY OF TEXAS DENTAL BRANCH AT HOUSTON

**§ 73.301. Composition, Location**

The University of Texas Dental Branch at Houston is composed of The University of Texas Dental School at Houston, The University of Texas Dental Science Institute at Houston, The University of Texas School of Dental Hygiene at Houston, The University of Texas Postgraduate School of Dentistry at Houston, and other institutions and activities assigned to it from time to time. It is located in the Texas Medical Center.

[Acts 1971, 62nd Leg., p. 3175, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.302. Purpose**

The principal purpose of the dental school is to teach the subjects of dental education that will give a thorough knowledge of dentistry and related subjects and that meet the requirements of the Council on Dental Education, the American Association of Dental Schools, and other educational associations of similar standards concerned with dental education.

[Acts 1971, 62nd Leg., p. 3175, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.303. Faculty**

The board of regents shall appoint the faculty of the dental school.

[Acts 1971, 62nd Leg., p. 3175, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.304. Courses and Degrees; Rules and Regulations**

(a) The board may confer degrees and issue diplomas, and may fix a standard of grades for students.

(b) The dental school shall have regular courses leading to degrees and special courses deemed necessary by the board.

(c) The board may make other rules and regulations it deems necessary for the proper control and management of the dental school.

[Acts 1971, 62nd Leg., p. 3175, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 73.305. Gifts and Grants**

The board may accept gifts and grants from any source for the benefit of the dental branch.

[Acts 1971, 62nd Leg., p. 3176, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**CHAPTER 74. OTHER MEDICAL, DENTAL, AND NURSING UNITS OF THE UNIVERSITY OF TEXAS SYSTEM**

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- 74.252. Training and Teaching.
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- 74.254. Affiliation Agreements; Joint Appointments.
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- 74.351. Establishment; Purpose.
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- 74.353. Courses and Degrees; Rules and Regulations.
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**SUBCHAPTER I. THE UNIVERSITY OF TEXAS NURSING SCHOOL (SYSTEM-WIDE)**

- 74.401. Composition, Operation, Maintenance.
- 74.402. Courses, Degrees, Etc.
- 74.403. Affiliation Agreements; Joint Appointments.
- 74.404. Gifts and Grants.

**SUBCHAPTER J. PODIATRY SCHOOL TO BE ESTABLISHED AND LOCATED**

- 74.501. Establishment and Location; Name; Scope.
- 74.502. Courses and Degrees; Rules and Regulations.
- 74.503. Affiliation Agreements; Joint Appointments.
- 74.504. Gifts and Grants.
- 74.505. Teaching Hospital.
- 74.506. Funding.

**SUBCHAPTER A. THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON**

**§ 74.001. Composition**

The University of Texas Medical Branch at Galveston is composed of the following component institutions under the control and management of the Board of Regents of The University of Texas System:

(1) The University of Texas Medical School at Galveston, including:

- (A) the Graduate School;
  - (B) the School of Allied Health Sciences;
- and

(C) the Marine Biomedical Institute;

(2) The University of Texas Hospitals at Galveston, including:

- (A) John Sealy Hospital;
- (B) Children's Hospital;
- (C) Marvin L. Graves Hospital;
- (D) Randall Pavilion;

(E) Moody State School for Cerebral Palsied Children;

- (F) R. Waverly Smith Pavilion;
- (G) Jennie Sealy Hospital;
- (H) John W. McCullough Outpatient Clinic;
- (I) Rebecca Sealy Outpatient Facility; and
- (J) Rosa and Henry Ziegler Hospital; and

(3) other institutions that may be assigned to it from time to time.

[Acts 1971, 62nd Leg., p. 3178, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.002. Jennie Sealy Hospital; R. Waverly Smith Pavilion**

(a) The Jennie Sealy Hospital and the R. Waverly Smith Pavilion shall be operated by the medical branch as integral parts of its hospital operations, but without cost or expense to the medical branch or to the state for maintenance, operations, repairs, or otherwise.

(b) Title to those facilities shall remain in the name of the Sealy-Smith Foundation; and the property shall not be sold, granted, leased, or in any manner conveyed to the medical branch or to the university system.

(c) Except as otherwise provided in this section, the land on which Jennie Sealy Hospital is situated (Lots 11, 12, 13, and 14, Block 667, city of Galveston, Galveston County, Texas, conveyed to the Sealy-Smith Foundation by the board of regents) shall be used as the site of the Jennie Sealy Hospital, and in the event the land is not so utilized the title reverts to the board of regents.

(d) By agreement between the board of regents and the trustees of the Sealy-Smith Foundation, the purpose or use of these facilities may be changed to any other purpose or use consistent with the purposes of the foundation and with the operation of a medical school. However, no agreement shall be made which will impose on the medical branch or the state any obligation for maintenance, operation, repairs, or otherwise.

[Acts 1971, 62nd Leg., p. 3178, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.003. Land Acquisition**

The board may acquire by donation or deed of gift, for the use and benefit of the medical branch, any and all properties contiguous or adjacent, or both, to the campus of the medical branch when the lands are deemed necessary for campus expansion.

[Acts 1971, 62nd Leg., p. 3179, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 74.004 to 74.050 reserved for expansion]

**SUBCHAPTER B. MOODY STATE SCHOOL FOR CEREBRAL PALSIED CHILDREN**

**§ 74.051. Moody State School for Cerebral Palsied Children**

The Moody State School for Cerebral Palsied Children is under the management and control of the board of regents of The University of Texas System. [Acts 1971, 62nd Leg., p. 3179, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.052. Purpose of School**

The purpose of the school is to provide for the diagnosis, care, and education of persons afflicted with cerebral palsy.

[Acts 1971, 62nd Leg., p. 3179, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.053. Superintendent, Officers, Employees**

(a) The board of regents shall appoint a well-educated person as superintendent of the school and shall determine his salary and his duties. The board may remove him for reasons it deems sufficient.

(b) The superintendent may appoint and remove the subordinate officers and employees, the number and salaries of whom shall be fixed by the board.

(c) The superintendent is responsible to the board for the details of management of the school. He shall exercise the power conferred on him by law with the approval and consent of the board.

[Acts 1971, 62nd Leg., p. 3179, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.054. Rules and Regulations**

The superintendent, with the approval of the board of regents, shall make the necessary rules and regulations for the government and management of the school.

[Acts 1971, 62nd Leg., p. 3179, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.055. Persons who may be Admitted; Classification**

(a) A person afflicted with cerebral palsy who has been a citizen of this state and of the county from which he comes at the time of filing his application with the county judge as provided by this subchapter shall be admitted to the school.

(b) A "citizen of this state" is defined to be any person who has actually resided in the state with the bona fide intention of being a citizen of the state for a period of 12 months immediately preceding the date of the application.

(c) Students admitted to the school shall be classified as:

- (1) indigent public students;
- (2) non-indigent public students; and
- (3) private students.

(d) Indigent public students are those who possess no property of any kind and have no one legally liable for their support and able to reimburse the state.

(e) Non-indigent public students are those who possess some property out of which the state may be reimbursed or who have someone legally liable for their support and able to reimburse the state.

[Acts 1971, 62nd Leg., p. 3179, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.056. Private Students**

(a) Private students may be admitted to the school on the application of a parent, guardian, or friend under regulations prescribed by the board and the superintendent not in conflict with the provisions of this subchapter.

(b) A private student shall be kept and maintained at the school at his own expense or at the expense of his parent, guardian, relative, or friend. For the board, care, and education of private students, the superintendent shall make a special contract at the rate set by the board of regents. At the time of admission of a private student, the agreed fee must be paid in advance for six months, and bond and security must be given for the prompt payment of all future expenses of the student.

(c) Payments under this section shall be made to the school, which shall give receipt for the payments and shall use them for the maintenance and improvement of the school.

[Acts 1971, 62nd Leg., p. 3180, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 74.057. Preference as Between Applicants

When application is made for more students than can be admitted, the superintendent shall give preference to indigent public students over non-indigent public students, and shall at all times give preference to both of those classes over private students.

[Acts 1971, 62nd Leg., p. 3180, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 74.058. Application

(a) The parent, guardian, or friend of a person for whom admission is sought may make application in writing and under oath to the county judge of the county where the person for whom admission is sought resides.

(b) The application shall state as to the person for whom admission is sought:

- (1) the name, age, sex, and national origin;
- (2) his occupation, trade, or employment;
- (3) his residence address or addresses for the three years immediately preceding the date of the application;
- (4) the name and address of any living parent or guardian;
- (5) the name and address of the husband or wife, if any;
- (6) the name, address, age, and sex of each child, if any;
- (7) a description and estimated value of any property interest;
- (8) the name and address of each person liable for his support, if any, and a description and estimated value of any property owned by that person; and
- (9) the name and address of any relative who is or was similarly afflicted, insane, inebriate, consumptive, or criminal.

[Acts 1971, 62nd Leg., p. 3180, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 74.059. Certificate of Physician

The application shall be accompanied by a certificate of a reputable practicing physician stating that he has carefully examined the person for whose admission application is made and that the person is afflicted with cerebral palsy. The certificate shall also show the present physical condition of the applicant and any special and other information that would be helpful to the superintendent in the care and education of the person.

[Acts 1971, 62nd Leg., p. 3181, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 74.060. Duties of County Judge

(a) The county judge shall certify that the physician making the certificate is a reputable physician actively engaged in the practice of his profession and has complied with the laws of this state granting license to physicians to practice medicine.

(b) If the judge is not satisfied as to the showing made in the application and certificate, or either, he may subpoena witnesses and examine them under oath as to those matters.

(c) If it appears to the county judge that the person is entitled to admission to the school, he shall forward an application to the superintendent of the school for admission of the person as an indigent or non-indigent student, as the judge determines on careful investigation. The application shall be accompanied with full copy of the proceedings had in the case, and the original shall be filed in the office of the county clerk.

(d) The county judge shall see that each student admitted to the school is supplied with three full suits of substantial clothing.

[Acts 1971, 62nd Leg., p. 3181, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 74.061. Expenses

The cost of the clothing and the transportation of an indigent public student and the expenses and compensation of the necessary escort shall be paid by the county from which the student is sent. Non-indigent public students shall pay for the clothing, transportation, and escort. In no case shall the escort be entitled to charge or receive more than \$2 a day and expenses actually necessary in going to and returning from the school.

[Acts 1971, 62nd Leg., p. 3181, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 74.062. Support of Indigent Public Students

Indigent public students shall be supported entirely at the expense of the state.

[Acts 1971, 62nd Leg., p. 3181, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 74.063. Support of Non-Indigent Public Students; Reimbursement; Suit

(a) Each non-indigent public student shall be kept and maintained at the expense of the state in the first instance; but the state has the right to be reimbursed for the support of a non-indigent student, and the claim of the state for support constitutes a valid lien against any property of the student, or in case he has a guardian, against his estate, or against the person or persons who may be legally liable for his support and financially able to contribute to his support.

(b) The claim may be collected by suit or other proceedings in the name of this state by the county or district attorney of the county from which the student is sent, against the student, his guardian, or the person or persons liable for his support, as the case may be.

(c) The suit or proceeding shall be instituted on the written request of the superintendent, accompa-

nied by his certificate as to the amount due the state, which shall in no case exceed the sum set by the board of regents. The certificate of the superintendent shall be sufficient evidence of the amount due the state for the support of the student.

(d) The county or district attorney shall institute and conduct the suit or proceedings, for which he is entitled to a commission of 10 percent of the amount collected. The county or district attorney shall pay all money so collected, less the commission, to the board of regents, which shall receive and give receipt for the payment and shall use the money for maintenance and improvement of the school.

[Acts 1971, 62nd Leg., p. 3181, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 74.064 to 74.100 reserved for expansion]

SUBCHAPTER C. THE UNIVERSITY OF TEXAS  
SOUTHWESTERN MEDICAL SCHOOL  
AT DALLAS

§ 74.101. Component Institution

The University of Texas Southwestern Medical School at Dallas is a component institution of The University of Texas System under the management and control of the board of regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3182, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 74.102. Courses and Degrees; Rules and Regulations

The board of regents may prescribe courses leading to customary degrees and may make rules and regulations for the operation, control, and management of the medical school as may be necessary for its conduct as a medical school of the first class.

[Acts 1971, 62nd Leg., p. 3182, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 74.103. Gifts and Grants

The board may accept and administer, on terms and conditions satisfactory to it, grants and gifts tendered to it in aid of research and teaching at the medical school. The board may also accept from the federal government or any foundation, trust fund, corporation, or individual donations, gifts, and grants, including real estate, buildings, libraries, laboratories, apparatus, equipment, records, and leases, for the exclusive use and benefit of the medical school. Before acceptance of gifts, grants, and donations of real property, the board shall secure the opinion of the attorney general on the title of the real property to be conveyed.

[Acts 1971, 62nd Leg., p. 3182, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 74.104. Entering Classes

The medical school shall admit at least 100 students in each entering class.

[Acts 1971, 62nd Leg., p. 3182, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 74.105. Lease of Land for Hospital, Etc.

(a) The board may lease to nonprofit charitable, scientific, or educational corporations organized un-

der the laws of the State of Texas, or to any governmental agency or agencies, a tract or tracts of land situated in Dallas County out of land previously deeded by Southwestern Medical Foundation to the State of Texas.

(b) A lease under this section shall be on the terms, conditions, and provisions and for a period of years determined by the board. No lease shall be for a term of more than 99 years.

(c) A lease under this section shall be made only to a nonprofit corporation or governmental agency for the purpose of constructing, maintaining, and operating a hospital, hospitals, or public health centers and services; or for the purpose of constructing, maintaining, and operating dormitories and housing facilities for students attending the medical school or persons employed by and in institutions located on the property.

(d) In no event shall the State of Texas or The University of Texas System be liable, directly or indirectly, for any expense or cost in connection with the construction, operation, and maintenance of any building or other improvement placed on the leased premises by any lessee.

[Acts 1971, 62nd Leg., p. 3182, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 74.106 to 74.150 reserved for expansion]

SUBCHAPTER D. THE UNIVERSITY OF TEXAS  
MEDICAL SCHOOL AT SAN ANTONIO

§ 74.151. Component Institution

The University of Texas Medical School at San Antonio is a component institution of The University of Texas System under the management and control of the board of regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3183, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 74.152. Courses and Degrees; Rules and Regulations

The board of regents may prescribe courses leading to customary degrees and may make rules and regulations for the operation, control, and management of the medical school as may be necessary for its conduct as a medical school of the first class.

[Acts 1971, 62nd Leg., p. 3183, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 74.153. Gifts and Grants

The board may accept and administer, on terms and conditions satisfactory to it, grants and gifts tendered to it in aid of research and teaching at the medical school. The board may also accept from the federal government, any foundation, trust fund, corporation, or individual donations, gifts, and grants, including real estate, buildings, libraries, laboratories, apparatus, equipment, records, and money, for the exclusive use and benefit of the medical school. Before acceptance of gifts, grants, and donations of real property, the board shall secure the opinion of the attorney general on the title of the real property to be conveyed.

[Acts 1971, 62nd Leg., p. 3183, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.154. Teaching Hospital**

A teaching hospital deemed suitable by the board shall be provided by the city or county within one mile of the campus of the medical school. It shall be maintained without cost to the state.

[Acts 1971, 62nd Leg., p. 3183, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 74.155 to 74.200 reserved for expansion]

SUBCHAPTER E. MEDICAL SCHOOL TO BE  
ESTABLISHED AND LOCATED BY  
BOARD OF REGENTS

**§ 74.201. Establishment and Location; Name; Scope**

(a) The board of regents may establish and maintain an additional medical branch of the university system at any location in the state. However, the location of the medical school must be determined by the board to be in the best interests of the people of the State of Texas and must be approved by the Coordinating Board, Texas College and University System. The school so established shall be known by a name designated by the board. The board is prohibited, however, from establishing this medical school in the same county that maintains or operates the main campus of any public or private medical school on September 1, 1969.

(b) The board may provide for the teaching and training of medical students, medical technicians, and other technicians in the practice of medicine.  
[Acts 1971, 62nd Leg., p. 3184, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.202. Courses and Degrees; Rules and Regulations**

The board may prescribe courses leading to customary degrees offered in other leading American medical schools, may award the degrees, and may make other rules and regulations for the operation, control, and management of the school, including the determination of the number of students that shall be admitted to any degree-granting program, that are necessary for the conduct of a professional school of the first class.

[Acts 1971, 62nd Leg., p. 3184, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.203. Affiliation Agreements; Joint Appointments**

The board may execute and carry out with any entity or institution affiliation or coordinating agreements that are reasonably necessary or desirable for the conduct and operation of a professional school of the first class; and the board may make joint appointments in other institutions under its governance. The salary of any person who receives a joint appointment shall be apportioned to the appointing institutions on the basis of services rendered.

[Acts 1971, 62nd Leg., p. 3184, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.204. Gifts and Grants**

The board may accept and administer, on terms and conditions satisfactory to it, grants or gifts of property, including real estate and money, that may be tendered to it in aid of the planning, establishment, conduct, and operation of the school and in aid of research and teaching at the school. The board may accept from the federal government or any foundation, trust fund, corporation, or individual donations, gifts, and grants, including real estate, buildings, libraries, laboratories, apparatus, equipment, records, or money, for the use and benefit of the school.

[Acts 1971, 62nd Leg., p. 3184, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.205. Teaching Hospital**

A complete teaching hospital for the school shall be furnished at no cost or expense to the state, and the state shall never contribute any funds for the construction, maintenance, or operation of a teaching hospital for the school.

[Acts 1971, 62nd Leg., p. 3184, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 74.206 to 74.250 reserved for expansion]

SUBCHAPTER F. THE UNIVERSITY OF TEXAS  
DENTAL SCHOOL AT SAN ANTONIO

**§ 74.251. Component Institution**

The University of Texas Dental School at San Antonio is a component institution of The University of Texas System under the management and control of the board of regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3185, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.252. Training and Teaching**

The board may provide for the training and teaching of dental students, dental technicians, and other technicians related to the practice of dentistry.

[Acts 1971, 62nd Leg., p. 3185, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.253. Courses and Degrees; Rules and Regulations**

The board may prescribe courses leading to customary degrees offered in other leading American dental schools, may award the degrees, and may make other rules and regulations for the operation, control, and management of the school, including the determination of the number of students that shall be admitted to any degree-granting program, as may be necessary for the conduct of a professional school of the first class.

[Acts 1971, 62nd Leg., p. 3185, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.254. Affiliation Agreements; Joint Appointments**

The board may execute and carry out with any entity or institution affiliation or coordinating agreements that are reasonably necessary or desirable for the conduct and operation of a professional

school of the first class; and the board may make joint appointments in other institutions under its governance. The salary of a person who receives a joint appointment shall be apportioned to the appointing institutions on the basis of services rendered.

[Acts 1971, 62nd Leg., p. 3185, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.255. Gifts and Grants**

The board may accept gifts and grants from any source for the benefit of the dental school.

[Acts 1971, 62nd Leg., p. 3185, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 74.256 to 74.300 reserved for expansion]

**SUBCHAPTER G. THE UNIVERSITY OF TEXAS  
(CLINICAL) NURSING SCHOOL AT  
SAN ANTONIO**

**§ 74.301. Establishment; Purpose**

The board of regents may establish and maintain in Bexar County The University of Texas (Clinical) Nursing School at San Antonio, a clinical nursing school for the education of nursing students.

[Acts 1971, 62nd Leg., p. 3185, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.302. Hospital Facilities and Services**

All hospital facilities and services required for the operation and maintenance of the nursing school shall be furnished and provided at no cost or expense to the state at the time of completion of the nursing school and subsequently.

[Acts 1971, 62nd Leg., p. 3186, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.303. Courses and Degrees; Rules and Regulations**

The board may prescribe courses leading to customary degrees offered in other leading American nursing schools, may award those degrees, and may make rules and regulations for the operation, control, and management of the school as may be necessary for the conduct of a professional school of the first class.

[Acts 1971, 62nd Leg., p. 3186, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.304. Affiliation Agreements; Joint Appointments**

The board may execute and carry out with any entity or institution affiliation or coordinating agreements that are reasonably necessary or desirable for the conduct and operation of a professional school of the first class, not in conflict with Section 74.302 of this code; and the board may make joint appointments in other institutions under its governance. The salary of any person who receives a joint appointment shall be apportioned to the appointing institutions on the basis of services rendered.

[Acts 1971, 62nd Leg., p. 3186, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.305. Gifts and Grants**

The board may accept and administer, on terms and conditions satisfactory to it, grants and gifts of property, including real estate and money, that may be tendered to it in aid of the planning, establishment, conduct, and operation of the school and in aid of research and teaching at the school. The board may accept from the federal government or any foundation, trust fund, corporation, or individual donations, gifts, and grants, including real estate, buildings, libraries, laboratories, apparatus, equipment, records and money, for the use and benefit of the school.

[Acts 1971, 62nd Leg., p. 3186, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.306. Liberal Arts Courses Pending Establishment**

While the nursing school is being established, students may take the prerequisite liberal arts courses prescribed by the nursing school.

[Acts 1971, 62nd Leg., p. 3186, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 74.307 to 74.350 reserved for expansion]

**SUBCHAPTER H. THE UNIVERSITY OF TEXAS  
(UNDERGRADUATE) NURSING SCHOOL AT  
EL PASO**

**§ 74.351. Establishment; Purpose**

The board of regents may establish and maintain in El Paso County The University of Texas (Undergraduate) Nursing School at El Paso, a four-year school for the education of nursing students.

[Acts 1971, 62nd Leg., p. 3186, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.352. Hospital Facilities and Services**

All hospital facilities and services required for the operation and maintenance of the nursing school shall be furnished and provided at no cost or expense to the state at the time of completion of the nursing school and subsequently.

[Acts 1971, 62nd Leg., p. 3187, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.353. Courses and Degrees; Rules and Regulations**

The board may prescribe courses leading to customary degrees offered in other leading American nursing schools, may award those degrees, and may make rules and regulations for the operation, control, and management of the school as may be necessary for the conduct of a professional school of the first class.

[Acts 1971, 62nd Leg., p. 3187, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 74.354. Affiliation Agreements; Joint Appointments**

The board may execute and carry out with any entity or institution affiliation or coordinating agreements that are reasonably necessary or desirable for the conduct and operation of a professional school of the first class, not in conflict with Section

74.352 of this code; and the board may make joint appointments in other institutions under its governance. The salary of any person who receives a joint appointment shall be apportioned to the appointing institution on the basis of services rendered. [Acts 1971, 62nd Leg., p. 3187, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 74.355. Gifts and Grants

The board may accept and administer, on terms and conditions satisfactory to it, grants and gifts of property, including real estate and money, that may be tendered to it in aid of the planning, establishment, conduct and operation of the school and in aid of research and teaching at the school. The board may accept from the federal government or any foundation, trust fund, corporation, or individual donations, gifts, and grants, including real estate, buildings, libraries, laboratories, apparatus, equipment, records and money, for the use and benefit of the school.

[Acts 1971, 62nd Leg., p. 3187, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 74.356 to 74.400 reserved for expansion]

### SUBCHAPTER I. THE UNIVERSITY OF TEXAS NURSING SCHOOL (SYSTEM-WIDE)

#### § 74.401. Composition, Operation, Maintenance

The board of regents of The University of Texas System is authorized to establish, maintain, and operate The University of Texas Nursing School (System-wide) which is composed of the following branches: The University of Texas (Undergraduate) Nursing School at Austin; The University of Texas (Graduate) Nursing School at Austin; The University of Texas (Undergraduate) Nursing School at El Paso; The University of Texas (Clinical) Nursing School at Galveston; The University of Texas (Clinical) Nursing School at San Antonio; and The University of Texas (Undergraduate) Nursing School at Tarrant County. The board is authorized to provide for the education of nursing students at each nursing school; however, all hospital facilities and services required for the operation and maintenance of each nursing school shall be furnished and provided at no cost and expense to the State of Texas except at the Galveston Division of The University of Texas (Clinical) Nursing School at Galveston.

[Acts 1971, 62nd Leg., p. 3346, ch. 1024, art. 2, § 19, eff. Sept. 1, 1971.]

#### § 74.402. Courses, Degrees, Etc.

The board is authorized to prescribe courses leading to such customary degrees as are offered in other leading American nursing schools, to award those degrees, and to make rules and regulations for the operation, control, and management of each nursing school, as may be necessary for the conduct of professional schools of the first class.

[Acts 1971, 62nd Leg., p. 3346, ch. 1024, art. 2, § 19, eff. Sept. 1, 1971.]

#### § 74.403. Affiliation Agreements; Joint Appointments

The board is authorized to execute and carry out with any entity or institution affiliation or coordi-

nating agreements that are reasonably necessary or desirable for the conduct and operation of professional schools of the first class, not in conflict with Section 74.401 of this code, and the board is specifically authorized to make joint appointments in other institutions under its governance, the salary of any such person who receives a joint appointment to be apportioned to the appointing institutions on the basis of services rendered.

[Acts 1971, 62nd Leg., p. 3346, ch. 1024, art. 2, § 19, eff. Sept. 1, 1971.]

#### § 74.404. Gifts and Grants

The board may accept gifts and grants from any source in aid of the conduct and operation of The University of Texas Nursing School (System-wide) or the branch nursing schools.

[Acts 1971, 62nd Leg., p. 3346, ch. 1024, art. 2, § 19, eff. Sept. 1, 1971.]

[Sections 74.405 to 74.500 reserved for expansion]

### SUBCHAPTER J. PODIATRY SCHOOL TO BE ESTABLISHED AND LOCATED

#### § 74.501. Establishment and Location; Name; Scope

(a) Subject to the approval of the Coordinating Board, Texas College and University System, the board of regents of the University of Texas System may establish and maintain a podiatry branch of its system at any location in the state. The location of the podiatry school must be determined by the board of regents to be in the best interests of the people of the State of Texas and must be approved by the Coordinating Board, Texas College and University System. If possible, the podiatry school shall be located in or affiliated with an existing or proposed academic health sciences center which provides education and training of medical students, dental students, or both, or shall be located in or affiliated with a medical or dental unit, as such term is defined in paragraph (5), Section 61.003, of this Code. If it is not possible to so locate or affiliate the podiatry school, it may be located in or affiliated with any other public senior college or university within the system under the jurisdiction of the board of regents. The school so established shall be known by a name designated by the board of regents.

(b) The board of regents may provide for the teaching and training of podiatry students, podiatry technicians, and other technicians in the practice of podiatry.

[Acts 1973, 63rd Leg., p. 1681, ch. 608, § 1, eff. June 15, 1973.]

#### § 74.502. Courses and Degrees; Rules and Regulations

The board may prescribe courses leading to customary degrees offered in other leading American podiatry schools, may award the degrees, and may make other rules and regulations for the operation, control, and management of the school, including the determination of the numbers of students that shall be admitted to any degree-granting programs, that are necessary for the conduct of a professional school of the first class.

[Acts 1973, 63rd Leg., p. 1681, ch. 608, § 1, eff. June 15, 1973.]

**§ 74.503. Affiliation Agreements; Joint Appointments**

The board may execute and carry out with any entity or institution affiliation or coordinating agreements that are reasonably necessary or desirable for the conduct and operation of a professional school of the first class; and the board may make joint appointments in other institutions under its governance. The salary of any person who receives a joint appointment shall be apportioned to the appointing institutions on the basis of services rendered.

[Acts 1973, 63rd Leg., p. 1681, ch. 608, § 1, eff. June 15, 1973.]

**§ 74.504. Gifts and Grants**

The board may accept and administer on terms and conditions satisfactory to it, grants or gifts of property, including real estate and money, that may be tendered to it in aid of research and teaching at the school. The board may accept from the federal government or any foundation, trust fund, corporation, individual, or other legal entity, donations, gifts, and grants, including real estate, buildings, libraries, laboratories, apparatus, equipment, records, or money, for the use and benefit of the school.

[Acts 1973, 63rd Leg., p. 1681, ch. 608, § 1, eff. June 15, 1973.]

**§ 74.505. Teaching Hospital**

A teaching hospital shall be furnished for or available for use by the school at no cost or expense to the state, and the state shall never contribute any funds for the construction, maintenance, or operation of a teaching hospital for the school.

[Acts 1973, 63rd Leg., p. 1681, ch. 608, § 1, eff. June 15, 1973.]

**§ 74.506. Funding**

No state funds shall be expended for physical improvements for the purpose of this Act before fiscal year 1977.

[Acts 1973, 63rd Leg., p. 1681, ch. 608, § 1, eff. June 15, 1973.]

**CHAPTER 75. OTHER UNITS OF THE UNIVERSITY OF TEXAS SYSTEM**

**SUBCHAPTER A. THE INSTITUTE OF TEXAN CULTURES**

Section

- 75.001. Institute of Texan Cultures.
- 75.002. Purpose of Institute.
- 75.003. Gifts of Land.

**SUBCHAPTER B. INSTITUTE FOR URBAN STUDIES**

- 75.101. Creation of Institute; Location.
- 75.102. Administration.
- 75.103. Role and Scope of Institute.
- 75.104. Correlation of Programs.
- 75.105. Receipt and Disbursement of Funds, Property, and Services.

**SUBCHAPTER A. THE INSTITUTE OF TEXAN CULTURES**

**§ 75.001. Institute of Texan Cultures**

The Institute of Texan Cultures and the Texas State Exhibits Building at HemisFair 1968, and all land and improvements related to them, are under the management and control of the board of regents. [Acts 1971, 62nd Leg., p. 3188, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 75.002. Purpose of Institute**

The institute shall continue to be used principally as a center concerned with subjects relating to the history and culture of the people of Texas, with collecting, organizing, and interpreting information on Texas subjects, and with producing films, filmstrips, slides, tapes, publications, and exhibits on these subjects for statewide use on television, in classrooms, in museums, and at public gatherings for the benefit of the people of Texas.

[Acts 1971, 62nd Leg., p. 3188, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 75.003. Gifts of Land**

The board may accept gifts of land for the benefit of the institute.

[Acts 1971, 62nd Leg., p. 3188, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 75.004 to 75.100 reserved for expansion]

**SUBCHAPTER B. INSTITUTE FOR URBAN STUDIES**

**§ 75.101. Creation of Institute; Location**

The board of regents of The University of Texas System shall establish and maintain an institute for urban studies in the Fort Worth-Dallas metropolitan area.

[Acts 1971, 62nd Leg., p. 3188, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 75.102. Administration**

The administration of the institute for urban studies shall be under the direction of the chancellor and board of regents of The University of Texas System. The administrative officer of the institute shall be appointed by the chief academic executive of his university with the approval of the board. The administrative officer shall appoint the professional and administrative staff of the institute according to usual procedures and with the approval of the board.

[Acts 1971, 62nd Leg., p. 3188, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 75.103. Role and Scope of Institute**

The institute of urban studies shall conduct basic and applied research into urban problems and public policy and make available the results of this research to private groups and public bodies and officials. It may offer consultative and general advisory services concerning urban problems and their solutions. According to the policies of the Coordinating Board, Texas College and University System, and with its approval, the institute may conduct instructional

and training programs for those who are working in or expect to make careers in urban public service. The training programs may be conducted by the institute either in its own name or by agreement and cooperation with other public and private organizations.

[Acts 1971, 62nd Leg., p. 3188, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 75.104. Correlation of Programs

In order to correlate the programs offered by the institute and the institute established by the University of Houston under Subchapter D, Chapter 111, of this code,<sup>1</sup> there shall be maintained regular liaison between the institutes concerning programs undertaken, a joint committee for future planning, and a union catalogue of research resources. This correlation shall be achieved by utilizing regular administrative channels, including the staff of the Coordinating Board, Texas College and University System. [Acts 1971, 62nd Leg., p. 3189, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Section 111.61 et seq.

#### § 75.105. Receipt and Disbursement of Funds, Property, and Services

In addition to state appropriations, the institute may receive and expend or use funds, property, or services from any source, public or private, under rules established by the chief academic executive of the university and the board and under applicable state laws.

[Acts 1971, 62nd Leg., p. 3189, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### SUBTITLE D. THE TEXAS A & M UNIVERSITY SYSTEM

## CHAPTER 85. ADMINISTRATION OF THE TEXAS A & M UNIVERSITY SYSTEM

### SUBCHAPTER A. GENERAL PROVISIONS

#### Section

85.01. Definitions.

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 85.11. Board of Directors.
- 85.12. Qualifications; Terms.
- 85.13. Certificate of Appointment.
- 85.14. President of Board.
- 85.15. Expenses of Directors.
- 85.16. Seal.

### SUBCHAPTER C. POWERS AND DUTIES OF BOARD

- 85.21. General Powers and Duties.
- 85.22. Expenditures.
- 85.23. Permanent Improvements; Contracts; Land Transactions.
- 85.24. Utilities.
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- 85.26. Leases and Easements; Rights-of-way for Electric Lines, Pipelines, Irrigation Canals, Etc.
- 85.27. Flood Control Easements.
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### SUBCHAPTER D. LEASE OF LANDS FOR OIL, GAS, AND OTHER MINERAL DEVELOPMENT

- 85.51. Authority to Lease.
- 85.52. Sale of Mineral Ore in Place.

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- 85.55. Public Auction; Bids; Acceptance; Rejection; Payments.
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- 85.58. Acceptance of Bids; Award of Lease.
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- 85.65. Rights of Purchaser; Assignment; Relinquishment.
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- 85.67. Forfeiture; Other Remedies; Lien.
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- 85.69. Payments; Disposition.
- 85.70. Disposition of Money; Special Funds; Investment.
- 85.71. Forms; Contracts; Regulations.
- 85.72. Expenses of Executing this Subchapter.

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 85.01. Definitions

In this chapter:

- (1) "System" or "university system" means The Texas A & M University System.
- (2) "Board" means the board of directors of The Texas A & M University System.

[Acts 1971, 62nd Leg., p. 3191, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 85.02 to 85.10 reserved for expansion]

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

#### § 85.11. Board of Directors

The government of the university system is vested in a board of nine directors appointed by the governor with the advice and consent of the senate.

[Acts 1971, 62nd Leg., p. 3192, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 85.12. Qualifications; Terms

Each member of the board shall be a qualified voter; and the members shall be selected from different portions of the state. The members hold office for staggered terms of six years, with the terms of three expiring every two years.

[Acts 1971, 62nd Leg., p. 3192, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 85.13. Certificate of Appointment

The secretary of state shall forward a certificate to each director within 10 days after his appointment, notifying him of the fact of his appointment. If any person so appointed and notified fails for 10 days to give notice to the governor of his acceptance, his appointment shall be deemed void and his place shall be filled as in the case of a vacancy.

[Acts 1971, 62nd Leg., p. 3192, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 85.14. President of Board

The board shall elect from its members a president of the board, who shall call the board together for

the transaction of business whenever he deems it expedient.

[Acts 1971, 62nd Leg., p. 3192, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.15. Expenses of Directors**

The directors shall serve without compensation but are entitled to reimbursement for actual expenses incurred in attending board meetings and in transacting the official business of the board.

[Acts 1971, 62nd Leg., p. 3192, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.16. Seal**

The board may make and use a common seal.

[Acts 1971, 62nd Leg., p. 3192, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 85.17 to 85.20 reserved for expansion]

**SUBCHAPTER C. POWERS AND DUTIES OF BOARD**

**§ 85.21. General Powers and Duties**

The board shall make bylaws, rules, and regulations it deems necessary and proper for the government of the university system and its institutions, agencies, and services. The board shall regulate the course of study and prescribe the course of discipline necessary to enforce the faithful discharge of the duties of the officers, faculty, and students.

[Acts 1971, 62nd Leg., p. 3192, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.22. Expenditures**

All expenditures may be made by order of the board and shall be paid on warrants from the comptroller based on vouchers approved by the president of the board or by some officer or officers designated by him in writing to the comptroller.

[Acts 1971, 62nd Leg., p. 3192, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.23. Permanent Improvements; Contracts; Land Transactions**

(a) The board may contract with persons, firms, or corporations for the purchase, acquisition, or construction of permanent improvements on or conveniently located with reference to the campus of any institution of the system; and may purchase, sell, or lease lands and other appurtenances for the construction of the permanent improvements. However, no liability shall be incurred by the State of Texas under this subsection.

(b) The board may sell, encumber, or contract with reference to the divesting or encumbering of the title to, any part of the campus or other property of any institution of the system as may be necessary in the construction or acquisition of dormitories. However, no debt shall be incurred against the institution or the State of Texas.

[Acts 1971, 62nd Leg., p. 3193, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.24. Utilities**

(a) The board from time to time may improve and equip existing central power plants and may con-

struct, acquire, improve, and equip steam plants and additions to them, and the board may acquire land for these purposes for the institutions under its control, when the total cost, type of construction, capacity, and plans and specifications have been approved by the board. As used in this subsection, "steam plants" does not include electrical generating facilities, but "central power plants" does include electrical generating facilities.

(b) The board from time to time may construct, extend, and improve the water systems, sewer systems, or both, for any or all institutions under its control, when the total cost, type of construction, capacity, and plans and specifications have been approved by the board.

(c) The board may furnish water, sewer, steam, power, electricity, or any or all of those services from the power and steam plant or plants and other facilities located at each institution to any or all dormitories, kitchens and dining halls, hospitals, student activity buildings, gymnasiums, athletic buildings and stadiums, the dormitory for help, laundry, and other buildings or facilities that may have been or may be constructed at each institution, and may determine the amount to be charged as a part of the maintenance and operation expense of those buildings or facilities for the service or services. The board may allocate the cost of furnishing the services to revenue-producing buildings and facilities and to other buildings and facilities at the institutions. The board may pledge the net revenues from the amounts thus received for the services to pay the principal of and interest on, and to create and maintain the reserve for, the negotiable revenue bonds issued for the purpose of constructing, acquiring, improving, extending, or equipping the power and steam plants, or additions thereto, or other facilities, and may secure the bonds additionally by pledging rentals, rates, charges, and fees for the use or availability of all or any property, buildings, structures, activities, operations, or facilities, of any nature, which may be fixed and collected from all or any designated part of the students enrolled in the institution or institutions or from others in the amounts and in the manner determined and provided by the board in the resolution authorizing the issuance of the bonds.

[Acts 1971, 62nd Leg., p. 3193, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.25. Lands and Mineral Interests**

(a) The board is vested with the sole and exclusive management and control of lands and mineral interests under its jurisdiction and that may be acquired by it. The board may convey lands to other units or agencies of government; and where not otherwise authorized by existing law so to do, the board may sell said lands or lease the surface estate under terms and conditions it deems best in the public interest. The board may not, however, sell or otherwise dispose of any land comprising the original main campus of Texas A & M University, located at College Station, except as specifically authorized by existing law. Proceeds received therefrom may be retained in local funds subject to disposition by the board for any lawful purpose.

(b) This section is cumulative of existing statutes relating to the authority of the board to lease for oil,

gas, sulphur, mineral ore, and other mineral developments, and otherwise to buy, sell, and lease certain lands under its jurisdiction and supervision.

(c) This section does not cover any lands or minerals held by the general land office.

[Acts 1971, 62nd Leg., p. 3194, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.26. Leases and Easements; Rights-of-way for Electric Lines, Pipelines, Irrigation Canals, Etc.**

(a) The board may execute leases and grant easements for rights-of-way for telephone, telegraph, electric transmission, and power lines, for oil pipelines, gas pipelines, sulphur pipelines, water pipelines and other electric lines and pipelines of any nature whatsoever, and for irrigation canals, and laterals, and may execute easements or leases for the erection and maintenance of electric substations, pumping stations, loading racks, tank farms, and other structures, and may execute easements for rights-of-way to the Texas Highway Department, to any county in the state, or to any corporation, group, organization, firm, or individual for highway or roadway purposes, on or across any lands belonging to the state and under the control of the board, if the board in its discretion deems it apparent that the interest of the state can best be served by the granting of the easements and leases.

(b) Each easement granted under this section shall be on forms approved by the attorney general and shall include a complete description of the land on which the easement is to be granted, the period of time covered by the easement, the amount of money to be paid by the grantee to the grantor, or other consideration for the granting of such easement. It shall also specify the terms and conditions, penalties for failure to comply with its provisions, and other pertinent information necessary and desirable to effect a complete understanding of the transaction.

(c) The grant of an easement for right-of-way, except an easement for right-of-way for highway or roadway purposes which may be for an indefinite term shall be limited to a term of not longer than 10 years, but any such easement may be renewed by the board.

(d) All income received by the board under the provisions of this section shall be accounted for and used in the same manner as other money available to the part of the system to which the land from which the easement is granted is assigned.

(e) No person, firm, group, organization, agency, or corporation shall hereafter construct any telephone, telegraph, transmission, or electric line, pipeline, electric substation, tank farm, loading rack, pumping station, irrigation canal or lateral, highway, or roadway of the kind and character enumerated in Subsection (a) of this section, across or on any section or part of a section of land of the character described in Subsection (a) of this section, who has not obtained a proper easement as provided by this section; or continue in possession of any such land without obtaining from the board a grant of a right-of-way easement or other easement across or on such land where the telephone, telegraph, transmission, or electric lines, pipelines, or any other transmission or pipelines, electric substation, tank

farm, loading rack, or pumping station, irrigation canal or lateral, highway, or roadway is to<sup>1</sup> constructed. Any person, firm, group, organization, agency, or corporation violating this subsection shall be liable for a penalty of \$100 for each day of the violation, to be recovered by the attorney general. [Acts 1971, 62nd Leg., p. 3194, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Probably should read "is to be".

**§ 85.27. Flood Control Easements**

The board may convey flood control easements over land under its jurisdiction and control to water control and improvement districts of this state. No flood control easement shall be conveyed unless the board receives from the district reasonable consideration for the conveyance. The conveyance shall be under the terms and conditions that the board deems in the best interest of the university system.

[Acts 1971, 62nd Leg., p. 3195, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.28. Airports**

(a) The board may construct or otherwise acquire an airport for any institution within the system. It may maintain and operate the airports in connection with the teaching of courses in aeronautical engineering and for purposes in cooperation with the national defense program and for other purposes which will not interfere with those uses.

(b) The board may acquire by purchase, lease, gift, condemnation, or otherwise, and may use, operate, and maintain any kind of property or property interest necessary or convenient to the exercise of powers under this section. The power of eminent domain shall be exercised in the manner provided by general law, including Title 52, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> except that the board shall not be required to give bond for appeal or bond for costs.

[Acts 1971, 62nd Leg., p. 3195, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Civil Statutes, Art. 3264 et seq.

**§ 85.29. Research and Experimentation for Highway Department**

The state comptroller of public accounts may draw proper warrants in favor of any part of the university system based on vouchers or claims submitted by the system through the State Highway Department covering reasonable fees and charges for services rendered by members of the staff of the system to the State Highway Department and for equipment and materials necessary for research and experimentation in all phases of highway activity, economics, materials, specifications, design of roadways, construction, maintenance, pavement and structures, traffic control, safety, the economics of highway design and construction, and other fields of highway design, construction, maintenance, or operation, based on an agreement between the State Highway Department and the Texas Agricultural and Mechanical College System as passed by the State Highway Department on September 29, 1948, and recorded by the State Highway Department as Minute Order Number 25396; and the state treasurer shall pay warrants so issued against any funds appropriated by the legislature to the State Highway

Department for the construction and maintenance of highways, roads, and bridges. The payments made to the system shall be credited and deposited to local institutional funds under its control.

[Acts 1971, 62nd Leg., p. 3195, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 85.30 to 85.50 reserved for expansion]

SUBCHAPTER D. LEASE OF LANDS FOR OIL, GAS, AND OTHER MINERAL DEVELOPMENT

§ 85.51. Authority to Lease

The board may lease for oil, gas, sulphur, mineral ore, and other mineral developments to the highest bidder at public auction all lands used for experimental stations and all other lands under its exclusive control, or any part of those lands, owned or in the future acquired by the state for the use of the university system.

[Acts 1971, 62nd Leg., p. 3196, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 85.52. Sale of Mineral Ore in Place

Mineral ore located in and on the land may also be sold in place by the board at not less than the fair market value as determined by the same methods as are provided for leasing of lands under this subchapter for development of the minerals in the lands.

[Acts 1971, 62nd Leg., p. 3196, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 85.53. Tracts, Lots, Blocks

The board may cause the lands to be surveyed or subdivided into tracts, lots, or blocks that will, in its judgment, be most conducive and convenient to facilitate the advantageous sale of lease for oil, gas, sulphur, mineral ore, and other minerals, and may make maps and plats that may be thought necessary to carry out the purposes of this subchapter. The board may obtain authentic abstracts of title to all the lands as it deems necessary from time to time, and may take any steps necessary to perfect a merchantable title to the lands in the State of Texas.

[Acts 1971, 62nd Leg., p. 3196, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 85.54. Placing Leases on Market; Advertising

(a) Whenever, in the opinion of the board, there is a demand for the purchase of oil, gas, sulphur, mineral ore, or other mineral leases on any tract or part of any tract of land that will reasonably insure an advantageous sale, the board shall place the oil, gas, sulphur, mineral ore, or other mineral leases on the land on the market in any tract or tracts, or any part thereof, that the board may designate.

(b) The board shall cause to be advertised a brief description of the land from which the oil, gas, sulphur, mineral ore, or other minerals is proposed to be leased. The advertisement shall be made by inserting in two or more papers of general circulation in this state; and in addition the board may, in its discretion, cause the advertisement to be placed in an oil and gas journal published in and out of the state, mail copies of the proposals to the county judge of the county where the lands are located, and mail copies of the proposals to other persons the board thinks would be interested.

[Acts 1971, 62nd Leg., p. 3196, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 85.55. Public Auction; Bids; Acceptance; Rejection; Payments

(a) The board may sell the lease or leases to the highest bidder at public auction, at Texas A & M University, in College Station, at any hour between 10 a. m. and 5 p. m.

(b) The board may reject all bids. However, the highest bidder shall pay to the board on the day of the sale 25 percent of the bonus bid, and the balance of the bid shall be paid to the board within 24 hours after notification that the bid has been accepted. Payments shall be in cash, certified check, or cashier's check, as the board may direct. Failure to pay the balance of the amount bid will forfeit to the board the 25 percent paid.

(c) A separate bid shall be made for each tract or subdivision thereof. No bids shall be accepted which offer less than the fair market price per ton for the mineral ore or a royalty of less than one-eighth of the gross production of oil, gas, sulphur, and other minerals in the land bid upon, and this minimum royalty may be increased at the discretion of the board. Every bid shall carry the obligation to pay an amount not less than \$1 per acre for delay in drilling or development. The amount shall be fixed by the board in advance of the advertisement and shall be paid every year for five years unless in the meantime production in paying quantities is had upon the land or the land is re-leased by the lessee.

[Acts 1971, 62nd Leg., p. 3197, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 85.56. Subsequent Procedure if No Bids Accepted

If no bid is accepted by the board at the public auction, any subsequent procedure for the sale of oil, gas, sulphur, mineral ore, and other mineral leases shall be in the manner prescribed by this subchapter.

[Acts 1971, 62nd Leg., p. 3197, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 85.57. Withdrawal of Land Advertised

The board may withdraw any lands advertised for lease or for the sale of mineral ore in place.

[Acts 1971, 62nd Leg., p. 3197, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 85.58. Acceptance of Bids; Award of Lease

(a) If in the opinion of the board any one of the bidders has offered a reasonable and proper price for any tract and not less than the price fixed by the board, the lands advertised may be leased for oil, gas, sulphur, mineral ore, and other mineral purposes under the provisions of this subchapter and any regulations the board may prescribe which are not inconsistent with the provisions of this subchapter.

(b) On acceptance of a bid, the board shall prepare a lease contract. The bid and a copy of the lease contract shall be filed in the general land office.

[Acts 1971, 62nd Leg., p. 3197, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.59. Exploratory Term; Extension; Other Provisions of Lease**

(a) The exploratory term of the lease as determined by the board prior to the promulgation of the advertisement shall in no case exceed five years, and each lease shall provide that the lease will terminate at the expiration of its exploratory term unless by unanimous vote of members of the board the lease may be extended for a period of three years. The lease may be extended if the board finds that there is likelihood of oil, gas, sulphur, mineral ore, and other minerals being discovered by lessees, and that the lessees have proceeded with diligence to protect the interest of the state. However, if oil, gas, sulphur, mineral ore, and other minerals are being produced in paying quantities from the premises, the lease shall continue in force and effect as long as the oil, gas, sulphur, mineral ore, and other minerals are being so produced. No extension under this subsection may be made by the board until the last 30 days of the original term of the lease.

(b) When, in the discretion of the board, it is deemed for the best interest of the state to extend a lease issued by the board, the board by unanimous vote may extend the lease for a period not to exceed three years, on the condition that the lessee shall continue to pay yearly rental as provided in the lease and any additional terms the board may see fit and proper to demand. The board may extend the lease and execute an extension agreement.

(c) The lease shall include any additional provisions and regulations the board may prescribe to preserve the interest of the state, not inconsistent with the provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 3197, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.60. Discontinuance of Yearly Payments; Termination for Nonproduction**

When the royalties amount to as much as the yearly payments as fixed by the board, the yearly payments may be discontinued. If before the expiration of five years oil, gas, sulphur, mineral ore, and other minerals have not been produced in paying quantities, the lease shall terminate unless extended as provided by this subchapter.

[Acts 1971, 62nd Leg., p. 3198, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.61. Operations under Lease: Effect on Rental Payments, Term of Lease**

If, during the term of any lease issued under the provisions of this subchapter, the lessee is engaged in actual drilling and mining operations for the discovery of oil, gas, sulphur, mineral ore, and other minerals on land covered by any such lease, no rentals shall be payable as to the tract on which the operations are being conducted as long as the operations are proceeding in good faith; and if oil, gas, sulphur, mineral ore, and other minerals are discovered in paying quantities on any tract of land covered by any lease, then the lease as to that tract shall remain in force as long as oil, gas, sulphur, mineral ore, and other minerals are produced in paying quantities from the tract.

[Acts 1971, 62nd Leg., p. 3198, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.62. Proration or Reduction of Production**

When, in the discretion of the board, it is for the best interest of the state to prorate or reduce production of any land, the board may execute the necessary contract to carry out that purpose.

[Acts 1971, 62nd Leg., p. 3198, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.63. Interference with Surface Uses**

No lease for oil, gas, sulphur, mineral ore, and other minerals shall be made by the board which will permit the drilling or mining for oil, gas, sulphur, mineral ore, and other minerals within 300 feet of any building on the land without the consent of the board. A lease on any experimental station or farm shall provide that the operations for oil, gas, sulphur, mineral ore, and other minerals shall not in any way interfere with use of the land as an experimental station and shall not cause the abandonment of the property or its use for experimental farm purposes; and the lessee shall drill, mine, and carry on his operations in such a way as not to cause the abandonment of the property for experimental farm purposes, and any such leased property shall be subject to the use by the State of Texas for all experimental purposes and the board shall continue to operate the experimental station.

[Acts 1971, 62nd Leg., p. 3198, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.64. Protection from Drainage**

In every case where the area in which oil, gas, sulphur, mineral ore, and other minerals sold shall be contiguous or adjacent to lands which are not lands belonging to and held by the university system, the acceptance of the bid and the sale made thereby shall constitute an obligation on the owner to adequately protect the land leased from drainage from the adjacent lands to the extent that a reasonably prudent operator would do under the same and similar circumstances. In cases where the area in which the oil, gas, sulphur, mineral ore, and other minerals are sold is contiguous to other lands belonging to and held by the university system which have been leased or sold at a lesser royalty, the owner shall likewise protect the land from drainage from the lands so leased or sold for a lesser royalty. On failure to protect the land from drainage as herein provided, the sale and all rights thereunder may be forfeited by the board in the manner provided in this subchapter for forfeitures.

[Acts 1971, 62nd Leg., p. 3199, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.65. Rights of Purchaser; Assignment; Relinquishment**

(a) Title to all rights purchased may be held by the owners as long as the area produces oil, gas, sulphur, mineral ore, and other minerals in paying quantities.

(b) All rights purchased may be assigned. All assignments shall be filed in the general land office within 100 days from the date of the first acknowledgment thereof, accompanied by 10 cents per acre for each acre assigned; and if not so filed and payment made, the assignment shall not be effective.

(c) All rights to any whole tract or to any assigned portion thereof may be relinquished to the state at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated, and filed with the chairman of the board, accompanied by \$1 for each area assigned; but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon.

(d) The board shall authorize the laying of pipeline, telephone line, and the opening of roads as deemed reasonably necessary for and incident to the purpose of this subchapter.

[Acts 1971, 62nd Leg., p. 3199, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.66. Royalty Payments; Inspection of Records; Report of Land Commissioner**

(a) If oil or other minerals are developed on any of the lands leased by the board, the royalty or money as stipulated in the sale shall be paid to the general land office at Austin on or before the last day of each month for the preceding month during the life of the rights purchased, and shall be set aside in the state treasury as specified in Section 85.70 of this code. The royalty or money paid to the general land office shall be accompanied by the sworn statement of the owner, manager, or other authorized agent showing the gross amount of oil, gas, sulphur, mineral ore, and other minerals produced and saved since the last report, the amount of oil, gas, sulphur, mineral ore, and other minerals produced and sold off the premises, and the market value of the oil, gas, sulphur, mineral ore, and other minerals, together with a copy of all daily gauges, or vats, tanks, gas meter readings, pipeline receipts, gas line receipts and other checks and memoranda of the amounts produced and put into pipelines, tanks, vats, or pool and gas lines, gas storage, other places of storage, and other means of transportation.

(b) The books and accounts, receipts and discharges of all wells, tanks, vats, pools, meters, pipelines, and all contracts and other records pertaining to the production, transportation, sale, and marketing of oil, gas, sulphur, mineral ore, and other minerals shall at all times be subject to inspection and examination of any member of the board or any duly authorized representative of the board.

(c) The commissioner of the general land office shall tender to the board on or before the 10th day of each month a report of all receipts from the lease or sale of oil, gas, sulphur, mineral ore, and other minerals turned into the special fund in the state treasury of the preceding month.

(d) Each lease shall contain a provision enabling the Board, at its discretion, to require that payment of royalty, as stipulated in the lease, be in kind. The Board shall have all powers necessary to negotiate and execute sales contracts or any other instruments necessary for the disposition of any royalty taken in kind. Such other reasonable provisions, not inconsistent with this subchapter, that will facilitate the efficient and equitable payment of royalty in kind may be included in the lease by the Board.

[Acts 1971, 62nd Leg., p. 3199, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 846, ch. 382, § 1, eff. Aug. 27, 1973.]

**§ 85.67. Forfeiture; Other Remedies; Lien**

(a) If the owner of the rights acquired under this subchapter fails or refuses to make the payment of any sum due thereon, either as rental, royalty on production, or other payment, within 30 days after same becomes due, or if the owner or his authorized agent makes any false return or false report concerning production, royalty, drilling, or mining, or if the owner fails or refuses to drill any offset well or wells in good faith, as required by his lease, or if the owner or his agent refuses the proper authority access to the records and other data pertaining to the operations under this subchapter, or if the owner or his authorized agent fails or refuses to give correct information to the proper authorities, or fails or refuses to furnish the log of any well within 30 days after production is found in paying quantities, or if any of the material terms of the lease are violated, the lease is subject to forfeiture by the board by an order entered upon the minutes of the board reciting the facts constituting the default and declaring the forfeiture.

(b) The board may have suit instituted for forfeiture through the attorney general.

(c) On proper showing by the forfeiting owner, within 30 days after the declaration of forfeiture, the lease may, at the discretion of the board and on such terms as it may prescribe, be reinstated.

(d) In case of violation by the owner of the lease contract, the remedy of the state by forfeiture is not the exclusive remedy, but suit for damages or specific performance, or both, may be instituted.

(e) The state shall have a first lien upon all oil, gas, sulphur, mineral ore, and other minerals produced upon the leased area and upon all rigs, tanks, vats, pipeline, telephone lines, and machinery and appliances used in the production and handling of oil, gas, sulphur, mineral ore, and other minerals produced thereon, to secure any amount due from the owner of the lease.

[Acts 1971, 62nd Leg., p. 3200, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.68. Filing of Records**

All surveys, files, records, copies of sale and lease contracts, and all other records pertaining to the sales and leases hereby authorized, shall be filed in the general land office and constitute archives thereof.

[Acts 1971, 62nd Leg., p. 3201, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.69. Payments; Disposition**

Payments under this subchapter shall be made to the commissioner of the general land office at Austin, who shall transmit to the state treasurer all royalties, lease fees, rentals for delay in drilling or mining, and all other payments, including all filing assignments and relinquishment fees, to be deposited in the special fund in the state treasury as provided by Section 85.70 of this Code.

[Acts 1971, 62nd Leg., p. 3201, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 85.70. Disposition of Money; Special Funds; Investment**

(a) All money received under and by virtue of this subchapter shall be deposited in the state treasury to

the credit of a special fund to be known as The Texas A & M University System Special Mineral Investment Fund. In the judgment of the board, this special fund may be invested so as to produce an income which may be expended under the direction of the board in erecting permanent improvements for the university system and in payment of expenses incurred in connection with the administration of this subchapter. The unexpended income likewise may be invested as herein provided.

(b) The income from the investment of the special mineral investment fund shall be deposited to the credit of a fund to be known as The Texas A & M University System Special Mineral Income Fund, and shall be appropriated by the legislature exclusively for the university system for the purposes herein provided.

[Acts 1971, 62nd Leg., p. 3201, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 85.71. Forms; Contracts; Regulations

The board shall adopt forms and contracts and shall promulgate rules and regulations that in its best judgment will protect the income from lands leased under this subchapter. A majority of the board may act in all cases, except where otherwise provided by this subchapter.

[Acts 1971, 62nd Leg., p. 3201, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 85.72. Expenses of Executing this Subchapter

The expenses of executing the provisions of this subchapter shall be paid by warrants drawn by the comptroller on the state treasury against the income from the special fund accumulated from leases, rentals, royalties, and other payments.

[Acts 1971, 62nd Leg., p. 3201, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## CHAPTER 86. TEXAS A & M UNIVERSITY

### SUBCHAPTER A. GENERAL PROVISIONS

#### Section

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- 86.15. Summer Sessions; Elementary Agriculture for Teachers.
- 86.16. Firemen's Training School.
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### SUBCHAPTER A. GENERAL PROVISIONS

#### § 86.01. Definitions

In this chapter:

(1) "University" means Texas A & M University.

(2) "Board" means the board of directors of The Texas A & M University System.

[Acts 1971, 62nd Leg., p. 3202, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 86.02. Texas A & M University

Texas A & M University is an institution of higher education located in the city of College Station. It is under the management and control of the board of directors of The Texas A & M University System.

[Acts 1971, 62nd Leg., p. 3202, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 86.03. Leading Object

The leading object of the university shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanical arts, in such manner as the legislature may prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

[Acts 1971, 62nd Leg., p. 3202, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 86.04 to 86.10 reserved for expansion]

### SUBCHAPTER B. POWERS AND DUTIES OF BOARD

#### § 86.11. Appointment of President, Officers, Professors

The board shall appoint the president, the professors, and other officers it deems proper to keep the university in successful operation. It may abolish any office it deems unnecessary.

[Acts 1971, 62nd Leg., p. 3203, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 86.12. Entomologist

The president and board shall employ an expert entomologist, one or more, as may be deemed necessary, whose duty it shall be to devise, if possible, means of destroying the Mexican boll weevil, boll worm, caterpillar, sharpshooter, chinch bug, peach bug, fly and worm and other insect pests and to perform the duties of professor of entomology in the university.

[Acts 1971, 62nd Leg., p. 3203, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 86.13. Civil Engineer; Soil Conservation Demonstrations

The board shall employ a graduate civil engineer of the university who has a practical and scientific knowledge of the conservation of moisture and soil fertility, who understands the practical art of terracing farmland to preserve the moisture and soil fertility and to prevent the washing away and the destruction of the properties of the soil, and who has

had five years' actual experience in terracing farmlands in some southern state. He shall make his headquarters at the university, where he shall instruct the students by lecture and practical demonstration in the best method of such conservation and terracing so as to enable them to do the work successfully. He shall devote one-half of his time to such instruction, and the other half shall be spent in field work, giving practical demonstrations in terracing to farmers' institutes and other farmers' organizations; and the president of the university shall require him to go over the state on the application of farmers desiring expert instruction in terracing farmlands and in conserving the moisture and soil fertility. He shall be furnished with the necessary instruments and equipment for the demonstration and instruction.

[Acts 1971, 62nd Leg., p. 3203, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 86.14. Special Summer School**

The board shall provide for a special summer school of at least two months each year for the training of special students who shall be admitted without an entrance examination, and may make provisions for the summer school, purchase the necessary equipment, and generally do and perform all acts necessary to establish and maintain the summer school.

[Acts 1971, 62nd Leg., p. 3203, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 86.15. Summer Sessions; Elementary Agriculture for Teachers**

The board shall require the teaching of elementary agriculture for teachers in the summer sessions.

[Acts 1971, 62nd Leg., p. 3203, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 86.16. Firemen's Training School**

(a) The university shall conduct and maintain a firemen's training school as a unit of the university in the manner deemed expedient and advisable by the board.

(b) The firemen's training school advisory board is composed of:

(1) three members of the teaching staff of the university appointed by the chairman of the board of directors; and

(2) four members or representatives of the State Firemen's Association of Texas or its successor, appointed by the president or other managing officer of that association.

(c) The advisory board shall confer with and advise the board of directors with reference to the organization of the school, the purchasing of equipment, the curriculum and program, and the conduct and management of the school.

(d) Expenditures for the per diem expenses of members of the advisory board and all other necessary expenses of the school shall be made only on the order of the board of directors, and no warrants shall be paid unless also approved in writing by the president of the university, who shall be advised with respect to the conduct of the school.

[Acts 1971, 62nd Leg., p. 3203, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 86.17. Adjunct in Kimble County**

The board may establish in Kimble County an adjunct of the university to be located on land furnished without cost to the state. The board may provide at the adjunct any services which conform to the leading object of the university as prescribed by Section 86.03 of this code, including research, subject to the exception that not more than \$300,000 may be expended from available plant funds for buildings and improvements without the specific authorization of the legislature.

[Acts 1971, 62nd Leg., p. 3204, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 86.18. Graduate Programs; Contracts with Baylor University**

The university may enter into contracts and agreements with Baylor University for joint participation in graduate programs that may be designed to benefit the state.

[Acts 1971, 62nd Leg., p. 3204, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 86.19. Eminent Domain**

The board is vested with the power of eminent domain to acquire for the use of the university any land that may be necessary and proper for carrying out its purposes. The power of eminent domain shall be exercised in the manner prescribed in Title 52, Revised Civil Statutes of Texas, 1925, as amended<sup>1</sup>, except that the board shall not be required to deposit a bond or the amount equal to the award of the commissioners.

[Acts 1971, 62nd Leg., p. 3204, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Civil Statutes, Art. 3264 et seq.

**§ 86.20. Airport**

The university may own and operate an airport, may accept federal aid and money for those purposes, and may enter into sponsor's assurance agreements with the federal government. It may operate the airport separately or in cooperation with a city, a county, the state, or the federal government, with the approval of the appropriate governing body, but without any expense to or liability against the state in any manner.

[Acts 1971, 62nd Leg., p. 3204, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 86.21. Perpetual Fund**

The money arising from the sale of the 180,000 acres of land donated to this state by the United States under the provisions of an Act of Congress passed on the second day of July, 1862,<sup>1</sup> and an amended Act of Congress of July 23, 1866,<sup>2</sup> shall constitute a perpetual fund, under the conditions and restrictions imposed by the above recited Acts, for the benefit of Texas A & M University; and the investment of the money, heretofore made in the bonds of the state, when those bonds are redeemed, may be made by the board in United States government securities in furtherance of the interests of the university and in accordance with the terms on which it was received.

[Acts 1971, 62nd Leg., p. 3204, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> 12 U.S.Stat., p. 503.  
<sup>2</sup> 14 U.S.Stat., p. 208.

**§ 86.22. Accrued Interest**

The interest heretofore collected by the State Board of Education in accordance with the provisions of the act of August 21, 1876,<sup>1</sup> due at the end of the fiscal year of 1876, on the bonds belonging to the Agricultural and Mechanical College and invested in six percent state bonds, shall also constitute a part of the perpetual fund of the university until the legislature shall otherwise provide. The state board shall collect the semiannual interest on the bonds as it becomes due, and place the money in the state treasury to the credit of the fund. The interest on all such bonds is set apart exclusively for the use of the university and shall be drawn from the treasury by the board of directors on vouchers audited by the board, or approved by the governor and attested by the secretary of the board. On the vouchers being filed with the comptroller, he shall draw his warrant on the state treasurer as necessary to pay the directors, professors and officers of the university.

[Acts 1971, 62nd Leg., p. 3205, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Acts 1876, p. 283, §§ 1, 2.

**§ 86.23. Student Center Complex Fees**

(a) The board of directors of Texas A & M University System is hereby authorized to levy a regular, fixed student fee not to exceed \$10 per student for each semester for the long session and not to exceed \$5 per student for each term of the summer session, or any fractional part thereof, against each student enrolled in said institution, as may in the board's discretion be just and necessary for the purpose of operating, maintaining, improving, and equipping the Texas A & M Student Center Complex and acquiring or constructing additions to said complex. The activities of the student center complex financed in whole or in part by the student center complex fee shall be limited to those activities in which the entire student body is eligible to participate and in no event shall any of the activities so financed be held outside the territorial limits of Texas A & M University.

(b) The comptroller of Texas A & M University shall collect the fees provided for in Subsection (a) of this section and shall credit the money received from the fees to an account known as the Student Center Complex Fee Account.

(c) The money thus collected and placed in the said Student Center Complex Fee Account shall be used for the purpose of operating, maintaining, improving, and equipping the Texas A & M Student Center Complex. A complete and itemized budget shall be submitted annually to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident thereto. The board of directors shall make such changes in the budget as it deems necessary before approving the same, and shall then levy the student fees under the provisions of Subsection (a) of this section in such amounts as will be sufficient to meet the budgetary needs of the center, within the statutory limits herein fixed.

[Acts 1971, 62nd Leg., p. 3337, ch. 1024, art. 2, § 4, eff. Sept. 1, 1971.]

**§ 86.24. Group Hospital Fees**

The Board of Directors of the Texas A & M University System may levy and collect from each student at Texas A & M University a compulsory group hospital fee of not to exceed \$15 for each regular semester and not to exceed \$7.50 for each term of each summer session.

[Acts 1973, 63rd Leg., p. 546, ch. 232, § 1, eff. Aug. 27, 1973.]

[Sections 86.25 to 86.50 reserved for expansion]

SUBCHAPTER C. REAL ESTATE  
RESEARCH CENTER

**§ 86.51. Real Estate Research Center**

There is established at Texas A & M University in the College of Agriculture, a Real Estate Research Center, hereinafter referred to as the center. The operating budget, staffing, and activities of the center shall be approved by the board of directors of The Texas A & M University System.

[Acts 1971, 62nd Leg., p. 3342, ch. 1024, art. 2, § 12, eff. Sept. 1, 1971.]

**§ 86.52. Real Estate Research Advisory Committee**

(a) The Real Estate Research Advisory Committee is created.

(b) The advisory committee is composed of nine persons appointed by the governor, without senate confirmation, with the following representation:

(1) six members shall be real estate brokers, licensed as such for at least five years preceding the date of their appointment, who have been recommended by the Texas Real Estate Commission and are representative of each of the following real estate specialties:

(A) one member shall be principally engaged in real estate brokerage;

(B) one member shall be principally engaged in real estate financing;

(C) one member shall be principally engaged in the ownership or construction of real estate improvements;

(D) one member shall be principally engaged in the ownership, development or management of residential properties;

(E) one member shall be principally engaged in the ownership, development or management of commercial properties; and

(F) one member shall be principally engaged in the ownership, development or management of industrial properties; and

(2) three members shall be representatives of the general public.

(c) Except for the initial appointees, members of the advisory committee hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate three members, including two representatives of the real estate industry and one representative of the general public, for terms expiring in 1973, three for terms expiring in 1975, and three for terms expiring in 1977. Any vacancy shall be filled

by appointment for the unexpired portion of the term. Each member shall serve until his successor is qualified.

(d) The chairman of the Texas Real Estate Commission, or a member of the commission designated by him, shall serve as an ex officio, nonvoting member of the advisory committee.

(e) The committee shall elect a chairman from its membership, and he shall serve for an annual term.

(f) The first meeting of the advisory committee shall be called by the president of Texas A & M University or his designated representative. The committee shall meet not less than semiannually, and in addition on call of its chairman, or on petition of any six of its members, or on call of the president of Texas A & M University or his designated representative.

(g) The advisory committee shall review and approve proposals to be submitted to the board of directors of The Texas A & M University System relating to staffing and general policies including priority ranking of research studies and educational and other studies.

(h) The president of Texas A & M University or his designated representative shall submit to the advisory committee in advance of each fiscal year a budget for expenditures of all funds provided for the center in a form that is related to the proposed schedule of activities for the review and approval of the advisory committee. The proposed budget approved by the advisory committee shall be forwarded with the comments of the committee to the board of directors of The Texas A & M University System prior to its action on the proposed budget, and the board of directors of The Texas A & M University System shall not authorize any expenditure that has not had the prior approval of the advisory committee.

(i) The president of Texas A & M University or his designated representative shall submit to the advisory committee for its review and approval a research agenda at the beginning of each fiscal year and shall continuously inform the advisory committee of changes in its substance and scheduling.

[Acts 1971, 62nd Leg., p. 3342, ch. 1024, art. 2, § 12, eff. Sept. 1, 1971.]

**§ 86.53. Purposes, Objectives, and Duties of the Center**

The purposes, objectives, and duties of the center are as follows:

(1) to conduct studies in all areas that relate directly or indirectly to real estate and/or urban or rural economics and to publish and disseminate the findings and results of the studies;

(2) to assist the teaching program in real estate offered by the colleges and universities in the State of Texas when requested to do so, and to award scholarships and establish real estate chairs when funds are available;

(3) to supply material to the Texas Real Estate Commission for the preparation of the examinations for real estate salesmen and brokers, if requested to do so by the commission;

(4) to develop and from time to time revise and update materials for use in the extension

courses in real estate offered by the universities and colleges in the State of Texas when requested to do so;

(5) to assist the Texas Real Estate Commission in developing standards for the accreditation of vocational schools and other teaching agencies giving courses in the field of real estate, and standards for the approval of courses in the field of real estate, as and when requested to do so by the commission;

(6) to make studies of and recommend changes in state statutes and municipal ordinances, providing however that no staff member of the center shall directly contact legislators or locally elected officials concerning the recommendations except to provide a factual response to an inquiry as to the method of research or nature of the findings;

(7) provided and except, however, that those conducting such research and studies shall periodically review their progress with the advisory committee or its designated representative, and the results of any research project, or study, shall not be published or disseminated until it has been reviewed and approved in writing by the advisory committee or its designated representative.

[Acts 1971, 62nd Leg., p. 3342, ch. 1024, art. 2, § 12, eff. Sept. 1, 1971.]

**§ 86.54. Publication Charges; Gifts and Grants**

The center may make a charge for its publications and may receive gifts and grants from foundations, individuals, and other sources for the benefit of the research center.

[Acts 1971, 62nd Leg., p. 3342, ch. 1024, art. 2, § 12, eff. Sept. 1, 1971.]

**§ 86.55. Annual Report**

A report of the activities and accomplishments of the center shall be published annually.

[Acts 1971, 62nd Leg., p. 3342, ch. 1024, art. 2, § 12, eff. Sept. 1, 1971.]

**CHAPTER 87. OTHER ACADEMIC INSTITUTIONS IN THE TEXAS A & M UNIVERSITY SYSTEM**

**SUBCHAPTER A. TARLETON STATE UNIVERSITY**

- Section 87.001. Tarleton State University.
- 87.002. Student Loan Fund.
- 87.003. Eminent Domain.

**Subchapter B. Prairie View A & M University**

- 87.101. Prairie View A & M University.
- 87.102. Governing Board.

**SUBCHAPTER C. THE TEXAS MARITIME ACADEMY**

- 87.201. Texas Maritime Academy.
- 87.202. General Powers and Duties.
- 87.203. Admission, Discipline, Instruction.
- 87.204. Funds, Properties, Agreements.
- 87.205. Fees and Charges.
- 87.206. Instruction in Field of Marine Resources

## SUBCHAPTER A. TARLETON STATE UNIVERSITY

## § 87.001. Tarleton State University

Tarleton State University is a coeducational institution of higher education located in the city of Stephenville. It is under the management and control of the board of directors of The Texas A & M University System.

[Acts 1971, 62nd Leg., p. 3206, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 800, ch. 360, § 2, eff. June 12, 1973.]

## § 87.002. Student Loan Fund

The sum of \$75,000 donated by the citizenship of Stephenville and Erath County shall be used by the board of directors as a student loan fund to be loaned to students who cannot otherwise attend the university, at a rate of interest not to exceed five percent per year, on any terms and conditions the board may deem advisable.

[Acts 1971, 62nd Leg., p. 3206, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 800, ch. 360, § 2, eff. June 12, 1973.]

## § 87.003. Eminent Domain

The board has the power of eminent domain to acquire for the use of the university any land that may be necessary or proper for carrying out its purposes.

[Acts 1971, 62nd Leg., p. 3206, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 800, ch. 360, § 2, eff. June 12, 1973.]

[Sections 87.004 to 87.100 reserved for expansion]

## SUBCHAPTER B. PRAIRIE VIEW A &amp; M UNIVERSITY

## § 87.101. Prairie View A &amp; M University

Prairie View A & M University is a coeducational institution of higher education located at Prairie View, in Waller County.

[Acts 1971, 62nd Leg., p. 3206, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 580, ch. 249, § 2, eff. Aug. 27, 1973.]

## § 87.102. Governing Board

The university is under the control and supervision of the board of directors of The Texas A & M University System. The board has the same powers and duties with respect to this university as are conferred on it by statute with respect to Texas A & M University.

[Acts 1971, 62nd Leg., p. 3206, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 580, ch. 249, § 2, eff. Aug. 27, 1973.]

[Sections 87.103 to 87.200 reserved for expansion]

## SUBCHAPTER C. THE TEXAS MARITIME ACADEMY

## § 87.201. Texas Maritime Academy

The Texas Maritime Academy, located in Galveston, is a school for the purpose of instructing boys in

the practice of seamanship, ship construction, naval architecture, wireless telegraph, engineering, and the science of navigation. It is under the management and control of the board of directors of The Texas A & M University System.

[Acts 1971, 62nd Leg., p. 3206, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 87.202. General Powers and Duties

The board shall:

(1) employ a superintendent of the academy, who shall also be commander;

(2) employ instructors and the necessary employees and determine their number, duties, and compensation;

(3) fix the terms and conditions under which pupils shall be received, instructed, and graduated;

(4) arrange cruises to and from the harbors of Houston, Galveston, Beaumont, Port Arthur, and Corpus Christi; and

(5) establish rules and regulations for the proper management of the academy.

[Acts 1971, 62nd Leg., p. 3207, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 87.203. Admission, Discipline, Instruction

The board shall prescribe the standards of admission and admit the applicants who meet the requirements. Students shall be subject to the regulations of conduct and discipline prescribed by the board. The board shall make provision for the proper instruction, for courses of study, and for the care, supervision, and management of the school; and the board is vested with all powers necessary for the proper discharge of these duties.

[Acts 1971, 62nd Leg., p. 3207, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 87.204. Funds, Properties, Agreements

The board may receive any funds or property that may be subscribed, loaned, or bequeathed for the organization or maintenance of the academy and shall execute all necessary agreements for the faithful application of the funds or property.

[Acts 1971, 62nd Leg., p. 3207, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 87.205. Fees and Charges

The fact that provision for the establishment of this academy is for the primary purpose of giving students practical and technical instruction in the arts and sciences relating to the foregoing subjects, and the further fact that training in these fields will lead to immediate and remunerative employment for those who have finished the prescribed courses, make it necessary that larger fees be charged those students who enter the academy than is now paid by students enrolled in state-supported institutions of higher education. Therefore, the provisions of Subchapter E, Chapter 54 of this code,<sup>1</sup> do not apply to the students enrolled in the academy. The board is specifically charged with the duty of assessing such fees and charges against the students who enter the academy as may be necessary to provide for the maintenance and support of the academy.

[Acts 1971, 62nd Leg., p. 3207, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Sections 54.501 to 54.503.

**§ 87.206. Instruction in Field of Marine Resources**

In addition to the instruction authorized in Section 87.201 of this code, the school or any other school created under this subchapter may provide instruction for all students in educational programs related to the general field of marine resources. Such courses must have the prior approval of the Coordinating Board, Texas College and University System. [Acts 1971, 62nd Leg., p. 3348, ch. 1024, art. 2, § 22, eff. Sept. 1, 1971.]

**CHAPTER 88. AGENCIES AND SERVICES OF THE TEXAS A & M UNIVERSITY SYSTEM**

**SUBCHAPTER A. GENERAL PROVISIONS**

Section

88.001. Agencies and Services.

**SUBCHAPTER B. THE TEXAS FOREST SERVICE**

- 88.101. State Forester: Appointment, Qualifications.
- 88.102. General Duties.
- 88.103. Enforcement; Appointment of Peace Officers.
- 88.104. Authority to Enter Private Land.
- 88.105. Cooperation with Persons and Agencies.
- 88.106. Cooperation with Federal Agencies; Rural Fire Protection Plans; Fire Training; Disposition of Obsolete Equipment.
- 88.107. Forest Land: Acquisition by Gift or Purchase.
- 88.108. Acquisition of Land for Forestry Purposes; Disposition.
- 88.109. Use of Certain Department of Corrections Land for Reformation.
- 88.110. Purchase of Land for Seedling Nursery.
- 88.111. Forest Land Acquired by State under Tax Sale.
- 88.112. South Central Interstate Forest Fire Protection Compact.
- 88.113. Compact Administrator.
- 88.114. Advisory Committee.
- 88.115. Legislative Intent.
- 88.116. Text of Compact.

**SUBCHAPTER C. THE TEXAS AGRICULTURAL EXPERIMENT STATION**

- 88.201. Purposes.
- 88.202. Main State Experiment Station.
- 88.203. Substations.
- 88.204. Sale of Stations.
- 88.205. Sale of Crops.
- 88.206. Donations; Leases.
- 88.207. Expenses; Per Diem.
- 88.208. Inspections.
- 88.209. Director.
- 88.210. Reports.
- 88.211. Bulletin.
- 88.212. Disbursements.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 88.001. Agencies and Services**

The agencies and services of the Texas A & M University System are:

- (1) the Texas Forest Service (see Subchapter B of this chapter);
- (2) the Texas Agricultural Experiment Station (see Subchapter C of this chapter);
- (3) the Texas Agricultural Extension Service, established by action of the board of directors;

(4) the Texas Engineering Experiment Station, established by action of the board of directors;

(5) the Texas Engineering Extension Service, established by action of the board of directors; and

(6) other agencies and services that may be established by law or by action of the board of directors.

[Acts 1971, 62nd Leg., p. 3209, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 88.002 to 88.100 reserved for expansion]

**SUBCHAPTER B. THE TEXAS FOREST SERVICE**

**§ 88.101. State Forester: Appointment, Qualifications**

The board of directors shall appoint a state forester, who shall be a technically trained forester with not less than two years of experience in professional forestry work. The state forester is the director of the Texas Forest Service.

[Acts 1971, 62nd Leg., p. 3209, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.102. General Duties**

Under the general supervision of the board, the state forester shall:

(1) assume direction of all forest interests and all matters pertaining to forestry within the jurisdiction of this state;

(2) subject to the approval and confirmation of the board, appoint the assistants and employees necessary in executing the duties of his office and the purposes of the board, their compensation to be fixed by the board;

(3) take any action deemed necessary by the board to prevent and extinguish forest fires;

(4) enforce all laws pertaining to the protection of forests and woodlands and prosecute violations of those laws;

(5) collect data relating to forest conditions; and

(6) prepare for the board an annual report stating the progress and condition of state forestry work and recommending plans for improving the state system of forest protection, management, and replacement.

[Acts 1971, 62nd Leg., p. 3209, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.103. Enforcement; Appointment of Peace Officers**

When necessary to execute his enforcement duties, the state forester may appoint as peace officers two district foresters, four division patrolmen, and four patrolmen, whose powers shall not exceed the enforcement powers of the state forester. The necessity of these appointments shall be certified to and approved by the board.

[Acts 1971, 62nd Leg., p. 3209, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.104. Authority to Enter Private Land**

Authority is hereby granted to every employee of the Texas Forest Service and any outside labor or assistance the employee deems necessary to enter upon any privately-owned land in the performance of fire suppression duties which are by state law under the direction of the state forester. These entries on privately-owned land may be made whenever it is necessary to investigate forest and grass fires and to ascertain whether they are burning uncontrolled, and whenever it is necessary to suppress forest and grass fires that are known to be burning uncontrolled.

[Acts 1971, 62nd Leg., p. 3210, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.105. Cooperation with Persons and Agencies**

On request, under the sanction of the board, and whenever he deems it essential to the best interests of the people of the state, the state forester shall cooperate with counties, towns, corporations, or individuals in preparing plans for the protection, management, and replacement of trees, woodlots, and timber tracts, under an agreement that the parties obtaining the assistance pay at least the field expenses of the men employed in preparing the plans. The board may cooperate with the National Forest Service under terms it deems desirable.

[Acts 1971, 62nd Leg., p. 3210, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.106. Cooperation with Federal Agencies; Rural Fire Protection Plans; Fire Training; Disposition of Obsolete Equipment**

The state forester, under the supervision of the board, may cooperate on forestry projects with the National Forest Service and other federal agencies; and, subject to the authorization of the board, he may execute agreements relating to forest protection projects in cooperation with federal agencies and timberland owners and may also execute agreements with timberland owners involving supervision of forest protection and forest development projects when the projects are developed with the aid of loans from a federal agency and when the supervision by the state is required by federal statute or is deemed necessary by the federal agency. Under the supervision of the board, the state forester is further authorized to cooperate in the development of rural fire protection plans, to provide training in suppression of fires, and to sell, lend, or otherwise make available to organized fire fighting groups obsolete fire control equipment available to the Texas Forest Service, including federal excess or surplus property.

[Acts 1971, 62nd Leg., p. 3210, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 240, ch. 115, § 1, eff. May 18, 1973.]

**§ 88.107. Forest Land: Acquisition by Gift or Purchase**

(a) On the recommendation of the board, the governor may accept gifts of land to the state to be held, protected, and administered by the board as state forests and to be used to demonstrate the practical utility of timber culture and water conservation and for game preserves. The gifts may be on terms and conditions agreed upon between the grantors of the property and the board.

(b) The board may purchase lands in the name of the state suitable chiefly for the production of timber as state forests, using for that purpose any special appropriation.

(c) All conveyances of property, by gift or otherwise, shall be submitted to the attorney general for approval as to form.

[Acts 1971, 62nd Leg., p. 3210, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.108. Acquisition of Land for Forestry Purposes; Disposition**

(a) The board may accept gifts, donations, or contributions of land suitable for forestry purposes and may enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise any land that in the judgment of the board is desirable for state forests.

(b) When land is acquired or leased under this section, the board may make expenditures, from any funds not otherwise obligated, for its management, development, and utilization. The board may sell or otherwise dispose of products from the land and may make rules and regulations that may be necessary to carry out the purposes of this section.

(c) All revenue derived from land now owned or later acquired under the provisions of this section shall be segregated by the board for use in the acquisition, management, development, and use of the land until all obligations incurred have been paid in full. Thereafter, net profits accruing from the administration of the land shall be applicable for the purposes that the legislature may prescribe.

(d) Obligations for the acquisition of land incurred by the board under the authority of this section shall be paid solely and exclusively from revenue derived from the land and shall not impose any liability on the general credit and taxing power of the state.

(e) The board may sell, exchange, or lease state forest land under its jurisdiction when in its judgment it is advantageous to the state to do so in the highest orderly development and management of state forests. However, no sale or exchange of any such land belonging to the state or the university shall be made until the sale or exchange is authorized by the legislature. The sale, lease or exchange shall not be contrary to the terms of any contract into which it has entered.

[Acts 1971, 62nd Leg., p. 3211, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.109. Use of Certain Department of Corrections Land for Reforestation**

The several tracts of land in Cherokee County near Maydelle, consisting of approximately 2,150 acres, owned by the Texas Department of Corrections, is set aside for reforestation purposes to be used by Texas A & M University to demonstrate reforestation work.

[Acts 1971, 62nd Leg., p. 3211, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.110. Purchase of Land for Seedling Nursery**

The board may acquire by purchase in the name of the State of Texas for the use and benefit of the Texas Forest Service, and may improve, a sufficient quantity of land suitable for the operation of a

forest tree seedling nursery in the reforestation program of the Texas Forest Service and for the production of other forest products. However, not more than 400 acres of land may be purchased under this section; and the selling price of seedlings produced on the land, as far as practical, shall represent the cost of production plus at least 10 percent. [Acts 1971, 62nd Leg., p. 3211, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.111. Forest Land Acquired by State under Tax Sale**

When pine forest land is sold to the state for the payment of taxes, interest, penalty, and costs adjudged against the land, as provided in Article 7328, Revised Civil Statutes of Texas, 1925, as amended, and not redeemed or resold as provided in Article 7328, the land shall be withdrawn from the market and shall be held, protected, and administered by the board as state forest; and the board may manage, use, and improve the pine forest land as fully and to the same extent as in the case of other forest land held by it in accordance with the law. Forest land, as used in this section, includes all land on which is growing pine timber of any material value and all cutover pine timberland which may reasonably be expected to produce, by reason of natural or other methods of reforestation, another growth of pine timber of any material value.

[Acts 1971, 62nd Leg., p. 3211, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.112. South Central Interstate Forest Fire Protection Compact**

The South Central Interstate Forest Fire Protection Compact has been ratified by the states of Texas, Arkansas, Louisiana, Mississippi, and Oklahoma. The text of the compact is set out in Section 88.116 of this code, and an authenticated copy is on file in the office of the secretary of state.

[Acts 1971, 62nd Leg., p. 3212, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.113. Compact Administrator**

The director of the Texas Forest Service shall act as compact administrator for the State of Texas and represent Texas in the South Central Interstate Forest Fire Protection Compact.

[Acts 1971, 62nd Leg., p. 3212, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.114. Advisory Committee**

The advisory committee referred to in Article III of the compact shall be composed of four members selected as follows: One member shall be named from the membership of the Senate of the State of Texas by the Lieutenant Governor; one member shall be named from the membership of the House of Representatives of the State of Texas by the Speaker; and two members shall be appointed by the governor, one of whom shall be selected from among the persons who comprise the board of directors of The Texas A & M University System, and one of whom shall be a person associated with forestry or a forest products industry.

[Acts 1971, 62nd Leg., p. 3212, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.115. Legislative Intent**

It is the intent of the Legislature of the State of Texas, in ratifying the South Central Interstate Forest Fire Protection Compact, that this compact is and shall be a joint program of the member states and that representatives of the United States government shall participate in compact meetings or in other activities under the compact only in the manner and to the extent authorized by the representatives of the member states, appointed pursuant to the terms of this compact.

[Acts 1971, 62nd Leg., p. 3212, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 88.116. Text of Compact**

The South Central Interstate Forest Fire Protection Compact reads as follows:

**SOUTH CENTRAL INTERSTATE FOREST FIRE PROTECTION COMPACT**

**ARTICLE I.**

The purpose of this compact is to promote effective prevention and control of forest fires in the South Central region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member States, by providing for mutual aid in fighting forest fires among the compacting States of the region and with States which are party to other Regional Forest Fire Protection compacts or agreements, and for more adequate forest development.

**ARTICLE II.**

This compact shall become operative immediately as to those States ratifying it whenever any two or more of the States of Arkansas, Louisiana, Mississippi, Oklahoma, and Texas which are contiguous have ratified it and Congress has given consent thereto. Any State not mentioned in this article which is contiguous with any member State may become a party to this compact, subject to approval by the legislature of each of the member States.

**ARTICLE III.**

In each State, the State Forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that State and shall consult with like officials of the other member States and shall implement cooperation between such States in forest fire prevention and control.

The compact administrators of the member States shall organize to coordinate the services of the member States and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of legislators, representatives of the Board of Directors of the Texas Agricultural and Mechanical College System, and forestry or forest products industries representatives, which shall meet from time to time with the compact administrators. Each member State shall name one member of the Senate and one member of the House of Representatives, and the Governor of each member State shall appoint one representative who shall be associated with for-

estry or forest products industries, and a member of the Board of Directors of the Texas Agricultural and Mechanical College System, to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting States, and each State shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member States.

It shall be the duty of each member State to formulate and put in effect a forest fire plan for that State and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

#### ARTICLE IV.

Whenever the State forest fire control agency of a member State requests aid from the State forest fire control agency of any other member State in combating, controlling or preventing forest fires, it shall be the duty of the State forest fire control agency of that State to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

#### ARTICLE V.

Whenever the forces of any member State are rendering outside aid pursuant to the request of another member State under this compact, the employees of such State shall, under the direction of the officers of the State to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the State to which they are rendering aid.

No member State or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith; provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any State.

All liability, except as otherwise provided herein, that may arise either under the laws of the requesting State or under the laws of the aiding State or under the laws of a third State on account of or in connection with a request for aid, shall be assumed and borne by the requesting State.

Any member State rendering outside aid pursuant to this compact shall be reimbursed by the member State receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of employees and equipment incurred in connection with such request; provided, that nothing herein contained shall prevent any assisting member State from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member State without charge or cost.

Each member State shall provide for the payment of compensation and death benefits to injured em-

ployees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such State.

For the purposes of this compact the term "employee" shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding State under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member States.

#### ARTICLE VI.

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member State.

Nothing in this compact shall be construed to limit or restrict the powers of any State ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of State laws, rules or regulations intended to aid in such prevention, control and extinguishment in such State.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between the United States Forest Service and a member State or States.

#### ARTICLE VII.

The compact administrators may request the United States Forest Service to act as the primary research and coordinating agency of the South Central Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each State, and the United States Forest Service may accept the initial responsibility in preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of the United States Forest Service may attend meetings of the compact administrators.

#### ARTICLE VIII.

The provisions of Articles IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any State party to this compact and any other State which is party to a regional forest fire protection compact in another region; provided, that the Legislature of such other State shall have given its assent to such mutual aid provisions of this compact.

#### ARTICLE IX.

This compact shall continue in force and remain binding on each State ratifying it until the legislature or the Governor of such State takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the State desiring to withdraw to the chief executives of all States then parties to the compact.

[Acts 1971, 62nd Leg., p. 3213, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 88.117 to 88.200 reserved for expansion]

SUBCHAPTER C. THE TEXAS AGRICULTURAL EXPERIMENT STATION

§ 88.201. Purposes

There shall be established, at places in the state the board of directors deems proper, experiment stations for the purpose of making experiments and conducting investigations in the planting and growing of agricultural and horticultural crops and soils, and the breeding, feeding and fattening of livestock for slaughter.

[Acts 1971, 62nd Leg., p. 3215, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 88.202. Main State Experiment Station

The experiment station located at College Station, which is in part supported by the federal government, shall remain there as a permanent institution. It shall be known as the Main State Experiment Station and shall be under the supervision of the board of directors. The board may accept from the federal government any aid in its support that may be provided by Congress.

[Acts 1971, 62nd Leg., p. 3216, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 88.203. Substations

(a) The board may:

(1) establish experiment substations at places in this state it deems proper;

(2) abandon or discontinue any substation which may become undesirable for experiment purposes, and if deemed necessary establish others in their stead at places it deems advisable; and

(3) sell any land or other state property used in the operation of an experiment station when abandoned and apply the proceeds of the sale to the purchase of other land and property for the establishment of experiment stations.

(b) The board shall exercise a general supervision and direction over substations established under this subchapter.

[Acts 1971, 62nd Leg., p. 3216, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 88.204. Sale of Stations

If property used in the operation of a station is sold, the title to the property shall not pass from this state until a deed of conveyance is made to the purchaser, duly signed by the governor and attested by the secretary of state under his official seal. All funds received from the sale of station lands or property shall be deposited in the state treasury and shall be paid out in accordance with the provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 3216, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 88.205. Sale of Crops

Proceeds from the sale, barter, or exchange of crops raised on any experiment station shall be applied to defray the expenses of operating the station.

[Acts 1971, 62nd Leg., p. 3216, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 88.206. Donations; Leases

(a) The board may accept and receive donations of money and property when given to be used in connection with any experiment work authorized by this subchapter.

(b) In the location of any experiment station, the board may take into consideration and receive any donation of money, land, or other property to be used in the operation, equipment, or management of the station; and for experiment work may lease any land that in its judgment may be necessary for any of the purposes named in this subchapter.

[Acts 1971, 62nd Leg., p. 3216, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 88.207. Expenses; Per Diem

The necessary traveling expenses of the members of the board and those of the director and his assistants shall be paid out of the funds appropriated by this state for the maintenance and support of the experiment stations. In addition to actual traveling expenses, each member of the board, when traveling on the official business of the stations, shall be paid \$5 per day while actually engaged in the discharge of his duties.

[Acts 1971, 62nd Leg., p. 3216, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 88.208. Inspections

The board shall visit the stations once a year and shall make criticisms to the director and his assistants that it deems expedient and necessary.

[Acts 1971, 62nd Leg., p. 3217, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 88.209. Director

(a) The main station and the substations are under the supervision, control, management, and direction of the director of the Texas Agricultural Experiment Station at College Station. The director shall reside at College Station.

(b) The board may pay a part of the director's salary from money appropriated by the Legislature for the maintenance and support of the experiment stations in the proportion that in its judgment is just and proper, taking into consideration the division of his time between the main station and the substations and the sum appropriated for the purpose by the federal government.

(c) The director may employ the assistants and labor and may purchase the livestock, farming implements, tools, seed, and other materials and supplies that he deems necessary for the successful management of any or all of the experiment stations, subject to the approval of the board.

[Acts 1971, 62nd Leg., p. 3217, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 88.210. Reports

On the first day of each month, the director shall make a complete report to the board showing receipts and disbursements, the source of the receipts, and for what purpose they were disbursed; and on or before January 1, of each year, he shall make a

full and detailed report to the board of the operation of the stations, including a statement of receipts and expenditures for the entire year. The annual report shall be transmitted to the governor with any additional report that the board deems proper.

[Acts 1971, 62nd Leg., p. 3217, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 88.211. Bulletin

The director shall periodically issue and circulate among the farmers and livestock raisers of Texas printed bulletins showing the results of the experiments and the results accomplished and the progress made in the improvement of the agricultural and livestock interests of this state. The bulletins shall be mailed to all persons who desire them. The director shall invite the cooperation of persons engaged in those industries and shall give them advice when requested with reference to the management and cultivation of their farms and the care, management, and feeding of their stock.

[Acts 1971, 62nd Leg., p. 3217, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 88.212. Disbursements

Before warrants are issued by the comptroller in payment of state experiment station accounts, vouchers covering them shall be audited and signed by the director or an assistant designated by him, in writing, for that purpose, and also by a member of the board.

[Acts 1971, 62nd Leg., p. 3217, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### SUBTITLE E. THE STATE SENIOR COLLEGE SYSTEM

#### CHAPTER 95. ADMINISTRATION OF THE STATE SENIOR COLLEGE SYSTEM

##### SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

###### Section

- 95.01. Board of Regents.
- 95.02. Board Members: Appointment, Qualifications, Terms.
- 95.03. Board Meetings.
- 95.04. Per Diem; Expenses.

##### SUBCHAPTER B. POWERS AND DUTIES OF BOARD

- 95.21. General Responsibilities of Board.
- 95.22. Inspection of Senior Colleges.
- 95.23. Local Committees of Board.
- 95.24. Admission; Diplomas and Certificates.
- 95.25. Teaching Certificates.
- 95.26. Incidental Fees.
- 95.27. Annual Report to Governor.
- 95.28. Disbursement of Funds.
- 95.29. Financial Statements and Recommendations.
- 95.30. Eminent Domain.
- 95.31. Acquisition of Land; Procedures.
- 95.32. Dormitories.

##### SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

#### § 95.01. Board of Regents

The organization, control, and management of the state senior college system is vested in the Board of Regents, State Senior Colleges.

[Acts 1971, 62nd Leg., p. 3218, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 95.02. Board Members: Appointment, Qualifications, Terms

The board is composed of nine members appointed by the governor with the advice and consent of the senate. The members hold office for terms of six years, with the terms of three members expiring every two years. Each member of the board shall be a qualified voter; and the members shall be selected from different portions of the state.

[Acts 1971, 62nd Leg., p. 3218, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 95.03. Board Meetings

The board shall meet each year at Austin, on the first Monday in May, or as soon thereafter as practicable, for the transaction of business pertaining to the affairs of the state senior colleges. The board shall also meet at other times and places deemed necessary for the welfare of the colleges by a majority of the members.

[Acts 1971, 62nd Leg., p. 3219, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 95.04. Per Diem; Expenses

Each member of the board shall receive \$10 per day for the time spent attending the meetings of the board, in addition to reimbursement for traveling expenses. Payment shall be made out of the appropriation for the support and maintenance of the state senior colleges as the board may direct.

[Acts 1971, 62nd Leg., p. 3219, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 95.05 to 95.20 reserved for expansion]

##### SUBCHAPTER B. POWERS AND DUTIES OF BOARD

#### § 95.21. General Responsibilities of Board

The board is responsible for the general control and management of the state senior colleges and may erect, equip, and repair buildings; purchase libraries, furniture, apparatus, fuel, and other necessary supplies; employ and discharge presidents or principals, teachers, treasurers, and other employees; and fix the salaries of the persons employed. The president of each state senior college shall nominate annually to the board the professors, teachers, officials, and assistants who, in his opinion, will promote the best interests of the institution.

[Acts 1971, 62nd Leg., p. 3219, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 95.22. Inspection of Senior Colleges

The board shall visit each college under its control and management at least once during each scholastic year, inspect its work, and gather information which will enable the board to perform its duties intelligently and effectively.

[Acts 1971, 62nd Leg., p. 3219, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 95.23. Local Committees of Board

At least once a year each local committee of the board shall meet on the campus of the institution for which the local committee is responsible for report-

ing to the board. At the meeting, the local committee shall confer with the institution's officials and carefully examine all phases of the operations of the institution.

[Acts 1971, 62nd Leg., p. 3219, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 95.24. Admission; Diplomas and Certificates**

The board may determine the conditions on which students may be admitted to the colleges, the grades of certificates issued, the conditions for the award of certificates and diplomas, and the authority by which certificates and diplomas are signed.

[Acts 1971, 62nd Leg., p. 3219, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 95.25. Teaching Certificates**

Diplomas and teachers certificates of each of the state senior colleges authorize the holders to teach in the public schools.

[Acts 1971, 62nd Leg., p. 3220, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 95.26. Incidental Fees**

The board may fix the rate of incidental fees to be paid by students attending the colleges and may make rules for the collection of the fees and for the disbursement of the funds collected.

[Acts 1971, 62nd Leg., p. 3220, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 95.27. Annual Report to Governor**

The board shall make an annual report to the governor showing the general condition of the affairs of each senior college and making recommendations for its future management and welfare.

[Acts 1971, 62nd Leg., p. 3220, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 95.28. Disbursement of Funds**

All appropriations made by the legislature for the support and maintenance of the state senior colleges, for the purchase of land or buildings for the colleges, for the erection or repair of buildings, for the purchase of apparatus, libraries, or equipment of any kind, or for any other improvement of any kind shall be disbursed under the direction and authority of the board. The board may formulate rules for the general control and management of the schools, for the auditing and approving of accounts, and for the issuance of vouchers and warrants which are necessary for the efficient administration of the schools.

[Acts 1971, 62nd Leg., p. 3220, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 95.29. Financial Statements and Recommendations**

The board shall file in each house of the legislature at each of its regular biennial sessions a statement of the receipts and expenditures of each of the senior colleges, showing the amount of salaries paid to the various teachers, contingent expenses, expenditures for improvements, and other items of expense. The board shall also file its recommendations for appropriations for the senior colleges.

[Acts 1971, 62nd Leg., p. 3220, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 95.30 Eminent Domain**

The board has the power of eminent domain to acquire for the use of the state senior colleges the lands necessary and proper for carrying out their purposes, in the manner prescribed in Title 52, Revised Civil Statutes of Texas, 1925, as amended.<sup>1</sup> The taking of the land is for the use of the state. The board shall not be required to deposit a bond or the amount equal to the award of damages by the commissioners as provided in Paragraph 2, Article 3268, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1971, 62nd Leg., p. 3220, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Civil Statutes, Art. 3264 et seq.

**§ 95.31. Acquisition of Land; Procedures**

(a) The board may acquire land needed for the proper operation of a senior college in the county in which the senior college is located. The acquisition may be by purchase or by condemnation.

(b) If the board and the landowner cannot agree on the sale and purchase of the land, the board may request the attorney general to proceed to condemn the land as provided by law. In lieu of a suit, the parties may select by agreement three persons to ascertain the value of the land under their oaths and the direction of the court. The finding and decision of the jury, court, or persons selected is in all cases final, except that the parties may appeal as in other civil cases.

(c) When the value of the land has been ascertained and the court is satisfied with the valuation, the court shall enter a decree vesting the title of the land in the state for the use and benefit of the senior college for whose benefit the land is needed. No decree shall be entered until the value of the land as ascertained, together with all reasonable cost and expense of the owner in attending the proceeding, is paid to him or into court for his benefit and subject to his order. The costs and expenses, including reasonable attorneys' fees, shall be ascertained by the court in which the proceeding is held.

[Acts 1971, 62nd Leg., p. 3220, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 95.32. Dormitories**

(a) The board may enter into contracts with persons, firms, or corporations for the erection of dormitories at any senior college, and may purchase or lease lands and other appurtenances for the construction of the dormitories, provided that the state incurs no liability for the buildings or the sites.

(b) The board may make contracts with reference to the collection and disposition of the revenue derived from the dormitories in the acquisition, management, and maintenance of the buildings.

(c) The board may adopt rules and regulations it deems reasonable requiring any class or classes of students to reside in the dormitories or other buildings. Absolute management and control of the dormitories constructed is vested in the board.

[Acts 1971, 62nd Leg., p. 3221, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## CHAPTER 96. INSTITUTIONS OF THE STATE SENIOR COLLEGE SYSTEM

### SUBCHAPTER A. SUL ROSS STATE UNIVERSITY

#### Section

96.01. Sul Ross State University.

### SUBCHAPTER B. ANGELO STATE UNIVERSITY

- 96.21. Angelo State University.  
 96.22. Donations, Gifts, Endowments.  
 96.23. Management and Control of Lands; Conveyances and Leases.  
 96.24. Military Training.  
 96.25. Obligations and Benefits of General Laws.

### SUBCHAPTER C. SOUTHWEST TEXAS STATE UNIVERSITY

96.41. Southwest Texas State University.

### SUBCHAPTER D. SAM HOUSTON STATE UNIVERSITY

- 96.61. Sam Houston State University.  
 96.62. University Airport.  
 96.63. Josey School of Vocational Education.

### SUBCHAPTER A. SUL ROSS STATE UNIVERSITY

#### § 96.01. Sul Ross State University

Sul Ross State University is a coeducational institution of higher education located in the city of Alpine. It is under the management and control of the Board of Regents, State Senior Colleges.

[Acts 1971, 62nd Leg., p. 3222, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 96.02 to 96.20 reserved for expansion]

### SUBCHAPTER B. ANGELO STATE UNIVERSITY

#### § 96.21. Angelo State University

Angelo State University is a coeducational institution of higher education located in the city of San Angelo. It is under the management and control of the Board of Regents, State Senior Colleges.

[Acts 1971, 62nd Leg., p. 3222, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 96.22. Donations, Gifts, Endowments

The board may accept donations, gifts, and endowments for the university, to be held in trust and administered by the board for the purposes and under the directions, limitations, and provisions declared in writing in the donation, gift, or endowment, not inconsistent with the laws of the state or with the objectives and proper management of the university.

[Acts 1971, 62nd Leg., p. 3222, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 96.23. Management and Control of Lands; Conveyances and Leases

(a) The board is vested with the sole and exclusive management and control of all the lands, including lands with oil and gas and other minerals, transferred to the university by the Junior College District of Tom Green County.

(b) The board may sell, lease, explore, and develop the lands, may make and enter into unitization agreements, and may execute division orders and other contracts necessary in the management and development of the lands, all on terms and conditions which the board deems to be in the best interest of the university. No lease shall be sold for less than the royalty and rental terms demanded at that time by the general land office in the sale of oil, gas, and other mineral leases of the public lands of the state.

(c) All money received shall be deposited in the state treasury to the credit of a special fund which, in the judgment of the board, may be invested and the principal and income of which may be expended on appropriation by the legislature for the administration of the university.

[Acts 1971, 62nd Leg., p. 3222, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 96.24. Military Training

No student shall ever be required to take any military training as a condition for entrance into or graduation from the university.

[Acts 1971, 62nd Leg., p. 3223, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 96.25. Obligations and Benefits of General Laws

The university is subject to the obligations and entitled to the benefits of all general laws of Texas applicable to all other state institutions of higher education, except that where the general laws are in conflict with this subchapter, the provisions of this subchapter prevail to the extent of the conflict.

[Acts 1971, 62nd Leg., p. 3223, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 96.26 to 96.40 reserved for expansion]

### SUBCHAPTER C. SOUTHWEST TEXAS STATE UNIVERSITY

#### § 96.41. Southwest Texas State University

Southwest Texas State University is a coeducational institution of higher education located in the city of San Marcos. It is under the management and control of the Board of Regents, State Senior Colleges.

[Acts 1971, 62nd Leg., p. 3223, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 96.42 to 96.60 reserved for expansion]

### SUBCHAPTER D. SAM HOUSTON STATE UNIVERSITY

#### § 96.61. Sam Houston State University

Sam Houston State University is a coeducational institution of higher education located in the city of Huntsville. It is under the management and control of the Board of Regents, State Senior Colleges.

[Acts 1971, 62nd Leg., p. 3223, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 96.62. University Airport**

(a) The board may construct or otherwise acquire without costs to the state or the university an airport for purposes of cooperation with the national defense program and for instruction in aeronautics.

(b) The board may acquire by purchase, lease, gift, or by any other means, and may maintain, use, and operate any and all property of any kind, real, personal, or mixed, or any interest in property, necessary or convenient to the exercise of the powers conferred by this section. The board has the power of eminent domain for the purpose of acquiring by condemnation any real property, or any interest in real property, necessary or convenient to the exercise of the powers conferred by this section. The board shall exercise the power of eminent domain in the manner provided by general law, including Title 52, Revised Civil Statutes of Texas, 1925,<sup>1</sup> except that it shall not be required to give bond for appeal or bond for costs.

[Acts 1971, 62nd Leg., p. 3223, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Civil Statutes, Art. 3264 et seq.

**§ 96.63. Josey School of Vocational Education**

(a) The Josey School of Vocational Education is a division of Sam Houston State University and is under the direction and control of the Board of Regents, State Senior Colleges.

(b) The administration of the school is under the direction of the president of Sam Houston State University.

(c) The school shall provide vocational training for individuals over the age of 18 who cannot qualify scholastically for college entrance and for other persons who desire to avail themselves of short intensive courses in vocational education in the following fields: agriculture, home management, distributive education, photography, plumbing, sheet metal work, machine shop, auto mechanics, furniture, electrical appliances, air conditioning and refrigeration, printing, radio, garment making, interior decorating, light construction contracting, photoengraving, watchmaking, and other trades of like nature. The training in these subjects shall be organized so that the courses may be completed in from 9 to 24 months. Courses may also be offered in English and mathematics and other subjects which will contribute to the vocational training of the student. Vocational courses in government, designed to prepare workers in various county, city, and state offices, may also be offered.

(d) The rate of tuition charged students shall be the actual cost of teaching service, not to exceed \$500 per scholastic year of nine months. Scholarships may be awarded by the board to worthy indigent students who might greatly benefit from the training offered. The amount of the scholarships may vary according to the needs of the individuals, but in no case may it reduce the tuition payment by the student to a point less than the tuition fee regularly charged students at the state senior colleges.

[Acts 1971, 62nd Leg., p. 3224, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Chapters 97 to 99 reserved for expansion]

**SUBTITLE F. OTHER COLLEGES AND UNIVERSITIES**

**CHAPTER 100. EAST TEXAS STATE UNIVERSITY**

**SUBCHAPTER A. GENERAL PROVISIONS**

Section  
100.01. East Texas State University.

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

100.11. Board of Regents.  
100.12. Terms of Office; Vacancies.  
100.13. Removal.  
100.14. Oath.  
100.15. Officers.  
100.16. Meetings.

**SUBCHAPTER C. POWERS AND DUTIES**

100.31. Extent of Powers.  
100.32. Degrees.  
100.33. Donations, Gifts, Grants, Endowments.  
100.34. Lease of University Property.  
100.35. Contracts for Water and Sewage.  
100.36. Management of Lands.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 100.01. East Texas State University**

East Texas State University is a coeducational institution of higher education located in the city of Commerce.

[Acts 1971, 62nd Leg., p. 3225, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 100.02 to 100.10 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**§ 100.11. Board of Regents**

The organization, control, and management of the university is vested in a board of nine regents appointed by the governor and confirmed by the senate. Not more than two members of the board shall be appointed from or be a resident of any one state senatorial district, and no member may be appointed from or be a resident of the county in which the university is located.

[Acts 1971, 62nd Leg., p. 3225, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 100.12. Terms of Office; Vacancies**

Members of the board hold office for staggered terms of six years, with the terms of three regents expiring on February 15 of each odd-numbered year. Any vacancy that occurs on the board shall be filled for the unexpired term by appointment of the governor. Each member shall serve until his successor is appointed and has qualified.

[Acts 1971, 62nd Leg., p. 3226, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 100.13. Removal**

The members of the board are removable by the governor for inefficiency or malfeasance of office.

[Acts 1971, 62nd Leg., p. 3226, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 100.14. Oath

Each member of the board shall take the constitutional oath of office before assuming the duties of his office.

[Acts 1971, 62nd Leg., p. 3226, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 100.15. Officers

The board shall organize by electing a chairman and any other officers it deems necessary.

[Acts 1971, 62nd Leg., p. 3226, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 100.16. Meetings

The chairman shall convene the board to consider any business connected with the university whenever he deems it expedient.

[Acts 1971, 62nd Leg., p. 3226, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 100.17 to 100.30 reserved for expansion]

### SUBCHAPTER C. POWERS AND DUTIES

#### § 100.31. Extent of Powers

With respect to the management and control of the university, the board has the same powers and duties that are conferred on the Board of Regents, State Senior Colleges, with respect to colleges in that system.

[Acts 1971, 62nd Leg., p. 3226, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 100.32. Degrees

The board may award bachelor's, master's, and doctor's degrees and their equivalents, but no department, school, or degree program shall be instituted except with the prior approval of the Coordinating Board, Texas College and University System.

[Acts 1971, 62nd Leg., p. 3226, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 100.33. Donations, Gifts, Grants, Endowments

The board may accept donations, gifts, grants, and endowments for the university to be held in trust and administered by the board for the purposes and under the directions, limitations, and provisions declared in writing in the donation, gift, grant, or endowment, not inconsistent with the laws of the state or with the objectives and proper management of the university.

[Acts 1971, 62nd Leg., p. 3226, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 100.34. Lease of University Property

The board may lease any part of the university's property to any person, partnership, special partnership, business association, or institution, including governmental entities, for the purpose of permitting the university to develop its resources to the greatest extent feasible while realizing a maximum economic benefit.

[Acts 1971, 62nd Leg., p. 3227, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 100.35. Contracts for Water and Sewage

The board shall contract with the city of Commerce for the furnishing of water and sewage to the university. The rates to be charged the university shall be those regularly established, published, and declared for similar users or customers, or if there are no similar users or customers, the rates to be charged shall be those established by the city for commercial users. The city may make any special adjustments, discounts, and rates that the governing body of the city may see fit to provide for the university.

[Acts 1971, 62nd Leg., p. 3227, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 100.36. Management of Lands

The board has the sole and exclusive management and control of lands set aside and appropriated to or acquired by the university. The board may sell, lease, and otherwise manage, control, and use the lands in any manner and at prices and under terms and conditions the board deems best for the interest of the university. Land shall not be sold at a price less per acre than that at which the same class of other public land may be sold under the statutes. No grazing lease shall be made for a period of more than 10 years.

[Acts 1973, 63rd Leg., p. 424, ch. 189, § 1, eff. Aug. 27, 1973.]

## CHAPTER 101. STEPHEN F. AUSTIN STATE UNIVERSITY

### SUBCHAPTER A. GENERAL PROVISIONS

#### Section

101.01. Stephen F. Austin State University.

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 101.11. Board of Regents.
- 101.12. Term of Office.
- 101.13. Qualifications; Oath.
- 101.14. Officers.
- 101.15. Bylaws, Rules, Regulations.
- 101.16. University President.
- 101.17. Minutes.
- 101.18. Suits Affecting University.
- 101.19. Expenses.
- 101.20. Meetings.
- 101.21. Reports.

### SUBCHAPTER C. POWERS AND DUTIES

101.41. Extent of Powers.

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 101.01. Stephen F. Austin State University

Stephen F. Austin State University is a coeducational institution of higher education located in the city of Nacogdoches.

[Acts 1971, 62nd Leg., p. 3228, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 101.02 to 101.10 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 101.11. Board of Regents

The control and management of the university is vested in a board of nine regents appointed by the governor with the advice and consent of the senate. [Acts 1971, 62nd Leg., p. 3228, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 101.12. Term of Office

Members of the board hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. Any vacancy shall be filled by appointment for the unexpired portion of the term. [Acts 1971, 62nd Leg., p. 3228, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 101.13. Qualifications; Oath

Each member of the board must be a citizen of the State of Texas and shall take the constitutional oath of office. [Acts 1971, 62nd Leg., p. 3228, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 101.14. Officers

The board shall elect a chairman and any other officer deemed necessary. [Acts 1971, 62nd Leg., p. 3228, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 101.15. Bylaws, Rules, Regulations

The board shall enact bylaws, rules, and regulations necessary for the successful management and operation of the university. [Acts 1971, 62nd Leg., p. 3228, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 101.16. University President

The board shall select the president of the university. [Acts 1971, 62nd Leg., p. 3228, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 101.17. Minutes

The board shall cause accurate and complete minutes of its meetings to be maintained. The minutes are open to the public for inspection at the university during regular business hours, and certified copies of the minutes shall be furnished to anyone on payment of a fee set by the board. [Acts 1971, 62nd Leg., p. 3228, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 101.18. Suits Affecting University

The board may sue and be sued in the name of the university. Venue is in either Nacogdoches County or Travis County. The university may be impleaded by service of citation on its president, and legislative consent to suits against the university is granted. [Acts 1971, 62nd Leg., p. 3229, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 101.19. Expenses

Members of the board shall serve without pay but shall be reimbursed for their actual expenses incurred in attending the work of the board, subject to the approval of the chairman of the board. [Acts 1971, 62nd Leg., p. 3229, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 101.20. Meetings

The board shall hold an annual meeting on the campus of the university during the month of April, and at other times and places as scheduled by the board or designated by its chairman. [Acts 1971, 62nd Leg., p. 3229, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 101.21. Reports

The board shall make reports to the coordinating board as required in Section 61.066 of this code. [Acts 1971, 62nd Leg., p. 3229, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 101.22 to 101.40 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 101.41. Extent of Powers

With respect to the management and control of the university, the board has the same powers and duties that are conferred on the Board of Regents, State Senior Colleges, with respect to institutions in that system. [Acts 1971, 62nd Leg., p. 3229, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

CHAPTER 102. WEST TEXAS STATE UNIVERSITY

SUBCHAPTER A. GENERAL PROVISIONS

Section 102.01. West Texas State University.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 102.11. Board of Regents.
- 102.12. Terms; Vacancies.
- 102.13. Oath.
- 102.14. Removal.
- 102.15. Officers.
- 102.16. Meetings.

SUBCHAPTER C. POWERS AND DUTIES

- 102.31. Extent of Powers.
- 102.32. Lease of Lands to Fraternities and Sororities.
- 102.33. Airport.

SUBCHAPTER D. KILLGORE RESEARCH CENTER

- 102.51. Gifts and Donations; Location of Center.
- 102.52. Transfer of Money; Disbursements.
- 102.53. Maintenance and Administration.
- 102.54. Permanent Research Program.

## SUBCHAPTER A. GENERAL PROVISIONS

## § 102.01. West Texas State University

West Texas State University is a coeducational institution of higher education located in the city of Canyon.

[Acts 1971, 62nd Leg., p. 3230, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 102.02 to 102.10 reserved for expansion]

## SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

## § 102.11. Board of Regents

The organization, control, and management of the university is vested in a board of nine regents appointed by the governor and confirmed by the senate. The members of the board shall be selected from different portions of the state.

[Acts 1971, 62nd Leg., p. 3230, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 756, ch. 331, § 1, eff. June 12, 1973.]

## § 102.12. Terms; Vacancies

The members of the board hold office for staggered terms of six years, with the terms of three members expiring each two years. Any vacancy that occurs on the board shall be filled for the unexpired term by appointment of the governor.

[Acts 1971, 62nd Leg., p. 3231, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 102.13. Oath

Each member of the board shall take the constitutional oath of office before assuming the duties of his office.

[Acts 1971, 62nd Leg., p. 3231, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 102.14. Removal

The members of the board are removable by the governor for inefficiency or malfeasance of office.

[Acts 1971, 62nd Leg., p. 3231, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 102.15. Officers

The board shall elect a chairman and any other officers it deems necessary.

[Acts 1971, 62nd Leg., p. 3231, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 102.16. Meetings

The chairman of the board may convene the board to consider any business connected with the university whenever he deems it expedient.

[Acts 1971, 62nd Leg., p. 3231, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 102.17 to 102.30 reserved for expansion]

## SUBCHAPTER C. POWERS AND DUTIES

## § 102.31. Extent of Powers

With respect to the management and control of the university, the board has the same powers and

duties that are conferred on the Board of Regents, State Senior Colleges, with respect to institutions in that system.

[Acts 1971, 62nd Leg., p. 3231, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 102.32. Lease of Lands to Fraternities and Sororities

(a) The board may lease portions of the state-owned land held for the use and benefit of the university in the city of Canyon to fraternities and sororities for the purpose of constructing chapter houses.

(b) A lease may be for any term of years less than 100, and the consideration and terms may be determined by the board, consistent with the best interests of the university. The chairman of the board, with approval of a majority of the board, may execute all documents necessary to consummate the leasing.

[Acts 1971, 62nd Leg., p. 3231, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 102.33. Airport

The university may own and operate an airport, may accept federal aid and money for those purposes, and may enter into sponsor's assurance agreements with the federal government. It may operate the airport separately or in cooperation with a city, a county, the state, or the federal government, with the approval of the appropriate governing body, but without any expense to or liability against the state in any manner.

[Acts 1971, 62nd Leg., p. 3231, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 102.34 to 102.50 reserved for expansion]

## SUBCHAPTER D. KILLGORE RESEARCH CENTER

## § 102.51. Gifts and Donations; Location of Center

The board may accept gifts and donations of money and other personal property from the Killgore Foundation and from any other private organization or individual to establish, construct, maintain, and operate a regional center to be known as the Killgore Research Center, on any land held by the board for the use of the university.

[Acts 1971, 62nd Leg., p. 3232, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 102.52. Transfer of Money; Disbursements

All money so received shall be transferred as soon as available to the West Texas State University Foundation or to any other fund or foundation chosen by agreement between the donors and the administration of the university. The disbursement of all this money is under the supervision of the business manager of the university, subject to accounting procedures approved by the state auditor.

[Acts 1971, 62nd Leg., p. 3232, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## § 102.53. Maintenance and Administration

The maintenance and administration of the research center is the responsibility of the State of Texas acting through the administration of the uni-

versity, with the advice and assistance of an advisory council on research selected by the administration and the donors.

[Acts 1971, 62nd Leg., p. 3232, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 102.54. Permanent Research Program**

In order to provide for a permanent research program, the administration of the university may:

(1) establish formalized working relationships with established research programs similar to the relationship already developed between the university and The University of Texas M. D. Anderson Hospital and Tumor Institute at Houston;

(2) integrate the research program being developed in the graduate school of the university with the research program at the research center;

(3) employ project directors who are recognized researchers and who have had experience in applying for and using research grants from governmental agencies and private foundations;

(4) assign a person from the administrative staff of the university as administrator of the research center; and

(5) perform any other acts and make any agreements which will implement and further the research programs of the research center and the university, consistent with the purposes of this subchapter.

[Acts 1971, 62nd Leg., p. 3232, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**CHAPTER 103. MIDWESTERN UNIVERSITY**

Section

- 103.01. **Midwestern University.**
- 103.02. **Board of Regents.**
- 103.03. **Board Members: Appointment, Terms, Oath.**
- 103.04. **Reimbursement of Board Members.**
- 103.05. **Board Officers.**
- 103.06. **President of University: Selection; Duties.**
- 103.07. **General Responsibilities.**
- 103.08. **Donations, Gifts, and Endowments.**
- 103.09. **Lease of Lands.**
- 103.10. **Joint Programs.**

**§ 103.01. Midwestern University**

Midwestern University is a coeducational institution of higher learning located in the city of Wichita Falls.

[Acts 1971, 62nd Leg., p. 3233, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 103.02. Board of Regents**

The organization, control, and management of the university is vested in a board of nine regents.

[Acts 1971, 62nd Leg., p. 3233, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 103.03. Board Members: Appointment, Terms, Oath**

Members of the board shall be appointed by the governor and confirmed by the senate. Members hold office for staggered terms of six years. Any vacancy that occurs on the board shall be filled for

the unexpired term by appointment of the governor. Each member of the board shall take the constitutional oath of office.

[Acts 1971, 62nd Leg., p. 3233, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 103.04. Reimbursement of Board Members**

The board shall receive reimbursement only for the actual cost of attendance at board meetings.

[Acts 1971, 62nd Leg., p. 3233, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 103.05. Board Officers**

The board shall organize by electing a chairman and other officers they desire.

[Acts 1971, 62nd Leg., p. 3233, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 103.06. President of University: Selection; Duties**

The board shall select a president for the university and shall fix his term of office, name his salary, and define his duties. The president shall be the executive officer for the board and shall work under its directions. He shall recommend a plan of organization and the appointment of employees of the university. He shall have the cooperation of the board and shall be responsible to the board for the general management and success of the university.

[Acts 1971, 62nd Leg., p. 3233, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 103.07. General Responsibilities**

The board shall build and operate a state college of the first rank that will compare favorably with the other splendid colleges in Texas in the preparation of youth for the varied interests and industries in the section in which the university is located, and this college shall be equipped adequately to do its work as well as other state colleges.

[Acts 1971, 62nd Leg., p. 3233, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 103.08. Donations, Gifts, and Endowments**

The board may accept donations, gifts, and endowments for the university to be held in trust and administered by the board for the purposes and under the directions, limitations, and provisions declared in writing in the donation, gift, or endowment, not inconsistent with the objects and proper management of the university.

[Acts 1971, 62nd Leg., p. 3234, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 103.09. Lease of Lands**

The board may lease the surface rights of land under its control and management for any term of years less than 100.

[Acts 1971, 62nd Leg., p. 3234, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 103.10. Joint Programs**

(a) Both civilian and military student personnel shall be eligible to enroll in joint programs. All joint program students shall register at the university and shall receive appropriate credit from the university.

(b) Students enrolled at the university in joint programs shall pay the regular tuition fees as provided by law. The university shall collect an initial administrative fee in the amount of \$25 from military student personnel who receive all their instruction at the air force base solely by air force personnel in lieu of such regular tuition fees. No state appropriations shall be made for instructional costs for semester credit hours taught at the air force base by air force personnel. Civilian students shall be subject to the general tuition provisions set forth in this code for all credit hours taught.

(c) (1) No training may be given to students in any of the following areas:

(A) the prescribing of ophthalmic lenses for the human eye or the prescribing of contact lenses for the human eye, or the fitting or adaptation of contact lenses to the human eye;

(B) the prescribing, whether written or oral, of the use of any optical device in connection with ocular exercises, visual training, vision training, or orthoptics; or

(C) optometric technology or ophthalmological technology other than those courses of training being offered to military trainees at Sheppard Air Force Base on May 17, 1973; provided, however, training in the use of screening devices or orthoptic training devices may be given to the students.

(2) It is the intent of the above restrictions that training may not be given to students on subjects of visual care involving the exercise of professional judgment required of licensed physicians or optometrists.

(d) Military students who receive all of their instruction on the military base shall be exempt from all student service fees and building use fees.

[Acts 1973, 63rd Leg., p. 522, ch. 225, § 1, eff. Aug. 27, 1973.]

## CHAPTER 104. TEXAS A & I UNIVERSITY

### SUBCHAPTER A. GENERAL PROVISIONS

#### Section

104.01. Texas A & I University.

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 104.11. Board of Directors.
- 104.12. Term of Office; Vacancy; Oath; Removal.
- 104.13. Board Officers.
- 104.14. President of University.

### SUBCHAPTER C. POWERS AND DUTIES

- 104.21. General Powers and Duties.
- 104.22. Eminent Domain.
- 104.23. Acquisition of Land for Field Classrooms.
- 104.24. Dormitories.

### SUBCHAPTER D. TEXAS A & I UNIVERSITY AT LAREDO

- 104.41. Establishment; Scope; Discontinuation.
- 104.42. Facilities; Gifts and Grants.
- 104.43. Courses and Degrees; Rules and Regulations.
- 104.44. Effect of Subchapter.

### SUBCHAPTER E. PURCHASE OF FARMLAND, EQUIPMENT, CROPS, ETC.

#### Section

- 104.51. Authorization.
- 104.52. Revenue Bonds.
- 104.53. Pledge of Revenue; Mortgages.
- 104.54. Bonds as Special Obligations.
- 104.55. Bonds as Authorized Investments, Security for Deposits.
- 104.56. Prior Liens, Pledges, Mortgages.
- 104.57. Form, Conditions, Details, Refinancing.
- 104.58. Approval and Registration.
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### SUBCHAPTER F. MINERAL DEVELOPMENT IN UNIVERSITY LAND

- 104.71. Mineral Leases; Disposition of Proceeds.
- 104.72. Majority of Board to Act.
- 104.73. Subdivision of Land; Titles.
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- 104.76. Rejection of Bids; Withdrawal of Land.
- 104.77. Acceptance; Conditions and Provisions of Lease.
- 104.78. Acceptance and Filing of Bids; Yearly Payments; Termination of Lease.
- 104.79. Award and Filing of Lease.
- 104.80. Exploratory Term of Lease; Extension; Other Provisions.
- 104.81. Extension of Leases.
- 104.82. Control of Drilling and Production.
- 104.83. Drilling Operations: Suspension of Rent; Continuance of Lease; Duty to Prevent Drainage.
- 104.84. Title to Rights Purchased; Assignment; Relinquishment.
- 104.85. Payment of Royalties; Records; Report of Receipts.
- 104.86. Protection from Drainage; Forfeiture of Rights.
- 104.87. Forfeiture and Other Remedies; Liens.
- 104.88. Filing of Documents and Payment of Royalties, Fees, and Rentals.
- 104.89. Forms, Regulations, Rules, and Contracts.

### SUBCHAPTER G. TEXAS A & I UNIVERSITY AT CORPUS CHRISTI

- 104.91. Establishment; Scope.
- 104.92. Degrees; Rules; Joint Appointments.
- 104.93. Gifts and Grants.

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 104.01. Texas A & I University

Texas A & I University is a coeducational institution of higher education located in the city of Kingsville.

[Acts 1971, 62nd Leg., p. 3236, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 104.02 to 104.10 reserved for expansion]

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

#### § 104.11. Board of Directors

The university is under the management and control of a board of nine directors appointed by the governor with the advice and consent of the senate.

[Acts 1971, 62nd Leg., p. 3236, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.12. Term of Office; Vacancy; Oath; Removal

(a) The members of the board of directors hold office for staggered terms of six years, with the terms of three expiring every two years.

(b) Any vacancy on the board shall be filled for the unexpired portion of the term by appointment of the governor.

(c) Each member of the board shall take the constitutional oath of office.

(d) Each member of the board is removable by the governor for inefficiency or inattention to the duties of his office.

[Acts 1971, 62nd Leg., p. 3236, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.13. Board Officers**

(a) The board shall elect a president of the board and any other officers it may desire.

(b) The board may select from its members a secretary-treasurer and compensate him in an amount not to exceed \$50 a month from the institutional funds normally expended under its authority.

[Acts 1971, 62nd Leg., p. 3236, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.14. President of University**

The board shall appoint a president of the university, fix his term of office, set his salary, and define his duties. The president is the executive officer for the board and shall work under its direction. He shall recommend a plan for the organization of the university and the appointment of employees of the university. He is responsible to the board for the general management and success of the university; and he shall have the cooperation of the board.

[Acts 1971, 62nd Leg., p. 3236, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 104.15 to 104.20 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

**§ 104.21. General Powers and Duties**

With respect to the management and control of the university, the board has the same powers and duties that are conferred on the Board of Regents, State Senior Colleges, with respect to institutions in that system, except as otherwise provided by this chapter.

[Acts 1971, 62nd Leg., p. 3237, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.22. Eminent Domain**

The board has the power of eminent domain to acquire land needed for the accomplishment of the purposes of the university. In this regard it may operate under condemnation procedures applicable to railroad companies under the laws of this state.

[Acts 1971, 62nd Leg., p. 3237, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.23. Acquisition of Land for Field Classrooms**

(a) The board may acquire land in Hidalgo County, without cost to the State of Texas, to provide field classrooms to further the work of the university in agriculture and animal husbandry.

(b) The board may pledge any future revenue from any land acquired under this section to secure any lien given and retained to secure the purchase price of the land.

(c) The board may pledge collaterally and additionally any unencumbered future net revenue from the bookstore of the university to secure any lien

given and retained to secure the purchase price of any land acquired under this section. The board may direct that any revenue from the land acquired under this section remaining after payment of the monthly or yearly installments or after discharge of the lien retained on the land shall be used to reimburse the bookstore to the extent that any of its revenue has been expended in payment of the purchase price of the land.

[Acts 1971, 62nd Leg., p. 3237, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.24. Dormitories**

(a) The board may enter into contracts with persons, firms, or corporations for the construction of dormitories at the university and may purchase or lease land and appurtenances for the construction. However, the state incurs no liability for the buildings or the sites.

(b) The board may make contracts with reference to the collection and disposition of the revenue derived from the dormitories in the acquisition, management, and maintenance of the buildings.

(c) The board may adopt rules and regulations it deems desirable requiring any class or classes of students to reside in the dormitories or other buildings. The board has absolute management and control of the dormitories constructed under the provisions of this section.

[Acts 1971, 62nd Leg., p. 3237, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 104.25 to 104.40 reserved for expansion]

SUBCHAPTER D. TEXAS A & I UNIVERSITY AT LAREDO

**§ 104.41. Establishment; Scope; Discontinuation**

The board may establish an upper-level educational center of Texas A & I University in the city of Laredo, to be known as Texas A & I University at Laredo, to accept junior, senior, and master's level students only. This upper-level educational center may be discontinued by the Coordinating Board, Texas College and University System, at its discretion.

[Acts 1971, 62nd Leg., p. 3238, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 372, ch. 167, § 1, eff. May 25, 1973.]

**§ 104.42. Facilities; Gifts and Grants**

The board shall make provision for adequate physical facilities for use by the university at Laredo, and may accept and administer, on terms and conditions satisfactory to the board, grants or gifts of money or property which are tendered by any person for the use and benefit of the school.

[Acts 1971, 62nd Leg., p. 3238, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.43. Courses and Degrees; Rules and Regulations**

The board, with approval of the Coordinating Board, Texas College and University System, may prescribe courses leading to customary degrees, and make other rules and regulations for the operation, control, and management of the university at Lare-

do as necessary for the school to be a first-class upper division institution of higher learning. It is the intent of the legislature that degrees offered include only bachelor's and master's degrees and their equivalents. In prescribing the courses, the board shall give special emphasis to those courses leading to baccalaureate and master's degrees in teacher education and business administration.

[Acts 1971, 62nd Leg., p. 3238, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 372, ch. 167, § 1, eff. May 25, 1973.]

#### § 104.44. Effect of Subchapter

Nothing in this subchapter shall be construed to limit the powers of the board as conferred by law.

[Acts 1971, 62nd Leg., p. 3238, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 104.45 to 104.50 reserved for expansion]

### SUBCHAPTER E. PURCHASE OF FARMLAND, EQUIPMENT, CROPS, ETC.

#### § 104.51. Authorization

The board for the benefit of the university may purchase, use, lease as lessor, and operate farmland, may purchase crops and other horticultural and agricultural products growing on or produced or to be produced and harvested from the land, and may purchase any farming machinery, apparatus, and equipment used or useful in connection with it, from any person, firm, or corporation and for the price or prices the board considers reasonable and proper.

[Acts 1971, 62nd Leg., p. 3238, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.52. Revenue Bonds

For the purpose of purchasing the items permitted to be purchased under Section 104.51 of this code, the board may issue its negotiable revenue bonds from time to time in the amounts it considers necessary or appropriate for the purpose of paying the purchase price or prices. The bonds may be made redeemable before maturity, at the option of the board, at the price or prices and under the terms and conditions that may be fixed by the board prior to the issuance of the bonds. The bonds shall be sold for not less than par and accrued interest.

[Acts 1971, 62nd Leg., p. 3238, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.53. Pledge of Revenue; Mortgages

The board may pledge to the payment of the interest on and the principal of the bonds all or any part of the revenue derived or anticipated to be derived in any manner from the land, including any revenue received from rendering scientific or experimental services on the land purchased and all or any part of the revenue of the university derived or anticipated to be derived from the sale, handling, or disposal of the crops, agricultural and horticultural products acquired or to be grown and harvested from the land; and the board may enter into any agreements regarding the pledging thereof that it may deem appropriate. The board may also mortgage the farming equipment, machinery, apparatus, and land thus purchased and any growing fruits,

products, and crops, or those to be grown, on any terms the board may determine to be appropriate.

[Acts 1971, 62nd Leg., p. 3239, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.54. Bonds as Special Obligations

The bonds authorized to be issued under this subchapter are special obligations of the board, payable only from the revenue pledged, and none of the bonds shall ever be an indebtedness of the State of Texas.

[Acts 1971, 62nd Leg., p. 3239, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.55. Bonds as Authorized Investments, Security for Deposits

The bonds are declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies. The bonds are eligible to secure the deposit of public funds of the State of Texas and of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas; and the bonds are lawful and sufficient security for those deposits to the extent of the principal amount, or their value on the market, whichever is less, when accompanied by all unmatured coupons appurtenant to them.

[Acts 1971, 62nd Leg., p. 3239, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.56. Prior Liens, Pledges, Mortgages

Any pledge of revenue or mortgage of property made under the terms of this subchapter shall be subject to any prior lien, pledge, or mortgage thereof, but the existence of any such prior lien, pledge, or mortgage shall not prevent (a) the making of a subsequent and inferior lien, pledge, or mortgage, unless that action is prohibited under the resolution, order, or indenture authorizing the prior obligations, or (b) the issuing of additional parity lien revenue bonds which are hereby authorized, if and to the extent permitted by the order or indenture authorizing the prior obligations.

[Acts 1971, 62nd Leg., p. 3239, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.57. Form, Conditions, Details, Refinancing

Subject to the restrictions contained in this subchapter, the board is given complete discretion in fixing the form, conditions, and details of the bonds, pledge, and mortgage, and the bonds may be refunded or otherwise refinanced whenever the board deems that action to be appropriate or necessary.

[Acts 1971, 62nd Leg., p. 3239, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.58. Approval and Registration

Prior to delivery, all bonds authorized to be issued under this subchapter and the records relating to their issuance shall be submitted to the attorney general for examination; and if he finds that they have been issued in accordance with the constitution and this subchapter and that they will be binding special obligations of the board, he shall approve them. They shall then be registered by the comptroller of public accounts. After the approval and registration, the bonds shall be incontestable.

[Acts 1971, 62nd Leg., p. 3240, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.59. Cumulative Effect**

This subchapter does not repeal any statute now in effect, but is cumulative of all other statutes pertaining to the university, and does not modify or abridge any powers held by the university to control or pledge its funds. However, to the extent that the provisions of this subchapter may be in conflict with the provisions of any other law, the provisions of this subchapter take precedence and prevail.

[Acts 1971, 62nd Leg., p. 3240, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 104.60 to 104.70 reserved for expansion]

SUBCHAPTER F. MINERAL DEVELOPMENT IN UNIVERSITY LAND

**§ 104.71. Mineral Leases; Disposition of Proceeds**

(a) The board may lease for oil, gas, sulphur, or other mineral development to the highest bidder at public auction all or part of the lands under the exclusive control of the board owned by the State of Texas and acquired for the use of Texas A & I University and its divisions.

(b) Any money received by virtue of this section shall be deposited in the state treasury to the credit of a special fund to be known as the Texas A & I University special mineral fund, to be used exclusively for the university and its branches and divisions. However, no money shall ever be expended from this fund except as authorized by the general appropriations act.

[Acts 1971, 62nd Leg., p. 3240, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.72. Majority of Board to Act**

A majority of the board has power to act in all cases under this subchapter except as otherwise provided in this subchapter.

[Acts 1971, 62nd Leg., p. 3240, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.73. Subdivision of Land; Titles**

(a) The board may have the lands surveyed or subdivided into tracts, lots, or blocks which, in their judgment, will be most conducive and convenient to an advantageous sale or lease of oil, gas, sulphur, or other minerals in the lands; and the board may make maps and plats which it deems necessary to carry out the purposes of this subchapter.

(b) The board may obtain authentic abstracts of title to the lands from time to time as it deems necessary and may take necessary steps to perfect a merchantable title to the lands.

[Acts 1971, 62nd Leg., p. 3240, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.74. Sale of Leases; Advertisements; Payments**

(a) Whenever in the opinion of the board there is a demand for the purchase of oil, gas, sulphur, or other mineral leases on any tract or part of any tract of land which will reasonably insure an advantageous sale, the board shall place the oil, gas, sulphur,

or other mineral leases on the land on the market in a tract or tracts, or any part of a tract, which the board may designate.

(b) The board shall have advertised a brief description of the land from which the oil, gas, sulphur, or other minerals is proposed to be leased. The advertisement shall be made by inserting in two or more papers of general circulation in this state, and in addition, the board may, in its discretion, cause the advertisement to be placed in an oil and gas journal published in and out of the state. The board may also mail copies of the proposals to the county judge of the county where the lands are located and to other persons the board believes would be interested.

(c) The board may sell the lease or leases to the highest bidder at public auction at the university in Kingsville at any hour between 10 a. m. and 5 p. m.

(d) The highest bidder shall pay to the board on the day of the sale 25 percent of the bonus bid, and the balance of the bid shall be paid within 24 hours after the bidder is notified that the bid has been accepted. Payments shall be made in cash, certified check, or cashier's check, as the board directs. The failure of the bidder to pay the balance of the amount bid will forfeit to the board the 25 percent paid.

[Acts 1971, 62nd Leg., p. 3241, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.75. Separate Bids; Minimum Royalty; Delay Rental**

(a) A separate bid shall be made for each tract or subdivision of a tract.

(b) No bid shall be accepted which offers a royalty of less than one-eighth of the gross production of oil, gas, sulphur, and other minerals in the land bid upon, and this minimum royalty may be increased at the discretion of the board.

(c) Every bid shall carry the obligation to pay an amount not less than \$1 per acre for delay in drilling or development. The amount shall be fixed by the board in advance of the advertisement. The amount fixed shall be paid every year for five years unless in the meantime production in paying quantities is had upon the land or the land is released by the lessee.

[Acts 1971, 62nd Leg., p. 3241, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.76. Rejection of Bids; Withdrawal of Land**

The board may reject any and all bids and may withdraw any land advertised for lease.

[Acts 1971, 62nd Leg., p. 3241, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.77. Acceptance; Conditions and Provisions of Lease**

(a) If, in the opinion of the board, any one of the bidders has offered a reasonable and proper price for any tract, which is not less than the price set by the board, the lands advertised may be leased for oil, gas, sulphur, and other mineral purposes under the terms of this section and subject to regulations prescribed by the board which are not inconsistent with the provisions of this section. In the event no bid is accepted by the board at public auction, any subsequent procedure for the sale of the leases shall

be in the manner prescribed in the preceding sections.

(b) No lease shall be made by the board which will permit the drilling or mining for oil, gas, sulphur, or other minerals within 300 feet of any building on the land without the consent of the board. In making any lease on any experimental station or farm, the lease shall provide that the operations for oil, gas, and other minerals shall not in any way interfere with use of the land for university purposes and shall not cause the abandonment of the property or its use for experimental farm purposes. The lease shall also provide that the lessee operating the property shall drill and carry on his operations in such a way as not to cause the abandonment of the property for university purposes, and the leased property shall be subject to the use by the state for all university purposes, and the board shall continue to operate the university.

[Acts 1971, 62nd Leg., p. 3241, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.78. Acceptance and Filing of Bids; Yearly Payments; Termination of Lease

(a) If the board determines that a satisfactory bid has been received for the oil, gas, sulphur, or other mineral lands, it shall accept the bid and reject all others and shall file the accepted bid in the general land office.

(b) Whenever the royalties shall amount to as much as the yearly payments fixed by the board, the yearly payments may be discontinued.

(c) If before the expiration of five years oil, gas, sulphur, or other minerals have not been produced in paying quantities, the lease shall terminate unless extended as provided in Sections 104.80 and 104.81 of this code.

[Acts 1971, 62nd Leg., p. 3242, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.79. Award and Filing of Lease

If the board determines that a satisfactory bid has been received for the oil, gas, sulphur, or other minerals, it shall make an award to the bidder offering the highest price, and a lease shall be filed in the general land office.

[Acts 1971, 62nd Leg., p. 3242, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.80. Exploratory Term of Lease; Extension; Other Provisions

(a) The exploratory term of a lease as determined by the board prior to the promulgation of the advertisement shall not exceed five years, and each lease shall provide that the lease will terminate at the expiration of its exploratory term unless by unanimous vote of the board the lease is extended for a period of three years.

(b) The lease may be extended if the board finds that there is a likelihood of oil, gas, sulphur, or other minerals being discovered by the lessees, and that the lessees have proceeded with diligence to protect the interest of the state. If oil, gas, sulphur, or other minerals are being produced in paying quantities from the premises, the lease shall continue in force and effect as long as the oil, gas, sulphur, or other minerals are being so produced. No extension

may be made by the board until the last 30 days of the original term of the lease.

(c) The lease shall include additional provisions and regulations prescribed by the board to preserve the interest of the state, not inconsistent with the provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 3242, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.81. Extension of Leases

When in the discretion of the board it is deemed for the best interest of the state to extend a lease issued by the board, the board may by unanimous vote extend the lease for a period not to exceed three years, on the condition that the lessee shall continue to pay yearly rental as provided in the lease and shall comply with any additional terms which the board may see fit and proper to demand. The board may extend the lease and execute an extension agreement.

[Acts 1971, 62nd Leg., p. 3243, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.82. Control of Drilling and Production

The drilling for and the production of oil, gas, and other minerals from the lands shall be governed and controlled by the Railroad Commission of Texas and other regulatory bodies which govern and control other fields in this state.

[Acts 1971, 62nd Leg., p. 3243, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.83. Drilling Operations; Suspension of Rent; Continuance of Lease; Duty to Prevent Drainage

(a) If during the term of a lease issued under the provisions of this subchapter the lessee is engaged in actual drilling operations for the discovery of oil, gas, sulphur, or other minerals, no rentals shall be payable as to the tract on which the operations are being conducted as long as the operations are proceeding in good faith.

(b) In the event oil, gas, sulphur, or other minerals are discovered in paying quantities on any tract of land covered by a lease, then the lease as to that tract shall remain in force as long as oil, gas, sulphur, or other minerals are produced in paying quantities from the tract.

(c) In the event of the discovery of oil, gas, sulphur, or other minerals on any tract covered by a lease or on any land adjoining the tract, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by the lease to properly develop the same to the extent that a reasonably prudent man would do under the same and similar circumstances.

[Acts 1971, 62nd Leg., p. 3243, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 104.84. Title to Rights Purchased; Assignment; Relinquishment

(a) Title to all rights purchased may be held by the owners as long as the area produces oil, gas, sulphur, or other minerals in paying quantities.

(b) All rights purchased may be assigned. All assignments shall be filed in the general land office within 100 days from the date of the first acknowl-

edgment thereof, accompanied by 10 cents per acre for each acre assigned. The assignment shall not be effective unless it is filed and the payment made.

(c) All rights to any whole tract or to any assigned portion thereof may be relinquished to the state at any time by having an instrument of relinquishment recorded in the county or counties in which the area is situated. The instrument of relinquishment shall be filed with the chairman of the board, accompanied by \$1 for each area assigned. The assignment shall not relieve the owner of any past-due obligations accrued on the lease.

(d) The board shall authorize the laying of pipeline and telephone line and the opening of roads deemed reasonably necessary in carrying out the purposes of this subchapter.

[Acts 1971, 62nd Leg., p. 3243, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.85. Payment of Royalties; Records; Report of Receipts**

(a) If oil or other minerals are developed on any of the lands leased by the board, the royalty as stipulated in the sale shall be paid to the general land office in Austin on or before the last day of each month for the preceding month during the life of the rights purchased. The royalty payments shall be set aside in the state treasury as specified in Section 104.71 of this code and used as provided in that section.

(b) The royalty paid to the general land office shall be accompanied by the sworn statement of the owner, manager, or other authorized agent showing the gross amount of oil, gas, sulphur, or other minerals produced and sold off the premises and the market value of the minerals, together with a copy of all daily gauges, or vats, tanks, gas meter readings, pipeline receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipelines, vats, tanks, or pool and gas lines or gas storage. The books and accounts, receipts and discharges of all wells, tanks, vats, pools, meters, and pipelines, and all contracts and other records pertaining to the production, transportation, sale, and marketing of the oil, gas, sulphur, or other minerals shall at all times be subject to inspection and examination by any member of the board or any duly authorized representative of the board.

(c) The commissioner of the general land office shall tender to the board on or before the 10th day of each month a report of all receipts from the lease or sale of oil, gas, sulphur, or other minerals turned into the special fund in the state treasury during the preceding month.

[Acts 1971, 62nd Leg., p. 3244, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.86. Protection from Drainage; Forfeiture of Rights**

(a) In every case where the area in which oil, gas, sulphur, or other minerals sold is contiguous or adjacent to lands which are not lands belonging to and held by the university, the acceptance of the bid and the sale made thereby shall constitute an obligation of the owner to adequately protect the land leased from drainage from the adjacent lands to the extent that a reasonably prudent operator would do under the same and similar circumstances.

(b) In cases where the area in which the oil, gas, sulphur, or other minerals sold is contiguous to other lands belonging to and held by the university which have been leased or sold at a lesser royalty, the owner shall protect the land from drainage from the lands leased or sold for a lesser royalty.

(c) On failure to protect the land from drainage as provided in this section, the sale and all rights acquired may be forfeited by the board in the manner provided in Section 104.87 of this code for forfeitures.

[Acts 1971, 62nd Leg., p. 3244, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.87. Forfeiture and Other Remedies; Liens**

(a) Leases granted under the provisions of this chapter are subject to forfeiture by the board by an order entered in the minutes of the board reciting the acts or omissions constituting a default and declaring a forfeiture.

(b) Any of the following acts or omissions constitutes a default:

(1) the failure or refusal by the owner of the rights acquired under this chapter to make a payment of a sum due, either as rental or royalty on production, within 30 days after the payment becomes due;

(2) the making of a false return or false report concerning production, royalty, drilling, or mining by the owner or his authorized agent;

(3) the failure or refusal of the owner or his agent to drill an offset well or wells in good faith, as required by the lease;

(4) the refusal of the owner or his agent to allow the proper authorities access to the records and other data pertaining to the operations authorized in this subchapter;

(5) the failure or refusal of the owner or his authorized agent to give correct information to the proper authorities, or to furnish the log of any well within 30 days after production is found in paying quantities; or

(6) the violation by the owner of any material term of the lease.

(c) The board may, if it so desires, have suit for forfeiture instituted through the attorney general.

(d) On proper showing by the forfeiting owner within 30 days after the declaration of forfeiture, the lease may be reinstated at the discretion of the board and upon terms prescribed by the board.

(e) In case of violation by the owner of the lease contract, the remedy of forfeiture shall not be the exclusive remedy, and the state may institute suit for damages or specific performance or both.

(f) The state shall have a first lien on oil, gas, sulphur, or other minerals produced in the leased area, and on all rigs, tanks, vats, pipelines, telephone lines, and machinery and appliances used in the production and handling of oil, gas, sulphur, or other minerals produced, to secure the amount due from the owner of the lease.

[Acts 1971, 62nd Leg., p. 3244, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.88. Filing of Documents and Payment of Royalties, Fees, and Rentals**

(a) All surveys, files, copies of sale and lease contracts, and other records pertaining to the sales and leases authorized in this subchapter shall be filed in the general land office and shall constitute archives.

(b) Payment of all royalties, lease fees, rentals for delay in drilling or mining, filing fees for assignments and relinquishments, and all other payments shall be made to the commissioner of the general land office at Austin. The commissioner shall transmit all payments received to the state treasurer for deposit to the credit of the Texas A & I University special mineral fund.

[Acts 1971, 62nd Leg., p. 3245, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 104.89. Forms, Regulations, Rules, and Contracts**

The board shall adopt proper forms, regulations, rules, and contracts which, in its judgment, will protect the income from lands leased pursuant to this subchapter.

[Acts 1971, 62nd Leg., p. 3245, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Section 104.90 reserved for expansion]

**SUBCHAPTER G. TEXAS A & I UNIVERSITY  
AT CORPUS CHRISTI**

**§ 104.91. Establishment; Scope**

(a) The board is authorized and directed to establish and maintain a fully state-supported coeducational institution of higher learning to be known as Texas A & I University at Corpus Christi. The site for the institution shall consist of at least 200 acres of land and shall be provided for the institution at no cost to the state.

(b) The institution shall be organized to accept only junior, senior, and graduate-level students, with at least 60 semester hours of accredited college or university study.

[Acts 1971, 62nd Leg., p. 3349, ch. 1024, art. 2, § 24, eff. Sept. 1, 1971.]

**§ 104.92. Degrees; Rules; Joint Appointments**

(a) The board may prescribe courses leading to such customary degrees as are offered at leading American universities of this concept and to award such degrees. It is the intent of the legislature that such degrees shall include baccalaureate and master's degrees and their equivalents, and that there be established a standard program for such type institution, but no department, school, or degree program shall be instituted except with the prior approval of the Coordinating Board, Texas College and University System.

(b) The board shall make such other rules and regulations for the operation, control, and management of the university, including the determination of the number of students that shall be admitted to any school, college, or degree-granting program, as may be necessary for the conduct of the university as one of the first class.

(c) The board is specifically authorized to make joint appointments in the university and in other

institutions under its governance, the salary of any such person who receives a joint appointment to be apportioned to the appointing institution on the basis of services rendered.

[Acts 1971, 62nd Leg., p. 3349, ch. 1024, art. 2, § 24, eff. Sept. 1, 1971.]

**§ 104.93. Gifts and Grants**

(a) The board may accept and administer upon terms and conditions satisfactory to it grants or gifts of property, including real estate and/or money that may be tendered to it in aid of the planning, establishment, conduct, and operation of Texas A & I University at Corpus Christi, and in aid of research and teaching at the university.

(b) The board may accept from the federal government or any foundation, trust fund, corporation, or individual donations, gifts, and grants, including real estate, buildings, libraries, laboratories, apparatus, equipment, records, or money for the use and benefit of the university.

[Acts 1971, 62nd Leg., p. 3349, ch. 1024, art. 2, § 24, eff. Sept. 1, 1971.]

**CHAPTER 105. NORTH TEXAS  
STATE UNIVERSITY**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Section**

105.01. North Texas State University.

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

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105.12. Term of Office; Removal; Vacancy.

105.13. Residence.

105.14. Oath.

105.15. Officers; Meetings.

**SUBCHAPTER C. POWERS AND DUTIES**

105.41. Extent of Powers.

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105.43. Student Union Fee.

**SUBCHAPTER D. STATE HISTORICAL COLLECTION**

105.61. Designation.

105.62. Gifts and Donations.

105.63. Rules and Regulations.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 105.01. North Texas State University**

North Texas State University is a coeducational institution of higher education located in the city of Denton.

[Acts 1971, 62nd Leg., p. 3246, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 105.02 to 105.10 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**§ 105.11. Board of Regents**

The organization, control, and management of the university is vested in a board of nine regents appointed by the governor and confirmed by the senate.

[Acts 1971, 62nd Leg., p. 3246, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 105.12. Term of Office; Removal; Vacancy**

The term of office of each regent is six years, with the term of three regents expiring every two years. Members of the board may be removed from office for inefficiency or malfeasance of office. Any vacancy that occurs on the board shall be filled by the governor for the unexpired term.

[Acts 1971, 62nd Leg., p. 3247, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 105.13. Residence**

Not more than one member of the board may be appointed from or be a resident of any one state senatorial district.

[Acts 1971, 62nd Leg., p. 3247, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3345, ch. 1024, art. 2, § 17, eff. Sept. 1, 1971.]

**§ 105.14. Oath**

Each member of the board shall take the constitutional oath of office before assuming the duties of his office.

[Acts 1971, 62nd Leg., p. 3247, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 105.15. Officers; Meetings**

The board shall elect a chairman and any other officers it deems necessary. The chairman may convene the board when he deems it expedient to consider any business related to the university.

[Acts 1971, 62nd Leg., p. 3247, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 105.16 to 105.40 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

**§ 105.41. Extent of Powers**

With respect to the management and control of the university, the board has the same powers and duties that are conferred on the Board of Regents, State Senior Colleges, with respect to institutions in that system.

[Acts 1971, 62nd Leg., p. 3247, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 105.42. Contracts with City for Utility Services**

The board may contract with the city of Denton for the furnishing of water and other utility services to the university. The rates to be charged the university shall not exceed those regularly established, published, and declared rates for similar customers; and if there are no similar customers, the rates to be charged shall be those established by the city of Denton for commercial users. The city may make any adjustments, discounts, and special rates that the governing authorities of the city may see fit to provide for the university.

[Acts 1971, 62nd Leg., p. 3247, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 105.43. Student Union Fee**

(a) The board may levy a regular, fixed student fee not to exceed \$10 per student for each semester of the long session and not to exceed \$5 per student

for each semester of the summer session, or any fractional part thereof, against each student enrolled in that institution, as may in their discretion be just and necessary for the purpose of operating, maintaining, improving, and equipping the student union and acquiring or constructing additions thereto; provided, however, that the student body must approve each increase of said fee in excess of \$1 per student for each semester of the long session and 50 cents per student for each term of the summer school, at an election called for that purpose by the board. Notice of an election shall be given by publication of a substantial copy of the resolution or order of the board calling the election and showing the amount of the increased fee and the purpose for which it is to be used. The notice shall be published in The North Texas Daily or in any other student newspaper having general circulation among the students for three consecutive days of the week immediately preceding the date set for the election. The board shall canvass the returns and declare the results of the election, and if a majority of the students voting in the election vote in favor of the increase, then the board may levy the fee in an amount not in excess of the amount authorized at the election.

(b) The activities of the student union financed in whole or in part by the student union fee shall be limited to those activities in which the entire student body is eligible to participate and in no event may any of the activities so financed be held outside of the territorial limits of the campus of North Texas State University.

(c) The fiscal officer of North Texas State University shall collect the fees provided for in Subsection (a) of this section and shall credit the money received from those fees to an account known as the student union fee account.

(d) The money thus collected and placed in the student union fee account shall be used for the purpose of operating and maintaining and improving the student union and shall be placed under the control of and subject to the order of the board of directors of the student union, which board of directors shall annually submit a complete and itemized budget to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving it, and shall then levy the student fees under the provisions of Subsection (a) of this section in such amounts as will be sufficient to meet the budgetary needs of the student union, within the statutory limits fixed in this section.

(e) This fee is collectible beginning September 1, 1971.

[Acts 1971, 62nd Leg., p. 3336, ch. 1024, art. 2, § 3, eff. Sept. 1, 1971.]

[Sections 105.44 to 105.60 reserved for expansion]

SUBCHAPTER D. STATE HISTORICAL COLLECTION

**§ 105.61. Designation**

The historical collection of the university, consisting of books, documents, stamps, coins, firearms,

implements of warfare, relics, heirlooms, and other items of historical importance, is designated a State Historical Collection, to be known as "The State Historical Collection of North Texas State University."

[Acts 1971, 62nd Leg., p. 3247, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 105.62. Gifts and Donations

The board may accept and receive gifts, donations, and collections of books, documents, stamps, coins, firearms, implements of warfare, relics, heirlooms, and collections of all kinds having historical importance and value, to be used in teaching the youth of this state.

[Acts 1971, 62nd Leg., p. 3248, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 105.63. Rules and Regulations

The board may make any rules and regulations regarding the receiving and holding of these gifts, donations, and collections, that it considers necessary and advisable.

[Acts 1971, 62nd Leg., p. 3248, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### CHAPTER 106. TEXAS SOUTHERN UNIVERSITY

#### SUBCHAPTER A. GENERAL PROVISIONS

##### Section

- 106.01. Texas Southern University.  
106.02. Purpose of the University.

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 106.11. Board of Regents.  
106.12. Terms of Office.  
106.13. Qualifications; Oath.  
106.14. Officers.  
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106.16. Seal.

#### SUBCHAPTER C. POWERS AND DUTIES

- 106.31. Administrative Powers.  
106.32. Expenditures.  
106.33. Contracts with Other Institutions.  
106.34. Gifts, Grants.  
106.35. Acquisition of Land.  
106.36. Military Training.

#### SUBCHAPTER D. CONTROL OF UNIVERSITY FUNDS

- 106.51. Control of Money Collected.  
106.52. Depositories.  
106.53. Accounts; Trust Funds.  
106.54. Biennial Report.  
106.55. Legislative Intent.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### § 106.01. Texas Southern University

Texas Southern University is a coeducational institution of higher education located in the city of Houston.

[Acts 1971, 62nd Leg., p. 3249, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 106.02. Purpose of the University

In addition to providing other general academic and related programs, Texas Southern University is designated as a special purpose institution of higher education for urban programming and shall provide instruction, research, programs, and services as are appropriate to this designation.

[Acts 1973, 63rd Leg., p. 1594, ch. 575, § 1, eff. June 15, 1973.]

[Sections 106.03 to 106.10 reserved for expansion]

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

##### § 106.11. Board of Regents

The government of the university is vested in a board of nine regents appointed by the governor with the advice and consent of the Senate.

[Acts 1971, 62nd Leg., p. 3249, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1247, ch. 450, § 2, eff. June 14, 1973.]

##### § 106.12. Terms of Office

Members of the board hold office for staggered terms of six years, with the terms of three directors expiring on February 1 of odd-numbered years.

[Acts 1971, 62nd Leg., p. 3249, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 106.13. Qualifications; Oath

Each member of the board shall be a qualified voter of the state. The members shall be selected from different portions of the state. Each member shall take the constitutional oath of office.

[Acts 1971, 62nd Leg., p. 3249, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 106.14. Officers

The board shall elect a chairman and a vice chairman from its members to serve at the will of the board. The board shall appoint a secretary. The state treasurer shall be the treasurer of the university.

[Acts 1971, 62nd Leg., p. 3249, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 106.15. Expenses

The reasonable expenses incurred by members of the board in the discharge of their duties shall be paid from any available funds of the university.

[Acts 1971, 62nd Leg., p. 3249, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 106.16. Seal

The board may make, use, and alter a common seal.

[Acts 1971, 62nd Leg., p. 3249, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 106.17 to 106.30 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

##### § 106.31. Administrative Powers

The board shall establish the several departments in the university, determine the offices, professor-

ships, and other positions at the institution, appoint a president, appoint the professors and other officers and employees and prescribe their duties, and fix their respective salaries. The board shall enact by-laws, rules, and regulations deemed necessary for the successful management and government of the institution. The board may remove any professor, instructor, tutor, or other officer or employee connected with the institution when, in its judgment, the best interests and proper operation of the institution requires it.

[Acts 1971, 62nd Leg., p. 3250, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 106.32. Expenditures**

All expenditures shall be made by order of the board and shall be paid on warrants issued by the comptroller based on vouchers approved by the chairman of the board or some other officer of the university designated by him in writing to the comptroller, and countersigned by the secretary of the board or some other officer of the university designated by the secretary in writing to the comptroller.

[Acts 1971, 62nd Leg., p. 3250, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 106.33. Contracts with Other Institutions**

The board may make proper arrangements by contract with other educational institutions, hospitals, and clinics in Houston for the use of any facilities and services it considers necessary and expedient for the proper training and education of students in professional courses.

[Acts 1971, 62nd Leg., p. 3250, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 106.34. Gifts, Grants**

The board may accept from other than state sources gifts and grants of money and property for the benefit of the university.

[Acts 1971, 62nd Leg., p. 3250, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 106.35. Acquisition of Land**

The board on behalf of the university may acquire by purchase, exchange, or otherwise any tract or parcel of land in Harris County that is contiguous or adjacent to the campus of the university when the board deems the land necessary for campus expansion.

[Acts 1971, 62nd Leg., p. 3250, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 106.36. Military Training**

No student shall ever be required to take any military training as a condition for entrance into or graduation from the university.

[Acts 1971, 62nd Leg., p. 3250, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 106.37 to 106.50 reserved for expansion]

SUBCHAPTER D. CONTROL OF UNIVERSITY FUNDS

**§ 106.51. Control of Money Collected**

The board may retain control of:

- (1) money derived from student fees of all kinds;

- (2) charges for use of rooms and dormitories;
- (3) receipts from meals, cafes, and cafeterias;
- (4) fees on deposit refundable to students under certain conditions;
- (5) receipts from school athletic activities;
- (6) income from student publications and other student activities;
- (7) receipts from the sale of publication products and miscellaneous supplies and equipment;
- (8) students' voluntary deposits of money for safekeeping;
- (9) funds, revenue, and accounts received from the University of Houston and other institutions;
- (10) gifts and grants to the university; and
- (11) all other fees and local institutional income of a strictly local nature arising out of, or incident to, the university's educational activities.

[Acts 1971, 62nd Leg., p. 3251, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 106.52. Depositories**

The board may select depository banks as places of deposit of all funds of the kind and character named in Section 106.51 of this code, which are collected by the university, and the board shall require adequate surety bonds or securities to be posted to secure the deposits and may require additional security at any time the board deems any deposit inadequately secured. All funds of the character named in Section 106.51 of this code, which are so collected, shall be deposited in the depository bank or banks within five days from the date of collection. Depository banks so selected are authorized to pledge their securities to protect the funds. Any surety bond furnished under the provisions of this section shall be payable to the governor and his successors in office; and venue of suit to recover any amount claimed by the state to be due on any of these bonds is fixed in Travis County.

[Acts 1971, 62nd Leg., p. 3251, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 106.53. Accounts; Trust Funds**

Separate accounts shall be kept on the books of the university, showing the sources of all sums collected and the purposes for which expended. All trust funds handled by the board shall be deposited in separate accounts and shall not be commingled with the general income from student fees or other local institutional income, and all trust funds shall be secured by separate bonds or securities.

[Acts 1971, 62nd Leg., p. 3251, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 106.54. Biennial Report**

True and full accounts shall be kept by the board and by the employees of the university of all funds collected from all sources by the university, all the sums paid out by it, and the persons to whom and the purposes for which the sums are paid. The board shall print biennially a complete report of all sums collected, all expenditures, and the sums remaining on hand. The report shall be printed in even-numbered years between September 1 and Jan-

uary 1. It shall show the true condition of all funds as of the preceding August 1, and shall show all collections and expenditures for the preceding two years. The board shall furnish copies of the report to the governor, state treasurer, comptroller, state auditor, and attorney general, and not less than three copies to the State Board of Control. The board shall furnish a copy to each member of the House Appropriations Committee, the Senate Finance Committee, and the House and Senate committees on education of each regular session of the legislature within one week after the committees are appointed.

[Acts 1971, 62nd Leg., p. 3251, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 106.55. Legislative Intent

The authority granted the board under this subchapter is intended to be the same as the authority granted to the governing boards of The University of Texas System, Texas A & M University System, and similar institutions with regard to the control and use of local funds.

[Acts 1971, 62nd Leg., p. 3252, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

## CHAPTER 107. TEXAS WOMAN'S UNIVERSITY

### SUBCHAPTER A. GENERAL PROVISIONS

#### Section

107.01. Location and Purpose of University.

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 107.21. Board of Regents.
- 107.22. Officers.
- 107.23. Board Meetings; Minutes.
- 107.24. Compensation of Board.

### SUBCHAPTER C. POWERS AND DUTIES

- 107.41. Extent of Powers.
- 107.42. Staff.
- 107.43. Departments.
- 107.44. Rules and Regulations.

### SUBCHAPTER D. DORMITORIES AND IMPROVEMENTS

- 107.61. Construction of Dormitories and Improvements.
- 107.62. Obligations; Pledge of Revenue.
- 107.63. Sale of Real Estate.
- 107.64. Required Dormitory Residence.
- 107.65. Management of Dormitories.
- 107.66. Requisition of Furnishings, Equipment, Etc.
- 107.67. Limitation on Obligations.
- 107.68. General Powers.

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 107.01. Location and Purpose of University

Texas Woman's University is an institution of higher education for women with its main campus at Denton.

[Acts 1971, 62nd Leg., p. 3253, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 107.02 to 107.20 reserved for expansion]

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

#### § 107.21. Board of Regents

The board of regents of the university is composed of nine persons, four of whom shall be women, appointed by the governor with the advice and consent of the senate. Each member of the board shall be a qualified voter; and the members shall be selected from different portions of the state. The members hold office for staggered terms of six years, with the terms of three expiring every two years.

[Acts 1971, 62nd Leg., p. 3253, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 107.22. Officers

The board shall biennially elect a chairman, a vice chairman, and other officers it deems necessary from among its members.

[Acts 1971, 62nd Leg., p. 3253, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 107.23. Board Meetings; Minutes

The chairman shall convene the board to consider any business connected with the university whenever he deems it expedient. A full record shall be kept of all the board's proceedings.

[Acts 1971, 62nd Leg., p. 3253, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 107.24. Compensation of Board

Members of the board shall receive the same compensation conferred by law on the board of regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3253, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 107.25 to 107.40 reserved for expansion]

### SUBCHAPTER C. POWERS AND DUTIES

#### § 107.41. Extent of Powers

The board has the power incident to its position and to the same extent, as far as applicable, as is conferred on the board of regents of The University of Texas System.

[Acts 1971, 62nd Leg., p. 3253, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 107.42. Staff

The board shall appoint a president of the university and other officers and employees it deems proper and shall fix their salaries. The board shall make rules and regulations for the government of the university's staff as it deems advisable.

[Acts 1971, 62nd Leg., p. 3253, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 107.43. Departments

The board shall divide the course of instruction into departments and shall select careful and efficient professors in each department, in order to secure the best possible instruction in all areas of study.

[Acts 1971, 62nd Leg., p. 3254, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 107.44. Rules and Regulations**

The board shall adopt rules and regulations it deems necessary to carry out the purposes of the institution and to enforce the faithful discharge of the duties of all officers, professors, and students.

[Acts 1971, 62nd Leg., p. 3254, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 107.45 to 107.60 reserved for expansion]

**SUBCHAPTER D. DORMITORIES AND IMPROVEMENTS**

**§ 107.61. Construction of Dormitories and Improvements**

The board may erect and equip, or may contract with any person, firm, or corporation for the erecting and equipping of dormitories and other improvements, which shall be located either on the campus or on land purchased or leased for the purpose by the board. The board may purchase or lease additional real estate for the purpose, or exchange or sell real estate for the purpose.

[Acts 1971, 62nd Leg., p. 3254, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 107.62. Obligations; Pledge of Revenue**

In payment for the erecting and equipping of dormitories and improvements, the board may issue its obligations in the amount and on the terms deemed advisable by the board. As security the board may pledge the income from the dormitories and improvements erected or from other dormitories owned by the university, as well as all other revenue derived by the university from other sources, except revenue derived by means of appropriations made for a specific purpose by the legislature.

[Acts 1971, 62nd Leg., p. 3254, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 107.63. Sale of Real Estate**

The board may sell or encumber any part of the campus or real estate owned by the university for the purpose of obtaining funds with which to erect and equip these improvements or for the purpose of securing the payment of its obligations issued to any person, firm, or corporation for the erecting or equipping of these improvements.

[Acts 1971, 62nd Leg., p. 3254, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 107.64. Required Dormitory Residence**

The board may adopt regulations it deems reasonable requiring any class or classes of students to reside in university dormitories or other buildings.

[Acts 1971, 62nd Leg., p. 3254, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 107.65. Management of Dormitories**

The board has absolute and sole management and control of university dormitories and other improvements.

[Acts 1971, 62nd Leg., p. 3254, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 107.66. Requisition of Furnishings, Equipment, Etc.**

The board may make requisition to the State Board of Control for furniture, furnishings, equipment, and appointments required for the proper use and enjoyment of improvements erected by the board, and the State Board of Control may purchase and pay for the furnishings, equipment, and appointments.

[Acts 1971, 62nd Leg., p. 3255, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 107.67. Limitation on Obligations**

In the erecting, or in contracts for the erecting, of dormitories and improvements, the board may not in any manner incur any indebtedness against the university except as provided in Sections 107.62 and 107.63 of this code. The obligations incurred in the erecting of dormitories and improvements may never be personal obligations of the university but shall be discharged solely from the revenue or property authorized to be pledged for that purpose.

[Acts 1971, 62nd Leg., p. 3255, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 107.68. General Powers**

The board may do any and all things necessary or convenient to carry out the purpose and intent of this subchapter.

[Acts 1971, 62nd Leg., p. 3255, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**CHAPTER 108. LAMAR UNIVERSITY**

**SUBCHAPTER A. GENERAL PROVISIONS**

Section  
108.01: Lamar University.

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

- 108.11. Board of Regents.
- 108.12. Officers.
- 108.13. Compensation of Board.
- 108.14. President.
- 108.15. Seal.

**SUBCHAPTER C. POWERS AND DUTIES**

- 108.31. General Responsibilities.
- 108.32. Scope of Powers.
- 108.33. Eminent Domain.
- 108.34. Donations, Gifts, Endowments.
- 108.35. Spindletop Memorial Museum.
- 108.36. Educational Centers.
- 108.37. Student Center Fees.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 108.01. Lamar University**

Lamar University is a coeducational institution of higher education located in the city of Beaumont.

[Acts 1971, 62nd Leg., p. 3256, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 108.02 to 108.10 reserved for expansion]

## SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

**§ 108.11. Board of Regents**

The organization, control, and management of the university is vested in a board of nine regents, who shall be appointed by the governor and confirmed by the senate. The term of office of each regent shall be six years. Any vacancy that occurs on the board shall be filled by the governor for the unexpired term. The members of the board are removable by the governor for inefficiency or inattention to the duties of the office. Each member of the board shall take the constitutional oath of office.

[Acts 1971, 62nd Leg., p. 3256, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 108.12. Officers**

The board shall elect a chairman and any other officers they consider necessary.

[Acts 1971, 62nd Leg., p. 3256, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 108.13. Compensation of Board**

The members of the board shall serve without compensation, but shall receive actual expenses incurred in attending the meetings of the board, or in the transaction of any business of the university imposed by the board.

[Acts 1971, 62nd Leg., p. 3256, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 108.14. President**

The board shall select a president for the university and shall fix his term of office, set his salary, and define his duties. The president shall be the executive officer for the board and shall work under its direction. He shall recommend the plan of organization and the appointment of employees of the university, and shall have the cooperation of the board and shall be responsible to the board for the general management and success of the university.

[Acts 1971, 62nd Leg., p. 3256, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 108.15. Seal**

The board may adopt an official seal.

[Acts 1971, 62nd Leg., p. 3256, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 108.16 to 108.30 reserved for expansion]

## SUBCHAPTER C. POWERS AND DUTIES

**§ 108.31. General Responsibilities**

The board shall build and operate a state university of the first rank that compares favorably with the splendid colleges of Texas in the preparation of its youth for the varied interests and industries possible in the section of the state in which the university is located. The university shall be equipped adequately to do its work as well as other state colleges perform their functions.

[Acts 1971, 62nd Leg., p. 3257, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 108.32. Scope of Powers**

The university and the board have all the powers and authority conferred by law on state senior colleges in Texas and the Board of Regents, State Senior Colleges, to the extent that that law is applicable.

[Acts 1971, 62nd Leg., p. 3257, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 108.33. Eminent Domain**

The university has the power of eminent domain and shall proceed under condemnation proceedings applicable to railroad companies under the laws of the state.

[Acts 1971, 62nd Leg., p. 3257, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 108.34. Donations, Gifts, Endowments**

The board may accept donations, gifts, and endowments for the university to be held in trust and administered by the board for the purposes and under any directions, limitations, and provisions declared in writing in the donation, gift, or endowment, to the extent that the directions, limitations, and provisions are not inconsistent with the objects and proper management of the university.

[Acts 1971, 62nd Leg., p. 3257, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 108.35. Spindletop Memorial Museum**

The board may create the Spindletop Memorial Museum and may administer it in accordance with the rules and regulations of the university.

[Acts 1971, 62nd Leg., p. 3257, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 108.36. Educational Centers**

(a) The Board may establish an educational center of Lamar University in the counties of Jefferson and Orange, to be known as Lamar University at Jefferson and Orange Counties, to accept freshman and sophomore level students only. This educational center may be discontinued by the Coordinating Board, Texas College and University System at its discretion.

(b) The board may make provision for adequate physical facilities to be provided at no cost to the State of Texas for use by the Lamar University at Jefferson and Orange Counties and may accept and administer, on terms and conditions satisfactory to the board, grants or gifts of money or property which are tendered by any reason for the use and benefit of the school; provided however, that any expenditure of funds, other than local funds or any such grants or gifts, for teaching classes not held on the Beaumont Campus, shall be only as specifically authorized in the General Appropriations Act.

(c) The board with approval of the Coordinating Board, Texas College and University System, may prescribe courses leading to customary degrees, and make other rules and regulations for the operation, control, and management of the Lamar University at Jefferson and Orange Counties as necessary for the school to be a first-class institution for freshman and sophomore students.

(d) Nothing in this section shall be construed to limit the powers of the board of regents of Lamar University as conferred by law.

[Acts 1971, 62nd Leg., p. 3340, ch. 1024, art. 2, § 9, eff. Sept. 1, 1971.]

**§ 108.37. Student Center Fees**

The board of regents may levy a regular fixed student fee not to exceed \$10 per student for each semester of the long session and not to exceed \$5 per student for each term of the summer session, against each student enrolled in the institution, as in their discretion may be just and necessary for the purpose of operating, maintaining, improving, and equipping the student center and acquiring or constructing additions to the student center.

[Acts 1971, 62nd Leg., p. 3344, ch. 1024, art. 2, § 14, eff. Sept. 1, 1971.]

**CHAPTER 109. TEXAS TECH UNIVERSITY**

**SUBCHAPTER A. GENERAL PROVISIONS**

Section

109.01. Texas Tech University.

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

109.21. Board of Regents.

109.22. Board Members: Terms, Vacancies.

109.23. Chief Executive Officer: Selection, Duties.

**SUBCHAPTER C. POWERS AND DUTIES**

109.41. Eminent Domain.

109.42. Residence for President.

109.43. Dormitories: Rules and Regulations.

109.44. Research Park.

109.45. City Museum.

109.46. Lease of Land for Armory.

109.47. Lease of Land for National Guard Armory.

**SUBCHAPTER D. MINERAL DEVELOPMENT IN UNIVERSITY LAND**

109.61. Mineral Leases; Disposition of Proceeds.

109.62. Majority of Board to Act.

109.63. Subdivision of Land; Titles.

109.64. Sale of Leases; Advertisements; Payments.

109.65. Separate Bids; Minimum Royalty; Delay Rental.

109.66. Rejection of Bids; Withdrawal of Land.

109.67. Acceptance; Conditions and Provisions of Lease.

109.68. Acceptance and Filing of Bids; Yearly Payments; Termination of Lease.

109.69. Award and Filing of Lease.

109.70. Exploratory Term of Lease; Extension; Other Provisions.

109.71. Extension of Leases.

109.72. Control of Drilling and Production.

109.73. Drilling Operations: Suspension of Rent; Continuance of Lease; Duty to Prevent Drainage.

109.74. Title to Rights Purchased; Assignment; Relinquishment.

109.75. Payment of Royalties; Records; Report of Receipts.

109.76. Protection from Drainage; Forfeiture of Rights.

109.77. Forfeiture and Other Remedies; Liens.

109.78. Filing of Documents and Payment of Royalties, Fees, and Rentals.

109.79. Forms, Regulations, Rules, and Contracts.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 109.01. Texas Tech University**

Texas Tech University is a coeducational institution of higher education located in the city of Lubbock.

[Acts 1971, 62nd Leg., p. 3259, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 109.02 to 109.20 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**§ 109.21. Board of Regents**

The government, control, and direction of the policies of the university are vested in a board of nine regents, who shall be appointed by the governor with the advice and consent of the senate.

[Acts 1971, 62nd Leg., p. 3259, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.22. Board Members: Terms, Vacancies**

Except for the initial appointees, members hold office of terms of six years expiring on January 31 of odd-numbered years. In making the initial appointments, the governor shall designate three for terms expiring in 1971, three for terms expiring in 1973, and three for terms expiring in 1975. Any vacancy shall be filled for the unexpired portion of the term by appointment by the governor with the advice and consent of the senate.

[Acts 1971, 62nd Leg., p. 3259, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.23. Chief Executive Officer: Selection, Duties**

The board shall provide a chief executive officer, who shall devote his attention to the executive management of the university and who shall be directly accountable to the board for the conduct of the university. The board, when required by law to be the governing body of any other state educational institution or facility, shall also direct the chief executive officer to be directly responsible for the executive management of that other institution or facility.

[Acts 1971, 62nd Leg., p. 3259, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 109.24 to 109.40 reserved for expansion]

**SUBCHAPTER C. POWERS AND DUTIES**

**§ 109.41. Eminent Domain**

The board of regents has the power of eminent domain to acquire land needed to carry out the purposes of the university.

[Acts 1971, 62nd Leg., p. 3259, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.42. Residence for President**

The board may purchase a house or may purchase land and construct a house suitable for the residence of the president of the university.

[Acts 1971, 62nd Leg., p. 3259, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.43. Dormitories: Rules and Regulations**

The board may adopt rules and regulations it deems advisable requiring any class or classes of students to reside in university dormitories or other buildings.

[Acts 1971, 62nd Leg., p. 3260, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.44. Research Park**

(a) The board may plan, develop, and maintain a research park on a portion of the campus of the university. For this purpose, the board may select and set aside on the campus a tract of land of approximately 150 acres.

(b) The board may subdivide the tract into lots and lease the lots to persons, firms, foundations, associations, corporations, and government agencies for the purpose of conducting research. Each lessee may construct buildings and facilities appropriate for research, subject to rules of the board.

(c) The board may execute any lease deemed favorable to the university, and the board shall establish standards of admission for tenant organizations, rental rates, and architectural and landscaping standards.

(d) Money received from the rental of sites in the research park shall be used to offset the expenses involved in developing the sites and providing utilities and services. Any excess of receipts over expenses shall be applied toward research activities undertaken in behalf of the university. The support and maintenance of the park shall never become a charge against or obligation of the State of Texas.

(e) The research park shall be used for research only, and the board shall prohibit manufacturing, social, political, religious, fraternal, and other uses. [Acts 1971, 62nd Leg., p. 3260, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.45. City Museum**

(a) The board may rent, lease, or convey, for a sum of money to be determined by the board, a part of the campus, not to exceed four acres, to the city of Lubbock for the sole purpose of building, with bonds or current city taxes, and maintaining with city tax money, a history, science, and art museum.

(b) The board may rent or lease a building or any part of a building on the parcel of land to the city of Lubbock for the sole purpose of maintaining a history and art museum for a sum of money to be determined by the board.

(c) The board may dedicate for public use a street or streets leading to and connecting the parcel of land and building and to provide ingress and egress to and from a public highway and to and from adjacent parking lots.

(d) The board, at its discretion, may contract with the city of Lubbock for the staffing, operation, and maintenance of a history and art museum with funds provided by the city of Lubbock.

(e) The board may enter into contracts and agreements which are necessary and proper for carrying out the provisions of this section, provided that no expenditure of money by the board shall be made except as may be appropriated by the legislature. [Acts 1971, 62nd Leg., p. 3260, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.46. Lease of Land for Armory**

(a) The board may lease to a suitable agency of the United States a portion of the campus, not to exceed five and one-half acres, for a period not to exceed 99 years, to be used as a site for the erection and maintenance of an armory building or other

suitable building or buildings for the instruction of students in military and naval sciences and other subjects.

(b) The board may enter into lease contracts and other contracts and agreements which are necessary and proper in carrying out the provisions of this section.

[Acts 1971, 62nd Leg., p. 3260, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.47. Lease of Land for National Guard Armory**

(a) The board may select and lease a portion of the campus to the Texas National Guard for the purpose of erecting an armory and other buildings suitable for use by the Texas National Guard. The board may enter into a lease contract with the Texas National Guard Armory Board on terms which are suitable and satisfactory to the board for a term of not more than 99 years.

(b) The board may select and set aside a tract of campus land, not in excess of 10 acres, to be used by the Texas National Guard as a drill ground.

(c) The board may permit the Texas National Guard Armory Board and the Texas National Guard and any of its subdivisions ingress upon and egress from the campus for the purpose of going to and from the armory and other buildings and the drill ground.

[Acts 1971, 62nd Leg., p. 3261, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 109.48 to 109.60 reserved for expansion]

**SUBCHAPTER D. MINERAL DEVELOPMENT IN UNIVERSITY LAND****§ 109.61. Mineral Leases; Disposition of Proceeds**

(a) The board may lease for oil, gas, sulphur, or other mineral development to the highest bidder at public auction all or part of the lands under the exclusive control of the board owned by the State of Texas and acquired for the use of Texas Tech University and its divisions.

(b) Any money received by virtue of this section shall be deposited in the state treasury to the credit of a special fund to be known as the Texas Tech University special mineral fund, to be used exclusively for the university and its branches and divisions. However, no money shall ever be expended from this fund except as authorized by the general appropriations act.

[Acts 1971, 62nd Leg., p. 3261, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.62. Majority of Board to Act**

A majority of the board has power to act in all cases under this subchapter except as otherwise provided in this subchapter.

[Acts 1971, 62nd Leg., p. 3261, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.63. Subdivision of Land; Titles**

(a) The board may have the lands surveyed or subdivided into tracts, lots, or blocks which, in their judgment, will be most conducive and convenient to

an advantageous sale or lease of oil, gas, sulphur, or other minerals in the lands; and the board may make maps and plats which it deems necessary to carry out the purposes of this subchapter.

(b) The board may obtain authentic abstracts of title to the lands from time to time as it deems necessary and may take necessary steps to perfect a merchantable title to the lands.

[Acts 1971, 62nd Leg., p. 3261, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.64. Sale of Leases; Advertisements; Payments**

(a) Whenever in the opinion of the board there is a demand for the purchase of oil, gas, sulphur, or other mineral leases on any tract or part of any tract of land which will reasonably insure an advantageous sale, the board shall place the oil, gas, sulphur, or other mineral leases on the land on the market in a tract or tracts, or any part of a tract, which the board may designate.

(b) The board shall have advertised a brief description of the land from which the oil, gas, sulphur, or other minerals is proposed to be leased. The advertisement shall be made by inserting in two or more papers of general circulation in this state, and in addition, the board may, in its discretion, cause the advertisement to be placed in an oil and gas journal published in and out of the state. The board may also mail copies of the proposals to the county judge of the county where the lands are located and to other persons the board believes would be interested.

(c) The board may sell the lease or leases to the highest bidder at public auction at the university in Lubbock at any hour between 10 a. m. and 5 p. m.

(d) The highest bidder shall pay to the board on the day of the sale 25 percent of the bonus bid, and the balance of the bid shall be paid within 24 hours after the bidder is notified that the bid has been accepted. Payments shall be made in cash, certified check, or cashier's check, as the board directs. The failure of the bidder to pay the balance of the amount bid will forfeit to the board the 25 percent paid.

[Acts 1971, 62nd Leg., p. 3262, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.65. Separate Bids; Minimum Royalty; Delay Rental**

(a) A separate bid shall be made for each tract or subdivision of a tract.

(b) No bid shall be accepted which offers a royalty of less than one-eighth of the gross production of oil, gas, sulphur, and other minerals in the land bid upon, and this minimum royalty may be increased at the discretion of the board.

(c) Every bid shall carry the obligation to pay an amount not less than \$1 per acre for delay in drilling or development. The amount shall be fixed by the board in advance of the advertisement. The amount fixed shall be paid every year for five years unless in the meantime production in paying quantities is had upon the land or the land is released by the lessee.

[Acts 1971, 62nd Leg., p. 3262, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.66. Rejection of Bids; Withdrawal of Land**

The board may reject any and all bids and may withdraw any land advertised for lease.

[Acts 1971, 62nd Leg., p. 3262, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.67. Acceptance; Conditions and Provisions of Lease**

(a) If, in the opinion of the board, any one of the bidders has offered a reasonable and proper price for any tract, which is not less than the price set by the board, the lands advertised may be leased for oil, gas, sulphur, and other mineral purposes under the terms of this section and subject to regulations prescribed by the board which are not inconsistent with the provisions of this section. In the event no bid is accepted by the board at public auction, any subsequent procedure for the sale of the leases shall be in the manner prescribed in the preceding sections.

(b) No lease shall be made by the board which will permit the drilling or mining for oil, gas, sulphur, or other minerals within 300 feet of any building on the land without the consent of the board. In making any lease on any experimental station or farm, the lease shall provide that the operations for oil, gas, and other minerals shall not in any way interfere with use of the land for university purposes and shall not cause the abandonment of the property or its use for experimental farm purposes. The lease shall also provide that the lessee operating the property shall drill and carry on his operations in such a way as not to cause the abandonment of the property for university purposes, and the leased property shall be subject to the use by the state for all university purposes, and the board shall continue to operate the university.

[Acts 1971, 62nd Leg., p. 3262, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.68. Acceptance and Filing of Bids; Yearly Payments; Termination of Lease**

(a) If the board determines that a satisfactory bid has been received for the oil, gas, sulphur, or other mineral lands, it shall accept the bid and reject all others and shall file the accepted bid in the general land office.

(b) Whenever the royalties shall amount to as much as the yearly payments fixed by the board, the yearly payments may be discontinued.

(c) If before the expiration of five years oil, gas, sulphur, or other minerals have not been produced in paying quantities, the lease shall terminate unless extended as provided in Sections 109.70 and 109.71 of this code.

[Acts 1971, 62nd Leg., p. 3263, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.69. Award and Filing of Lease**

If the board determines that a satisfactory bid has been received for the oil, gas, sulphur, or other minerals, it shall make an award to the bidder offering the highest price, and a lease shall be filed in the general land office.

[Acts 1971, 62nd Leg., p. 3263, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.70. Exploratory Term of Lease; Extension; Other Provisions**

(a) The exploratory term of a lease as determined by the board prior to the promulgation of the advertisement shall not exceed five years, and each lease shall provide that the lease will terminate at the expiration of its exploratory term unless by unanimous vote of the board the lease is extended for a period of three years.

(b) The lease may be extended if the board finds that there is a likelihood of oil, gas, sulphur, or other minerals being discovered by the lessees, and that the lessees have proceeded with diligence to protect the interest of the state. If oil, gas, sulphur, or other minerals are being produced in paying quantities from the premises, the lease shall continue in force and effect as long as the oil, gas, sulphur, or other minerals are being so produced. No extension may be made by the board until the last 30 days of the original term of the lease.

(c) The lease shall include additional provisions and regulations prescribed by the board to preserve the interest of the state, not inconsistent with the provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 3263, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.71. Extension of Leases**

When in the discretion of the board it is deemed for the best interest of the state to extend a lease issued by the board, the board may by unanimous vote extend the lease for a period not to exceed three years, on the condition that the lessee shall continue to pay yearly rental as provided in the lease and shall comply with any additional terms which the board may see fit and proper to demand. The board may extend the lease and execute an extension agreement.

[Acts 1971, 62nd Leg., p. 3264, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.72. Control of Drilling and Production**

The drilling for and the production of oil, gas, and other minerals from the lands shall be governed and controlled by the Railroad Commission of Texas and other regulatory bodies which govern and control other fields in this state.

[Acts 1971, 62nd Leg., p. 3264, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.73. Drilling Operations: Suspension of Rent; Continuance of Lease; Duty to Prevent Drainage**

(a) If during the term of a lease issued under the provisions of this subchapter the lessee is engaged in actual drilling operations for the discovery of oil, gas, sulphur, or other minerals, no rentals shall be payable as to the tract on which the operations are being conducted as long as the operations are proceeding in good faith.

(b) In the event oil, gas, sulphur, or other minerals are discovered in paying quantities on any tract of land covered by a lease, then the lease as to that tract shall remain in force as long as oil, gas, sulphur, or other minerals are produced in paying quantities from the tract.

(c) In the event of the discovery of oil, gas, sulphur, or other minerals on any tract covered by a lease or on any land adjoining the tract, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by the lease to properly develop the same to the extent that a reasonably prudent man would do under the same and similar circumstances.

[Acts 1971, 62nd Leg., p. 3264, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.74. Title to Rights Purchased; Assignment; Relinquishment**

(a) Title to all rights purchased may be held by the owners as long as the area produces oil, gas, sulphur, or other minerals in paying quantities.

(b) All rights purchased may be assigned. All assignments shall be filed in the general land office within 100 days from the date of the first acknowledgment thereof, accompanied by 10 cents per acre for each acre assigned. The assignment shall not be effective unless it is filed and the payment made.

(c) All rights to any whole tract or to any assigned portion thereof may be relinquished to the state at any time by having an instrument of relinquishment recorded in the county or counties in which the area is situated. The instrument of relinquishment shall be filed with the chairman of the board, accompanied by \$1 for each area assigned. The assignment shall not relieve the owner of any past-due obligations accrued on the lease.

(d) The board shall authorize the laying of pipeline and telephone line and the opening of roads deemed reasonably necessary in carrying out the purposes of this subchapter.

[Acts 1971, 62nd Leg., p. 3264, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.75. Payment of Royalties; Records; Report of Receipts**

(a) If oil or other minerals are developed on any of the lands leased by the board, the royalty as stipulated in the sale shall be paid to the general land office in Austin on or before the last day of each month for the preceding month during the life of the rights purchased. The royalty payments shall be set aside in the state treasury as specified in Section 109.61 of this code and used as provided in that section.

(b) The royalty paid to the general land office shall be accompanied by the sworn statement of the owner, manager, or other authorized agent showing the gross amount of oil, gas, sulphur, or other minerals produced and sold off the premises and the market value of the minerals, together with a copy of all daily gauges, or vats, tanks, gas meter readings, pipeline receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipelines, vats, tanks, or pool and gas lines or gas storage. The books and accounts, receipts and discharges of all wells, tanks, vats, pools, meters, and pipelines, and all contracts and other records pertaining to the production, transportation, sale, and marketing of the oil, gas, sulphur, or other minerals shall at all times be subject to inspection and examination by any member of the board or any duly authorized representative of the board.

(c) The commissioner of the general land office shall tender to the board on or before the 10th day of each month a report of all receipts from the lease or sale of oil, gas, sulphur, or other minerals turned into the special fund in the state treasury during the preceding month.

[Acts 1971, 62nd Leg., p. 3265, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.76. Protection from Drainage; Forfeiture of Rights**

(a) In every case where the area in which oil, gas, sulphur, or other minerals sold is contiguous or adjacent to lands which are not lands belonging to and held by the university, the acceptance of the bid and the sale made thereby shall constitute an obligation of the owner to adequately protect the land leased from drainage from the adjacent lands to the extent that a reasonably prudent operator would do under the same and similar circumstances.

(b) In cases where the area in which the oil, gas, sulphur, or other minerals sold is contiguous to other lands belonging to and held by the university which have been leased or sold at a lesser royalty, the owner shall protect the land from drainage from the lands leased or sold for a lesser royalty.

(c) On failure to protect the land from drainage as provided in this section, the sale and all rights acquired may be forfeited by the board in the manner provided in Section 109.77 of this code for forfeitures.

[Acts 1971, 62nd Leg., p. 3265, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.77. Forfeiture and Other Remedies; Liens**

(a) Leases granted under the provisions of this chapter are subject to forfeiture by the board by an order entered in the minutes of the board reciting the acts or omissions constituting a default and declaring a forfeiture.

(b) Any of the following acts or omissions constitutes a default:

(1) the failure or refusal by the owner of the rights acquired under this chapter to make a payment of a sum due, either as rental or royalty on production, within 30 days after the payment becomes due;

(2) the making of a false return or false report concerning production, royalty, drilling, or mining by the owner or his authorized agent;

(3) the failure or refusal of the owner or his agent to drill an offset well or wells in good faith, as required by the lease;

(4) the refusal of the owner or his agent to allow the proper authorities access to the records and other data pertaining to the operations authorized in this subchapter;

(5) the failure or refusal of the owner or his authorized agent to give correct information to the proper authorities, or to furnish the log of any well within 30 days after production is found in paying quantities; or

(6) the violation by the owner of any material term of the lease.

(c) The board may, if it so desires, have suit for forfeiture instituted through the attorney general.

(d) On proper showing by the forfeiting owner within 30 days after the declaration of forfeiture, the lease may be reinstated at the discretion of the board and upon terms prescribed by the board.

(e) In case of violation by the owner of the lease contract, the remedy of forfeiture shall not be the exclusive remedy, and the state may institute suit for damages or specific performance or both.

(f) The state shall have a first lien on oil, gas, sulphur, or other minerals produced in the leased area, and on all rigs, tanks, vats, pipelines, telephone lines, and machinery and appliances used in the production and handling of oil, gas, sulphur, or other minerals produced, to secure the amount due from the owner of the lease.

[Acts 1971, 62nd Leg., p. 3265, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.78. Filing of Documents and Payment of Royalties, Fees, and Rentals**

(a) All surveys, files, copies of sale and lease contracts, and other records pertaining to the sales and leases authorized in this subchapter shall be filed in the general land office and shall constitute archives.

(b) Payment of all royalties, lease fees, rentals for delay in drilling or mining, filing fees for assignments and relinquishments, and all other payments shall be made to the commissioner of the general land office at Austin. The commissioner shall transmit all payments received to the state treasurer for deposit to the credit of the Texas Tech University special mineral fund.

[Acts 1971, 62nd Leg., p. 3266, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 109.79. Forms, Regulations, Rules, and Contracts**

The board shall adopt proper forms, regulations, rules, and contracts which, in its judgment, will protect the income from lands leased pursuant to this subchapter.

[Acts 1971, 62nd Leg., p. 3266, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**CHAPTER 110. TEXAS TECH UNIVERSITY SCHOOL OF MEDICINE AT LUBBOCK**

- Section
- 110.01. Separate Institution.
- 110.02. Concurrent and Separate Powers.
- 110.03. General Powers.
- 110.04. Chief Executive Officer.
- 110.05. Courses Offered.
- 110.06. Agreements with Other Schools.
- 110.07. Physical Facilities.
- 110.08. Grants; Gifts.
- 110.09. Teaching Hospital.
- 110.10. Supervision by Coordinating Board.

**§ 110.01. Separate Institution**

Texas Tech University School of Medicine at Lubbock is a separate institution and not a department, school, or branch of Texas Tech University but is under the direction, management, and control of the Texas Tech University Board of Regents.

[Acts 1971, 62nd Leg., p. 3267, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 110.02. Concurrent and Separate Powers**

The board of regents has the same powers of direction, management, and control over the medical school as they exercise over Texas Tech University. However, the board shall act separately and independently on all matters affecting the medical school as a separate institution.

[Acts 1971, 62nd Leg., p. 3267, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 110.03. General Powers**

The board may make rules and regulations for the direction, control, and management of Texas Tech University School of Medicine as necessary for the school to be a medical school of the first class.

[Acts 1971, 62nd Leg., p. 3267, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 110.04. Chief Executive Officer**

The chief executive officer of Texas Tech University is also the chief executive officer of the medical school under the authority of Section 109.23 of this code.

[Acts 1971, 62nd Leg., p. 3267, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 110.05. Courses Offered**

The board may prescribe courses leading to customary degrees.

[Acts 1971, 62nd Leg., p. 3267, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 110.06. Agreements with Other Schools**

The board may, when in the best interests of medical education at the medical school, execute and carry out affiliation or coordinating agreements with any other entity or institution in the Lubbock area, Amarillo area, El Paso area, and the Odessa-Midland area to provide clinical, postgraduate, including internship and residency, or other levels of medical educational work for the medical school. Additionally, the board may execute and carry out affiliation or coordinating agreements with any other entity or institution necessary to conduct and operate the medical school as a first-class medical school. The board may utilize the facilities and staffs of other state biomedical units.

[Acts 1971, 62nd Leg., p. 3268, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 110.07. Physical Facilities**

The board shall make provision for adequate physical facilities for the medical school, including library, auditorium, and animal facilities, for use by the medical school in its teaching and research programs.

[Acts 1971, 62nd Leg., p. 3268, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 110.08. Grants; Gifts**

The board, in its discretion, may accept and administer grants and gifts from the federal government, any foundation, trust fund, corporation, or individual for the use and benefit of the medical school.

[Acts 1971, 62nd Leg., p. 3268, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 110.09. Teaching Hospital**

A complete teaching hospital for the medical school shall be furnished at no cost or expense to the state. The state may never contribute any funds for the construction, maintenance, or operation of a teaching hospital for the medical school.

[Acts 1971, 62nd Leg., p. 3268, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 110.10. Supervision by Coordinating Board**

The medical school is subject to the continuing supervision of and to the rules and regulations of the Coordinating Board, Texas College and University System, as provided by Chapter 61 of this code<sup>1</sup>.

[Acts 1971, 62nd Leg., p. 3268, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Section 61.001 et seq.

## CHAPTER 111. THE UNIVERSITY OF HOUSTON

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#### Section

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SUBCHAPTER A. GENERAL PROVISIONS

§ 111.01. University of Houston

The University of Houston is a coeducational institution of higher education located in the city of Houston.

[Acts 1971, 62nd Leg., p. 3270, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 111.02. Applicability of General Laws

The University of Houston is subject to the obligations and entitled to the benefits of all general laws of Texas applicable to all other state institutions of higher education, except where the general laws are in conflict with this chapter, and in the event of conflict this chapter prevails to the extent of the conflict.

[Acts 1971, 62nd Leg., p. 3270, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 111.03 to 111.10 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 111.11. Board of Regents

The organization and control of the university is vested in a board of nine regents.

[Acts 1971, 62nd Leg., p. 3270, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 111.12. Appointments to Board; Terms

Members of the board are appointed by the governor with the advice and consent of the senate. The term of office of each regent shall be six years, except that in making the first appointments the governor shall appoint three members for six years, three members for four years, and three members for two years. Any vacancy that occurs on the board shall be filled for the unexpired term by appointment of the governor.

[Acts 1971, 62nd Leg., p. 3270, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 111.13. Qualifications of Members; Oath

Each member of the board shall be a citizen of the State of Texas, and each member shall take the constitutional oath of office.

[Acts 1971, 62nd Leg., p. 3270, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 111.14. Officers

The board shall elect one of the members chairman. They shall elect any other officers they deem necessary.

[Acts 1971, 62nd Leg., p. 3270, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 111.15. Compensation

Members of the board shall serve without pay, but shall be reimbursed for their actual expenses incurred in attending the work of the board, subject to the approval of the chairman.

[Acts 1971, 62nd Leg., p. 3270, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 111.16. Meetings

The board shall hold a regular meeting at the campus of the university during the month of April annually, and at other times and places scheduled by the board or designated by the chairman.

[Acts 1971, 62nd Leg., p. 3271, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 111.17. Minutes

Full, accurate, and complete minutes of the board shall be kept and shall be open to inspection by the public at the university during regular business hours. Certified copies of any minutes shall be furnished on payment of a fee assessed by the board, which shall not exceed 25 cents per 100 words or fractional part thereof.

[Acts 1971, 62nd Leg., p. 3271, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 111.18. President

The board shall select a president for the university, who shall be the executive officer for the board and shall work under its direction. The president shall recommend the plan or organization of the university and shall be responsible to the board for the general management and success of the university.

[Acts 1971, 62nd Leg., p. 3271, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 111.19. Personnel: Appointments, Salaries, Etc.

The board may appoint and remove the president, any faculty member, or other officer or employee of the university when, in its judgment, the interest of the university requires it. The board shall fix the respective salaries and duties of the officers and employees.

[Acts 1971, 62nd Leg., p. 3271, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 111.20 to 111.30 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 111.31. Courses and Degrees

The board shall prescribe courses leading to customary degrees offered in American universities of the first rank. However, the role and scope of the university, including its authorized departments and offerings of degree and certificate programs, are subject to the determination and approval of the Coordinating Board, Texas College and University System. All work done and all courses, degrees, certificates, and diplomas awarded shall conform to standard college requirements as promulgated by the accrediting associations that supervise matters of accreditation of universities and colleges in the State of Texas.

[Acts 1971, 62nd Leg., p. 3271, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 111.32. Reports

The board shall report in detail to the governor and to the Coordinating Board, Texas College and University System, annually, and to the legislature

at the beginning of each regular session, on the following matters:

- (1) the receipts and disbursements of the university and the expenses incurred;
- (2) the number of teachers and the salary of each member of the faculty;
- (3) the number of employees and the salary and duties of each person;
- (4) the number of students, classified by grades and departments; and
- (5) a summary of the proceedings of the board and of the faculty.

[Acts 1971, 62nd Leg., p. 3271, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 111.33. Suits

The board has the power to sue and be sued in the name of the University of Houston. Venue shall be in either Harris County or Travis County. The university shall be impleaded by service of citation on the president or any of its vice presidents.

[Acts 1971, 62nd Leg., p. 3272, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 111.34. Contracts

All contracts of the university shall be approved by a majority of the board.

[Acts 1971, 62nd Leg., p. 3272, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 111.35. Bylaws; Rules; Regulations

The board shall enact bylaws, rules, and regulations necessary for the successful management and government of the university.

[Acts 1971, 62nd Leg., p. 3272, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 111.36. Donations, Gifts, Endowments

The board may accept donations, gifts, and endowments for the university to be held in trust and administered by the board for the purposes and under the directions, limitations, and provisions declared in writing in the donation, gift, or endowment, provided that the purposes and directions, limitations, and provisions are not inconsistent with the laws of the State of Texas or with the objectives and proper management of the university.

[Acts 1971, 62nd Leg., p. 3272, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 111.37. Lease and Management of Land

(a) The board may lease for oil, gas, sulphur, ore, and other mineral development all land under its exclusive control for the use of the university. The board may make and enter into pooling agreements, division orders, or other contracts necessary in the management and development of its land. All leases, pooling agreements, division orders, or other contracts entered into shall be on terms which the board deems in the best interest of the university. No lease shall be sold for less than the royalty and rental terms demanded at that time by the General Land Office in the sale of oil, gas, and other mineral leases of the public lands of the State of Texas.

(b) All money received under and by virtue of the leases and contracts executed for the management

and development of the land, except revenue pledged to the payment of revenue bonds or notes, shall be deposited to the credit of a special fund created by the board. The board shall designate a depository for the special fund and shall accord the money deposited in it the same protection by the pledging of assets of the depository as is required for the protection of public funds. Money deposited in the special fund may be used by the board for the administration of the university, for payment of principal of and interest on any revenue bonds or notes issued by the board, and for any other use or purpose which in the judgment of the board may be for the good of the university.

[Acts 1971, 62nd Leg., p. 3272, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 111.38. Eminent Domain

The board has the power of eminent domain to acquire for the use of the university any land necessary and proper for carrying out its purposes as a state-supported institution of higher education. However, the power of eminent domain is restricted to the area within Harris County and any county whose boundaries are contiguous to Harris County. The board shall not be required to deposit a bond or the amount equal to the award of the commissioners as provided in Paragraph 2, Article 3268, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1971, 62nd Leg., p. 3273, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 111.39. Acquisition and Disposition of Land

The board may acquire by purchase, donation, or otherwise for the use of the university any land and other real property necessary or convenient for carrying out its purposes as a state-supported institution of higher education, and may sell, exchange, lease, or otherwise dispose of any land or other real property owned by or acquired for the university. However, the power of acquisition and disposition is restricted to the area within Harris County and the counties whose boundaries are contiguous to Harris County. The proceeds from any sale of land or other real property shall be added to the capital funds of the university. No new institutions, branches, or other operations of any kind shall be developed without specific authorization by the legislature.

[Acts 1971, 62nd Leg., p. 3273, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 111.40. Charges for Services to the Public; Reports

(a) A schedule of minimum fees and charges shall be established by the board for services performed by any department of the university for students and the public. The schedule shall conform to the fees and charges customarily made for like services in the community. By way of example, but not as a limitation, are services of the hearing clinic, optometry clinic, reading clinic, and data processing and computing center.

(b) All fees and compensation derived from performing services shall be reported to the governor and to the Coordinating Board, Texas College and University System, annually, to the legislature at the beginning of each regular session, and to the

board as required by it. A brief statement of the firm, society, organization, or association using the facilities and the use made shall be included in each report.

[Acts 1971, 62nd Leg., p. 3273, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 111.41. Military Training**

(a) Within its authority to contract with the Department of Defense for military training under Section 51.304 of this code, the board may lease armory land and buildings from and to the United States, and may acquire equipment and material necessary to accomplish the purposes of the courses in military training. The board may enter into insurance contracts for the protection of the federal government's rights in and to any property involved.

(b) No student of the university shall ever be required to take a military training course as a condition for entrance into the university or for graduation from the university.

[Acts 1971, 62nd Leg., p. 3273, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 111.42 to 111.60 reserved for expansion]

SUBCHAPTER D. INSTITUTE FOR  
URBAN STUDIES

**§ 111.61. Creation of Institute; Location**

The board of regents of the University of Houston shall establish and maintain an institute for urban studies in the Houston metropolitan area.

[Acts 1971, 62nd Leg., p. 3274, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 111.62. Administration**

The administration of the institute for urban studies shall be under the direction of the president and board of regents of the University of Houston. The administrative officer of the institute shall be appointed by the president with the approval of the board. The administrative officer shall appoint the professional and administrative staff of the institute according to usual procedures and with the approval of the board.

[Acts 1971, 62nd Leg., p. 3274, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 111.63. Role and Scope of Institute**

The institute of urban studies shall conduct basic and applied research into urban problems and public policy and make available the results of this research to private groups and public bodies and officials. It may offer consultative and general advisory services concerning urban problems and their solutions. According to the policies of the Coordinating Board, Texas College and University System, and with its approval, the institute may conduct instructional and training programs for those who are working in or expect to make careers in urban public service. The training programs may be conducted by the institute either in its own name or by agreement and cooperation with other public and private organizations.

[Acts 1971, 62nd Leg., p. 3274, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 111.64. Correlation of Programs**

In order to correlate the programs offered by the institute and the institute established by The University of Texas System under Subchapter B, Chapter 75, of this code,<sup>1</sup> there shall be maintained regular liaison between the institutes concerning programs undertaken, a joint committee for future planning, and a union catalogue of research resources. This correlation shall be achieved by utilizing regular administrative channels, including the staff of the Coordinating Board, Texas College and University System.

[Acts 1971, 62nd Leg., p. 3274, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Section 75.101 et seq.

**§ 111.65. Receipt and Disbursement of Funds, Property, and Services**

In addition to state appropriations, the institute may receive and expend or use funds, property, or services from any source, public or private, under rules established by the president and the board and under applicable state laws.

[Acts 1971, 62nd Leg., p. 3274, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 111.66 to 111.80 reserved for expansion]

SUBCHAPTER E. THE UNIVERSITY OF  
HOUSTON AT CLEAR LAKE CITY

**§ 111.81. Establishment, Location**

There is established in Harris County, as recommended by the Coordinating Board, Texas College and University System, a coeducational institution of higher education to be known as the University of Houston at Clear Lake City. The university shall be located on land currently owned by the University of Houston, either land acquired by donation under Chapter 37, Acts of the 60th Legislature, Regular Session, 1967, or land generally adjacent to that land and also owned by the University of Houston.

[Acts 1971, 62nd Leg., p. 3348, ch. 1024, art. 2, § 23, eff. Sept. 1, 1971.]

**§ 111.82. Organization and Control**

The organization and control of the university are vested in the board of regents of the University of Houston. With respect to this university, the board of regents has all the rights, powers, and duties that it has with respect to the organization and control of the University of Houston, except as otherwise provided by this Act. However, the University of Houston at Clear Lake City shall be maintained as a separate and distinct institution of higher education.

[Acts 1971, 62nd Leg., p. 3348, ch. 1024, art. 2, § 23, eff. Sept. 1, 1971.]

**§ 111.83. Role and Scope**

The university shall be organized to offer only junior, senior, and graduate-level programs.

[Acts 1971, 62nd Leg., p. 3348, ch. 1024, art. 2, § 23, eff. Sept. 1, 1971.]

**§ 111.84. Advisory Committee**

(a) There is established a permanent advisory committee consisting of the president, or a representative designated by him, of each tax-supported junior college and community college now existing or hereafter established in Harris, Galveston, Fort Bend, Waller, Montgomery, Liberty, Chambers, or Brazoria County.

(b) The advisory committee shall biennially elect a chairman from among its members and may elect other officers. It shall make rules to govern the calling of meetings and the transaction of its business.

(c) The advisory committee shall periodically study the overall needs of the region mentioned in Subsection (a) of this section for the development of programs and resources in higher education, and as a result of its studies shall make recommendations to the board of regents of the University of Houston regarding the development of the departments and degree programs of the University of Houston at Clear Lake City. The board of regents shall give careful consideration to the recommendations of the advisory committee.

[Acts 1971, 62nd Leg., p. 3348, ch. 1024, art. 2, § 23, eff. Sept. 1, 1971.]

**§ 111.85. Authority of Coordinating Board**

The university is a general academic teaching institution, and as such it is subject to the authority of the Coordinating Board, Texas College and University System.

[Acts 1971, 62nd Leg., p. 3348, ch. 1024, art. 2, § 23, eff. Sept. 1, 1971.]

## CHAPTER 112. PAN AMERICAN UNIVERSITY

### SUBCHAPTER A. GENERAL PROVISIONS

Section

112.01. Pan American University.

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 112.11. Board of Regents.
- 112.12. Term of Office.
- 112.13. Officers.
- 112.14. Expenses.
- 112.15. Meetings.
- 112.16. Minutes.
- 112.17. President.
- 112.18. Personnel: Appointments, Salaries, Etc.

### SUBCHAPTER C. POWERS AND DUTIES

- 112.31. Rules and Regulations.
- 112.32. Suits.
- 112.33. Contracts.
- 112.34. Gifts, Endowments.
- 112.35. Eminent Domain.
- 112.36. Military Training.
- 112.37. Reports.

### SUBCHAPTER A. GENERAL PROVISIONS

**§ 112.01. Pan American University**

Pan American University is a coeducational institution of higher education located in the city of Edinburg.

[Acts 1971, 62nd Leg., p. 3275, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 112.02 to 112.10 reserved for expansion]

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

**§ 112.11. Board of Regents**

The organization and control of the university is vested in a board of nine regents appointed by the governor with the advice and consent of the senate.

[Acts 1971, 62nd Leg., p. 3275, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 112.12. Term of Office**

Members of the board hold office for staggered terms of six years, with the terms of three members expiring every two years. Any vacancy that occurs on the board shall be filled for the unexpired term by appointment of the governor.

[Acts 1971, 62nd Leg., p. 3276, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 112.13. Officers**

The board shall elect one member to be chairman and may elect any other officers it deems necessary. Each member shall take the constitutional oath of office.

[Acts 1971, 62nd Leg., p. 3276, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 112.14. Expenses**

Members of the board shall serve without pay, but shall be reimbursed for their actual expenses incurred in attending the work of the board, subject to the approval of the chairman.

[Acts 1971, 62nd Leg., p. 3276, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 112.15. Meetings**

The board shall hold a regular meeting each year during the month of April on the campus of the university, and may meet at other times and places as scheduled by the board or called by the chairman.

[Acts 1971, 62nd Leg., p. 3276, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 112.16. Minutes**

Accurate and complete minutes of the board shall be maintained and shall be open to public inspection at the university during regular business hours. Certified copies of any minutes shall be furnished on payment of a fee to be assessed by the board, not to exceed 25 cents per 100 words or fractional part of 100 words.

[Acts 1971, 62nd Leg., p. 3276, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 112.17. President**

The board of regents shall select a president, who shall be chief executive officer for the board and shall work under the board's direction. The president shall recommend the plan of organization of the university and is responsible to the board for the general management and success of the university.

[Acts 1971, 62nd Leg., p. 3276, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 112.18. Personnel: Appointments, Salaries, Etc.**

The board may appoint or remove the president, any faculty member, or any other officer or employee of the university when, in the judgment of the board, the best interests of the university require it. The board shall fix the salaries and duties of the officers and employees of the university. [Acts 1971, 62nd Leg., p. 3276, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 112.19 to 112.30 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

**§ 112.31. Rules and Regulations**

The board may adopt bylaws, rules and regulations necessary for the successful management and operation of the university.

[Acts 1971, 62nd Leg., p. 3276, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 112.32. Suits**

The board may sue or be sued in the name of Pan American University. Venue is in either Hidalgo County or Travis County. The university shall be impleaded by service of citation on the president, and legislative consent to these suits is granted.

[Acts 1971, 62nd Leg., p. 3277, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 112.33. Contracts**

All contracts of the university must be approved by a majority of the board of regents.

[Acts 1971, 62nd Leg., p. 3277, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 112.34. Gifts, Endowments**

The board may accept donations, gifts, and endowments for the university to be held in trust and administered by the board for the purposes and under any directions, limitations, and provisions that may be declared in writing in the donation, gift, or endowment, consistent with the laws of the state and the objectives and proper management of the university.

[Acts 1971, 62nd Leg., p. 3277, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 112.35. Eminent Domain**

The board has the power of eminent domain, restricted to the boundaries of Hidalgo County, to acquire land for the use of the university which is necessary and proper for carrying out the purposes of the university. The board may not be required to deposit a bond or the amount equal to the award of the commissioners as required by Paragraph 2, Article 3268, Revised Civil Statutes of Texas, 1925, as amended. If the power is exercised, the board shall determine the amount and character of interests in land and easements to be acquired. As against persons, firms, and corporations, or receivers or trustees of them, having the power of eminent domain, the board may condemn only an easement.

[Acts 1971, 62nd Leg., p. 3277, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 112.36. Military Training**

(a) Within its authority to contract with the Department of Defense for military training under Section 51.173<sup>1</sup> of this code, the board may lease armory land and buildings from and to the United States, and may acquire equipment and material necessary to accomplish the purposes of the courses in military training. The board may enter into insurance contracts for the protection of the federal government's rights in and to any property involved.

(b) No student of the university shall ever be required to take a military training course as a condition for entrance into or graduation from the university.

[Acts 1971, 62nd Leg., p. 3277, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Probably should read "Section 51.304".

**§ 112.37. Reports**

The board shall report the condition of the university annually to the governor, to the Coordinating Board, Texas College and University System, and to the legislature at the beginning of each regular session. The report shall set forth, in detail, receipts and disbursements; an itemized statement of all expenses for each year; the number of teachers and the salary of each member of the faculty; the number of employees and the general duties and salary received by each; the number of students, classified by grades and departments; and a summary of the proceedings of the board and faculty.

[Acts 1971, 62nd Leg., p. 3277, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**CHAPTER 113. TYLER STATE COLLEGE**

SUBCHAPTER A. GENERAL PROVISIONS

- Section 113.01. Tyler State College.
- 113.02. Role and Scope.
- 113.03. Applicability of General Laws.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 113.11. Board of Regents.
- 113.12. Qualifications; Oath.
- 113.13. Terms of Office; Vacancies.
- 113.14. Compensation of Board.
- 113.15. Chairman; Bylaws.
- 113.16. Meetings.
- 113.17. Minutes.

SUBCHAPTER C. POWERS AND DUTIES

- 113.31. Rules and Regulations.
- 113.32. President.
- 113.33. Suits; Venue; Citation.
- 113.34. Reports.
- 113.35. Gifts and Grants.
- 113.36. Management of Property.

SUBCHAPTER A. GENERAL PROVISIONS

**§ 113.01. Tyler State College**

There is created and established in the city of Tyler a coeducational institution of higher education to be known as Tyler State College. The college shall be organized to accept only junior-, senior-, and graduate-level students.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

### § 113.02. Role and Scope

The role and scope of the college shall be defined by the Coordinating Board, Texas College and University System.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

### § 113.03. Applicability of General Laws

Tyler State College is subject to the obligations and entitled to the benefits of all general laws of Texas applicable to all other state institutions of higher education, including Chapter 55 of this code,<sup>1</sup> except where the general laws are in conflict with this chapter, and in the event of conflict this chapter prevails to the extent of the conflict.

[Acts 1973, 63rd Leg., p. 1657, ch. 601, § 2, eff. June 15, 1973.]

<sup>1</sup> Section 55.01 et seq.

[Sections 113.04 to 113.10 reserved for expansion]

## SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

### § 113.11. Board of Regents

The organization, control, and management of the college is vested in a board of nine regents appointed by the governor and confirmed by the senate.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

### § 113.12. Qualifications; Oath

Each member of the board shall be a citizen of the State of Texas and shall take the constitutional oath of office.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

### § 113.13. Terms of Office; Vacancies

(a) Members of the board hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate three members for terms expiring in 1973, three for terms expiring in 1975, and three for terms expiring in 1977.

(b) Any vacancy on the board shall be filled for the unexpired term by appointment of the governor.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

### § 113.14. Compensation of Board

Members of the board serve without compensation but are entitled to reimbursement for actual expenses incurred in attending the work of the board.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

### § 113.15. Chairman; Bylaws

The board shall elect a chairman from among its membership and shall enact bylaws governing the conduct of the board.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

<sup>1</sup> West's Tex.Stats. & Codes—38

### § 113.16. Meetings

The board shall hold an annual meeting on the campus of the college during the month of April, and at other times and places scheduled by the board or designated by its chairman.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

### § 113.17. Minutes

The board shall cause accurate and complete minutes of its meetings to be maintained. The minutes shall be open to the public for inspection at the college during regular business hours, and certified copies of the minutes shall be furnished to anyone on payment of a fee set by the board.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

[Sections 113.18 to 113.30 reserved for expansion]

## SUBCHAPTER C. POWERS AND DUTIES

### § 113.31. Rules and Regulations

The board shall promulgate rules and regulations necessary for the successful management and operation of the college.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

### § 113.32. President

The board may appoint and remove the president, any faculty member, or other officer or employee of the college and shall fix their respective salaries. The president is the executive officer of the college and is responsible for its general management. He shall recommend a plan of organization and orderly course development for the college.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

### § 113.33. Suits; Venue; Citation

The board may sue and be sued in the name of the college. Venue is in either Smith or Travis County. The college may be impleaded by service of citation on its president, and legislative consent to suits against the college is granted.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

### § 113.34. Reports

The board shall make reports to the coordinating board as required by law.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971.]

### § 113.35. Gifts and Grants

The board may accept donations, gifts, and endowments for the college. They are to be held in trust and administered by the board according to the purposes, directions, limitations, and provisions declared in writing in the donation, gift, or endowment. The provisions of the gift, donation, or endowment shall be followed to the extent that they are not inconsistent with the laws of this state or with the objective and proper management of the college. All money received in accordance with the

provisions of this section shall be deposited in a depository bank or banks selected by the board. [Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1657, ch. 601, § 5, eff. June 15, 1973.]

**§ 113.36. Management of Property**

The board is vested with the exclusive management of all property owned by the college. The board may make any agreements necessary to the effective management of the college's property.

[Acts 1971, 62nd Leg., p. 3358, ch. 1024, art. 2, § 36, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1657, ch. 601, § 4, eff. June 15, 1973.]

**SUBTITLE G. NON-BACCALAUREATE SYSTEM**

**CHAPTER 130. JUNIOR COLLEGE DISTRICTS**

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|         | 130.003. State Appropriation for Public Junior Colleges.                         |
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| 130.062. | Enlarged District: Creation; Resolution; Order.   |
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| Section  | 130.069. Disannexation of Overlapped Territory.                       |
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| 130.084. | Powers and Duties.   |
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*The provisions of Chapter 130 were transferred from Chapter 51, originally entitled "Public Junior Colleges" as enacted by Acts 1969, 61st Leg., p. 2735, ch. 889, § 1, to consist of Sections 51.001 to 51.203, which were renumbered as Sections 130.001 to 130.133 by Acts 1971, 62nd Leg., p. 3278, ch. 1024, art. 1, § 1, adding Title 3 to the Education Code.*

**SUBCHAPTER A. GENERAL PROVISIONS**

- § 130.001. Supervision by Coordinating Board, Texas College and University System**
- (a) The Coordinating Board, Texas College and University System, referred to as the coordinating

board, shall exercise general control of the public junior colleges of Texas.

(b) The coordinating board shall have the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges as prescribed by the legislature, and with the advice and assistance of the commissioner of higher education, shall have authority to:

(1) authorize the creation of public junior college districts as provided in the statutes, giving particular attention to the need for a public junior college in the proposed district and the ability of the district to provide adequate local financial support;

(2) dissolve any public junior college district which has failed to establish and maintain a junior college within three years from the date of its authorization;

(3) adopt standards for the operation of public junior colleges and prescribe the rules and regulations for such colleges;

(4) require of each public junior college such reports as deemed necessary in accordance with the coordinating board's rules and regulations; and

(5) establish advisory commissions composed of representatives of public junior colleges and other citizens of the state to provide advice and counsel to the coordinating board with respect to public junior colleges.

[Acts 1969, 61st Leg., p. 2993, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3280, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 130.002. Extent of State and Local Control

All authority not vested by this chapter or by other laws of the state in the coordinating board or in the Central Education Agency is reserved and retained locally in each of the respective public junior college districts or in the governing boards of such junior colleges as provided in the laws applicable.

[Acts 1969, 61st Leg., p. 2993, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3281, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 130.003. State Appropriation for Public Junior Colleges

(a) There shall be appropriated biennially from money in the state treasury not otherwise appropriated an amount sufficient to supplement local funds for the proper support, maintenance, operation, and improvement of those public junior colleges of Texas that meet the standards prescribed by this chapter. The sum shall be allocated on a basis and in a manner provided in Subsection (b) of this section.

(b) To be eligible for and to receive a proportionate share of the appropriation, a public junior college must:

(1) be certified as a public junior college as prescribed in Section 61.063 of this code;

(2) offer a minimum of 24 semester hours of vocational and/or terminal courses;

(3) have complied with all existing laws, rules, and regulations governing the establishment and maintenance of public junior colleges;

(4) collect, from each full-time and part-time student enrolled, matriculation and other session fees in the amounts required and provided by law for other state-supported institutions of higher education, except that the amount charged nonresidents need not be greater than the amount so required by law on January 1, 1971, and that notwithstanding the provisions of Subsection (b) of Section 54.051 of this code, the minimum tuition charge for resident students shall be \$25;

(5) grant, when properly applied for, the scholarships and tuition exemptions provided for in this code; and

(6) nothing in this section shall be construed to alter, amend, or repeal Section 54.060 of this code.

(c) All funds allocated under the provisions of this code, with the exception of those necessary for paying the costs of audits as provided, shall be used exclusively for the purpose of paying salaries of the instructional and administrative forces of the several institutions and the purchase of supplies and materials for instructional purposes.

(d) Only those colleges which have been certified as prescribed in Section 61.063 of this code shall be eligible for and may receive any appropriation made by the legislature to public junior colleges.

(e) The purpose of each public community college shall be to provide:

(1) technical programs up to two years in length leading to associate degrees or certificates;

(2) vocational programs leading directly to employment in semi-skilled and skilled occupations;

(3) freshman and sophomore courses in arts and sciences;

(4) continuing adult education programs for occupational or cultural upgrading;

(5) compensatory education programs designed to fulfill the commitment of an admissions policy allowing the enrollment of disadvantaged students.

(6) a continuing program of counseling and guidance designed to assist students in achieving their individual educational goals; and

(7) such other purposes as may be prescribed by the Coordinating Board, Texas College and University System, or local governing boards, in the best interest of post-secondary education in Texas.

[Acts 1969, 61st Leg., p. 2994, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3281, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3355, ch. 1024, art. 2, § 30, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 87, ch. 51, § 7, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1519, ch. 549, § 1, eff. June 15, 1973.]

**Amendment by Acts 1971, 62nd Leg., p. 2898, ch. 958, § 1**

*Acts 1971, 62nd Leg., p. 2898, ch. 958, § 1, effective August 15, 1971, purported to amend former section 51.003, subsec. (b) of the Education Code, as amended by House Bill No. 43*

(Acts 1971, 62nd Leg., p. 1745, ch. 511, incorporated in this section of the Code by Acts 1971, 62nd Leg., p. 3352, ch. 1024, art. 2, § 30).

As so amended former section 51.003(b) read:

"To be eligible for and to receive a proportionate share of the appropriation, a public junior college must:

"(1) be certified as a public junior college as prescribed in Section 51.002(a)(2) of this code;

"(2) offer a minimum of 24 semester hours of vocational and/or terminal courses;

"(3) have complied with all existing laws, rules, and regulations governing the establishment and maintenance of public junior colleges;

"(4) collect, from each full time and part-time student enrolled, matriculation and other session fees in the amounts required and provided by law for other State-supported institutions of higher education, except that the amount charged nonresidents need not be greater than the amount so required by law on January 1, 1971, and that notwithstanding the provisions of Item 1, Subsection (a), Section 1, Chapter 196, Acts of the 43rd Legislature, 1933, as amended (Article 2654c, Vernon's Texas Civil Statutes), the minimum tuition charge for resident students shall be Twenty-five Dollars (\$25); and

"(5) grant when properly applied for, the scholarships and tuition exemptions provided for in this code."

**§ 130.004. Authorized Types of Public Junior Colleges**

(a) By complying with the provisions of the appropriate following sections of this chapter a public junior college and/or district of any one of the following classifications may be established:

- (1) an independent school district junior college;
- (2) a city junior college;
- (3) a union junior college;
- (4) a county junior college;
- (5) a joint-county junior college; and
- (6) a public junior college as a part or division of a regional college district.

(b) As used in this chapter, the two general authorized types of junior colleges are:

(1) public junior colleges, which must consist of freshman and sophomore college work taught separately or in conjunction with the junior and senior years of high school and the course of study of such work must be submitted to and approved before being offered by the Coordinating Board, Texas College and University System; and

(2) a junior college division of a regional college, as that type of institution is defined in Subchapter F of this chapter, which operates under the laws applicable to public junior colleges in Texas.

(c) All junior college districts, whether established, organized, and/or created, or attempted to be

established, organized, and/or created, by vote of the people residing in those districts, or by action of the county school boards, or by action of the county judge, or by action of the commissioners courts, or by action of state educational officers or agencies, or by a combination of any two or more of the same, which districts have previously been recognized by either state or county authorities as junior college districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. Without in any way limiting the generalization of the provisions above,

(1) all additions of territory to or detachments of territory from such junior college districts are hereby in all things validated, whether the same were accomplished or attempted to be accomplished by action of the county school boards, or by action of the county judge, or by action of the commissioners court, or by action of state educational officers or agencies, or by vote of the people residing in such territory, or by a combination of any two or more of the same;

(2) the boundary lines of all such junior college districts are hereby in all things validated; and

(3) all acts of the governing boards of such junior college districts ordering an election or elections, declaring the results of such elections, levying, attempting, or purporting to levy taxes for and on behalf of such districts, and all bonds issued and now outstanding, and all bonds previously voted but not issued, and all tax elections, bond elections, and bond assumption elections are hereby in all things validated; all revenue bonds issued and outstanding and all revenue bonds authorized but not yet issued for and on behalf of such districts are hereby in all things validated.

(d) Subsection (c) of this section shall not apply to any district which has previously been declared invalid by a court of competent jurisdiction of Texas, nor shall it apply to any district which is now involved in litigation in any district court of Texas, the court of civil appeals, or the Supreme Court of Texas, in which litigation the validity of the organization or creation of such district or of the addition of territory to or detachment of territory from such districts is attacked, or to any district involved in proceedings now pending before the coordinating board in which proceedings the validity of the organization or creation of such district or of the addition of territory to or detachment of territory from such district is attacked.

[Acts 1969, 61st Leg., p. 2994, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3281, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.005. Change of Name to Community College District**

(a) The legislature hereby declares that the purpose of this section is to recognize that junior colleges are in fact comprehensive community colleges which serve their communities not only through university-parallel programs but also by means of occupational programs and other programs of community interest and need.

(b) The board of trustees of any junior college district may by resolution duly adopted change the

name of such district by substituting the word "community" for the word "junior" in such name. A copy of such resolution duly certified by the secretary of the board of trustees shall be filed with the Coordinating Board, Texas College and University System. Such change in name shall become effective upon the filing of such resolution with the said coordinating board. Thereafter all references to such district in all official actions, communications and records shall be by use of such new name. [Acts 1971, 62nd Leg., p. 3344, ch. 1024, art. 2, § 13, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 144, ch. 75, § 1, eff. May 7, 1973.]

[Sections 130.006 to 130.010 reserved for expansion]

#### SUBCHAPTER B. INDEPENDENT SCHOOL DISTRICT OR CITY JUNIOR COLLEGE

##### § 130.011. Establishment of Independent School District or City Junior College

(a) An independent school district junior college may be established in either of the following types of units:

(1) any independent school district or city which has assumed control of its schools having in either case:

(A) an assessed property valuation of not less than \$12 million or having an income provided by endowment or otherwise that will meet the needs of the proposed junior college district as determined by the Coordinating Board, Texas College and University System; and

(B) an average daily attendance of the next preceding school year of not fewer than 400 students in the last four grades in the classified high schools within the district or city; or

(2) any independent school district or city which has assumed control of its schools having in either case:

(A) an assessed property valuation of \$20 million or more and the coordinating board finds that such district or city is in a growing section and that there is a public convenience and necessity for such junior college; and

(B) an average daily attendance of the next preceding school year of fewer than 400 but not fewer than 300 students in the last four grades of classified high schools.

(b) Any such college district established and maintained as provided in this chapter shall be known as a junior college district.

[Acts 1969, 61st Leg., p. 2996, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3283, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 130.012. Petition to Establish

Whenever it is proposed to establish a junior college district in any type of unit authorized by Section 130.011 of this code, a petition praying for an election, signed by not less than five percent of the qualified taxpaying electors of the proposed district shall be presented to the school board of trustees of the district or city, which shall:

(1) pass upon the legality and genuineness of the petition; and

(2) forward the petition, if approved, to the coordinating board.

[Acts 1969, 61st Leg., p. 2996, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3283, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 130.013. Order to Establish

It shall be the duty of the coordinating board with the advice of the commissioner of higher education to determine whether or not the conditions set forth in Sections 130.011 and 130.012 of this code have been complied with, and also whether, considering the geographic location of colleges already established, it is feasible and desirable to establish the proposed junior college district. It shall be the duty of the coordinating board to consider the needs and the welfare of the state as a whole, as well as the welfare of the community involved. The decision of the coordinating board shall be final and shall be transmitted through the commissioner of higher education to the local school board, along with the order of the coordinating board authorizing further procedure in the establishment of the junior college district, if the coordinating board endorses its establishment.

[Acts 1969, 61st Leg., p. 2996, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3283, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 130.014. Election

(a) If the coordinating board approves of the establishment of the junior college district, it shall then be the duty of the local school board to enter an order for an election to be held in the proposed territory within a time not less than 20 days and not more than 30 days after such order is issued, to determine whether or not such junior college district shall be created and formed. Such order shall:

(1) contain a description of the metes and bounds of the junior college district to be formed; and

(2) fix the date for the election.

(b) If a majority of the electors voting at the election shall be in favor of the creation of a junior college district, the district shall be deemed to be formed and created. The local school board shall make a canvass of the returns and declare the result of the election within 10 days after holding the election, and enter an order on the minutes of the board as to the result of the election.

[Acts 1969, 61st Leg., p. 2997, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3284, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 130.015. Control of Independent School District or City Junior College

A junior college established by an independent school district or city that has assumed control of schools already validated or established pursuant to the provisions of this chapter may be governed, administered, and controlled by and under the direction of the board of trustees of that independent or city school district.

[Acts 1969, 61st Leg., p. 2997, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3284, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 130.016. Separate Board of Trustees in Certain Instances

A junior college established by an independent school district or city that has assumed control of schools already validated or established pursuant to

the provisions of this chapter may be governed, administered, and controlled by and under the direction of a separate board of trustees, which may be placed in authority by either of the following procedures:

(1) the board of trustees of an independent school district or city school district which has the management, control, and operation of a junior college may divest itself of the management, control, and operation of that junior college so maintained and operated by the school board by appointing for the junior college district a separate board of trustees of nine members; or

(2) the board of trustees of any independent school district or city school district which has the control and management of a junior college may be divested of its control and management of that junior college by the procedure prescribed in Section 130.017 of this code.

[Acts 1969, 61st Leg., p. 2997, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3284, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.017. Petition to Divest School Board of Authority**

(a) On a petition signed by 10 percent of the qualified electors of the independent school district or city school district, the board of trustees shall call an election within 30 days after the petition has been duly presented for the purpose of determining whether the school board of trustees shall be divested of its authority as governing board of such junior college district.

(b) If a majority of the votes cast in the election are in favor of divesting the board of trustees of the independent school district or city school district of its authority as the governing board of the junior college district, the board of trustees shall, within 30 days after the official canvass of the election, appoint for the junior college district a separate board of trustees of nine members to serve as the governing board of the junior college district.

[Acts 1969, 61st Leg., p. 2997, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3284, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.018. Separate Board of Trustees—Terms, Etc.**

In the event a separate board of trustees for the junior college district is appointed under either procedure set out in Section 130.016 or Section 130.017 of this code, the board of trustees, consisting of nine members, shall be organized and constituted pursuant to the provisions of Section 130.082 of this code, and be governed by the provisions thereof.

[Acts 1969, 61st Leg., p. 2998, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3285, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 130.019 to 130.030 reserved for expansion]

SUBCHAPTER C. UNION, COUNTY, OR JOINT-COUNTY JUNIOR COLLEGES

**§ 130.031. Establishment of Union, County, or Joint-County Junior College**

The following types of junior colleges may be established in the following units:

(1) a union junior college district may be established by two or more contiguous independ-

ent school districts or two or more contiguous common school districts or a combination composed of one or more independent school districts with one or more common school districts of contiguous territory meeting the requirements set out in Section 130.032 of this code;

(2) a county junior college district may be established by any county meeting the requirements set out in Section 130.032 of this code; and

(3) a joint-county junior college district may be established by any combination of contiguous counties in the state meeting the requirements set out in Section 130.032 of this code.

[Acts 1969, 61st Leg., p. 2998, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3285, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.032. Restrictions**

In order for any territorial unit set out in Section 130.031 of this code to establish the applicable type of junior college, the proposed district must have a taxable property valuation of not less than \$30 million in the next preceding year and a total scholastic population of not less than 3,000 in the next preceding school year, provided a proposed district may have less than 3,000 scholastics but not less than 2,000 scholastics in the next preceding school year:

(1) if the proposed district includes a county which

(A) has a population of not less than 8,000 nor more than 8,500 inhabitants according to the last preceding federal census;

(B) has an assessed valuation of at least \$60 million; and

(C) does not have within its boundaries any state-supported senior college or university or all or part of a junior college district; and

(2) if the Coordinating Board, Texas College and University System, finds that the proposed junior college district is in a growing section of the state and that there is a public convenience and necessity for the junior college.

[Acts 1969, 61st Leg., p. 2998, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3285, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.033. Petition to Establish**

(a) Whenever it is proposed to establish a junior college of any type specified in Section 130.031 of this code a petition praying for an election therefor shall be presented in the applicable manner as prescribed in Subsections (b)-(d) of this section.

(b) In the case of a union junior college district, the petition shall be signed by not fewer than 10 percent of the qualified taxpaying electors of each of the school districts within the territory of the proposed junior college district and shall be presented to the county school board or county school boards of the respective counties if the territory encompasses more than one county; but if there is no county school board, the petition shall be presented to the commissioners court of the county or counties involved.

(c) In the case of a county junior college district, the petition shall be signed by not fewer than 10 percent of the qualified taxpaying electors of the proposed college district and shall be presented to

the county school board of the county; but if there is no county school board, the petition shall be presented to the commissioners court of the county.

(d) In case of a joint-county junior college district, the petition shall be signed by not fewer than 10 percent of the qualified taxpaying electors of each of the proposed counties and shall be presented to the respective county school boards of the counties to be included in the proposed district; in case there is no county school board, the petition shall be presented to the commissioners court of the county or counties involved.

[Acts 1969, 61st Leg., p. 2999, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3286, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 130.034. Tax Levy

Any petition authorized by Section 130.033 of this code may also incorporate therein a request for the proper authorities, in the event an election is ordered for the creation of such district, to submit at the same election the questions of issuing bonds and levying bond taxes, and levying maintenance taxes, in the event the district is created, not to exceed the limits provided in Section 130.122 of this code.

[Acts 1969, 61st Leg., p. 2999, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3286, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 130.035. Legality of Petition

It shall be the duty of the county school board or boards or the commissioners court or courts petitioned in compliance with Section 130.033 of this code to:

(1) pass upon the legality of the petition and the genuineness of the same; and

(2) forward the petition, so approved, to the Coordinating Board, Texas College and University System.

[Acts 1969, 61st Leg., p. 2999, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3286, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 130.036. Order to Establish

It shall be the duty of the coordinating board, with the advice of the commissioners of higher education to determine whether or not the conditions set forth in the preceding sections of this chapter have been complied with, and also whether, considering the geographic location of colleges already established, it is feasible and desirable to establish a junior college district. It shall be the duty of the coordinating board in making its decision to consider the needs approving of the state,<sup>1</sup> the welfare of the state as a whole, as well as the welfare of the community involved. The decision of the coordinating board shall be transmitted through the commissioner of higher education to the county school board or boards or the commissioners court or courts, as the case may be, along with the order of the coordinating board authorizing further procedure in the establishment of the junior college district.

[Acts 1969, 61st Leg., p. 2999, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3287, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> So in enrolled bill.

#### § 130.037. Calling Election; Submission of Questions

If the coordinating board approves the establishment of the junior college district, it shall then be

the duty of the commissioners court or courts to enter an order for an election to be held in the proposed territory within a period of not less than 20 days and not more than 30 days after the order is issued, to determine whether or not such junior college district be created and formed; and in the event the petition for the creation of the junior college is accompanied by a request to submit the questions of issuing bonds and levying bond taxes, and levying maintenance taxes, in the event the district is created, then the election order shall also submit such questions in accordance with the petition; and except for the body that calls the election, the election as to bonds and taxes shall be held as provided in Section 130.101(b). The order shall contain a description of the metes and bounds of the junior college district to be formed and fix the date of the election.

[Acts 1969, 61st Leg., p. 3000, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3287, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 130.038. Election

A majority of the electors in the proposed district, voting in the election, shall determine the question of creation of the junior college district submitted in the order and the election of the original trustees. If the order also submits questions of issuing bonds and levying taxes, a majority of the electors voting in such election shall determine such question submitted in the order. In the case of a joint-county junior college district, or a union junior college district, the election shall, by mutual agreement of the court or courts, be held on the same day throughout the proposed district.

[Acts 1969, 61st Leg., p. 3000, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3287, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 130.039. Election Returns, Canvass, and Result

(a) The commissioners court or courts within 10 days after holding of an election shall make a canvass of the returns and declare the results of the election.

(b) The court or courts shall enter an order on the minutes of the court or courts as to the results.

[Acts 1969, 61st Leg., p. 3000, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3287, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 130.040. Board of Trustees: Union, County, or Joint-County Junior College

A union junior college, a county junior college, or a joint-county junior college shall be governed, administered, and controlled by and under the direction of a board of trustees of seven members.

[Acts 1969, 61st Leg., p. 3000, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3288, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 130.041. Election of Trustees of Union, County, and Joint-County Junior College

The original trustees of a union or a county junior college shall be elected at large from the junior college district by the qualified voters of the district under the rules and regulations provided for in Section 130.042 of this code.

[Acts 1969, 61st Leg., p. 3000, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3288, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.042. Original Board**

(a) The original trustees shall be elected at the same election at which the creation of the district is determined.

(b) Any candidate desiring to be voted upon as a first trustee shall present a petition to the commissioners court or courts within three days before the order authorizing the election is issued by the commissioners court or courts, and shall accompany his petition with a petition signed by not less than two percent of the qualified voters in the district, requesting that his name be placed on the ticket as a candidate for trustee.

(c) The seven candidates for junior college trustee receiving the highest number of votes at the election shall be declared trustees of the district.

[Acts 1969, 61st Leg., p. 3001, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3288, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.043. Organization**

After the election of the original trustees, the board of trustees shall be organized and constituted, pursuant to the provisions of Section 130.082 of this code and be governed by the provisions thereof.

[Acts 1969, 61st Leg., p. 3001, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3288, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.044. Election of Trustees by the Position Method**

(a) The board of trustees of a district may, by a majority vote of the trustees, if a quorum is present and voting, adopt a numbered position system of electing members to the board.

(b) If the board adopts a numbered position system, candidates are voted on and elected separately for positions on the board according to the number of the position to which they seek election. The official ballots shall contain:

- (1) the phrase "Official Ballot for the Purpose of Electing Trustees";
- (2) the name of the junior college district;
- (3) the number of each position to be filled; and
- (4) the list of candidates under the position to which they seek election.

(c) Within 10 days from the date of adoption of the numbered position system, the trustees shall determine by lot which position each will hold on the board. The members in Class 1 shall draw for positions one and two; the members in Class 2 shall draw for positions three and four; and the members in Class 3 shall draw for positions five, six, and seven.

(d) A person desiring election to a numbered position on the board must, at least 30 days before the election, file with the board of trustees a written notice of his candidacy, designating the number of the position on the board of trustees for which he desires to become a candidate, and requesting that his name be placed on the ballot. Each candidate who files notice is entitled to have his name printed on the official ballot beneath the number of the position designated in his notice. A person who fails to file the notice required by this section may not have his name printed on the official ballot. A candidate is eligible to have his name printed on the

ballot under only one position to be filled at the election.

(e) In the election each voter may vote for only one candidate for each numbered position. The candidate receiving the most votes for each numbered position voted on in the election is entitled to serve as a trustee on the board, in the position to which he is elected.

(f) Notice of an election in a district must be given in the manner and for the time required under the law authorizing the creation of the district, except where there is a conflict with the provisions of this section, then this section is controlling.

[Acts 1971, 62nd Leg., p. 3288, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 130.045 to 130.060 reserved for expansion]

SUBCHAPTER D. CHANGES IN DISTRICT BOUNDARIES

**§ 130.061. Extension of Boundaries of a Junior College District Coextensive with an Independent School District**

The district boundaries of an independent school district junior college shall automatically be extended so that the boundary lines of the two districts, independent school district and junior college district, shall remain identical when:

- (1) the junior college district was created with the same boundary lines as an independent school district;
- (2) the boundaries of the independent school district are extended by consolidation, attachment of territory, or otherwise; and
- (3) the board of trustees of the independent school district is also the governing board of the junior college.

[Acts 1969, 61st Leg., p. 3001, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3289, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.062. Enlarged District: Creation; Resolution; Order**

(a) If the creation of the junior college district and the extension of the boundaries of the independent school district both occurred prior to March 17, 1950, the added territory of the independent school district may be brought into the junior college district in the manner prescribed by this section.

(b) A petition requesting that such territory be added to the junior college district signed by a majority of the qualified property taxpaying voters of the territory may be presented to the governing board of the junior college district.

(c) The board shall determine whether the petition is signed by the required majority, based upon the latest approved tax rolls of the independent school district, and if such determination is affirmative and if the board shall also determine that the facilities of the junior college district may be extended to cover adequately the scholastics of the added territory, the board shall pass an order admitting such territory. The order shall describe by metes and bounds the junior college district as extended; and a copy of the order shall be filed with the county superintendent. Thereafter, the territo-

ry shall be a part of the junior college district for all intents and purposes.

[Acts 1969, 61st Leg., p. 3001, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3289, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.063. Extension of Junior College District Boundaries for Junior College Purposes Only**

Territory consisting of school districts or parts of school districts adjoining or lying adjacent to any junior college district may be annexed to the junior college district for junior college purposes only, by either contract or election.

[Acts 1969, 61st Leg., p. 3002, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3290, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.064. Annexation by Contract**

If the annexation is by contract, a petition shall be presented to the governing board of any junior college district, executed by all property owners of all property situated in the territory proposed for annexation. The petition shall contain a legally sufficient description of the territory proposed for annexation. The governing board of the junior college district, if it deems the annexation to be in the best interest of the district, may effect the annexation by:

- (1) entering its order authorizing the annexation of the territory by contract; and
- (2) then entering into a written agreement duly executed and acknowledged by all persons, corporations, and entities owning property within the territory.

[Acts 1969, 61st Leg., p. 3002, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3290, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.065. Annexation by Election**

(a) If the annexation is by election, a petition signed by five percent of the property taxpaying electors in the territory seeking to be annexed shall be presented to the county school board of the county, or to the commissioners court of the county in case there is no county school board.

(b) The petition shall contain a legally sufficient description of the territory proposed for annexation, and shall be accompanied by a certified copy of an order by the governing board of the junior college district affected approving the proposed annexation of the territory to the junior college district for junior college purposes only.

(c) The county school board, or the commissioners court, shall issue an order for an election to be held in the territory proposed for annexation, not less than 20 nor more than 30 days from the date of the order, and shall give notice of the date of the election by posting notices of such election in three public places within the territory proposed for annexation.

(d) Only those legally qualified electors residing in the territory proposed for annexation shall be permitted to vote.

(e) The county school board, or the commissioners court shall canvass the returns at a meeting held not more than five days after the election. If the votes cast in the election show a majority in favor of annexation, the territory shall be declared annexed to the junior college district for junior college purposes only.

(f) The county school board or commissioners court shall cause a certified copy of the order to be transmitted to the governing board of the junior college district.

(g) At the next regular or special meeting of the governing board of the junior college district, the board shall, in the event of annexation by election, enter its order concurring in the order of the county school board or the commissioners court and shall enter an order redefining the boundary lines of the junior college district as enlarged and extended, and shall cause the order to be recorded on the minutes of the board of the junior college district.

[Acts 1969, 61st Leg., p. 3002, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3290, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.066. Adding Contiguous Territory to a Junior College District**

(a) Any territory may be included within the boundaries of a junior college district, herein called "district," for junior college purposes, in the manner hereinafter specified; provided, the territory to be included is contiguous to the district in which such territory is to be included and has been laid out by the Coordinating Board, Texas College and University System, as a service area for assisting junior colleges.

(b) Upon presentation of a petition, signed by 50, or a majority, whichever number is smaller, of the qualified electors residing in the territory proposed for inclusion in a district, to the governing body of the district requesting that the boundaries of the district be changed to include the territory described in said petition, such governing body may, in its discretion, order an election to be held within the boundaries of the entire district as proposed to be changed on the question of whether the boundaries of the district shall be changed to include the proposed territory. The ballots for such election shall have printed thereon "For" and "Against" boundary change. All qualified electors residing within the boundaries of the entire district as proposed to be changed shall be qualified to vote at such an election.

(c) The governing body of the district calling an election hereunder shall give notice of any such election by causing a substantial copy of its order calling the election to be posted in at least three public places within the boundaries of the district as proposed to be changed and published at least one time in a newspaper of general circulation within such boundaries. Provided, however, if any railroad right-of-way or other property is located within such territory, additional notice shall be given by certified mail, to the railroad company, at the address shown on the latest county tax roll. Such posting, such publication, and such certified mail notice shall be done at least 30 days prior to the date on which the election is to be held.

(d) Except as otherwise provided herein, all elections held hereunder shall be governed by the provisions relating to bond elections held by independent school districts. The order calling the election may provide that the entire district as proposed to be changed shall constitute one election precinct or such order may provide for more than one election precinct.

(e) The returns of any such election shall be canvassed by the governing body of the district and if a majority of persons residing in the district and voting at the election and a majority of the persons residing in the territory proposed to be annexed and voting at the election vote for the boundary change, the governing body of the district shall, in its order canvassing such returns, declare the boundaries of the district changed to include the territory described in the petition theretofore presented to them. Such order may also include the name by which the district as changed shall be known.

(f) At the next regular election held in the junior college district after territory is added to the district under this section, the qualified electors shall elect a new board of trustees. To continue in office, members of the present board of trustees must be re-elected at this election.

(g) This section is cumulative of all other laws on the subject, but this section is wholly sufficient authority within itself for the inclusion of territory in the boundaries of a district and the performance of the other acts and procedures authorized hereby, without reference to any other laws or any restrictions or limitations contained therein, except as herein specifically provided in this section. However, the governing body of any district may use the provisions of any other laws, not in conflict with the provisions of this section, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this section.

[Acts 1969, 61st Leg., p. 3003, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3291, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.067. Annexation of County-line Districts for Junior College Purposes**

(a) Parts of county-line school districts may be annexed to adjacent county or joint-county junior college districts for junior college purposes only, as provided in this section.

(b) The county or joint-county junior college district as originally created and organized must have included in its boundaries a part of a county-line school district, and the part of the county-line school district to be annexed is not included in any other junior college district.

(c) The county or joint-county junior college districts to which this section is applicable are those where the junior college district as originally created and organized had the same boundaries as a county or as a group of contiguous counties and included all of the territory in a county or group of counties and did not include a part of any county without including the entire territory of such county in such junior college district.

(d) A "county-line school district" as used in this section is any type of public school district created or organized under general or special laws of Texas, which includes within its boundaries territory that extends into or is located in two or more counties of Texas.

[Acts 1969, 61st Leg., p. 3003, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3292, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.068. Annexation of Non-included Parts of Counties**

(a) The non-included portion or portions of such county-line districts may be annexed to the county

or joint-county junior college district by either of two methods as provided by Subsections (b) and (c) of this section.

(b) On the petition of 20 or a majority of the legally qualified voters residing in that part of a county-line district not a part of a junior college district as described in Section 130.067 of this code praying for the annexation for junior college purposes only, of that part of the county-line school district to the junior college district in which the remainder of the county-line district is a part, the county judge of that county which has jurisdiction of the county-line school district shall issue an order for an election to be held in the non-included portion of the county-line school district praying to be annexed to the county or joint-county junior college district. The county judge shall give notice of the date of the election by posting notices at three public places in the part of the county-line school district wherein the election is to be held. Only those legally qualified voters residing in that part of the county-line school district shall be permitted to vote. The commissioners court shall at its next meeting canvass the returns of the election, and if the votes cast in the election show a majority in favor of annexation, then the court shall declare that part of the county-line school district annexed to the junior college district for junior college purposes only. The court shall cause certified copies of the order to be transmitted to the commissioners court of every county in which the junior college district and the county-line school district have territory, and each court shall make orders concurring in the order and shall cause them to be entered on the minutes of each commissioners court.

(c) Where a petition, signed by a majority of the legally qualified voters residing in that part of a county-line school district praying for annexation for junior college purposes only, of that part of the county-line school district to the junior college district in which the remainder of the county-line district is a part, is presented to the county judge of that county which has jurisdiction of the county-line school district together with a certified copy of an order by the governing board of the junior college district approving the proposed annexation to the junior college district for junior college purposes only; instead of ordering an election to be held as provided in Subsection (b) of this section, the county judge shall certify the filing of the petition and order to the commissioners court. The court at its next meeting shall pass an order declaring such non-included part of the county-line school district annexed to the junior college district for junior college purposes only and cause certified copies of the order to be transmitted to the commissioners court of every county in which the junior college district and the county-line school district have territory. Each such court shall make orders concurring in the order and cause same to be entered on the minutes of each commissioners court.

[Acts 1969, 61st Leg., p. 3004, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3292, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.069. Disannexation of Overlapped Territory**

(a) All junior college districts whose boundaries have or may hereafter become established so that they include territory which prior to such establish-

ment lay, and shall continue to lie, within the boundaries of another junior college district shall have the power to disannex such overlapped territory.

(b) Upon certification by the governing board of such a junior college district to the county board of school trustees of the county in which its college is located that such an overlapping condition exists, the county board may by resolution disannex the overlapped territory from the district, describing such territory by metes and bounds.

[Acts 1971, 62nd Leg., p. 3293, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.070. Disannexation of Territory Comprising an Independent School District**

(a) The territory of an independent school district which is the only school district that has been annexed to a countywide independent school district junior college district in an adjoining county may be disannexed from such countywide independent school district junior college district and constituted as a separate independent school district junior college district in accordance with the provisions of this section, provided that the countywide independent school district junior college district has no outstanding bonded indebtedness which was incurred after the annexation of such independent school district.

(b) The proposed disannexation and creation of a separate junior college district shall be initiated by a petition signed by not less than five percent (5%) of the qualified taxpaying electors of the independent school district seeking disannexation. The petition shall be presented to the board of trustees of the independent school district seeking to be disannexed, which shall pass upon the legality and genuineness of the petition and forward the petition, if approved, to the coordinating board.

(c) If the petition is found to be in order and all statutory provisions have been complied with, the coordinating board shall approve the petition and notify the board of trustees of the independent school district seeking to be disannexed, of such approval. The board of trustees of the independent school district seeking disannexation shall then order an election to be held in the school district within a time not less than twenty (20) days nor more than thirty (30) days after the order is issued. At the election the ballots shall be printed to provide for voting for or against the proposition: "Disannexation of the \_\_\_\_\_ Independent School from the \_\_\_\_\_ Junior College District, and creation of the \_\_\_\_\_ Junior College District with boundaries coterminous with the boundaries of the \_\_\_\_\_ Independent School District" (the blanks to be filled in as appropriate). All expenses incurred in holding the election shall be paid by the independent school district ordering such election.

(d) The board of trustees shall make a canvass of the returns and declare the result of the election within ten (10) days after holding the election and shall enter an order on the minutes of the board as to the result of the election. If a majority of the votes cast are in favor of disannexation and creation of a separate junior college district, such independent school district shall be deemed disannexed and constituted as a separate junior college district.

(e) If the creation of the separate junior college district is approved, it shall be governed by the provisions of this code relating to independent school district junior colleges. The offices of the representatives of the disannexed independent school district on the governing body of the countywide independent school district junior college district shall be terminated, and the remaining members of that governing body shall continue to serve for the terms for which they were elected.

(f) Any petition for disannexation and creation of a separate junior college district may also incorporate a request for the proper authorities, in the event an election is ordered for the creation of a new district, to submit at the same election, either as a part of the disannexation issue or as a separate issue, the questions of issuing bonds and levying bond taxes and levying maintenance taxes, in the event the district is created, not to exceed the limits provided in Section 130.122 of this code.

Acts 1972, 62nd Leg., 4th C.S., p. 37, ch. 16, § 1, eff. Oct. 30, 1972.

[Sections 130.071 to 130.080 reserved for expansion]

**SUBCHAPTER E. BOARDS OF TRUSTEES OF JUNIOR COLLEGE DISTRICTS**

**§ 130.081. Governing Board of Junior College of Independent School District**

In each junior college district which is controlled and managed by, and under the jurisdiction of, the governing board of an independent school district or a city school district, such governing board shall be constituted and chosen in accordance with the laws of this state applicable to the governing board of such independent school district or city school district.

[Acts 1969, 61st Leg., p. 3004, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3293, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.082. Governing Board of Junior College of Other than Independent School District**

(a) Except as provided by Section 130.081 or another section of this subchapter, the governing boards of all junior college districts shall be constituted and chosen as described in the provisions of this section.

(b) The official name of the governing board of the junior college district shall be the board of trustees.

(c) The official name of a junior college district shall be the "\_\_\_\_\_ Junior College District" and the board shall designate an appropriate and locally pertinent descriptive word or words to be filled in the aforesaid blank (and may change such designation when deemed advisable) by resolution or order; provided that no two districts shall have the same or substantially similar names. All resolutions or orders designating or changing names shall be filed immediately with the Coordinating Board, Texas College and University System, and the first name filed shall have priority, and the district shall be advised of any previous filing of any identical or substantially similar name. The name of any junior college district existing on the effective date of this

code shall remain the same until and unless it is changed pursuant hereto, and no other district shall use the name of any such existing district.

(d) The number of members or trustees of the governing board shall be either seven or nine, in accordance with the laws applicable to the junior college district on the effective date of this code or on the date of the creation of a new district or a new board. Any seven-member board may be increased to nine, and the two additional members shall be appointed by resolution or order of the board for terms of office as prescribed in Subsection (e) of this section. Any vacancy occurring on the board through death, resignation, or otherwise, shall be filled by appointment by resolution or order of the board, and any person so appointed shall serve until the expiration of the term of office for which the vacating member of the board had been elected or appointed. Each member of the board shall be a resident, qualified voter of the district and shall take the proper oath of office before taking up the duties thereof. Members of a board shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties, to the extent authorized and permitted by the board. The board shall elect one of its members as president of the board, and the president shall preside at meetings of said board and perform such other duties and functions as are prescribed by the board. The president of the board shall have a vote the same as the other members. The board shall elect a secretary of the board who may or may not be a member of the board, and who shall be the official custodian of the minutes, books, records, and seal of said board, and who shall perform such other duties and functions as are prescribed by the board. The board shall be authorized to elect any other officers as deemed necessary or advisable. Officers of the board shall be elected at the first regular meeting of the board following the regular election of members of the board in even-numbered years, or at any time thereafter in order to fill a vacancy. Said board shall be authorized to appoint or employ such agents, employees, and officials as deemed necessary or advisable to carry out any power, duty, or function of said board; and to employ a president, dean, or other administrative officer, and upon the president's recommendation to employ faculty and other employees of the junior college. Said board shall act and proceed by and through resolutions or orders adopted or passed by the board and the affirmative vote of a majority of all members of the board shall be required to adopt or pass a resolution or order, and the board shall adopt such rules, regulations, and bylaws as it deems advisable, not inconsistent with this section.

(e) The basic term of office of a member of the board shall be six years, and one-third of the members of the board shall be elected at large in the district at regular elections to be held on the first Saturday in April in each even-numbered year; provided that with a seven-member board two members shall be elected in two consecutive even-numbered years and three members shall be elected in the following even-numbered year. The members of each board in office at the effective date of this act, and all subsequent members of the board, shall

remain in office until the expiration of the terms for which they were elected or appointed, and until their successors shall have been elected and qualified; provided that where any existing board has held its regular elections for members of the board in odd-numbered years prior to the effective date of this act, the board shall nevertheless hold its next regular election on the first Saturday in April of the next even-numbered year following the effective date of this act, and the term of office of each incumbent member of the board shall, in effect, be lengthened by one year so as to comply with the foregoing provisions of this act. Upon the creation of a new board, or in any other situation where necessary, the members of the board shall choose by lot the terms for which they shall serve, so as to comply with the foregoing provisions. If a board is increased from seven to nine members, one of the members shall be appointed to serve until the first election at which two members otherwise would have been elected, and the other shall be appointed to serve until the second election at which two members otherwise would have been elected, and three members shall be elected for six-year terms at each election.

(f) Members of a board shall be elected at large from each junior college district at regular elections to be called and held by the board for such purpose, at the expense of the district, on the first Saturday in April in each even-numbered year. Said elections shall be held in accordance with the Texas Election Code except as hereinafter provided, and all resident, qualified electors of the district shall be permitted to vote. Each such election shall be called by resolution or order of the board, and notice of each such election shall be given by publishing an appropriate notice, in a newspaper of general circulation in the district, at least 10 days prior to the date of the election, setting forth the date of the election, the polling place or places, the numbers of the positions to be filled, the candidates for each position and any other matters deemed necessary or advisable.

(g) The board shall designate a number for the position held by each member of the board, from one upward in consecutive numerical order in such manner that the lowest numbers shall be assigned to the members whose terms of office expire in the shortest length of time, provided that any such position number designations on existing boards under existing law at the effective date of this act shall remain in effect. At each election candidates shall be voted upon and be elected separately for each position on the board, and the name of each candidate shall be placed on the official ballot according to the number of the position for which he or she is running. A candidate receiving a majority of the votes cast for all candidates for a position shall be declared elected. If no candidate receives such a majority, then the two candidates receiving the highest number of votes shall run against each other for the position. The run-off election for all positions shall be held on the last Saturday in April and shall be ordered, notice thereof given, and held, as provided herein for regular elections. Any resident, qualified elector of the district may have his or her name placed as a candidate on the official ballot for any position to be filled at each regular election by filing with the secretary of the board a written application therefor

signed by the applicant, not less than 30 nor more than 60 days prior to the date of the election. Such application must state the number of the position for which he or she is a candidate, or the name of the incumbent member of the board holding the position for which he or she desires to run. The location on the ballot of the names of candidates for each position shall be chosen by lot by the board. A candidate shall be eligible to run for only one position at each election.

(h) Notwithstanding anything in this code to the contrary, the provisions of all or any part of the laws of this state in effect immediately prior to the effective date of this act and relating to the name of any junior college district or the name of its governing board, or to the number of members of its governing board, or the procedures and times of electing or choosing said members, shall remain in effect under the following conditions. If, at any time before the effective date of this act (but not thereafter), the governing board of any junior college district shall specify by resolution or order the particular provisions of the aforesaid laws applicable to it which it desires to remain in effect, then such particular provisions shall continue to apply to said board and its district; provided that at any time thereafter the governing board may make this section in its entirety applicable to it and its district by appropriate resolution or order, and thereby permanently cancel the effect of the aforesaid particular provisions of other laws. All resolutions and orders permitted by this section shall be filed immediately with the Coordinating Board, Texas College and University System.

[Acts 1969, 61st Leg., p. 3004, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3294, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 130.083. Governing Board in Enlarged Junior College District

(a) From and after May 22, 1969, those junior college districts which were on May 22, 1969, operating under Chapter 15, Acts of the 58th Legislature, 1963 (Article 28150-1b, Vernon's Texas Civil Statutes<sup>1</sup>), and to which one, or more, school districts has been annexed for junior college purposes only, may, by a majority vote of the board of regents of the junior college district, choose to operate and be governed by a board of regents.

(b) Each school district which has been annexed to the junior college district for junior colleges purposes only shall be represented by at least one member of the board of regents. If the assessed tax rolls exceed \$67,500,000, the school district shall be represented by one member of the board of regents for each \$67,500,000 of assessed value, or a major fraction thereof, on the junior college tax roll, located within the school district. The original junior college district shall be represented on the board of regents by a number of regents arrived at according to the same formula.

(c) The total number of members of the board of regents of the junior college district shall never exceed 14. When the valuation of the enlarged district increases to the point that the number of regents exceeds 14 under the formula described in Subsection (b) of this section then the board of regents of the junior college district shall set a formula, based on proportional tax values, of repre-

sentation, which will produce a total of 14 members of the board of regents.

(d) The terms of office of the regents authorized by this act shall be six years. Those regents serving as regents on May 22, 1969, shall continue in office for the remainder of their respective terms and then until such time as their successors shall have been elected and qualified, and thereafter in each even-numbered year three regents shall be elected from the area originally forming the junior college district to succeed those regents whose terms are expiring, but if the number of regents becomes more or less than nine, the formula set out in Subsection (e) of this section shall be followed. All new regents added to the board of regents under the provisions of this section shall be appointed by the board of regents which orders the enlargement of the membership of such board, and shall serve until election specified in Subsection (e) of this section. All vacancies on the board of regents shall be filled at once for the unexpired term only by appointments made by the remaining members of such board.

(e) Where additional regent positions are provided under the terms of this section, the board of regents at the time of such authorization shall designate by resolution duly recorded in the minutes of such board the term to be served by each such additional regent, provided that the first regent authorized and appointed shall serve only until the next regular regent election, the second such regent shall serve until the regent election two years after the next regular regent election, and the third regent shall serve until the regent election four years after the next regular regent election, with additional regents which may be authorized to follow the same rotation of terms until all terms of additional regents provided under the terms of this section have been fixed to expire at the next regular regent election, or at the regent election two years after the next regular regent election, or at the regent election four years after the next regular election. Additional regents appointed to such terms and until such times as their successors shall have been elected and qualified, and thereafter the terms of such regents shall be for six years.

(f) Regent elections in all parts of the districts affected by the provisions of this section shall be held at the times and in the manner now provided for public junior colleges by general law. The qualified voters residing in the school district represented shall be entitled to vote in such elections. Each regent to be elected shall be a resident of the school district he is to represent and each regent to represent the original college district shall be a resident of the original college district.

(g) The provisions of this section shall be cumulative of existing laws governing elections of regents in public junior college districts.

[Acts 1971, 62nd Leg., p. 3296, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Repealed; see, now, § 130.082.

### § 130.084. Powers and Duties

The board of trustees of junior college districts shall be governed in the establishment, management and control of the junior college by the general law governing the establishment, management and con-

trol of independent school districts insofar as the general law is applicable.

[Acts 1969, 61st Leg., p. 3007, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3298, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.085. Tuition Exemption**

(a) The board of trustees of any public junior college may exempt from payment of tuition all students who are residents of the junior college district and who are enrolled for 12 or more semester credit hours, provided that this action will allow the college to participate in and benefit from funds available as provided by Sections 1-7, Title I, 64 Stat. 1100, as amended, 20 U.S.C. Secs. 236-241-1.<sup>1</sup>

(b) This action by the board of trustees does not affect their authority under Section 130.123 of this code, nor does this section in any way supersede that section. This action of the board does not affect the right of the college to a proportionate share of state appropriations under Section 130.003 of this code.

[Acts 1971, 62nd Leg., p. 3355, ch. 1024, art. 2, § 31, eff. Sept. 1, 1971.]

<sup>1</sup> 20 U.S.C.A. §§ 236 to 241-1.

**§ 130.086. Branch Campuses**

(a) The board of trustees of a junior college district may establish and operate branch campuses, centers, or extension facilities, without regard to the geographical bounds of the junior college district, provided that each branch campus, center, or extension facility is approved by the appropriate state educational agency.

(b) The branch campuses, centers, or extension facilities shall be within the role and scope of the junior college as determined by the appropriate state educational agency.

(c) The board of trustees of a junior college district may accept or acquire by purchase or rent land and facilities in the name of the junior college district without regard to the geographical bounds of the junior college district.

(d) Before any course may be offered by a junior college within the district of an operating public junior college it must be established that the public junior college is not capable of or is unable to offer the course. After the need is established and the course is not locally available, then the junior college may offer the course when approval is granted by the appropriate state educational agency.

(e) The board of trustees of a junior college district may enter cooperative agreement with independent, common, or county school districts, state or federal agencies as may be required to perform the services as outlined in this section.

(f) Out-of-district branch campuses, centers, or extension facilities of junior colleges existing prior to September 1, 1971, shall be reviewed by the appropriate state educational agency to determine their feasibility and desirability with respect to the junior college and the population of the geographical area served by the branch campus, center, or extension facility.

[Acts 1971, 62nd Leg., p. 3350, ch. 1024, art. 2, § 25, eff. Sept. 1, 1971.]

[Sections 130.087 to 130.090 reserved for expansion]

SUBCHAPTER F. REGIONAL COLLEGE DISTRICTS

**§ 130.091. Creation and Regulation of Regional College Districts**

(a) A regional college district may be established according to the method outlined herein by a county which contains a public junior college district, or by a combination of counties if one of such counties contains a public junior college district, and if the county seat of said county, or if the proposed regional college district is composed of a combination of counties, the respective county seats of such counties, is located at least 90 miles by the then direct regularly traveled road or highway from the county seat of any county containing a state-supported senior college or university, provided that the assessed property valuation of the proposed regional college district, for state and county purposes according to the most recent tax rolls is at least \$52,000,000 and that the scholastic population of such proposed district is not less than 20,000 scholastics according to the most recent scholastic census thereof, as approved by the appropriate state authority, and provided that the population of such county containing a public junior college district is not less than 80,000 according to the last preceding federal census.

(b) Any college created under the authority of this subchapter shall be subject to all provisions of Chapter 61 of this code,<sup>1</sup> and it is further provided that the Coordinating Board, Texas College and University System, shall determine the date upon which any college of any grade or level created hereunder shall begin courses of instruction, such date to be determined only if a feasibility study by the Coordinating Board, Texas College and University System, shall establish a need for any such college.

[Acts 1969, 61st Leg., p. 3007, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3298, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Section 61.001 et seq.

**§ 130.092. Petition for Election**

Whenever it is proposed to establish a regional college district, a petition signed by not fewer than 100 of the qualified property taxpaying voters of said public junior college district and not fewer than 100 of the qualified property taxpaying voters of each of the counties in the territory of such proposed regional college district shall be addressed and presented to the commissioners court of the county or the commissioners courts of the respective counties of such proposed regional college district, praying that an election shall be held upon a stated date in such county or counties which date shall be not less than 30 nor more than 60 days after the date of such petitions for the purpose of determining whether or not such a regional college district shall be formed and such regional college shall be established and whether or not such junior college district shall be merged into said regional college district and whether or not such regional college district shall assume the bonded indebtedness of such junior college district and whether or not such proposed district shall have the power to levy taxes for the payment of such bonded indebtedness and for the

maintenance and operation of said regional college and for providing buildings and facilities therefor, all of which questions shall be submitted as parts of one proposition to be printed on the ballots at such election. The signatures for such petition shall be segregated according to the county in which the signers reside and the signatures of the petitioners residing in such public junior college district shall also be segregated, under appropriate headings indicating the county or district of residence. Such petition may be in two or more counterparts according to the number of counties proposed to be included in such regional college district and respective counterparts of said petition may be filed with and presented to the commissioners courts of said respective counties. The name of such proposed regional college district shall be set forth in said petition and shall include therein the words "regional college district."

[Acts 1969, 61st Leg., p. 3008, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3298, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 130.093. Election

It shall be the duty of the said commissioners court or courts of said county or respective counties, promptly after receiving said petition or petitions to order an election to be held throughout their respective county or counties on the date fixed in said petition, and said order shall designate the polling places for said election in said county or counties and appoint officers thereof and provide the supplies therefor and shall set forth the name of such proposed district. The election precincts for said election shall conform as nearly as practicable to the regular election precincts of said county or respective counties, but the election precincts within the boundaries of such public junior college district shall not embrace any territory outside of said public junior college district. Each such commissioners court shall give notice of said election in its county by causing such notice to be published once each week for two alternate weeks before said election in some newspaper having general circulation in said county, the first publication being at least 21 days before said election. If there be no newspaper published having general circulation in such county, the notice of the election to be held in said county shall be published in some newspaper published outside of said county having general circulation in said county and such notice shall also be posted in a public place in each of the commissioner's precincts of said county, one of which shall be at the courthouse door of said county. If a regular session of any such commissioners court is not to be held in time to order such election and give such notice thereof, it shall be the duty of the county judge of such county, upon petition being called to his attention to timely call a special session of such court for this purpose.

The ballot at said election in each county shall provide for voting for or against the proposition: "The college merger, assumption of bonded indebtedness thereof, and the establishment of a regional college and the levying of taxes for the maintenance and operation thereof, and providing buildings and facilities therefor."

Except as otherwise herein provided, such election in each county shall be conducted in accordance with the general election laws of the state.

[Acts 1969, 61st Leg., p. 3008, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3299, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 130.094. Canvass of Returns and Declaration of Result; Effect of Vote

Such commissioners court or courts, as the case may be, shall within 10 days after holding such election, make a canvass of the returns and declare the results of the election. If a majority of those voting at said election within the boundaries of such public junior college district, and a majority of those voting at said election in each of such counties, vote for the proposition submitted, the merger of such public junior college district into and with such regional college district, and the assumption by such regional college district of the bonded indebtedness of such public junior college district shall be deemed to have been effected, and a regional college shall be established in such regional college district, conformably to the further provisions hereof, but the failure of the proposition submitted in any county not containing a public junior college district shall in no wise affect the formation of the proposed regional college district in any other county in which such election is held wherein a majority of the voters voting in such election in such county vote for the proposition submitted in the election order; provided, that a majority of the voters voting in such election in the public junior college district and in the county in which such public junior college district is located, vote for the proposition submitted in the election order. If the regional college district is not created by virtue of such election, another election for such purpose may be held in said proposed regional college district, or portion thereof containing a public junior college district, not less than one year from the date of such previous election, provided it be initiated by the same procedure above prescribed for the first election.

[Acts 1969, 61st Leg., p. 3009, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3300, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 130.095. Board of Regents

(a) If the merger herein provided for is effected by said election or any subsequent election held for said purposes, under the further provisions hereof, such regional college district shall thereafter be governed by a board of regents, constituted as herein provided. Said board of regents shall be made up in part of one regent at large, from each of the counties approving participation in the regional college district. In addition, there shall be one regent from each county for each 15,000 scholastics of the respective counties or a major fraction thereof, as determined by the proper state authority and provided further in addition there shall be one regent from each county for each \$50 million of assessed property valuation, or major fraction thereof, as determined by the county tax assessor-collector of each approving county of said district. The first regents, constituting said board of regents, from each of such counties, shall be appointed by the commissioners court of said respective counties except as modified herein and shall be made within 30 days after the election at which said merger shall have been effected; however, in the event that only the county containing the junior college votes favorably for the

proposed regional senior college district, the board of regents of the junior college district may decide:

(1) whether to activate the regional college district; or

(2) whether to continue the present junior college district and in the event that the decision is to activate the regional college district, the present junior college board will continue as the board of regents for the regional college and shall operate under all present and future junior college statutes as pertaining to junior colleges; that is to say, that in the event that more than one county votes to participate in the regional college, the board of regents shall be constituted as follows:

(A) one regent at large from each approving county;

(B) one regent from each approving county for each 15,000 scholastics or major fraction thereof; and

(C) one regent from each approving county for each \$50 million assessed property evaluation or major fraction thereof; and further, the first regents, constituting said board of regents, shall be appointed as follows:

(i) from the original junior college district, the board of regents of the junior college district shall appoint the members of the board from that county;

(ii) from each of several counties, the commissioners court shall appoint the members of the board of regents from that county. All appointments shall be made within 30 days from the date of the election. Each and every regent shall take the oath of office as prescribed for junior college board members.

(b) The board of regents thus appointed shall first meet within 21 days of the time the members are appointed at a time and place appointed by the then president of the board of regents of the junior college district and shall proceed to organize by electing from its members a president, a vice president, a secretary and an assistant secretary from members of the board. At the first meeting of said board of regents, the regents from each county shall draw lots for terms of office. The appointed regents from each county shall elect one of its members to draw for terms and all regents from the county drawing the lowest number shall serve a term of two years; all regents from the county drawing the second lowest number shall serve four years; all regents from the county drawing the third lowest number shall serve six years. In case there are more than three counties, there shall be two lowest lots; then two next lowest lots, etc.; that is to say that no board member shall serve longer than six years and all regents from any one county shall have the same term. If only the county in which the junior college is located forms the senior college district, the terms of office shall remain the same as under the statute under which the junior college district presently operates. The board of regents shall cause a permanent record to be made and preserved of the term of office of each appointed regent determined by lot as herein provided. At the expiration of the terms of office of each regent, a

successor shall be elected at elections held within the respective counties at large, at the same time and in the same manner as is now presently prescribed for the existing junior college district, provided that such elections shall be called and conducted in the manner presently prescribed for junior colleges. Costs of such regent elections shall be paid for from college funds. The returns of such board elections shall be canvassed and certified by the board of regents as is now presently prescribed for junior colleges. All provisions hereof with reference to elections of regents in counties originally constituting said regional college district shall extend and apply to election of regents in entire counties that may hereafter be annexed to said college district under the further provisions hereof.

[Acts 1969, 61st Leg., p. 3010, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3300, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.096. Property, Funds and Resources of Junior College District; Contracts**

Upon the merger of said public junior college district into and with the regional college district, all property, funds, and resources of the public junior college district are authorized and shall pass to and belong to said regional college district, and all contracts of such public junior college district shall extend to and be binding upon such regional college district; provided that the management and control of the property and affairs of the public junior college district shall continue in the board of trustees of such public junior college district until the appointment and organization of the board of regents of the regional college district, at which time the board of trustees of said public junior college district shall turn over all records, property, and affairs of the said public junior college district to the board of regents of said regional college district and shall cease to exist as a junior college board of trustees.

[Acts 1969, 61st Leg., p. 3011, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3302, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.097. Assessed Tax Values and Scholastic Census; Number of Regents; Conduct of Election; Vacancies; Organization of Board; Meetings; Office**

The amount of assessed tax values of said counties, for the purposes herein provided, shall be determined in the first instance, and from time to time, according to the most recent figures available, by the county tax assessor-collector of each approving county in the district. Such assessed tax values for ascertaining the number of regents at large to which said respective counties are entitled hereunder, to be appointed under the provisions hereof, shall first be made by the county tax assessor-collector of said county or respective counties. Such determination shall thereafter be made and certified before each biennial election of regents, by the board of regents. The number of scholastics of each of said counties, for the purposes herein provided, shall be determined in the first instance and from time to time, according to the most recent scholastic census of each of said respective counties, as approved by the state agency then authorized to approve such census. Such scholastic census of said respective counties for ascertaining the number of regents at large to which

said respective counties are entitled hereunder, to be appointed under the provisions hereof, shall first be made by the superintendent of schools of the prospective independent school districts located in the respective counties. Such determination shall thereafter be made and certified before each biennial election of regents at large, by the board of regents. All elections herein provided for shall be conducted according to the general election laws of the State of Texas, except as herein otherwise provided. All vacancies occurring in the board of regents shall be filled by appointment by the board of regents. After each election of regents the board of regents shall organize as herein provided. The board of regents shall select and maintain a regular office for their meetings and the transaction of their business, at such place as they determine, and shall hold regular meetings at such times as may be provided in the rules or bylaws of said board of regents, and may hold special meetings at the call of the president of the board.

[Acts 1969, 61st Leg., p. 3011, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3302, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.098. Rules of Procedure; Quorum; Seals; Suits**

(a) The board of regents may adopt its own rules of procedure, but a majority of said regents shall constitute a quorum, and a majority of those in attendance may transact any business.

(b) The board of regents of such regional college district shall adopt an official seal for the district, and said district may sue and be sued in its name. In any suit against said district, process may be served on the president or vice president.

[Acts 1969, 61st Leg., p. 3012, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3303, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.099. Compensation and Expenses of Board**

The board of regents of such regional college district may authorize the payment of a per diem of not to exceed \$10 to each member of such board of regents in attendance at a regular or special meeting of such board of regents. In addition, members of said board of regents may be allowed such actual expenses as may be incurred by them in performing their duties as may be authorized and allowed by the board of regents, provided, that per diem payments may not be made in addition to payments for actual expenses.

[Acts 1969, 61st Leg., p. 3012, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3303, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.100. Powers of Board**

The said board of regents shall have all the power and duties in respect of the business and affairs of the regional college district as provided by law in respect of the board of trustees of junior college districts, and such other powers as herein provided and as may be hereafter provided by law.

[Acts 1969, 61st Leg., p. 3012, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3303, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.101. Annexation of Contiguous County or Independent Districts**

(a) The entire area of any county located in Texas, the county seat of which is located at least 90 miles by the then direct regularly traveled road or

highway from the county seat of any county containing a state-supported senior college or university, or the area of any one or more independent school districts of a county in Texas who meets the requirements above, may be annexed to, and assume its pro rata part of the bonded indebtedness of said regional college district, in the manner herein provided. A petition of 100 of the property taxpaying voters of any such county or of any such independent school district, proposing that the entire area of such county, or of such independent school district, as the case may be, be annexed to, and that such countywide area or such district area assume its pro rata part of the bonded indebtedness of said regional college district, may be submitted to the board of regents of such regional college district. If the said board of regents determines that it would be to the interest of said regional college district and of the area proposed to be annexed, that such annexation be accomplished, said board of regents shall adopt a resolution so finding, and said petition and certified copy of said resolution shall be submitted to the commissioners court of said county, and it shall be the duty of said commissioners court, within 15 days after the presentation of such petition any copy of such resolution, to order an election to be held in said county at large, or in such school district, or districts, as the case may be, for the purpose of determining if the area of said county, or the area of such school district, or districts, shall be annexed to said regional college district, and assume its pro rata part of the bonded indebtedness of said regional college district; said election to be held not earlier than 60 days nor later than 90 days after passage of such order. The ballots at said election shall be printed to provide for voting for or against the proposition: "Annexation to be the regional college district and assumption of pro rata part of its bonded indebtedness." The name of such district shall be inserted in the proposition.

(b) Said commissioners court shall designate the polling place of said election and appoint the officers thereof, and furnish the supplies therefor. Said election shall be conducted in accordance with the general election laws of Texas, insofar as applicable. Returns of said election shall be made to said commissioners court and canvassed by said court.

(c) If the majority of the votes cast at such election are in favor of said proposition, such fact shall be certified by the commissioners court to the board of regents of said regional college district, and the entire area of said county, or of said school district, or districts, as the case may be, shall be deemed to have been annexed to and shall be a part of said regional college district and shall be subject to taxation for the payment of the existing bonded indebtedness and the maintenance of said regional college district the same as other property in the area of said regional college district.

(d) In the event an entire county is so annexed, the commissioners court of such county shall forthwith appoint a regent or regents for said college from the county in accordance with the number of regents allowed as hereinabove provided. All such regents shall, before entering upon the duties of their offices, take the oath as herein prescribed for regents. Such appointment shall be certified by the clerk of the commissioners court to the board of

regents of said college district. At the first meeting of the board of regents after the appointment and qualification of regents from such annexed county, the regents shall determine by lot in the manner provided by the board of regents, their term of office. Thereafter, successors to the regents from said annexed county shall be elected in the manner provided for other counties in said district.

(e) In the event the area of one or more independent school districts of a county, instead of the entire county, is annexed to said regional college district, said annexed territory shall be entitled to the number of regents as they may qualify for in terms of scholastics and tax values. Immediately after such annexation the commissioners court of the county in which such area is situated shall appoint from said area, the number of regents to which such area is entitled. This regent or regents as the case may be, so appointed, shall hold office until the expiration of the term of office of the regents of said county of which they are a part. At the expiration of the term of each regent from such annexed territory his successor shall be elected at an election to be held in the annexed area, to be called by the board of regents, which shall designate the polling place or places, the officers of the election, provide the supplies therefor and pay the expenses thereof.

[Acts 1969, 61st Leg., p. 3012, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3303, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.102. Taxes**

The tax assessors and collectors of the county or respective counties containing territory embraced within the boundaries of such regional college district shall assess and collect the taxes of said college district on the taxable property in the territory of said district located in said county or respective counties on levies made and rates fixed by the board of regents of said district. The assessed valuations of said property for state and county taxes shall be used as the valuations for said college district taxes. Such tax collectors shall collect the college district taxes at the same time that he collects the state and county taxes. All taxes collected for such regional college district shall be accounted for to and paid over to the treasurer of said college district by such tax collector, and he shall receive the same compensation for assessing and collecting such taxes as provided by law for like services rendered for junior college districts.

[Acts 1969, 61st Leg., p. 3014, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3304, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.103. President of College**

The board of regents shall choose the president of the regional college, fix his term of office, designate his salary, and define his duties. The president shall be the executive officer of the board of regents and shall work under its direction. He shall recommend the plan of organization of the college and shall recommend the appointment of all employees.

[Acts 1969, 61st Leg., p. 3014, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3305, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.104. Establishment of College; Divisions; Support**

(a) The board of regents shall proceed as soon as practicable to establish a regional college in said

regional college district, which shall consist of three divisions, as follows:

(1) a junior college division, which shall operate under all laws applicable to public junior colleges in Texas;

(2) an adult education division for adults regardless of age or former education for:

(A) basic education to emphasize citizenship, English, and training in elemental mathematics and science;

(B) terminal, vocational, and technological education and training in their generally accepted sense;

(C) work and study groups based on needs and interests as displayed by the residents of the area served by the regional college. The adult education division shall emphasize continuation of education of adults with emphasis upon democracy and citizenship;

(3) a senior college division which shall be guided by educational practices and principles applicable to upper division work in first-class colleges and universities; provided that any bachelor's degree shall be based on four years of college work and that any higher degree with appropriate courses may be offered when in the judgment of the board of regents, the educational welfare of the people served by the college demands and justifies such work and such courses. All of which shall be organized and blended into an educational program by the president of the college and his staff.

(b) It is understood and provided that no funds shall ever be appropriated from the treasury of the State of Texas or public money of this state for the support or partial support by the Legislature of Texas of any adult and senior college divisions of such regional colleges created under the provisions of this act, provided, however, that nothing herein contained shall in any manner prevent or interfere with the provisions of law now or hereafter existing authorizing state aid to the junior college divisions of such regional college districts in the same manner and to the same extent as that granted to junior college districts.

[Acts 1969, 61st Leg., p. 3014, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3305, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 130.105. Buildings, Property and Resources of Junior College District; Fees and Tuition; Tax Levy; Bonds**

(a) All buildings, property, and other educational resources of the public junior college district at the time of said merger shall be available for all divisions of the regional college in accordance with the laws of Texas governing public junior college districts and as determined by the board of regents of the regional college district. The board of regents shall have the power to fix such fees and tuition rates as shall be deemed to be necessary. In addition, the board of regents shall have the power to levy taxes and make such distribution of such taxes as it may deem necessary for the adequate support of said college; provided that the total annual tax levy for all regional college purposes shall not exceed a rate of 50 cents on each \$100 of assessed valuation of taxable property located in such region-

al college district. All powers relating to the issuance of bonds, the construction or acquisition of buildings and facilities, taxation, and otherwise, vested by law in public junior college districts shall be applicable to said regional college district, subject, however, to the limitation of 50 cents on each \$100 of valuation above mentioned.

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

[Acts 1969, 61st Leg., p. 3015, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3306, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 130.106. Donations, Gifts, and Endowments

Said board of regents is authorized, in behalf of said regional college, to accept donations, gifts, and endowments for the college to be held in trust and administered by the board of regents for such purpose and under writing by the donor, not inconsistent with the proper management and objects of the college.

[Acts 1969, 61st Leg., p. 3016, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3306, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 130.107. Power of Eminent Domain

(a) The power of eminent domain is hereby conferred on regional college districts, for the purpose of acquiring buildings, lands for building or campus sites, or other property determined by the boards of regents of such districts to be needed to carry out the authorized functions of such districts.

(b) Said power of eminent domain shall be exercised in the manner provided by Title 52 of the Revised Civil Statutes of Texas, 1925.<sup>1</sup>

[Acts 1969, 61st Leg., p. 3016, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3306, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Civil Statutes, Art. 3264 et seq.

#### § 130.108. Delinquent Taxes after Transfer of Assets

Any regional college district which has conveyed all, or substantially all, of its property and assets to a state-supported senior college or university located in such regional college district and which regional college district has no outstanding bonded indebtedness is hereby abolished and shall cease to exist and function; provided, however, that all delinquent and uncollected taxes in said regional college district shall not hereby be discharged, but shall be and remain fully due, payable and collectible. The tax assessor and collector of the county in which said regional college district is located shall cause all delinquent and uncollected taxes of said regional college district to be collected in accordance with the general laws applicable to regional college districts.

All of said taxes, as collected, shall be turned over to any such state-supported senior college or university. All taxes turned over to any such state-supported senior college or university in accordance with this act may be used by it for any lawful purpose. [Acts 1969, 61st Leg., p. 3016, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3306, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 130.109. Transfer of Assets of Certain Regional College Districts

All regional college districts which have been converted to fully state-supported institutions of higher learning are hereby authorized to transfer all assets of such districts, real, personal, tangible, or intangible to the governing boards of such institutions provided that each such governing board shall continue the payment of all notes and bonds payable from revenues theretofore issued by such districts and each county in which any such regional college district is located continues to levy and collect taxes in support of all tax obligations theretofore authorized and issued by such district.

[Acts 1969, 61st Leg., p. 3016, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3307, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 130.110 to 130.120 reserved for expansion]

### SUBCHAPTER G. FISCAL PROVISIONS

#### § 130.121. Tax Assessment, Equalization, and Collection

(a) The governing board of each junior college district, and each regional college district, for and on behalf of its junior college division, annually shall cause the taxable property in its district to be rendered and assessed for ad valorem taxation, and the value of such taxable property to be equalized, and the ad valorem taxes in the district to be collected, in accordance with any one of the methods set forth in this section, and any method adopted shall remain in effect until changed by the board.

(b) The laws of this state applicable to general law cities and towns may be adopted and shall be used to the extent pertinent and practicable.

(c) The laws of this state applicable to counties may be adopted and shall be used to the extent pertinent and practicable, provided that the board shall have the authority to act as its own board of equalization, or to appoint three resident, qualified voters of the district who own taxable property therein to act as the board of equalization of the district, and in either case the board of equalization shall qualify and perform the duties prescribed by law for county commissioners courts acting as boards of equalization.

(d) Each governing board shall be authorized to have the taxable property in its district assessed, its values equalized, and/or its taxes collected, in whole or in part, by the tax assessors, board of equalization, and/or tax collectors, respectively, of any county, city, taxing district, or other governmental subdivision in which all or any part of the junior college district is located; and such property may be assessed and the values thereof equalized on the same basis or a different basis than that used by any such governmental subdivision. Such property shall be assessed, the values thereof equalized, and such tax-

es collected, in the manner and for such compensation as shall be agreed upon between the appropriate parties, and the functions thus assumed by the officials of any such governmental subdivision shall be additional duties pertaining to their offices, respectively. The ad valorem tax law applicable to each such governmental subdivision shall apply to its officials in carrying out such functions for the junior college district.

(e) It is specifically provided, however, that under any method used all taxable property within a district shall be assessed on the same basis and the values thereof shall be equalized by only one board of equalization, in an equal and uniform manner, as required by the Texas Constitution.<sup>1</sup> If a governing board desires that taxable property shall be assessed and taxes collected by the tax assessors and/or collectors of more than one governmental subdivision, the governing board of the district shall either act as its own board of equalization, or appoint three resident, qualified voters of the district who own taxable property therein to act as the board of equalization, and in either case the board of equalization shall qualify and perform the duties prescribed by law for county commissioners courts acting as boards of equalization.

(f) Any other method or procedure authorized or permitted by any other statute of the State of Texas may be adopted, in whole or in part, to the extent pertinent and practicable.

[Acts 1969, 61st Leg., p. 3016, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3307, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> See Const. art. 1, § 8.

**§ 130.122. Tax Bonds and Maintenance Tax**

(a) The governing board of each junior college district, and each regional college district for and on behalf of its junior college division, shall be authorized to issue negotiable coupon bonds for the construction and equipment of school buildings and the purchase of the necessary sites therefor, and levy and pledge annual ad valorem taxes sufficient to pay the principal of and interest on said bonds as the same come due, and to levy annual ad valorem taxes for the further maintenance of its public junior college or junior colleges; provided that the annual bond tax shall never exceed 50 cents on the \$100 valuation of taxable property in the district, and the annual bond tax, if any, together with the annual maintenance tax shall never exceed the aggregate of \$1 on the \$100 valuation of taxable property in the district. Such bonds may be issued in various series or issues, and shall mature serially or otherwise not more than 40 years from their date, and shall bear interest at such rate or rates as shall be determined within the discretion of the board. Said bonds, and the interest coupons appertaining thereto, shall be negotiable instruments, and they may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and shall be signed and executed, as provided by the board in the resolution or order authorizing the issuance of said bonds. All bonds shall be sold to the highest bidder for not less than their par value and accrued interest.

(b) No such bonds shall be issued and none of the aforesaid taxes shall be levied unless authorized by a

majority of the electors voting at an election held for such purpose in accordance with law, at the expense of the district. Each such election shall be called by resolution or order of the board, which shall set forth the date of the election, the proposition or propositions to be submitted and voted on, the polling place or places, and any other matters deemed necessary or advisable by the board. Notice of said election shall be given by publishing a substantial copy of the election resolution or order one time, at least 10 days prior to the date set for the election, in a newspaper of general circulation in the district. The board shall canvass the returns and declare the results of such election.

(c) The governing board of each junior college district, and each regional college district, shall be authorized to refund or refinance all or any part of any of its outstanding bonds and matured but unpaid interest coupons payable from ad valorem taxes by the issuance of negotiable coupon refunding bonds payable from ad valorem taxes. Said refunding bonds shall mature serially or otherwise not more than 40 years from their date, and shall bear interest at such rate or rates as shall be determined within the discretion of the board. Said refunding bonds may be issued without an election in connection therewith, provided that in no event shall any series or issue of refunding bonds be issued in a principal amount greater than the face or par value of the obligations being refunded thereby, and provided that if a maximum interest rate was voted for the bonds being refunded, the refunding bonds shall not bear interest at a rate higher than such voted maximum rate. Said refunding bonds, and the interest coupons appurtenant thereto, shall be negotiable instruments and they may be made redeemable prior to maturity, and may be issued in such form, denomination, and manner, and under such terms, conditions, and details, and shall be signed and executed, as provided by the board in the resolution or order authorizing the issuance of said refunding bonds. The refunding bonds shall be issued and delivered in lieu of, and upon surrender to the Comptroller of Public Accounts of the State of Texas and cancellation of, the obligations being refunded thereby, and the comptroller of public accounts shall register the refunding bonds and deliver the same in accordance with the provisions of the resolution or order authorizing the refunding bonds. Such refunding may be accomplished in one or in several installment deliveries. Said refunding bonds also may be issued and delivered in accordance with the provisions of and procedures authorized by any other applicable law.

(d) All bonds issued pursuant to this section, and the appropriate proceedings authorizing their issuance, shall be submitted to the attorney general of the State of Texas for examination. If he finds that such bonds have been authorized in accordance with law he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas; and after such approval and registration such bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

(e) All bonds issued pursuant to this section shall be legal and authorized investments for all banks,

trust companies, building and loan associations, savings and loan associations, small business investment corporations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. Said bonds also shall be eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of said bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

(f) Each junior college district, and each regional college district (with reference to the operation and maintenance of its junior college division) heretofore or hereafter created pursuant to the laws of this state, is hereby declared to be, and constituted as, a school district within the meaning of Article VII, Section 3, of the Texas Constitution.

(g) All tax bonds voted in any district in accordance with law but unissued at the effective date of this code may be issued in the manner provided in this section, without an additional election; and all maintenance taxes heretofore voted in any district in accordance with law may be levied and collected in the manner provided in this act, without an additional election.

[Acts 1969, 61st Leg., p. 3017, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3308, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 130.123. Revenue Bonds

(a) The governing board (hereinafter called the "board") of each junior college district and each regional college district shall be authorized and have the power to acquire, purchase, construct, improve, enlarge, equip, operate, and/or maintain any property, buildings, structures, activities, operations, or facilities, of any nature, for and on behalf of its institution or institutions.

(b) For the purpose of carrying out any one or more of the aforesaid powers each board shall be authorized to issue its revenue bonds to be payable from and secured by liens on and pledges of all or any part of any of the revenues from any rentals, rates, charges, fees, or other resources of such board, in the manner hereinafter provided. Said bonds may be issued to mature serially or otherwise not more than 50 years from their date. In the authorization of any such bonds, each board may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, or other types of bonds, under such terms or conditions as may be set forth in the resolution or order authorizing the issuance of said bonds, all within the discretion of the board. Said bonds, and any interest coupons appurtenant thereto, shall be negotiable instruments (provided that such bonds may be issued registrable as to principal alone or as to both principal and interest), and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and may be sold in such

manner, at such price, and under such terms, and said bonds shall bear interest at such rate or rates, as shall be determined and provided by the board in the resolution or order, authorizing the issuance of said bonds. If so permitted in the bond resolution, and required part of the proceeds from the sale of the bonds may be used for paying interest thereon during the period of the construction of any facilities to be provided through the issuance of said bonds, and for the payment of operation and maintenance expenses of said facilities to the extent, and for the period of time, specified in said bond resolution, and also for the creation of reserves for the payment of the principal of and interest on the bonds; and such moneys be invested, until needed, to the extent, and in the manner provided, in said bond resolution or order.

(c) Each board shall be authorized to fix and collect rentals, rates, charges, and/or fees from students and others for the occupancy, use and/or availability of all or any of its property, buildings, structures, activities, operations, or facilities, of any nature, in such amounts and in such manner as may be determined by such board.

(d) Each board shall be authorized to pledge all or any part of any of its revenues from any of the aforesaid rentals, rates, charges, and/or fees to the payment of any bonds issued hereunder, including the payment of principal, interest, and any other amounts required or permitted in connection with said bonds. When any of the revenues from any such rentals, rates, charges, and/or fees are pledged to the payment of bonds, they shall be fixed and collected in such amounts as will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with said bonds, and, to the extent required by the resolution or order authorizing the issuance of said bonds, to provide for the payment of operation, maintenance, and other expenses. Each board shall be authorized to establish and enforce such parietal rules for students and others, and to enter into such agreements regarding occupancy, use, and availability, and the amounts and collection of pledged revenues, fees, or other resources as will assure making all said required payments. Fees for the use or availability of all or any property, buildings, structures, activities, operations, or facilities, of any nature, may be pledged to the payment of said bonds, and shall be fixed and collected from all or any designated part of the students enrolled in the institution or institutions, in such amounts and in such manner as shall be determined and provided by the board in the resolution or order authorizing the issuance of the bonds, and said fees may be collected in the full amounts required or permitted herein, without regard to actual use or availability, commencing at any time designated by the board. Said fees may be fixed and collected for the use or availability of any specifically described property, buildings, structures, activities, operations, or facilities, of any nature; or said fees may be fixed and collected as general fees for the general use or availability of the institution or institutions. Such specific and/or general fees may be fixed and collected and pledged to the payment of any issue or series of bonds issued hereunder, in the full amounts required or permitted here-

in, in addition to, and regardless of the existence of, any other specific or general fees at the institution or institutions; provided that each board may restrict its power to pledge such additional specific or general fees in any manner that may be provided in the resolution or order authorizing the issuance of any bonds issued hereunder, and provided that no such additional specific fees shall be pledged if prohibited by any resolution or order which authorized the issuance of any then outstanding bonds issued pursuant to any Texas statute.

(e) In addition to the revenues, fees, and other resources authorized to be pledged to the payment of bonds issued hereunder, each board further shall be authorized to pledge irrevocably to such payment, out of the tuition charges required or permitted by law to be imposed at its institution or institutions, an amount not exceeding \$15 from each enrolled student for each regular semester and \$7.50 from each enrolled student for each summer term, and each board also shall be authorized to pledge to such payment all or any part of any grant, donation, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

(f) Any revenue bonds issued by any such board under this act, and any revenue bonds or notes issued by any such board under any other Texas statute and payable from tuition fees and charges and/or any part of the use fees from or revenues of any property, buildings, structures, activities, operations, or facilities at the institution or institutions, may be refunded or otherwise refinanced by such governing board, and in such case all pertinent and appropriate provisions of this section shall be fully applicable to such refunding bonds. In refunding or otherwise refinancing any such bonds or notes the governing board may, in the same authorizing proceedings, refund or refinance bonds issued pursuant to this section and bonds or notes issued pursuant to any other such Texas statute and combine all said refunding bonds and any other additional new bonds to be issued pursuant to this section into one or more issues or series of bonds, and may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, or other type of bonds. All refunding bonds shall be issued and delivered under such terms and conditions as may be set forth in the authorizing proceedings.

(g) All bonds permitted to be issued under this section, and the appropriate proceedings authorizing their issuance, shall be submitted to the Attorney General of the State of Texas for examination. If he finds that such bonds have been authorized in accordance with law he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas; and after such approval and registration such bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

(h) All bonds issued under this section shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, small business investment corporations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for

all interest and sinking funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. Said bonds also shall be eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of said bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

(i) All revenue bonds heretofore approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas which were issued, sold, and delivered by any board, and which are payable from or secured by a pledge of any revenues, use fees, tuition, or other resources of such board, are hereby validated in all respects, together with all proceedings authorizing the issuance thereof, and said bonds and proceedings shall be valid as though they had been duly and legally issued and authorized originally.

[Acts 1969, 61st Leg., p. 3019, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3310, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 130.124 to 130.130 reserved for expansion]

SUBCHAPTER H. TRANSFER OF ASSETS ON DISSOLUTION OF DISTRICTS

§ 130.131. Dissolution and Transfer of Property Upon Creation of Senior College

(a) Whenever the legislature shall create within the boundary of any union junior college district a state-supported senior college of the first rank offering at least four years of college work, and whenever such union junior college district has been dissolved in the manner provided for in Sections 19.361-19.364 of this code, which said method of dissolution of such district is hereby authorized, the trustees of such union junior college district shall transfer the corporeal properties and facilities of such union junior college district to such state-supported senior college, and such trustees, after such dissolution and transfer of properties of such district, shall not further maintain a junior college and shall function only for the purpose of carrying out the provisions of this section and shall have no authority to create any additional indebtedness against such district, and when the bonded indebtedness of such district has been fully paid, such union junior college district shall cease to exist; provided that in the order calling such election and in the notice thereof, the authorities calling such election shall designate the date when such district shall be dissolved and such transfer shall be made, which date shall be within two years from the date of the election, and on or prior to said date.

(b) When any union junior college district has been dissolved and its properties transferred as provided in Subsection (a) of this section, or in any other lawful manner, having at the time of such dissolution outstanding bonds or other indebtedness enforceable either at law or in equity, then the

county commissioners court, for the purpose of paying such bonds, or other indebtedness, shall have power and be authorized to annually levy and collect ad valorem taxes sufficient only to pay the interest and create a sinking fund to retire the bonded indebtedness of such district, and the expense of collecting such taxes and paying such bonded indebtedness, and for no other purpose; provided such tax shall not exceed the rate voted by such district for junior college purposes; said county commissioners court shall have power to bring and defend litigation in the name of said union junior college district. [Acts 1969, 61st Leg., p. 3022, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3313, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 130.132. Abolition of Junior College Districts

(a) The term "applicable district," as used in this section, shall mean any junior college district which has conveyed all, or substantially all, of its property and assets to a state-supported senior college or university located in such junior college district, and which junior college district has no outstanding bonded indebtedness.

(b) All applicable districts and their governing boards are hereby abolished and shall cease to exist and function; provided, however, that all delinquent and uncollected taxes in said applicable districts shall not hereby be discharged, but shall be and remain fully due, payable and collectible. The persons formerly acting as the governing board and officers of each applicable district shall turn over all remaining property and assets of said applicable district, including all tax collections on hand, directly to the state-supported senior college or university located therein. The governing board of the independent school district in which any such state-supported senior college or university is located shall, for and on behalf of any such applicable district, cause, through its tax collector and other officers, all delinquent and uncollected taxes of any such applicable district to be collected in accordance with the general laws applicable to independent school districts. All of said taxes, as collected, shall be turned over to any such state-supported senior college or university. All taxes turned over to any such state-supported senior college or university in accordance with this section may be used by it for any lawful purpose.

[Acts 1969, 61st Leg., p. 3022, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3313, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

### § 130.133. Transfer of Properties of County Junior College Districts after Creation of Senior College

(a) Whenever the legislature has created or shall create within the boundaries of any county junior college district a state-supported senior college offering at least four years college work upon the condition that the board of trustees of said county junior college district shall convey all of the assets, real, personal, tangible, and intangible held in its name as of the date fixed for the establishment of said senior college and containing the other provision that said properties shall be conveyed to the governing body of the senior college free and clear of any indebtedness or indebtednesses, encumbrance or encumbrances of any kind or character and of whatsoever nature, the board of trustees of said county

junior college district is hereby fully authorized and empowered to convey to the governing body of the senior college all of such assets, real, personal, tangible, and intangible held by it on the date fixed for such conveyance in the act creating such senior college, except moneys on hand for the payment of outstanding obligations of the district.

(b) From and after the conveyance of the properties of said county junior college district to the governing body of said senior college, the county junior college district shall not further maintain a junior college and shall function only for the purpose of carrying out the provisions of this section.

(c) Where such county junior college district had or has outstanding tax obligations in the nature of bonds or other indebtedness, the board of trustees of said county junior college district shall continue to make the necessary tax levies annually for the purpose of paying necessary administrative expenses of the board of trustees and paying off and discharging such bonded or other indebtedness, both principal and interest, until all of the same has been fully paid off and discharged.

(d) Where said county junior college district has outstanding any bonds payable from the revenues from any building or buildings which revenue bonds constitute an encumbrance upon the income of such building or buildings, the board of trustees of the county junior college district is hereby authorized to issue bonds of said county junior college district payable from ad valorem taxes of said district and to sell such tax-supported bonds and pay off such revenue bonds or to exchange such tax-supported bonds for said revenue bonds. No such tax-supported bonds shall be issued, however, until authorized at an election held for that purpose and at which election a majority voting thereon shall have voted in favor of the issuance of said bonds.

(e) The board of trustees of the county junior college district is hereby authorized to perform all acts necessary toward the final discharge of all the indebtedness of said county junior college district and to perform all necessary administrative acts in connection therewith. Said board of trustees is specifically authorized to continue to levy and collect sufficient taxes annually within the limits prescribed by law and authorized by the required election for the purpose of discharging the principal and interest on all outstanding bonded and other indebtedness, including the repayment of any temporary loans which said board may find necessary to obtain in order to pay all current operating expenses of the junior college up to the date of the conveyance of the properties until all such obligations have been fully discharged, and such temporary loans are hereby authorized, and such temporary loans heretofore obtained are hereby ratified and validated.

[Acts 1969, 61st Leg., p. 3023, ch. 889, § 1; Acts 1971, 62nd Leg., p. 3314, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 130.134 to 130.150 reserved for expansion]

## SUBCHAPTER I. EDUCATIONAL OPPORTUNITIES FOR DISADVANTAGED STUDENTS

### § 130.151. Purpose

It is the purpose of this subchapter to enable each junior college which fulfills the provisions of this

subchapter to provide useful and meaningful educational programs for any person 17 years of age or older with a high school diploma or its equivalent, or for any person 18 years of age regardless of prior educational experience, cultural background, or economic resources.

[Acts 1973, 63rd Leg., p. 570, ch. 243, § 1, eff. June 11, 1973.]

§ 130.152. **Criteria for Programs for the Disadvantaged**

A junior college may develop programs to serve persons from backgrounds of economic or educational deprivation by submission of a plan based on the following criteria to the Coordinating Board, Texas College and University System;

(1) an instructional program that accommodates the different learning rates of students and compensates for prior economic and educational deprivation;

(2) an unrestricted admissions policy allowing the enrollment of any person 18 years of age or older with a high school diploma or its equivalent who can reasonably be expected to benefit from instruction;

(3) the assurance that all students, regardless of their differing programs of study, will be considered, known, and recognized as full members of the student body, provided that the administrative officers of a junior college may deny admission to a prospective student or attendance of an enrolled student if, in their judgment, he would not be competent to benefit from a program of the college, or would by his presence or conduct create a disruptive atmosphere within the college not consistent with the statutory purposes of the college;

(4) the submission of a plan for a financial aid program which removes to the maximum extent possible the financial barriers to the educational aspirations of the citizens of this state;

(5) an annual evaluation report based on scientific methods and utilizing control groups wherever possible to be submitted to the coordinating board at the end of each school year, covering each remedial-compensatory course or program offered at the college;

(6) any other criteria consistent with the provisions of this subchapter specified by the coordinating board; and

(7) a junior college must obtain approval of the Coordinating Board, Texas College and University System, before offering any courses under the provisions of this Act.

[Acts 1973, 63rd Leg., p. 570, ch. 243, § 1, eff. June 11, 1973.]

[Chapters 131 to 134 reserved for expansion]

**CHAPTER 135. TEXAS STATE TECHNICAL INSTITUTE**

**SUBCHAPTER A. GENERAL PROVISIONS**

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135.02.	Location.
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135.53.	Nonresident Fee Exemptions.
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135.55.	Suits; Venue.
135.56.	Disposition of Properties; Bonds and Notes; Pledge of Revenue.
135.57.	Insurance.
135.58.	Workmen's Compensation Insurance.
135.59.	Contracts with Baylor University.

**SUBCHAPTER A. GENERAL PROVISIONS**

§ 135.01. **Purpose of Institute**

Texas State Technical Institute is a coeducational institution offering courses of study in vocational and vocational-technical education for which there is demand within the State of Texas.

[Acts 1971, 62nd Leg., p. 3316, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

§ 135.02. **Location**

(a) The Texas State Technical Institute shall be located on only four campuses in McLennan, Cameron, Potter and Nolan counties.

(b) The main campus of the institute shall be located at Waco.

(c) The board may accept or acquire by purchase in the name of the State of Texas land and facilities in Cameron County, Potter County and Nolan County, subject to the approval of the governor.

(d) Except as otherwise provided by this chapter, all other campus locations to be operated by the institute system require legislative approval.

[Acts 1971, 62nd Leg., p. 3316, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 3341, ch. 1024, art. 2, § 10, eff. Sept. 1, 1971.]

§ 135.03. **Role and Scope of Institute**

(a) The institute shall provide occupationally oriented programs in highly technical and vocational areas, including field or laboratory work and remedial or related academic and technical instruction. Particular emphasis shall be placed on industrial and technological manpower needs of the state. Technical and vocational programs shall be subject to the approval of the State Board of Vocational Education. Related academic instruction is subject to the approval of the Coordinating Board, Texas College and University System.

(b) The institute shall provide training programs for technical teachers, counselors, and supervisors which shall be subject to prior and continuing approval of the State Board of Vocational Education.

(c) The institute shall conduct manpower development and utilization research programs for identification of training and retraining needs and projected needs and for curriculum development, either

individually or in cooperation with other public and private institutions.

[Acts 1971, 62nd Leg., p. 3316, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

#### § 135.04. Approval of Programs

(a) Educational programs wholly or partially financed from state funds are subject to the prior approval of the State Board of Vocational Education and the Coordinating Board, Texas College and University System.

(b) Before any program may be offered by the institute within the district of a public junior college that is operating a vocational and technical program, it must be established that the public junior college is not capable of offering or is unable to offer the program. After it is established that a need for the program exists and that the program is not locally available, the institute may offer the program, provided approval is secured as required by this chapter. Approval set forth in this subsection does not apply to McLennan, Cameron, and Potter counties.

(c) Where a local government located in a county or a portion of a county that is not operating a public junior college district requests that the institute offer a program, the institute may offer the program provided approval is secured from the State Board of Vocational Education.

[Acts 1971, 62nd Leg., p. 3316, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 135.05 to 135.20 reserved for expansion]

#### SUBCHAPTER B. BOARD OF REGENTS; ADMINISTRATIVE PROVISIONS

##### § 135.21. Board of Regents

The organization and control of the institute is vested in a board of nine regents.

[Acts 1971, 62nd Leg., p. 3317, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 135.22. Appointment of Board

The governor shall appoint members of the board with the advice and consent of the senate. In appointing members of the board the governor shall include persons representing agriculture, business, industry, and labor. Each member of the board shall be a citizen of Texas and shall take the constitutional oath of office.

[Acts 1971, 62nd Leg., p. 3317, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 135.23. Terms of Office

The term of office of each regent is six years. In making the first appointments the governor shall appoint three members for six years, three members for four years, and three members for two years. Any vacancy that occurs on the board is filled for the unexpired term by appointment of the governor.

[Acts 1971, 62nd Leg., p. 3317, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 135.24. Organization; Bylaws

The board shall elect one of the members chairman; elect other officers as it deems necessary; and enact bylaws, rules, and regulations as it deems

necessary for the successful management and operation of the institute.

[Acts 1971, 62nd Leg., p. 3317, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 135.25. Meetings

The board shall meet as prescribed by its bylaws, but not less than six times annually.

[Acts 1971, 62nd Leg., p. 3317, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 135.26. Compensation

Members of the board may not receive salary or compensation for their services, but they may receive reimbursement for their actual expenses incurred in attending to the work of the board, subject to the approval of the chairman.

[Acts 1971, 62nd Leg., p. 3317, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

[Sections 135.27 to 135.50 reserved for expansion]

#### SUBCHAPTER C. BOARD OF REGENTS; POWERS AND DUTIES

##### § 135.51. Certificates and Diplomas

The board shall prescribe and award certificates and diplomas limited to those common to technical education.

[Acts 1971, 62nd Leg., p. 3318, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 135.52. Fees and Tuition

The board may collect tuition and registration fees authorized by law.

[Acts 1971, 62nd Leg., p. 3318, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 135.53. Nonresident Fee Exemptions

The board may enter into cooperative agreements which exempt technical students from nonresident fees when there are reciprocal privileges granted to Texas residents.

[Acts 1971, 62nd Leg., p. 3318, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 135.54. Contracts

The board may contract with individuals, federal, state, and local agencies and departments, corporations, and associations to provide educational programs designed to meet the need for trained personnel in Texas.

[Acts 1971, 62nd Leg., p. 3318, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 135.55. Suits; Venue

The board may sue, and may be sued, in the name of the Texas State Technical Institute, with venue being in either McLennan County or Travis County.

[Acts 1971, 62nd Leg., p. 3318, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

##### § 135.56. Disposition of Properties; Bonds and Notes; Pledge of Revenue

(a) The board may lease, sell, transfer, or exchange land and permanent improvements of the

institute or any other properties it may acquire which the board determines are not necessary for the establishment or operation of the institute.

(b) The board may irrevocably pledge the fees, charges, revenues, and the proceeds of the lease, sale, transfer, or exchange of or from the buildings, land, structures, and the additions to the existing buildings and structures authorized to be constructed, improved, or equipped and to pledge the revenue of the proceeds of the lease, sale, transfer, or exchange of or from any other revenue-producing buildings, structures, facilities, and other property to the payment of the interest on and the principal of bonds authorized to be issued by Chapter 55 of this code,<sup>1</sup> and to enter into agreements regarding the imposition of fees, charges, and other revenue and the collection, pledge, and disposition as the board deems appropriate. However, where land and improvements on the land, the revenue of which has been pledged to pay bonds, are to be sold, the sale is conditioned on the deposit by the board of the proceeds of the sale to the sinking fund created by the bond order of the issuing authority.

(c) All income received by the board under the provisions of this section shall be accounted for and used in the same manner as other money available to the board for the establishment or operation of the institute.

(d) The bonds authorized to be issued under Chapter 55 of this code are special obligations of the board issuing the bonds and are payable only from a pledge of the fees, charges, and other revenues authorized by this section and from the proceeds of the lease, sale, transfer, or exchange of land and improvements on the land the revenue of which is pledged to secure the payment of interest on and principal of the bonds.

(e) The board, in addition to the authority already provided, may issue revenue bonds for the purposes authorized and in the manner prescribed and under the terms and conditions set forth in Chapter 55 of this code.

[Acts 1971, 62nd Leg., p. 3318, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> Section 55.01 et seq.

**§ 135.57. Insurance**

The board may procure the property and liability insurance coverages required by the United States to protect it and its agencies against the possibility of loss or liability in connection with property owned by the United States and loaned to the institute pursuant to the provisions of the National Industrial Reserve Act of 1948, 50 U.S.C. Secs. 451-462.<sup>1</sup>

[Acts 1971, 62nd Leg., p. 3319, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

<sup>1</sup> See 50 U.S.C.A. § 451 et seq.

**§ 135.58. Workmen's Compensation Insurance**

The board may provide workmen's compensation insurance for its employees according to the provisions of Chapter 229, Acts of the 50th Legislature, 1947, as amended (Article 8309b, Vernon's Texas Civil Statutes).

[Acts 1971, 62nd Leg., p. 3319, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 135.59. Contracts with Baylor University**

The board may enter into any contracts and agreements with Baylor University for joint participation in graduate programs that may be designed to benefit the State of Texas.

[Acts 1971, 62nd Leg., p. 3319, ch. 1024, art. 1, § 1, eff. Sept. 1, 1971.]

**TITLE 4. COMPACTS**

**CHAPTER 160. REGIONAL EDUCATION COMPACT**

*Title 4 consisting of Chapters 160 and 161 was added to the Education Code by Acts 1971, 62nd Leg., p. 3014, ch. 994, § 15, effective August 30, 1971 and September 1, 1967, respectively.*

Section

- 160.01. State Policy.
- 160.02. Text of Compact.
- 160.03. Compact Approved.
- 160.04. Governor as Representative.
- 160.05. Enrolled Copies.
- 160.06. Consent to Increased Membership.

**§ 160.01. State Policy**

It is declared to be the policy of the State of Texas to promote the development and maintenance of regional educational services and facilities in the Southern States in the professional, technological, scientific, literary, and other fields so as to provide greater educational advantages for the citizens of the State of Texas and the citizens of the States in the Southern Region. This policy can best be accomplished under the plan embodied in the regional compact entered into by the State of Texas and thirteen other States February 8, 1948, through their respective Governors.

[Acts 1971, 62nd Leg., p. 3014, ch. 994, § 15, eff. Aug. 30, 1971.]

**§ 160.02. Text of Compact**

The regional education compact, as amended, reads as follows:

**THE REGIONAL COMPACT**

(As amended)

WHEREAS, The States who are parties hereto have during the past several years, conducted careful investigation looking toward the establishment and maintenance of jointly owned and operated regional educational institutions in the Southern States in the professional, technological, scientific, literary and other fields, so as to provide greater educational advantages and facilities for the citizens of the several States who reside within such region; and

WHEREAS, Meharry Medical College of Nashville, Tennessee, has proposed that its lands, buildings, equipment, and the net income from its endowment be turned over to the Southern States, or to an agency acting in their behalf, to be operated as a regional institution for medical, dental and nursing education upon terms and conditions to be hereafter agreed upon between the Southern States and Meharry Medical College; which proposal, because of

the present financial condition of the institution has been approved by the said States who are parties hereto; and

WHEREAS, The said States desire to enter into a compact with each other providing for the planning and establishment of regional educational facilities; now,

THEREFORE, In consideration of the mutual agreements, covenants and obligations assumed by the respective States who are parties hereto (hereinafter referred to as "States"), the said several States do hereby form a geographical district or region consisting of the areas lying within the boundaries of the contracting States, which, for the purpose of this Compact, shall constitute an area for regional education supported by public funds derived from taxation by the constituent States and derived from other sources for the establishment, acquisition, operation and maintenance of regional educational schools and institutions, for the benefit of citizens of the respective States residing within the region so established, as may be determined from time to time in accordance with the terms and provisions of this Compact.

The States do further hereby establish and create a joint agency which shall be known as the Board of Control for Southern Regional Education (hereinafter referred to as the "Board"), the members of which Board shall consist of the Governor of each State, ex officio, and four additional citizens of each State to be appointed by the Governor thereof, at least one of whom shall be selected from the field of education and at least one of whom shall be a member of the Legislature of that State. The Governor shall continue as a member of the Board during his tenure of office as Governor of the State but the members of the Board appointed by the Governor shall hold office for a period of four (4) years except that in the original appointments one Board member so appointed by the Governor shall be designated at the time of his appointment to serve an initial term of two (2) years, one Board member to serve an initial term of three (3) years, and the remaining Board member to serve the full term of four (4) years, but thereafter the successor of each appointed Board member shall serve the full term of four (4) years. Vacancies on the Board caused by death, resignation, refusal or inability to serve, shall be filled by appointment by the Governor for the unexpired portion of the term. The officers of the Board shall be a Chairman, a Vice-Chairman, a Secretary, a Treasurer, and such additional officers as may be created by the Board from time to time. The Board shall meet annually and officers shall be elected to hold office until the next annual meeting. The Board shall have the right to formulate and establish by-laws not inconsistent with the provisions of this Compact to govern its own actions in the performance of the duties delegated to it, including the right to create and appoint an Executive Committee and a Finance Committee with such powers and authority as the Board may delegate to them from time to time. The Board may, within its discretion, elect as its Chairman a person who is not a member of the Board, provided such person resides within a signatory State; and upon such election such person shall become a member of the Board with all the rights and privileges of such membership.

It shall be the duty of the Board to submit plans and recommendations to the States from time to time for their approval and adoption by appropriate legislative action for the development, establishment, acquisition, operation and maintenance of educational schools and institutions within the geographical limits of the regional area of the States, of such character and type and for such educational purposes, professional, technological, scientific, literary, or otherwise, as they may deem and determine to be proper, necessary or advisable. Title to all such educational institutions when so established by appropriate legislative actions of the States, and to all properties and facilities used in connection therewith, shall be vested in said Board as the agency of and for the use and benefit of the said States and citizens thereof; and all such educational institutions shall be operated, maintained and financed in the manner herein set out, subject to any provisions or limitations which may be contained in the legislative Acts of the State authorizing the creation, establishment and operation of such educational institutions.

In addition to the power and authority heretofore granted, the Board shall have the power to enter into such agreements or arrangements with any of the States and with educational institutions or agencies, as may be required in the judgment of the Board, to provide adequate services and facilities for the graduate, professional, and technical education for the benefit of the citizens of the respective States residing within the region, and such additional and general power and authority as may be vested in the Board from time to time by legislative enactment of the said States.

Any two (2) or more States who are parties of this Compact shall have the right to enter into supplemental agreements providing for the establishment, financing and operation of regional educational institutions for the benefit of citizens residing within an area which constitutes a portion of the general region herein created, such institutions to be financed exclusively by such States and to be controlled exclusively by the members of the Board representing such States, provided such agreement is submitted to and approved by the Board prior to the establishment of such institutions.

Each State agrees that, when authorized by the Legislature, it will from time to time make available and pay over to said Board such funds as may be required for the establishment, acquisition, operation and maintenance of such regional educational institutions as may be authorized by the States under the terms of this Compact, the contribution of each State at all times to be in the proportion that its population bears to the total combined population of the States who are parties hereto as shown from time to time by the most recent official published report of the Bureau of the Census of the United States of America; or upon such other basis as may be agreed upon.

This Compact shall not take effect or be binding upon any State unless and until it shall be approved by proper legislative action of as many as six (6) or more of the States whose Governors have subscribed hereto within a period of eighteen (18) months from the date hereof. When and if six (6) or more States shall have given legislative approval to this Compact

within said eighteen (18) months period, it shall be and become binding upon such six (6) or more States sixty (60) days after the date of legislative approval by the sixth State, and the Governors of such six (6) or more States shall forthwith name the members of the Board from their States as hereinabove set out, and the Board shall then meet on call of the Governor of any State approving this Compact, at which time the Board shall elect officers, adopt by-laws, appoint committees and otherwise fully organize. Other States whose names are subscribed hereto shall thereafter become parties hereto upon approval of this Compact by legislative action within two (2) years from the date hereof, upon such conditions as may be agreed upon at the time. Provided, however, that with respect to any State whose constitution may require amendment in order to permit legislative approval of the Compact, such State or States shall become parties hereto upon approval of this Compact by legislative action within seven (7) years from the date hereof, upon such conditions as may be agreed upon at the time.

After becoming effective this Compact shall thereafter continue without limitation of time; provided, however, that it may be terminated at any time by unanimous action of the States; and provided further that any State may withdraw from this Compact if such withdrawal is approved by its Legislature, such withdrawal to become effective two (2) years after written notice thereof to the Board accompanied by a certified copy of the requisite legislative action, but such withdrawal shall not relieve the withdrawing State from its obligations hereunder accruing up to the effective date of such withdrawal. Any State so withdrawing shall ipso facto cease to have any claim to or ownership of any of the property held or vested in the Board or of any of the funds of the Board held under the terms of this Compact.

If any State shall at any time become in default in the performance of any of its obligations assumed herein or with respect to any obligation imposed upon said State as authorized by and in compliance with the terms and provisions of this Compact, all rights, privileges and benefits of such defaulting State, its members on the Board and its citizens, shall ipso facto be and become suspended from and after the date of such default. Unless such default shall be remedied and made good within a period of one year immediately following the date of such default this Compact may be terminated with respect to such defaulting State by an affirmative vote of three-fourths ( $\frac{3}{4}$ ) of the members of the Board (exclusive of the members representing the State in default), from and after which time such State shall cease to be a party to this Compact and shall have no further claim to or ownership of any of the property held by or vested in the Board or to any of the funds of the Board held under the terms of this Compact, but such termination shall in no manner release such defaulting State from any accrued obligation or otherwise affect this Compact or the rights, duties, privileges or obligations of the remaining States thereunder.

IN WITNESS WHEREOF this Compact has been approved and signed by Governors of the several States, subject to the approval of their respective Legislatures in the manner hereinabove set out, as of the 8th day of February, 1948.

- STATE OF FLORIDA  
By Millard F. Caldwell  
Governor
- STATE OF MARYLAND  
By Wm. Preston Lane, Jr.  
Governor
- STATE OF GEORGIA  
By M. E. Thompson  
Governor
- STATE OF LOUISIANA  
By J. H. Davis  
Governor
- STATE OF ALABAMA  
By James E. Folsom  
Governor
- STATE OF MISSISSIPPI  
By F. L. Wright  
Governor
- STATE OF TENNESSEE  
By Jim McCord  
Governor
- STATE OF ARKANSAS  
By Ben Laney  
Governor
- COMMONWEALTH OF VIRGINIA  
By William M. Tuck  
Governor
- STATE OF NORTH CAROLINA  
By R. Gregg Cherry  
Governor
- STATE OF SOUTH CAROLINA  
By J. Strom Thurmond  
Governor
- STATE OF TEXAS  
By Beauford H. Jester  
Governor
- STATE OF OKLAHOMA  
By Roy J. Turner  
Governor
- STATE OF WEST VIRGINIA  
By Clarence W. Meadows  
Governor

[Acts 1971, 62nd Leg., p. 3014, ch. 994, § 15, eff. Aug. 30, 1971.]

**§ 160.03. Compact Approved**

The above compact is approved. The State of Texas is declared to be a party to said compact, and the agreements, covenants, and obligations contained therein are declared to be binding on the State of Texas, insofar as is permissible under the Constitution of the State of Texas.

[Acts 1971, 62nd Leg., p. 3018, ch. 994, § 15, eff. Aug. 30, 1971.]

**§ 160.04. Governor as Representative**

The State of Texas shall be represented by the governor in all matters concerning the regional education program, and he shall have all powers necessary to effectuate the purposes of the compact including the power to make contracts with the Board of Control for Southern Regional Education for the education of Texas citizens in states other than Texas.

[Acts 1971, 62nd Leg., p. 3018, ch. 994, § 15, eff. Aug. 30, 1971.]

#### § 160.05. Enrolled Copies

The governor shall sign an enrolled copy of this chapter and sufficient copies shall be provided to supply each state approving the compact with an enrolled copy. The governor shall sign an enrolled copy of Section 160.06 of this code for submission to the Southern Regional Education Board.

[Acts 1971, 62nd Leg., p. 3018, ch. 994, § 15, eff. Aug. 30, 1971.]

#### § 160.06. Consent to Increased Membership

Consent is hereby given by the State of Texas to the membership of the States of West Virginia and Delaware in the Southern Regional Education Compact set out above upon the same terms and conditions as if each had signed, ratified, and approved the same as one of the original contracting states, subject to the approval of the other states party to the compact, and subject to the execution of a copy of the compact by the governor of each of the respective states of West Virginia and Delaware, and subject to the approval of the compact and acceptance of its terms, agreements, and obligations by their respective Legislatures.

[Acts 1971, 62nd Leg., p. 3018, ch. 994, § 15, eff. Aug. 30, 1971.]

### CHAPTER 161. COMPACT FOR EDUCATION

#### Section

- 161.01. Compact Entered Into: Text.
- 161.02. Texas Representatives.
- 161.03. Effective Date.

#### § 161.01. Compact Entered Into: Text

The Compact for Education is hereby entered into and enacted into law in the form substantially as follows:

#### COMPACT FOR EDUCATION

##### ARTICLE I. PURPOSE AND POLICY

Section A. It is the purpose of this compact to:

1. Establish and maintain close cooperation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the State and local levels.
2. Provide a forum for the discussion, development, crystalization and recommendation of public policy alternatives in the field of education.
3. Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the Nation, so that the executive and legislative branches of State Government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.
4. Facilitate the improvement of State and local educational systems so that all of them will be able to meet adequate and desirable goals in a society

which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

Section B. It is the policy of this compact to encourage and promote local and State initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and States.

Section C. The party States recognize that each of them has an interest in the quality and quantity of education furnished in each of the other States, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the Nation, and because the products and services contributing to the health, welfare and economic advancement of each State are supplied in significant part by persons educated in other States.

##### ARTICLE II. STATE DEFINED

As used in this Compact, "State" means a State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

##### ARTICLE III. THE COMMISSION

Section A. The Education Commission of the States, hereinafter called "the Commission," is hereby established. The Commission shall consist of seven members representing each party State. One of such members shall be the Governor or his designated representative, and six shall be appointed by and serve at the pleasure of the Governor, unless the laws of the State otherwise provide. In addition to any other principles or requirements which a State may establish for the appointment and service of its members of the Commission, the guiding principle for the composition of the membership on the Commission from each party State shall be that the members representing such State shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the State Government, higher education, the State education system, local education, lay and professional, public and non-public educational leadership. Of those appointees, one may be the head of a State agency or institution, designated by the Governor, having responsibility for one or more programs of public education. In addition to the members of the Commission representing the party States, there may be not to exceed ten non-voting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

Section B. The members of the Commission shall be entitled to one vote each on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the Commission are cast in favor thereof. Action of the Commission shall be only at a meeting at which a majority of the commissioners are present. The Commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the Commission may delegate the exercise of any

of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III(j).

Section C. The Commission shall have a seal.

Section D. The Commission shall elect annually, from among its members, a chairman, who shall be a Governor, a vice chairman and a treasurer. The Commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the Commission, and together with the treasurer and such other personnel as the Commission may deem appropriate shall be bonded in such amount as the Commission shall determine. The executive director shall be secretary.

Section E. Irrespective of the civil service, personnel or other merit system laws of any of the party States, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Commission, and shall fix the duties and compensation of such personnel. The Commission in its bylaws shall provide for their personnel policies and programs of the Commission.

Section F. The Commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

Section G. The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any State, the United States, or any other governmental agency or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Commission pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

Section H. The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

Section I. The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party States.

Section J. The Commission annually shall make to the Governor and legislature of each party State a report covering the activities of the Commission for the preceding year. The Commission may make such additional reports as it may deem desirable.

ARTICLE IV. POWERS

In addition to authority conferred on the Commission by other provisions of the compact, the Commission shall have authority to:

1. Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

2. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

3. Develop proposals for adequate financing of education as a whole and at each of its many levels.

4. Conduct or participate in research of the types referred to in this Article in any instance where the Commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

5. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

6. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

ARTICLE V. COOPERATION WITH FEDERAL GOVERNMENT

Section A. If the laws of the United States specifically so provided, or if administrative provision is made therefor within the Federal Government, the United States may be represented on the Commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to Federal law, and may be drawn from any one or more branches of the Federal Government, but no such representative shall have a vote on the Commission.

Section B. The Commission may provide information and make recommendations to any executive or legislative agency or officer of the Federal Government concerning the common educational policies of the States, and may advise with any such agencies or officers concerning any matter of mutual interest.

ARTICLE VI. COMMITTEES

Section A. To assist in the expeditious conduct of its business when the full Commission is not meeting, the Commission shall elect a steering committee of thirty members which, subject to the provisions of this compact and consistent with the policies of the Commission, shall be constituted and function as provided in the bylaws of the Commission. One-third of the voting membership of the steering committee shall consist of Governors, and the remainder shall consist of other members of the Commission. A Federal representative on the Commission may serve with the steering committee, but

without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the Commission shall be elected as follows: fifteen for one year and fifteen for two years. The chairman, vice chairman, and treasurer of the Commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the Commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two-term limitation.

Section B. The Commission may establish advisory and technical committees composed of State, local, and Federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the States concerned, be established to consider any matter of special concern to two or more of the party States.

Section C. The Commission may establish such additional committees as its bylaws may provide.

#### ARTICLE VII. FINANCE

Section A. The Commission shall advise the Governor or designated officer or officers of each party State of its budget and estimated expenditures for such period as may be required by the laws of that party State. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party States.

Section B. The total amount of appropriation requests under any budget shall be apportioned among the party States. In making such apportionment, the Commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party States.

Section C. The Commission shall not pledge the credit of any party States. The Commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III(g) of this compact, provided that the Commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it pursuant to Article III(g) thereof, the Commission shall not incur any obligation prior to the allotment of funds by the party States adequate to meet the same.

Section D. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the Commission.

Section E. The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party States and by any persons authorized by the Commission.

Section F. Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

#### ARTICLE VIII. ELIGIBLE PARTIES; ENTRY INTO AND WITHDRAWAL

Section A. This compact shall have as eligible parties all States, Territories, and Possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a Governor, the term "Governor," as used in this compact, shall mean the closest equivalent official of such jurisdiction.

Section B. Any State or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: provided that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions shall be required.

Section C. Adoption of the compact may be either by enactment thereof or by adherence thereto by the Governor; provided that in the absence of enactment, adherence by the Governor shall be sufficient to make his State a party only until December 31, 1967. During any period when a State is participating in this compact through gubernatorial action, the Governor shall appoint those persons who, in addition to himself, shall serve as the members of the Commission from his State, and shall provide to the Commission an equitable share of the financial support of the Commission from any source available to him.

Section D. Except for a withdrawal effective on December 31, 1967, in accordance with paragraph C of this Article, any party State may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States. No withdrawal shall affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal.

#### ARTICLE IX. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any Government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating therein, the compact shall remain in full force and effect as to the State affected as to all severable matters.

[Acts 1971, 62nd Leg., p. 3019, ch. 994, § 15, eff. Sept. 1, 1967.]

§ 161.02. Texas Representatives

The Texas membership to the Educational Commission of the States shall be the governor or his designated representative and six citizens of the state who shall be appointed and serve at the pleasure of the governor. These seven members shall officially represent Texas on the Education Commission of the States.

[Acts 1971, 62nd Leg., p. 3024, ch. 994, § 15, eff. Sept. 1, 1967.]

§ 161.03. Effective Date

The effective date of this chapter shall be September 1, 1967.

[Acts 1971, 62nd Leg., p. 3024, ch. 994, § 15, eff. Sept. 1, 1967.]

# DISPOSITION TABLE

Showing where provisions of former articles of the Civil Statutes and  
Penal Code of 1925 are covered in the Texas Education Code.

## CIVIL STATUTES

Civ.St. Article	Education Code Section		Civ.St. Article	Education Code Section
136	88.201		1269j—101 § 1	53.01
	88.205			53.31
137	88.202		§ 2	53.02
	88.203		§ 3	53.11
138	88.203			53.12
139	88.203			53.13
140	88.204		§ 4	53.14
141	—		§ 5	53.15
142	88.206		§ 6	53.33
143	88.206		§ 7	53.34
144	88.208		§ 8	53.35
145	88.207		§ 9	53.36
146	88.209		§ 10	53.37
147	88.210		§ 11	53.38
148	88.211		§ 12	53.39
149	88.212		§ 13	53.40
149a to 149k	—		§ 14	53.44
634(B)	21.161		§ 15	53.43
	21.162		§ 16	53.46
	21.164		§ 17	53.32
	21.165			53.45
	21.166		§ 18	53.41
	21.167		§ 19	53.42
	21.168		1415a	—
	21.169		2543c	51.008
634(C)	21.163		2584	65.11
689a—17a § 1	23.41			65.13
	23.42			65.15
	23.43		2584a	65.11
	23.45		2585	65.31
	23.46		2585a	67.22
	23.47		2585b	65.33
§ 2	23.44		2585c § 2(a)	67.02
	23.48		§ 2(b)	67.51
§ 3	23.49		§ 2(c)	67.61
§ 4	4.03(c)		§ 2(d)	74.151
	4.03(d)		§ 2(e)	73.201
	4.03(e)		§ 2(f)	73.301
§ 5	23.50		§ 2(g)	73.301
689a—19a § 1	17.56		§ 2(h)	68.02
§ 2	17.57		§ 2(i)	69.02
	17.58		2585d § 3(a)	67.51
§ 3	11.63(b)			67.61
§ 4	4.03(a)		§ 3(b)	74.001
	4.03(b)		§ 3(c)	73.301
	4.03(e)		§ 3(d)	73.001
§ 5	11.63(b)		2585e § 1	65.31
695i	17.91		§ 2	68.03
	17.92		§ 3	67.62
1109c	23.31		§ 4	67.52

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Civ.St. Article	Education Code Section
2586	65.32
2588	—
2589	65.14
2589a	—
2589b	—
2589c	67.21
2589d	67.21
2589e	67.21
2589f	67.23
2590	—
2591	—
2591a	66.04
2591b	66.05
2592	66.03
2592a	65.39
	66.41
2593	65.34
2593a	—
2594	65.35
2594a	65.37
2595	65.36
2595a	—
2596	65.39
	66.41
2597	66.44
2598	66.42
2599	—
2600	—
2601	—
2602	—
2603	—
2603a § 1	66.61
	66.62
§ 2	—
§ 3	66.63
§ 4	66.64
§ 5	66.65
§ 7	66.67
§ 8(a)	66.67
§ 8(b)—1	66.68
§ 8(b)—2	66.69
§ 8(c)	66.71
§ 9	66.72
§ 10	66.73
§ 11	66.74
§ 12	66.75
§ 13	66.76
§ 14	66.77
	66.78
§ 15	—
§ 16	66.80
§ 18	66.62
	66.66
	66.79
2603a—1	66.70
2603b	66.43
2603b—1	65.39
	66.41
2603b—3	69.21
2603c	—
2603d	—
2603e § 1	73.101
§ 2	73.103
§ 3	73.104

Civ.St. Article	Education Code Section
2603e § 4	73.105
§ 5	73.102
§ 6	73.108
§ 7	73.107
	73.108
§ 8	73.108
§ 9	73.107
§ 10	73.109
§ 11	—
§ 12	73.110
2603f § 1	73.101
	73.111
	73.201
§ 2	73.202
2603f—1	—
2603f—2 § 1	73.151
§ 2	73.152
§ 3	73.153
§ 4	73.154
§ 5	73.155
§ 6	73.156
	73.201
§ 7	—
§ 8	—
2603f—2.1	73.157
2603f—3 § 1	74.251
	74.252
§ 2	74.253
§ 3	74.254
§ 4	74.255
2603f—4	65.40
2603g	74.105
2603h	74.002
2604	65.38
2606	—
2606b § 1	74.101
§ 1a	74.101
§ 2	74.102
§ 3	74.101
§ 4	74.103
§ 5	74.104
2606c § 1	74.151
	74.154
§ 2	74.152
§ 3	74.153
§ 4	—
2606c—1	—
2606c—1.1 § 1	73.051
§ 2	73.052
§ 3	73.053
§ 4	74.201
§ 5	73.054
	74.202
§ 6	73.055
	74.203
§ 7	73.056
	74.204
§ 8	73.057
	74.205
2606c—2 § 1	74.301
	74.302
§ 2	74.303

## DISPOSITION TABLE

Civ.St. Article	Education Code Section	Civ.St. Article	Education Code Section
2606c—2 § 3	74.306	2613	
§ 4	74.304	Subd. 10	88.101
§ 5	74.305		88.102
2606c—2.1 § 1	74.351		88.105
	74.352	Subd. 10a	88.103
§ 2	74.353	Subd. 11	88.107
§ 3	74.354	Subd. 12	88.111
§ 4	74.355	2613a	88.109
2606c—2.2 § 1	74.401	2613a—1	85.23
§ 2	74.402	2613a—2	88.108
§ 3	74.403	2613a—3 § 1(a)	85.51
§ 4	74.404	§ 1(b)	85.70
2606c—3 § 1	71.01	§ 1(c)	85.70
§ 2	71.02	§ 2	85.53
	71.03	§ 3	85.54
	71.04		85.55
	71.05	§ 4	85.55
§ 3	71.06	§ 4a	85.52
§ 4	—	§ 5	85.56
2606c—3.1 § 1	70.01		85.58
	70.02		85.63
§ 2	70.03	§ 6	85.58
	70.04		85.60
§ 3	70.05	§ 7(a)	85.58
§ 4	70.06	§ 7(b)	85.59
§ 5	70.07	§ 7(c)	85.59
2606c—4 § 1	72.01	§ 7(d)	85.62
§ 2	72.02	§ 8	85.61
	72.03	§ 9	85.65
	72.04	§ 10	85.66
§ 3	72.05	§ 11	85.64
§ 4	72.06	§ 12	85.67
2606d § 1	75.101	§ 13	85.68
	111.61		85.69
§ 2	75.103	§ 14	85.57
	75.104		85.71
	111.63	§ 15	85.72
	111.64	2613a—4	85.24
§ 3	75.102	2613a—5	86.19
	111.62	2613a—6	—
§ 4	75.105	2613a—7	85.26
	111.65	2613a—8	88.110
2607	86.02	2613a—9	85.27
2607a § 1	86.02	2613a—11	85.25
§ 2	85.11	2613b	88.106
§ 3	85.11	2613b—1	88.104
2608	86.03	2613c § 1	88.112
2609	—		88.116
2610	85.11	§ 2	88.112
	85.14	§ 3	88.113
2611	85.13	§ 4	88.114
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§ 6	74.056	5416a	15.01
§ 7	74.058	5891A—1	51.212
§ 8	74.059	5891A—2	21.308
§ 9	74.060	6203b—2 § 1	29.01
§ 10	74.061	§ 2	29.02
§ 11	74.062	§ 3	29.03
	74.063	§ 4	29.04
§ 12	74.054	§ 5	29.05
3254c—1	74.051	6228a—4 § 1	3.25
3254c—2	74.051	§ 2	3.26
3264b	65.33	7150a	17.84
3888	17.51(e)		

## PENAL CODE (1925)

P.C. Article	Education Code Section	P.C. Article	Education Code Section
97	4.04(a)	297	21.032
288	4.17 Rep.	298	21.033
	21.109	299	4.25(a)
289	4.16	300	4.25(b)
	21.102	301	4.05
290	4.15		21.252
	21.103		21.253
291	4.11		21.254
292	4.12	301a	—
292a	4.29	301b	4.18
293	4.24		21.170(e)
293a	4.13	301c	4.07(c)
293b	4.14		4.08
293c	—	301d	4.20
294	4.26		4.21
294a	4.01 Rep.	419b	51.007
295	4.23	424	4.04(b)
295a	4.30	666—25b	4.22
295b	4.31	994	4.10
295c	4.33	1152	4.19(a) (b)
295d	51.231	1153	4.19(c)
	to	1154	4.19(d)
	51.244	1155	4.19(e)
296	4.09	1156	4.19(f)

TABLE OF  
SPECIAL LAWS PERTAINING  
TO EDUCATION

*Certain special laws relating to education, many of which were classified to Title 49, Education—Public, of the Civil Statutes, have not been repealed and are not carried into the Education Code. They have been dropped from the Civil Statutes as special laws.*

*The tabulation below lists these special laws numerically by article number classification to Vernon's Texas Civil Statutes (where so classified), followed by the subject matter and the original and amendatory citations to the General and Special Laws of Texas.*

Civ.St.Art.	Laws Citation	Subject Matter
		UNIVERSITY OF TEXAS SYSTEM
		El Paso County conveyances
2603b-2	1961, ch. 13	—Stadium site
2603b-4	1961, ch. 553 1971, ch. 114	—Special events center
2603c1	1939, p. 689	Validation of proceedings and bonds
2603c2	1941, ch. 404	purchased by Federal agencies
2603i	1959, ch. 59	Marine Science Institute, improve- ment of facilities
2603j	1961, ch. 113	Dallas County Hospital District, land exchange
2606a	1934, 2nd C.S., ch. 65	Refunding bonds
		TEXAS A & M UNIVERSITY
		Conveyance of land to United States for research facilities
2613a-10, § 1	1965, ch. 140, § 1	—Livestock insects and toxicology laboratory, cotton disease
2613a-10, § 2	1965, ch. 140, § 2	—Ginning, Agricultural Experimen- tal Station at Lubbock
2615d-1	1971, ch. 570	Kimble County Adjunct, transfer to Texas Tech
—	1973, ch. 500	Veterinary Medical Diagnostic Laboratory
		TEXAS TECH UNIVERSITY
		Conveyance of easements
2632f	1961, ch. 216	—Emergency telephones
2632f-1	1967, ch. 482	—Water line
—	1973, ch. 123	Conveyance to Highway Dept. and State
2654-1g	1969, 2nd C.S., ch. 30 1971, ch. 821	Brooks Study Act
		INDEPENDENT SCHOOL DISTRICTS
2668a	1961, ch. 60	Denton State School
2668b	1963, ch. 39	Travis State School
2668c	1963, ch. 63	Richmond State School
2668d	1963, ch. 64	Lufkin State School
2668e	1965, ch. 170	Lubbock State School
—	1973, ch. 199	Rio Grande State Center for Mental Health and Mental Retardation

Civ.St.Art.	Laws Citation	Subject Matter
		INDEPENDENT SCHOOL DISTRICTS—Continued
—	1973, ch. 200	Brenham State School
—	1973, ch. 585	Harris County Youth Village
		COUNTY SCHOOL BOARD OR TRUSTEES
		Election
2676a	1963, ch. 511	—Counties of 100,000 to 120,000
	1971, ch. 542, § 71	
2676b	1965, ch. 233	—County-wide district in counties of 4,400 to 4,675
	1971, ch. 542, § 8	
2676c	1965, ch. 595	—Counties of 1,500,000 or more
	1971, ch. 542, § 3	
2685a	1935, ch. 175	Expenses of administering scholastic affairs, counties of 13,600 to 13,650 and 15,200 to 15,700
		Expenses of county judge as ex-officio county superintendent
2685b	1939, Spec.L., p. 627	—Counties of 5,100 to 5,200
2685b-1	1941, ch. 92	—Counties of 5,950 to 6,050
		Compensation and meetings
2687b	1937, 1st C.S., ch. 40	—Counties of 130 000 to 133,000
2687c	1941, ch. 587	—Counties of 48,800 to 50,400
2687d	1941, ch. 577	—Counties of 23 005 to 23,300
		—Counties of 29,225 to 29,240
		—Counties of 31,830 to 32,941
		—Counties of 34,000 to 35,000
		—Counties of 50,950 to 51,100
2687e	1971, ch. 542, § 122	—Counties of 97,500 to 100,000
2687f	1971, ch. 542, § 123	—Counties of 20,500 to 20,800
		COUNTY SUPERINTENDENT
2688b	1934, 2nd C.S., ch. 67	Appointment in counties over 350,000
		Abolition of office and transfer of duties
2688d	1961, ch. 164	—Certain counties of not more than 4 districts
2688f	1961, ch. 514	—Counties of 60,000 to 66,000
	1971, ch. 542, § 37	
2688g	1962, 3rd C.S., ch. 17	—Counties of 600 000 or more with 4 or more districts
2688h	1962, 3rd C.S., ch. 63	—Counties of 110 000 to 124,000
	1969, ch. 826	—Counties of 150,000 to 170,000
	1971, ch. 542, § 98	
	1973, ch. 102	
2688h-1	1967, ch. 54	—Counties of 11,800 to 11,875
	1971, ch. 542, § 33	
2688i	1963, ch. 3	—Counties of 300,000 to 500,000
	1971, ch. 542, § 74	
2688i-1	1965, ch. 706	—In general
	1971, ch. 542, §§ 79, 126	
2688i-2	1967, ch. 493	—Counties of 86,472 to 86,500
2688j	1963, ch. 212	—Counties of 15,800 to 16,000
	1967, ch. 543	
	1971, ch. 542, § 30	
2688k	1963, ch. 446	—Counties of 16,000 or more
2688k-1	1967, ch. 253	—Counties of 18,300 to 18,600
	1971, ch. 542, § 55	
2688l	1965, ch. 204	—Counties of 3 180 to 3,230
	1971, ch. 542, §§ 34, 78	—Counties of 22 000 to 22,500
2688m	1965, ch. 506	—Counties of 15,500 to 15,700
	1971, ch. 542, § 110	
2688n	1965, ch. 654	—Counties of 25,750 to 28,000
2688n-1	1967, ch. 26	—Counties of 37,500 to 43,000
	1971, ch. 542, § 31	

## TABLE OF SPECIAL LAWS

Clv.St.Art.	Laws Citation	Subject Matter
		COUNTY SUPERINTENDENT— Continued
		Abolition of office and transfer of duties—Continued
2688o	1965, ch. 709	—Counties of 36,500 to 37,000
	1971, ch. 542, § 56	
2688p	1967, ch. 145	—Counties of 33,300 to 33,700
	1971, ch. 542, § 32	
2688q	1969, ch. 311	—Counties of 6,500 to 6,650
	1971, ch. 542, § 35	
2688r	1969, ch. 312	—Counties of 19,680 to 19,800
	1971, ch. 378	
	1971, ch. 542, § 127	
2688s	1969, ch. 313	—Counties of 50,000 to 53,000
	1971, ch. 542, § 76	
2688t	1969, ch. 322	—Counties of 24,150 to 24,400
	1971, ch. 542, § 36	
2688u	1969, ch. 352	—Counties of 17,640 to 17,700
	1971, ch. 542, § 75	
2688v	1971, ch. 167	—Counties of 21,000 to 22,000
2688w	1971, ch. 204	—Counties of 17,400 to 17,640
2688x	1971, ch. 278	—Counties of 53,800 to 55,000
2688y	1971, ch. 285	—Counties of 27,800 to 28,800
2688z	1971, ch. 338	—Counties of 27,500 to 27,660
2688aa	1971, ch. 415	—Counties of 24,400 to 24,600
	1973, ch. 391	—Counties of 34,103 to 35,310
2688bb	1971, ch. 453	—Counties of 9,100 to 9,200
	1973, ch. 376	
—	1973, ch. 195	—Runnels County
—	1973, ch. 206	—Angelina, Dawson, Henderson and Terry Counties
—	1973, ch. 294	—Tom Green County
—	1973, ch. 310	—Lubbock County
—	1973, ch. 384	—Caldwell County
—	1973, ch. 386	—Wheeler County
—	1973, ch. 389	—Uvalde County
—	1973, ch. 623	—Dawson County
2700a	1927, ch. 266	Salary and expenses in certain
2700b	1927, ch. 267	counties
2700c	1929, ch. 44	
	1931, Spec.L., ch. 219	
2700d	1929, ch. 148	
2700d-1	1930, 4th C.S., ch. 49	
2700d-2	1930, 5th C.S., ch. 83	
2700d-3 note	1931, Spec.L., chs. 55, 166, 193, 194	
	1935, chs. 82, 146	
	1935, 1st C.S., ch. 393	
	1935, 2nd C.S., ch. 450	
2700d-4	1935, ch. 80	
2700d-5	1935, ch. 232	
2700d-6	1935, 2nd C.S., ch. 471	
2700d-7	1937, ch. 27	
2700d-8	1937, ch. 64	
2700d-9	1937, ch. 75	
2700d-10	1937, ch. 82	
2700d-11	1937, ch. 127	
2700d-12	1937, ch. 105	
2700d-13	1937, ch. 132	
2700d-14	1937, ch. 135	
2700d-15	1937, ch. 197	
2700d-16	1937, ch. 411	
2700d-17	1937, ch. 477	
2700d-18	1937, 1st C.S., ch. 29	
2700d-19	1939, Spec.L., p. 632	

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Civ.St.Art.	Laws Citation	Subject Matter
		COUNTY SUPERINTENDENT— Continued
		Salary and expenses in certain counties—Continued
2700d-20 to	1937, 2nd C.S., ch. 43	
2700d-40	1939, Spec.L., pp. 628 to 657	
2700d-41	1941, ch. 229	
2700d-42	1941, ch. 278	
2700d-43	1941, ch. 643	
2700d-44	1945, ch. 126	
2700e	1965, ch. 500	Assistants, salaries in certain counties
2700e-1	1967, ch. 69 1969, ch. 603 1971, ch. 542, § 129	
2700e-2	1967, ch. 314 1971, ch. 542, § 133	
2700e-3	1969, ch. 314 1971, ch. 542, § 43	
2700e-4	1969, ch. 320 1971, ch. 542, § 6	
2700e-5	1969, ch. 495 1971, ch. 542, § 130	
2700e-6	1969, ch. 517 1971, ch. 542, § 131	
2700e-7	1969, ch. 573 1971, ch. 542, § 44	
2700e-8	1969, ch. 601 1971, ch. 542, § 9	
2700e-9	1969, ch. 822 1971, ch. 542, § 132	
2700e-10	1971, ch. 93	
2700e-11	1971, ch. 94	
2700e-12	1971, ch. 153	
2700e-13	1971, ch. 196	
2700e-14	1971, ch. 201	
2700e-15	1971, ch. 408	
2700e-16	1971, ch. 487	
2700e-17	1971, ch. 914	
		RURAL SCHOOL SUPERVISORS
2701a	1929, ch. 219	Certain counties
2701b	1929, ch. 251	
2701c	1929, 1st C.S., ch. 74	
2701d	1929, 3rd C.S., ch. 9	
2701d-1	1930, 5th C.S., ch. 32	
2701d-2	1930, 5th C.S., ch. 53	
2701d-2a	1927, 1st C.S., ch. 91 1929, 1st C.S., ch. 77 1930, 4th C.S., ch. 36 1931, Spec.L., ch. 164 1933, ch. 42 1939, Spec.L., p. 170	
2701d-3 note	1931, Spec.L., chs. 9, 14, 28, 45, 115, 118, 153, 157, 160, 188, 198, 205, 217 1935, chs. 143, 177, 218 1935, 1st C.S., ch. 392 1937, chs. 45, 50, 116 1939, Spec.L., pp. 709, 712 1941, ch. 418	
2701d-4	1933, ch. 181	
2701d-5	1931, 1st C.S., ch. 39 1939, Spec.L., pp. 713-715	
2701e-1	1939, Spec.L., p. 718	

## TABLE OF SPECIAL LAWS

Civ.St.Art.	Laws Citation	Subject Matter
		<b>COUNTY UNIT SYSTEM</b>
2702	1923, p. 237	Counties of 3,960 to 4,000
	1931, ch. 348	Counties of 8,600 to 9,000
	1941, ch. 128	Counties of 100,000 or more
2702-A	1947, ch. 331	Counties of 24,000 to 25,000
		Supervision, management and control of schools
2740a	1927, 1st C.S., ch. 89	—Counties of 42,000 to 52,000 of more than 1100 square miles
	1939, Spec.L., p. 693	
2740b	1929, ch. 289	—Counties of 15,000 to 20,000
2740c	1929, ch. 295	—Counties of 8,955 to 8,960, exemption of independent districts
2740d	1929, 2nd C.S., ch. 31	—Counties of 80,000 to 130,000
	1931, ch. 324	
2740f-2	1937, ch. 163	Counties of 5,600 to 5,750
2740f-3	1941, ch. 95	Counties of 7,500 to 7,590
2740f-4	1941, ch. 233	Counties of 10,339 to 10,540
2740f-5	1947, ch. 399	Counties of 27,000 to 30,000
2740g	1935, ch. 103	Counties having large areas in reforestation
		<b>COUNTY SCHOOL TRUSTEES</b>
2740h	1939, Spec.L., p. 690	Compensation and meetings, counties of 8,470 to 8,480
		<b>SCHOOL DISTRICTS</b>
		County board of education, consolidation, subdivision of districts
2742c	1929, ch. 134	—Counties of 34,300 to 34,500 and 930 to 1075 square miles
2742c note	1933, 1st C.S., ch. 108	—Counties of 9,000 to 12,000 and 3600 to 3800 square miles
2742c-1	1941, ch. 608	Separation from municipal control to become common district, city of 1600 or less
		<b>INDEPENDENT SCHOOL DISTRICTS</b>
2742f-2	1963, ch. 258	Boundary changes, counties of 110,000 to 124,000
	1971, ch. 542, § 61	County-wide districts
2744e	1937, ch. 231	—Counties of 20,000 to 32,500
2744e-1	1939, Spec.L., p. 677	—Counties of 35,000 to 67,500
2744e-2	1939, Spec.L., p. 673	—Counties of 2,775 to 2,850
2744e-3	1941, ch. 150	—Counties with taxable property of \$17,000,000
	1947, ch. 85	
2744e-4	1947, ch. 181	—Counties with scholastics under 2500 and not more than 2 districts
	1951, ch. 229	
2744e-5	1949, ch. 84	—Counties of 20,100 to 21,000
2744e-6	1949, ch. 134	—Counties with taxable property of \$42,000,000
		<b>COMMON SCHOOL DISTRICTS</b>
		Tax assessor-collector, board of equalization
2756d	1963, ch. 397	—Counties of 5,800 to 6,000
	1971, ch. 542, § 124	—Counties of 97,500 to 100,000
		<b>INDEPENDENT SCHOOL DISTRICTS</b>
2761b	1937, 2nd C.S., ch. 10	Exemptions from county control, counties of 11,000 to 11,021
2763a	1945, ch. 188	Depositories, assessors and collectors in districts created by special laws
	1961, ch. 451	

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Civ.St.Art.	Laws Citation	Subject Matter
		INDEPENDENT SCHOOL DISTRICTS—Continued
		Boundary changes
2766a	1955, ch. 172	—Counties of 100,000 or more
2766b	1961, ch. 484	—Counties of 149,000 or more with 16,500 scholastics
2766c	1963, ch. 35	—Counties of 36,500 to 37,000
	1971, ch. 542, § 1	
2767h	1963, ch. 294	Validation, district having less than 200 scholastics
		Trustee elections
2774b	1951, ch. 339	—City of 900,000 or more and 200,000 scholastics
	1965, ch. 312	
2774c-1	1965, ch. 39	—Counties of 15,800 to 16,000
	1971, ch. 542, § 137	—Counties of 75,800 to 76,000
2774d	1957, ch. 475	—Scholastics of 30,220 or more
2775a-3	1963, ch. 233	—Counties of 6,355 to 6,360
	1971, ch. 542, § 128	—Counties of 10,300 to 10,373
2775a	1953, ch. 76	—Counties of 800,000 or more
2775a-1	1955, ch. 360	—Scholastics of 500 or more
	1963, ch. 262	
	1965, ch. 73	
2775a-2	1959, ch. 482	—Scholastics of 18,000 or more
2775a-4	1963, ch. 413	—Counties of 8,500 to 9,000
2775a-5	1965, ch. 452	—Counties of 11,800 to 11,880
	1971, ch. 542, § 13	
2775a-6	1965, ch. 652	—Counties of 27,650 to 27,750
	1971, ch. 542, § 66	
2775a-7	1965, ch. 702	—Counties of 110,000 to 124,000
	1971, ch. 542, § 65	
2775a-8	1967, ch. 351	—Counties of 150,000 to 170,000
	1971, ch. 542, § 11	
2775a-9	1967, ch. 350	—Certain districts
2775b	1959, ch. 9	—Counties of 110,000 to 800,000
2775c	1959, ch. 24	—Scholastics of 1,831 to 1,835 and city of 4,427 to 4,430
2775c-1	1965, ch. 179	—Average daily attendance of 2,100 to 2,200
2775e	1962, ch. 23	—Counties of 100,000 to 120,000
	1971, ch. 542, § 72	
2775e-1	1969, ch. 9	—Counties of 17,600 to 17,640
	1971, ch. 542, § 46	
2775e-2	1969, ch. 443	—Counties of 8,000 to 8,030
	1971, ch. 542, § 70	
2775e-3	1971, ch. 324	—Counties of 19,675 to 20,020
2775f	1965, ch. 36	—Counties of 53,700 to 53,800
	1971, ch. 542, § 67	
2775f-1	1967, ch. 34	—Counties of 145,000 to 160,000
	1971, ch. 542, § 63	
2777a	1931, ch. 317	—City of 200,000 or more
		Trustee terms of office
2774d-4	1965, ch. 266	—City of 2,095 to 2,105
2777b	1933, ch. 36	—City of 220,000 to 290,000
	1945, ch. 221	
2777c	1935, ch. 64	—City of 160,000 to 220,000
2777d	1937, ch. 153	—City of 75,000 to 175,000
	1945, ch. 186	
	1949, ch. 87	
	1959, ch. 102	
2777d-1	1959, 1st C.S., ch. 21	—City of 2,620 to 2,630
2777d-2	1961, ch. 145	—Counties of less than 2,601
2777d-3	1965, ch. 178	—Counties of 1,117 to 1,175
2777e	1941, ch. 17	—City of 375,000 or more and 70,000 or more scholastics

## TABLE OF SPECIAL LAWS

Civ.St.Art.	Laws Citation	Subject Matter
		INDEPENDENT SCHOOL DISTRICTS—Continued
		Trustee terms of office—Continued
2777f	1961, ch. 531 1971, ch. 542, § 136	—City of 8,000 to 8,150
2779a	1941, ch. 272	Tax assessor and collector —Counties of 19,220 to 19,240 —Counties of 51,325 to 54,200
2782	1905, p. 263	Trustee elections, exemptions, Dallas and Fort Worth
		Separation from municipal control to become independent district
2783a	1929, ch. 302	—City of 100,000 or less
2783b	1935, ch. 88	—City of 30,000 or less
2783d	1947, ch. 171 1949, ch. 391 1953, ch. 28 1961, ch. 2 1967, ch. 445 1971, ch. 70 1973, ch. 211	—City of 290,000 or more
2783d-1	1971, ch. 945	Combined occupancy structure, average daily attendance over 100,000
2783e	1949, ch. 235	Separation from municipal control to become independent district, validation
2783f	1953, ch. 272	Receipts and expenditures, reports, city of 575,000
2783g	1961, ch. 407	Separate district in counties over 100,000 containing same territory as city
		TAXES AND TAXATION
		Common school districts
2784e-2	1959, ch. 487	—Counties of 20,560 to 20,850
2784e-3	1959, ch. 468 1961, ch. 39 1971, ch. 542, § 68	—Counties of 90,000 to 91,000
2784e-4	1959, 2nd C.S., ch. 11	—Scholastics over 200
2784e-5	1963, ch. 89	—Counties of 12,300 to 12,400
2784e-6	1963, ch. 98 1971, ch. 542, § 42	—Counties of 26,000 to 26,600
2784e-7	1965, ch. 389	—Counties of 10,300 to 10,350
2784e-8	1967, ch. 63 1971, ch. 45	—County-line consolidated, counties of 18,600 to 18,690
2784e-9	1967, ch. 231 1971, ch. 542, § 106	—County-line, counties of 24,600 to 25,000 and 49,000 to 49,400
2784e-10	1967, ch. 719 1971, ch. 542, § 69 1971, ch. 801	—Counties of 13,900 to 14,000
2784e-11	1969, ch. 229 1971, ch. 542, § 7	—Counties of 20,400 to 20,900
2784e-12	1969, ch. 748 1971, ch. 542, § 12	—Counties of 80,000 to 90,000
2784e-13	1971, ch. 144	Independent school districts, counties of 11,700 to 11,850
		Common school districts
2784e-14	1971, ch. 206	—Counties of 17,870 to 18,050
2784e-15	1971, ch. 488	—Counties of 19,500 to 19,630
2784e-16	1971, ch. 606	—Certain districts located partly in four counties
2784e-17	1971, ch. 724	Counties of 10,580 to 10,800

Civ.St.Art.	Laws Citation	Subject Matter
		<b>TAXES AND TAXATION—Cont'd</b>
		Common school districts
2784e-18	1971, ch. 779	—Counties of 53,700 to 53,800
2784e-19	1971, ch. 805	—Counties of 141,000 to 161,000, non-rural
—	1973, ch. 304	LaSalle County
2784g	1953, ch. 273	Counties of 700,000 or more
	1959, ch. 7	
2784g-1	1963, ch. 308	Independent school districts, tax assessor and collector, counties of 100,000 to 200,000
	1971, ch. 542, § 77	
2784g-2	1971, ch. 842	Certificates of indebtedness by school and junior college districts, counties of 200,000 or more
2784h	1963, ch. 86	Common school districts, counties of 68,000 to 73,000, validation
		<b>RURAL HIGH SCHOOL DISTRICTS</b>
2786f	1953, ch. 433	Warrants in certain counties
		<b>COMMON SCHOOL DISTRICTS</b>
2788a	1949, ch. 123	Bonds, scholastics of 60,000 or more
	1957, ch. 374	
		<b>INDEPENDENT SCHOOL DISTRICTS</b>
		Warrants
2790d-10	1965, ch. 82	—Counties of 5,250 to 5,290
	1971, ch. 542, § 38	
2790d-11	1967, ch. 62	—Counties of 5,500 to 6,500
2790d-12	1967, ch. 65	—Counties of 5,300 to 5,400
	1971, ch. 542, § 39	
2790d-13	1969, ch. 53	—Counties of 9,900 to 10,100
	1971, ch. 542, § 45	
2790d-14	1969, ch. 161	—Counties of 687,000 to 688,000
2790d-15	1969, ch. 575	—Counties of 18,600 to 18,690
	1971, ch. 542, § 125	
2790d-16	1969, ch. 828	—Counties of 6,705 to 6,790
	1971, ch. 542, § 4	
2790d-17	1969, 2nd C.S., ch. 46	—Counties of 6,360 to 6,400
	1971, ch. 542, § 64	
2790d-18	1971, ch. 170	—Average daily attendance over 4,000, etc.
2790d-19	1971, ch. 927	—City of 322,000 to 328,000
2790a	1929, ch. 205	Validation
2790a-1	1936, 3rd C.S., ch. 499	Validation
2790a-3	1939, Spec.L., p. 1025	—Counties of 17,000 to 17,500
2790a-4	1939, p. 292	Limit on rate under one dollar
2790a-5	1943, ch. 17	Validation
2790a-6	1949, ch. 612	Validation
2790b	1933, ch. 182	Validation, counties of 16,363 to 16,963
		Warrants
2790c	1933, ch. 168	—Counties of 22,000 to 22,100
2790d	1934, 4th C.S., ch. 22	—Districts partly in 3 or more counties
2790d-1	1939, Spec.L., p. 700	—Counties of 5,796 to 5,890
2790d-2	1939, Spec.L., p. 701	—Counties of 13,950 to 14,050
2790d-3	1939, Spec.L., p. 702	—Counties of 17,000 to 17,500
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# FAMILY CODE

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## TITLE 1. HUSBAND AND WIFE

### SUBTITLE A. THE MARRIAGE RELATIONSHIP

#### CHAPTER 1. ENTERING THE MARRIAGE RELATIONSHIP

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SUBCHAPTER A. APPLICATION FOR MARRIAGE LICENSE

§ 1.01. Marriage License

A man and a woman desiring to enter into a ceremonial marriage shall obtain a marriage license from the county clerk of any county of this state. A license may not be issued for the marriage of persons of the same sex.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1596, ch. 577, § 1, eff. Jan. 1, 1974.]

§ 1.02. Application for License

Except as otherwise provided by Section 1.05 of this code, persons applying for a license shall:

- (1) appear together or separately before the county clerk;
- (2) submit for each applicant:
  - (A) proof of identity and age as prescribed by Section 1.04 of this code;
  - (B) a medical examination certificate or an exemption order as prescribed by Subchapter B of this chapter;<sup>1</sup> and,
  - (C) if required, the documents establishing parental consent, or a court order, as prescribed by Subchapter C of this chapter;<sup>2</sup>
- (3) provide the information for which spaces are provided in the application for a marriage license; and,
- (4) take the oath printed on the application and sign the application before the county clerk.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1597, ch. 577, § 2, eff. Jan. 1, 1974.]

<sup>1</sup> Section 1.21 et seq.  
<sup>2</sup> Section 1.51 et seq.

§ 1.03. Application Form

(a) The county clerk shall furnish the application form as prescribed by the Bureau of Vital Statistics of the State Department of Health.

(b) The application form shall contain:

- (1) a heading entitled "Application for Marriage License, . . . . . County, Texas";
- (2) spaces for each applicant's full name (including the woman's maiden surname), address, social security number, if any, date of birth, and place of birth (including city, county, and state);
- (3) a space for indicating the document tendered by each applicant as proof of identity and age;
- (4) spaces for indicating whether each applicant has been divorced within the last 30 days;
- (5) printed boxes for the applicant to check "true" or "false" in response to the following statement: "I am not presently married.";

(6) printed boxes for each applicant to check "true" or "false" in response to the following statement: "The other applicant is not related to me as:

- (A) an ancestor or descendant, by blood or adoption;
- (B) a brother or sister, of the whole or half blood or by adoption; or
- (C) a parent's brother or sister of the whole of<sup>1</sup> half blood.";

(7) a printed oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT THE INFORMATION I HAVE GIVEN IN THIS APPLICATION IS CORRECT.";

(8) spaces immediately below the printed oath for the applicants' signatures;

(9) a certificate of the county clerk that the applicants made the oath and the date and place that it was made (or that the applicant did not appear personally but the prerequisites for the license have been fulfilled as prescribed by Section 1.05 of this code);

(10) spaces for indicating the date of the marriage and the county in which it is performed; and

(11) a space for the address to which the applicants desire the executed license to be mailed.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1971, 62nd Leg., p. 2351, ch. 715, § 1, eff. June 8, 1971; Acts 1973, 63rd Leg., p. 1597, ch. 577, § 3, eff. Jan. 1, 1974.]

<sup>1</sup> So in enrolled bill; probably should read "or".

§ 1.04. Proof of Identity and Age

The county clerk shall require proof of identity and age of each applicant to be established by a certified copy of the applicant's birth certificate or by some certificate, license, or document issued by this state or another state, the United States, or a foreign government.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.05. Absent Applicant

(a) If only one of the applicants is able to appear personally before the county clerk to apply for a marriage license, any adult person or the other applicant may apply on behalf of the absent applicant.

(b) The person applying on behalf of an absent applicant shall present to the clerk:

- (1) the affidavit of the absent applicant as prescribed by Subsection (c) of this section;
- (2) proof of the identity and age of the absent applicant as provided by Section 1.04 of this code;
- (3) a medical examination certificate or an exemption order for the absent applicant as prescribed by Subchapter B of this chapter;<sup>1</sup> and

(4) if required, the documents establishing parental consent, or a court order, for the absent applicant as prescribed by Subchapter C of this chapter.<sup>2</sup>

(c) The affidavit of an absent applicant must include:

(1) the absent applicant's full name (including the maiden surname, if applicable), address, date of birth, place of birth (including city, county, and state), citizenship, and social security number, if any;

(2) a declaration that the absent applicant is not presently married (unless to the other applicant and they wish to marry again);

(3) a declaration that the other applicant is not related to the absent applicant as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption; or

(C) a parent's brother or sister of the whole or half blood;

(4) a declaration that the absent applicant desires to marry, and the name, age, and address of the person to whom the absent applicant desires to be married;

(5) the approximate date on which the marriage is to occur;

(6) the reason the absent applicant is unable to appear personally before the county clerk for the issuance of the license; and

(7) if the absent applicant will be unable to attend the ceremony, the appointment of any adult, except the other applicant, to act as proxy for the purpose of participating in the ceremony.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1598, ch. 577, § 4, eff. Jan. 1, 1974.]

<sup>1</sup> Section 1.21 et seq.  
<sup>2</sup> Section 1.51 et seq.

### § 1.06. Execution of Application

(a) The county clerk shall:

(1) determine that all necessary information (other than the date of the marriage ceremony, the county in which it is conducted, and the name of the person who performs the ceremony) is entered in the application and that all necessary documents are submitted to him;

(2) administer the oath to each applicant appearing before the clerk;

(3) have each applicant appearing before the clerk sign the application in his presence; and

(4) execute his certificate on the application.

(b) A person appearing before the clerk on behalf of an absent applicant is not required to take the oath on behalf of the absent applicant.

<sup>1</sup> West's Tex. Stats. & Codes—46

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1598, ch. 577, § 5, eff. Jan. 1, 1974.]

### § 1.07. Issuance of License

(a) The county clerk may not issue a license to the applicants if:

(1) either applicant fails to provide information as required by Sections 1.02 and 1.05 of the code;

(2) either applicant fails to submit proof of age and identity;

(3) either applicant is under 16 years of age and the waiver of age requirements has not been ordered under the provisions of Section 1.51(c) of this code;

(4) either applicant fails to comply with the requirements of Subchapter B of this chapter;<sup>1</sup> or

(5) either applicant checks "false" in response to a statement in the application, except as provided in Subsection (b) of this section, or fails to make a required declaration in an affidavit required of an absent applicant.

(b) If an applicant checks "false" in response to the statement "I am not presently married," the county clerk shall inquire as to whether or not the applicant is presently married to the other applicant. If the applicant states that he is presently married to the other applicant, the county clerk shall record that statement on the license prior to the administration of the oath. The county clerk may not refuse to issue a license on the ground that the applicants are already married to each other.

(c) On the proper execution of the application, the clerk shall prepare the license. On the reverse side of the license he shall enter the names of the licensees and, for each of them, the date of the medical examination or the fact that an exemption was obtained, and the name of the person appointed to act as proxy for an absent applicant, if any.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1599, ch. 577, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> Section 1.21 et seq.

### § 1.08. Recording

The county clerk shall record all licenses issued by him and shall record all documents submitted with applications for licenses or note a summary of them on the application.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 1.09. Violation by County Clerk

A county clerk or deputy county clerk who violates or fails to comply with any provision of this subchapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$200 nor more than \$500.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

[Sections 1.10 to 1.20 reserved for expansion]

SUBCHAPTER B. MEDICAL EXAMINATION

§ 1.21. Medical Examination Certificate Required

Except as provided by Section 1.22 of this code, the county clerk shall not issue a marriage license unless each applicant submits at the time of the application a medical examination certificate as prescribed by this code.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.22. Exemption Order

On the joint application of both applicants for a marriage license, the judge of any county or district court, or court of domestic relations, of the county in which the license is to be issued may issue a written order exempting the applicants from the medical examination requirements of this chapter if he is satisfied by proof that sufficient grounds exist for the exemption and that the exemption will not adversely affect the public health and welfare. The hearing on the application shall be private, and all records relating to the application shall be held in absolute confidence and shall not be opened to public inspection.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 350, ch. 148, § 1, eff. Aug. 27, 1973.]

§ 1.23. Form and Content of Certificate

The medical examination certificate shall be made on a two-part form prescribed and supplied by the State Department of Health. One part of the form shall be for the laboratory statement and the other part shall be for the physician's statement.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.24. Serologic Tests

The first step in obtaining a medical examination certificate is to have a standard serologic test made by a state, county, or city laboratory, or a private laboratory approved by the State Department of Health. The applicant may apply to the laboratory in person for the test or may have a blood specimen taken by the physician for transmittal to the laboratory.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.25. Tests to be Prescribed by Health Department

The State Department of Health shall prescribe standard serologic tests for determining the existence of infectious syphilis in applicants for marriage licenses.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.26. Duties of Laboratory

The laboratory shall:

- (1) conduct a standard serologic test prescribed by the State Department of Health;

- (2) complete the laboratory statement and the detailed laboratory report on the prescribed forms and have them signed by the person in charge or a person authorized to enter the results of the test;

- (3) transmit the laboratory statement and one copy of the detailed laboratory report to the designated physician; and

- (4) transmit a copy of the detailed laboratory report to the State Department of Health.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.27. Content of Laboratory Statement

The laboratory statement shall specify the name and address of the person tested, the name and address of the physician to whom the report is sent, the name of the test, and the date of the test. This statement shall not include the result of the test.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.28. Detailed Laboratory Report

The detailed laboratory report shall include the result of the test. The copy submitted to the State Department of Health shall be held confidential and shall not be opened to public inspection. However, on the order of the court, the report is admissible as evidence in any judicial proceeding if it is relevant and material to any issue involved in the proceeding. The department may use these reports, without disclosing identities of persons, in compiling statistics for any purpose.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.29. Public Laboratories to Conduct Tests Free of Charge

All state, county, and city laboratories shall conduct the standard serologic tests and make the reports required by this chapter free of charge.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.30. List of Approved Private Laboratories

The State Department of Health shall furnish each county clerk a list of approved private laboratories. The department shall keep the list current with necessary additions and deletions.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.31. Examination; Issuance of Certificate

After receiving the laboratory report and examining the applicant, the physician may execute the physician's statement on the prescribed form and issue the completed medical examination certificate to the applicant. However, the physician shall not issue the certificate if he knows or has reason to believe that the applicant has any infectious condition of syphilis or other venereal disease.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.32. Content of Physician's Statement

The physician's statement must declare that on a specified date (which must be within the 21-day period immediately preceding the date the marriage license is applied for), the applicant was given a

thorough examination for infectious venereal disease, including a standard serologic test, and that the results of the examination, test, and history showed that, in the opinion of the examining physician, the applicant was free of any infectious condition of syphilis or other venereal disease.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 242, ch. 117, § 1, eff. May 18, 1973.]

### § 1.33. Physician

Except as provided by Section 1.34 of this code, the physician's statement must be executed by a physician licensed to practice medicine in this state.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 1.34. Nonresident Applicants

An applicant who resides in another state or territory may present a medical examination certificate executed by a physician who is licensed to practice medicine in that state or territory and by a laboratory approved by the official health agency of that state or territory, on the forms prescribed by the Texas State Department of Health under this chapter. If the standard serologic test was conducted by a private laboratory, the certificate must be accompanied by the affidavit of the director of the laboratory that the laboratory is certified by the state or territorial health agency.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 1.35. Reporting of Venereal Disease Cases

Nothing in this chapter affects any law, rule, or regulation relating to reporting of cases of venereal disease discovered by physicians in the course of their practice.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 1.36. Violation by County Clerk

A county clerk or deputy county clerk who violates or fails to comply with any provision of this subchapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$200 nor more than \$500.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 1.37. Giving False Information

A person who knowingly gives false information in any medical examination certificate or detailed laboratory report is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$200 nor more than \$500.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 1.38. Rubella Test Requirement

The State Board of Health may require all female applicants for marriage licenses to present laboratory evidence of immunological response to rubella (German measles) to the county clerk prior to the issuance of a marriage license. Such laboratory evidence of immunological response shall indicate immunity to or susceptibility to rubella (German measles). The board may promulgate rules and regulations regarding the form and content of the

required laboratory evidence. This section does not apply to a female applicant who is over 50 years of age or who has had a surgical sterilization.

[Acts 1973, 63rd Leg., p. 242, ch. 117, § 2, eff. May 18, 1973.]

[Sections 1.39 to 1.50 reserved for expansion]

## SUBCHAPTER C. UNDERAGE APPLICANTS

### § 1.51. Age Requirements: General Rules

(a) A person under 16 years of age may not marry.

(b) Except with parental consent as prescribed by Section 1.52 of this code, with a court order as prescribed by Section 1.53 of this code, or with a waiver of age requirements as prescribed by Subsection (c) of this section, the county clerk shall not issue a marriage license if either applicant is under 18 years of age.

(c) Upon petition in a district court in the name of the person seeking the waiver, the court may order the waiver of the age requirement prescribed in Subsection (a) for good cause shown.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1599, ch. 577, § 7, eff. Jan. 1, 1974.]

### § 1.52. Underage Applicant: Parental Consent

(a) If the applicant is 16 years of age or older but under 18 years of age, the county clerk shall issue the license if parental consent is given as prescribed by this section.

(b) Parental consent must be evidenced by a written declaration on a form supplied by the county clerk in which the person consents to the marriage and swears that he or she is a parent (when there is no judicially designated managing conservator or guardian of the applicant's person) or a judicially designated managing conservator or guardian (whether an individual, authorized agency, or court) of the applicant's person.

(c) Except as otherwise provided by this section, consent must be acknowledged before the county clerk at the time the application is made for the marriage license.

(d) If the person giving parental consent resides in another state, the consent may be acknowledged before an officer authorized to issue marriage licenses in that state.

(e) If the person giving parental consent is unable because of illness or incapacity to comply with the provisions of Subsection (c) or (d) of this section, the consent may be acknowledged before any officer authorized to take acknowledgments; but it must be accompanied by a physician's affidavit stating that the person giving parental consent is unable to be present because of illness or incapacity.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1599, ch. 577, § 7, eff. Jan. 1, 1974.]

### § 1.53. Underage Applicant: Court Order

(a) A person who is 16 years of age or older but under 18 years of age, may petition in his own name

in a district court for an order granting permission to marry.

(b) The petition must be filed in the county where a parent resides if a managing conservator or a guardian of the person has not been appointed. If a managing conservator or a guardian of the person has been appointed, the petition must be filed in the county where the managing conservator or the guardian of the person resides. If no person authorized to consent to marriage for the child resides in this state, the petition must be filed in the county where the child lives.

(c) The petition shall include a statement of the reasons the child desires to marry, whether each parent is living or dead, the name and residence address of each living parent, and whether or not a managing conservator or a guardian of the person has been appointed for the child.

(d) Process shall be served as in other civil cases on each living parent of the child, or if a managing conservator or a guardian of the person has been appointed, on the managing conservator or guardian of the person.

(e) The court shall appoint a guardian ad litem to represent the child in the proceeding and to speak for or against the petition in the manner he believes to be in the best interest of the child. The court shall prescribe a fee to be paid by the child for the services of the guardian ad litem; and the fee shall be collected as are other costs of the proceeding.

(f) If, after a hearing, the court believes marriage to be in the best interest of the child, it shall make an order granting the child permission to marry. [Acts 1973, 63rd Leg., p. 1599, ch. 577, § 7, eff. Jan. 1, 1974.]

[Sections 1.54 to 1.80 reserved for expansion]

SUBCHAPTER D. CEREMONY AND RETURN OF LICENSE

§ 1.81. Expiration of License

(a) Unless both applicants were exempted by court order from the medical examination requirements of this chapter, the marriage license expires at the end of the 21-day period immediately following the date of the medical examinations (or the earlier of the two examinations if they were conducted on different days), if the marriage ceremony has not been conducted within that period. The person who is to conduct the marriage ceremony shall determine this information from the county clerk's endorsement on the license.

(b) A person who conducts a marriage ceremony after the license has expired is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$200 nor more than \$500. [Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.82. Ceremony

(a) On receiving an unexpired marriage license, any authorized person may conduct the marriage ceremony.

(b) A person unable to appear for the ceremony may assent to marriage by the appearance of a proxy appointed in the affidavit prescribed by Section 1.05 of this code.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1600, ch. 577, § 8, eff. Jan. 1, 1974.]

§ 1.83. Persons Authorized to Conduct Ceremony

The following persons are authorized to conduct marriage ceremonies:

- (1) licensed or ordained Christian ministers and priests;
- (2) Jewish rabbis;
- (3) persons who are officers of religious organizations and who are duly authorized by the organization to conduct marriage ceremonies; and
- (4) justices of the supreme court, judges of the court of criminal appeals, justices of the courts of civil appeals, judges of the district, county, and probate courts, judges of the county courts at law, courts of domestic relations and juvenile courts, justices of the peace, and judges of the federal courts of this state.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.84. Return of License; Penalty for Violation

(a) The person who conducts the ceremony shall enter on the license the date and county in which it was performed and his or her name as the person who performed the ceremony, subscribe it and return the license to the county clerk who issued it within 30 days after the ceremony is conducted.

(b) A person who violates or fails to comply with any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$200 nor more than \$500.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.85. Recording of License; Delivery to Licensees

The county clerk shall record the returned license and shall mail the license to the address indicated in the application. On the application form the county clerk shall record the date of the marriage ceremony, the county in which it was conducted, and the name of the person who conducted the ceremony.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

[Sections 1.86 to 1.90 reserved for expansion]

SUBCHAPTER E. MARRIAGE WITHOUT FORMALITIES

§ 1.91. Proof of Certain Informal Marriages

(a) In any judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:

- (1) a declaration of their marriage has been executed under Section 1.92 of this code; or

(2) they agreed to be married, and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

(b) In any proceeding in which a marriage is to be proved under Subsection (a)(2) of this section, the agreement of the parties to marry may be inferred if it is proved that they lived together as husband and wife and represented to others that they were married.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 1.92. Declaration and Registration

(a) A declaration of informal marriage shall be executed on a form prescribed by the Bureau of Vital Statistics of the State Department of Health and provided by the county clerk. Each party to the declaration shall provide the information required in the form.

(b) The declaration form shall contain:

(1) a heading entitled "Declaration and Registration of Informal Marriage, \_\_\_\_\_ County, Texas";

(2) spaces for each party's full name (including the woman's maiden surname), address, date of birth, place of birth (including city, county, and state), and social security number, if any;

(3) a space for indicating the type of document tendered by each party as proof of age and identity;

(4) printed boxes for each party to check "true" or "false" in response to the following statement: "The other party is not related to me as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption; or

(C) a parent's brother or sister of the whole or half blood.";

(5) a printed declaration and oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT WE, THE UNDERSIGNED, ARE MARRIED TO EACH OTHER BY VIRTUE OF THE FOLLOWING FACTS: ON OR ABOUT (DATE) WE AGREED TO BE MARRIED, AND AFTER THAT DATE WE LIVED TOGETHER AS HUSBAND AND WIFE AND IN THIS STATE WE REPRESENTED TO OTHERS THAT WE WERE MARRIED, SINCE THE DATE OF MARRIAGE TO THE OTHER PARTY I HAVE NOT BEEN MARRIED TO ANY OTHER PERSON. THIS DECLARATION IS TRUE AND THE INFORMATION IN IT WHICH I HAVE GIVEN IS CORRECT.";

(6) spaces immediately below the printed declaration and oath for the parties' signatures; and

(7) a certificate of the county clerk that the parties made the declaration and oath and the place and date it was made.

(c) If either party is underage at the time of filing a declaration, the declaration shall have attached an acknowledged consent executed by a parent of each underage person.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1971, 62nd Leg., p. 2508, ch. 826, § 2, eff. June 9, 1971; Acts 1973, 63rd Leg., p. 1601, ch. 577, § 9, eff. Jan. 1, 1974.]

### § 1.93. Proof of Identity and Age

The county clerk shall require proof of the identity and age of each party to the declaration to be established by a certified copy of the party's birth certificate or by some certificate, license, or document issued by this state or another state, the United States, or a foreign government.

[Acts 1973, 63rd Leg., p. 1601, ch. 577, § 10, eff. Jan. 1, 1974.]

### § 1.94. Recording of Declaration

(a) The county clerk shall:

(1) determine that all necessary information is entered in the declaration form and that all necessary documents are submitted to him;

(2) administer the oath to each party to the declaration;

(3) have each party sign the declaration in his presence; and

(4) execute his certificate to the declaration.

(b) The county clerk may not certify or record the declaration if:

(1) either party fails to supply any information, or to provide any document, required by this subchapter;

(2) either party is under 16 years of age and waiver of the age requirement has not been ordered; or

(3) either party checks "false" in response to the statement of relationship to the other party.

(c) On execution of the declaration, the county clerk shall record the declaration and all documents submitted with the declaration or note a summary of them on the declaration form, deliver the original of the declaration to the parties, and send a copy to the Bureau of Vital Statistics.

(d) A declaration recorded as provided in this section is prima facie evidence of the marriage of the parties.

[Acts 1973, 63rd Leg., p. 1601, ch. 577, § 10, eff. Jan. 1, 1974.]

### § 1.95. Violation by County Clerk

A county clerk or a deputy county clerk who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$200 nor more than \$500.

[Acts 1973, 63rd Leg., p. 1601, ch. 577, § 10, eff. Jan. 1, 1974.]

CHAPTER 2. VALIDITY OF MARRIAGE

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 2.01. State Policy.
- 2.02. Fraud, Mistake, or Illegality in Obtaining License.
- 2.03. Ceremony Conducted by Unauthorized Person.

SUBCHAPTER B. VOID MARRIAGES

- 2.21. Consanguinity.
- 2.22. Marriage During Existence of Prior Marriage.
- 2.23. Certain Void Marriages Validated.
- 2.24. Suit to Declare Marriage Void.

SUBCHAPTER C. VOIDABLE MARRIAGES

- 2.41. Underage.
- 2.42. Under Influence of Alcohol or Narcotics.
- 2.43. Impotency.
- 2.44. Fraud, Duress, Force.
- 2.45. Mental Incompetency.
- 2.46. Concealed Divorce.
- 2.47. Death of Party to Voidable Marriage.

SUBCHAPTER A. GENERAL PROVISIONS

§ 2.01. State Policy

In order to promote the public health and welfare and to provide the necessary records, this code prescribes detailed and specific rules to be followed in establishing the marriage relationship. However, in order to provide stability for those entering into the marriage relationship in good faith and to provide legitimacy and security for the children of the relationship, it is the policy of this state to preserve and uphold each marriage against claims of invalidity unless strong reasons exist for holding it void or voidable. Therefore, every marriage entered into in this state is considered valid unless it is expressly made void by this chapter or unless it is expressly made voidable by this chapter and is annulled as provided by this chapter. When two or more marriages of a person to different spouses are alleged, the most recent marriage is presumed to be valid as against each marriage that precedes it until one who asserts the validity of a prior marriage proves its validity.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.02. Fraud, Mistake, or Illegality in Obtaining License

Except as otherwise provided by this chapter, the validity of a marriage is not affected by any fraud, mistake, or illegality that occurred in obtaining the marriage license.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.03. Ceremony Conducted by Unauthorized Person

The validity of a marriage is not affected by any lack of authority of the person conducting the marriage ceremony if there was a reasonable appearance of authority by that person and at least one party to the marriage participated in the ceremony in good faith and that party treats the marriage as valid.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

[Sections 2.04 to 2.20 reserved for expansion]

SUBCHAPTER B. VOID MARRIAGES

§ 2.21. Consanguinity

(a) A person may not marry:

- (1) an ancestor or descendant, by blood or adoption;
- (2) a brother or sister, of the whole or half blood or by adoption; or
- (3) a parent's brother or sister, of the whole or half blood.

(b) A marriage entered into in violation of this section is void.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.22. Marriage During Existence of Prior Marriage

A marriage is void if either party was previously married and the prior marriage is not dissolved. However, the marriage becomes valid when the prior marriage is dissolved if since that time the parties have lived together as husband and wife and represented themselves to others as being married.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.23. Certain Void Marriages Validated

Except for marriages that would have been void under Section 2.21 of this code, all marriages that were entered into before January 1, 1970, in violation of the prohibitions of Article 496, Penal Code of Texas, 1925, are validated from the beginning if the parties continued until January 1, 1970, to live together as husband and wife and to represent themselves to others as being married.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.24. Suit to Declare Marriage Void

(a) Either party to a marriage made void by this subchapter may sue to have the marriage declared void, or the marriage may be declared void in any collateral proceeding.

(b) A suit to have a marriage declared void may be maintained in this state only if the purported marriage was contracted in this state or if either party is domiciled in this state.

(c) A suit to have a marriage declared void is a suit in rem, affecting the status of the parties to the purported marriage. Process shall be served as in a suit for divorce.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

[Sections 2.25 to 2.40 reserved for expansion]

SUBCHAPTER C. VOIDABLE MARRIAGES

§ 2.41. Underage

(a) The licensed or informal marriage of persons under 16 years of age, unless a waiver of the age

requirement has been ordered, is voidable and subject to annulment on the petition of a next friend for the benefit of the underage party or on the petition of the parent or the judicially designated managing conservator or guardian (whether an individual, authorized agency, or court) of the person of the underage party. A suit filed under this subsection by a next friend must be brought within 90 days after the 16th birthday of the underage party, or it is barred. A suit by a parent, managing conservator, or guardian of the person may be brought at any time before the party is 16 years of age, but thereafter must be brought within 90 days after the petitioner knew or should have known of the marriage, or it is barred. However, in no case may a suit by a parent, managing conservator, or guardian of the person be brought under this subsection after the underage person has reached 18 years of age.

(b) The licensed or informal marriage of a person 16 years of age or older but under 18 years of age, without parental consent as provided in Section 1.52 or 1.92 of this code or without a court order as provided by Section 1.53 of this code, is voidable and subject to annulment on the petition of a next friend for the benefit of the underage party, or on the petition of the parent or the judicially designated managing conservator or guardian (whether an individual, authorized agency or court) of the person of the underage party. A suit filed under this subsection by a next friend must be brought within 90 days after the date of the marriage, or it is barred. A suit by a parent, managing conservator, or guardian of the person must be brought within 90 days after the date the petitioner knew or should have known of the marriage, or it is barred. However, in no case may a suit by a parent, managing conservator, or guardian of the person be brought under this subsection after the underage person has reached 18 years of age.

(c) In any suit under this section the marriage is voidable at the discretion of the court sitting without a jury. In exercising its discretion, the court shall consider all pertinent facts concerning the welfare of the parties to the marriage, including whether or not the female is pregnant.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1971, 62nd Leg., p. 2507, ch. 826, § 1, eff. June 9, 1971; Acts 1973, 63rd Leg., p. 1602, ch. 577, § 11, eff. Jan. 1, 1974.]

#### § 2.42. Under Influence of Alcohol or Narcotics

On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) at the time of the marriage the petitioner was under the influence of alcoholic beverages or narcotics and as a result did not have the capacity to consent to the marriage; and

(2) the petitioner has not voluntarily cohabited with the other party to the marriage since the effects of the alcoholic beverages or narcotics ended.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

#### § 2.43. Impotency

On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) either party, for physical or mental reasons, was permanently impotent at the time of the marriage;

(2) the petitioner did not know of the impotency at the time of the marriage; and

(3) the petitioner has not voluntarily cohabited with the other party since learning of the impotency.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

#### § 2.44. Fraud, Duress, Force

On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) the other party used fraud, duress, or force to induce the petitioner to enter into the marriage; and

(2) the petitioner has not voluntarily cohabited with the other party since learning of the fraud or since being released from the duress or force.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

#### § 2.45. Mental Incompetency

(a) On the suit of a party to a marriage, or on the suit of the party's guardian or next friend (if the court finds it to be in his best interest to be represented by a guardian or next friend), the marriage is voidable and subject to annulment if:

(1) at the time of the marriage, as a result of a mental disease or defect, the petitioner did not have the mental competency to consent to marriage or to understand the nature of the marriage ceremony; and

(2) since the marriage ceremony, the petitioner has not voluntarily cohabited with the other party during any period when the petitioner possessed the mental competency to recognize the marriage relationship.

(b) On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) at the time of the marriage, as a result of a mental disease or defect, the other party did not have the mental competency to consent to marriage or to understand the nature of the marriage ceremony;

(2) at the time of the marriage, the petitioner neither knew nor reasonably should have known of the mental disease or defect; and

(3) since the petitioner discovered or reasonably should have discovered the mental disease or defect, the petitioner has not voluntarily cohabited with the other party.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.46. Concealed Divorce

(a) On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) the other party was divorced from a third party within the thirty day period preceding the day of the marriage ceremony;

(2) at the time of the marriage ceremony, the petitioner did not know, and a reasonably prudent person would not have known, of the divorce; and

(3) since the petitioner discovered, or a reasonably prudent person would have discovered, the fact of the divorce, the petitioner has not voluntarily cohabited with the other party.

(b) A suit may not be brought under this section more than one year after the date of the marriage.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1610, ch. 577, § 38, eff. Jan. 1, 1974.]

§ 2.47. Death of Party to Voidable Marriage

A marriage voidable under this subchapter is not subject to challenge in any proceeding instituted after the death of either party.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

CHAPTER 3. DISSOLUTION OF MARRIAGE

SUBCHAPTER A. GROUNDS FOR DIVORCE; DEFENSES

Section

- 3.01. Insupportability.
- 3.02. Cruelty.
- 3.03. Adultery.
- 3.04. Conviction of Felony.
- 3.05. Abandonment.
- 3.06. Living Apart.
- 3.07. Confinement in Mental Hospital.
- 3.08. Defenses.

SUBCHAPTER B. JURISDICTION AND VENUE; RESIDENCE QUALIFICATIONS

- 3.21. Residence—General Rule.
- 3.22. Absence on Public Service.
- 3.23. Military Personnel not Previously Residents.
- 3.24. Suit by Nonresident Spouse.
- 3.25. Suit for Annulment or to Declare a Marriage Void.

SUBCHAPTER C. SUIT

- 3.51. Caption.
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- 3.56. Inventory and Appraisalment.
- 3.57. Transfers and Debts Pending Decree.
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- 3.59. Temporary Support.
- 3.60. Waiting Period.
- 3.61. Jury.
- 3.62. Testimony of Husband or Wife.
- 3.63. Division of Property.
- 3.64. Change of Name.
- 3.65. Costs.
- 3.66. Remarriage.

SUBCHAPTER A. GROUNDS FOR DIVORCE; DEFENSES

§ 3.01. Insupportability

On the petition of either party to a marriage, a divorce may be decreed without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.02. Cruelty

A divorce may be decreed in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse of a nature that renders further living together insupportable.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.03. Adultery

A divorce may be decreed in favor of one spouse if the other spouse has committed adultery.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.04. Conviction of Felony

(a) A divorce may be decreed in favor of one spouse if since the marriage the other spouse:

- (1) has been convicted of a felony;
- (2) has been imprisoned for at least one year in the state penitentiary, a federal penitentiary, or the penitentiary of another state; and
- (3) has not been pardoned.

(b) A divorce may not be decreed under this section against a spouse who was convicted on the testimony of the other spouse.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.05. Abandonment

A divorce may be decreed in favor of one spouse if the other spouse left the complaining spouse with the intention of abandonment and remained away for at least one year.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.06. Living Apart

A divorce may be decreed in favor of either spouse if the spouses have lived apart without cohabitation for at least three years.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.07. Confinement in Mental Hospital

A divorce may be decreed in favor of one spouse if at the time the suit is filed:

- (1) the other spouse has been confined in a mental hospital, a state mental hospital, or private mental hospital, as defined in Section 4, Texas Mental Health Code, as amended (Article 5547-4, Vernon's Texas Civil Statutes), in this state or another state for at least three years; and

(2) it appears that the spouse's mental disorder is of such a degree and nature that he is not likely to adjust, or that if he adjusts it is probable that he will suffer a relapse.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 3.08. Defenses

(a) The defense of recrimination is abolished.

(b) Condonation is a defense only if the court finds that there is a reasonable expectation of reconciliation.

(c) The defense of adultery is abolished.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1603, ch. 577, § 12, eff. Jan. 1, 1974.]

[Sections 3.09 to 3.20 reserved for expansion]

## SUBCHAPTER B. JURISDICTION AND VENUE; RESIDENCE QUALIFICATIONS

### § 3.21. Residence—General Rule

No suit for divorce may be maintained unless at the time suit is filed the petitioner or the respondent has been a domiciliary of this state for the preceding six-month period and a resident of the county in which the suit is filed for the preceding ninety-day period.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1603, ch. 577, § 13, eff. Jan. 1, 1974.]

### § 3.22. Absence on Public Service

For the purpose of Section 3.21 of this code, time spent by a Texas domiciliary in the service of the armed forces or other service of the United States or of this state outside this state or the county of residence of the domiciliary is considered residence in the state and county.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1603, ch. 577, § 14, eff. Jan. 1, 1974.]

### § 3.23. Military Personnel not Previously Residents

A person not previously a resident of this state who is serving in the armed forces of the United States and has been stationed at one or more military installations in this state for at least the last six months and at one or more military installations in a county of this state for at least the last ninety days is considered to have been a domiciliary of this state and a resident of the county for those periods for the purpose of bringing suit for divorce or annulment or to declare a marriage void.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1603, ch. 577, § 15, eff. Jan. 1, 1974.]

### § 3.24. Suit by Nonresident Spouse

If one spouse has been a domiciliary of this state for at least the last six months, a spouse domiciled in

another state or nation may sue for divorce in the county where the domiciled spouse is domiciled at the time the petition is filed.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1603, ch. 577, § 16, eff. Jan. 1, 1974.]

### § 3.25. Suit for Annulment or to Declare a Marriage Void

(a) A suit for annulment of a marriage or to declare a marriage void may be maintained in this state only if the parties were married in this state or if either party is domiciled in this state.

(b) A suit for annulment of a marriage or to declare a marriage void is a suit in rem, affecting the status of the parties to the marriage. Process shall be served as in a suit for divorce.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1603, ch. 577, § 17, eff. Jan. 1, 1974.]

[Sections 3.26 to 3.50 reserved for expansion]

## SUBCHAPTER C. SUIT

### § 3.51. Caption

Pleadings in a divorce or annulment suit shall be entitled, "In the Matter of the Marriage of \_\_\_\_\_ and \_\_\_\_\_."

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 3.52. Pleadings

Pleadings of the parties in a suit for divorce or annulment or to declare a marriage void shall contain allegations of the grounds relied on substantially in the language of the statute and without a detailed statement of evidentiary facts. Allegations of grounds for relief, matters of defense, or facts relied on for temporary relief stated in short and plain terms are not subject to special exceptions because of form or sufficiency. Except for allegations relied on for temporary relief, all allegations of evidentiary facts shall be stricken from the pleadings on the motion of any party to the suit or by the court on its own motion.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1604, ch. 577, § 18, eff. Jan. 1, 1974.]

### § 3.53. Answer

In a suit for divorce or annulment or to declare a marriage void, the respondent need not answer upon oath, and the petition shall not be taken as confessed for want of an answer.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1604, ch. 577, § 19, eff. Jan. 1, 1974.]

### § 3.54. Counseling

(a) On the filing of a petition for divorce, the clerk shall furnish an availability of counseling no-

tice to the attorney filing the petition. Except in a suit in which the respondent is cited by publication, the attorney shall forward the notice to both parties to the suit and shall certify to the court that he has complied with the provisions of this subsection.

(b) The availability of counseling notice shall be printed on the stationery of the clerk and shall state:

"In a divorce suit the court is authorized by law to require both parties to consult with a marriage counselor or other person appointed by the court. The counselor's function is to report to the court whether or not, in the opinion of the counselor, there exists a reasonable expectation of reconciliation and, if so, whether further counseling would be beneficial. If you believe that counseling would be beneficial to you or to the court, you may ask your attorney to request that the court order consultation with a counselor."

(c) After a petition for divorce is filed, the court may, in its discretion, direct the parties to counsel with a person or persons named by the court, who shall submit a written report to the court before the hearing on the petition.

(d) In his report, the counselor shall give only his opinion as to whether there exists a reasonable expectation of reconciliation of the parties, and if so, whether further counseling would be beneficial. The sole purpose of the report is to aid the court in determining whether the suit for divorce should be continued pending further counseling, and the report shall not be admitted as evidence in the suit. Copies of the report shall be furnished to the parties.

(e) If the court is of the opinion that there exists a reasonable expectation of the parties' reconciliation, the court may by written order continue the proceedings and direct the parties to any person or persons named by the court for further counseling for a period of time fixed by the court not to exceed 60 days, subject to any terms, conditions, and limitations the court deems desirable. The court shall consider the circumstances of the parties, including the needs of the parties' family, and the availability of counseling services, in making its order. At the expiration of the period of time specified by the court, the counselor to whom the parties were directed shall report to the court whether the parties have complied with the court's order. Thereafter, the court shall proceed as in divorce suits generally.

(f) No person who has counseled parties to a suit for divorce under this section is competent to testify in any action involving the parties or their children. The files, records, and other work-products of the counselor are privileged and confidential for all purposes and may not be admitted as evidence in any action involving the parties or their children.

(g) The expenses of counseling may be taxed as costs against either or both parties.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1604, ch. 577, § 20, eff. Jan. 1, 1974.]

### § 3.55. Managing Conservatorship and Support of Children

(a) The petition shall state whether or not there are children under 18 years of age born or adopted of the marriage.

(b) If the parties are parents of a child, as defined by Section 11.01 of this code, and the child is not under the continuing jurisdiction of any other court under Section 11.05 of this code, the suit for divorce, annulment, or to declare the marriage void, must include a suit affecting the parent-child relationship under Subtitle A, Title 2, of this code.<sup>1</sup>

(c) If the parties are parents of a child, as defined by Section 11.01 of this code, and the child is under the continuing jurisdiction of another court under Section 11.05 of this code, either party to the suit for divorce, annulment, or to declare the marriage void may move that court for transfer of the suit affecting the parent-child relationship to the court having jurisdiction of the suit or divorce, annulment, or to declare the marriage void. The court with continuing jurisdiction shall then transfer the proceeding to the court with jurisdiction of the suit for divorce, annulment, or to declare the marriage void. Proceedings for transfer under this section shall be governed by the procedures governing transfer under Section 11.06 of this code. On transfer of the proceedings to the court with jurisdiction of the suit for divorce, annulment, or to declare the marriage void, that court shall consolidate the suit affecting the parent-child relationship with the suit for divorce, annulment, or to declare the marriage void.

(d) After transfer of a suit affecting the parent-child relationship as provided in Subsection (c) of this section, or if the parties are parents of a child and no other court has jurisdiction of the child, the court with jurisdiction of the suit for divorce, annulment, or to declare the marriage void has jurisdiction to make orders, decrees, or judgments affecting the parent-child relationship in the same manner that a court with jurisdiction of a suit affecting the parent-child relationship has under Subtitle A, Title 2, of this code, and is subject to the same rules, requirements, and standards set forth in Subtitle A, Title 2, of this code for such suits. On entering its decree or judgment affecting the parent-child relationship, the court has continuing jurisdiction under Section 11.05 of this code, and the decree or judgment shall be treated for all purposes as though it were entered in a suit affecting the parent-child relationship.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1457, ch. 543, § 2, eff. Jan. 1, 1974.]

<sup>1</sup> Section 11.01 et seq.

### § 3.56. Inventory and Appraisal

At any time during a suit for divorce or annulment or to declare a marriage void, a party may, for the preservation of rights, require an inventory and appraisal of all property in the possession of another party, and may obtain an injunction re-

straining another party from disposing of the property in any manner.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1605, ch. 577, § 21, eff. Jan. 1, 1974.]

### § 3.57. Transfers and Debts Pending Decree

After a petition for divorce or annulment is filed and until a final decree is entered

(1) a transfer of real or personal community property or

(2) a debt incurred which would subject community property to liability by either spouse is void with respect to the other spouse if the transfer was made or the debt incurred with the intent to injure the rights of the other spouse. A transfer is not void if the person dealing with the transferor or debtor spouse did not have notice of the intent to injure the rights of the other spouse.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 3.58. Temporary Orders

After a petition for divorce or annulment or to declare a marriage void is filed, the court or judge may make temporary orders respecting the property and parties as deemed necessary and equitable.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1605, ch. 577, § 22, eff. Jan. 2, 1974.]

### § 3.59. Temporary Support

After a petition for divorce or annulment is filed, the judge, after due notice may order payments for the support of the wife, or for the support of the husband if he is unable to support himself, until a final decree is entered.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 3.60. Waiting Period

A divorce shall not be granted until at least 60 days have elapsed since the day the suit was filed. However, a decree entered in violation of this section is not subject to collateral attack.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 3.61. Jury

Either party may demand a jury trial.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 3.62. Testimony of Husband or Wife

In all such suits and proceedings the husband and wife shall be competent witnesses for and against each other, but neither party shall be compelled to testify as to any matter that will criminate himself or herself; and where the husband or wife testifies, the court or jury trying the case shall determine the credibility of such witness and the weight to be given such testimony.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 3.63. Division of Property

In a decree of divorce or annulment the court shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 3.64. Change of Name

In a decree for divorce or annulment, the court for good cause shown may change the name of either party specifically requesting the change. A change of name does not release a person from any liability incurred in a previous name or defeat any right which the person held in a previous name.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1605, ch. 577, § 23, eff. Jan. 1, 1974.]

### § 3.65. Costs

In a suit for divorce or annulment or to declare a marriage void, the court may award costs to any party as it deems reasonable. However, costs may not be adjudged against a party against whom a divorce is granted under Section 3.07 of this code.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1605, ch. 577, § 24, eff. Jan. 1, 1974.]

### § 3.66. Remarriage

Neither party to a divorce may marry a third party for a period of thirty days immediately following the date the divorce is decreed, but the parties divorced may marry each other at any time.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1605, ch. 577, § 24, eff. Jan. 1, 1974.]

## CHAPTER 4. RIGHTS, DUTIES, POWERS, AND LIABILITIES OF SPOUSES

### Section

4.01. Persons Married Elsewhere.

4.02. Duty to Support.

4.03. Capacity of Spouses.

4.04. Joinder in Civil Suits.

### § 4.01. Persons Married Elsewhere

The law of this state applies to persons married elsewhere who are domiciled in this state.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 4.02. Duty to Support

Each spouse has the duty to support his or her minor children. The husband has the duty to support the wife, and the wife has the duty to support the husband when he is unable to support himself. A spouse who fails to discharge a duty of support is liable to any person who provides necessaries to those to whom support is owed.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

**§ 4.03. Capacity of Spouses**

Except as expressly provided by statute or by the constitution, every person who has been married in accordance with the law of this state, regardless of age, has the power and capacity of an adult, including the capacity to contract.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

**§ 4.04. Joinder in Civil Suits**

(a) A spouse may sue and be sued without the joinder of the other spouse.

(b) When claims or liabilities are joint and several, the spouses may be joined under the rules relating to joinder of parties generally.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

**SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES**

**CHAPTER 5. MARITAL PROPERTY**

**SUBCHAPTER A. SEPARATE AND COMMUNITY PROPERTY**

Section

5.01. Marital Property Characterized.

5.02. Presumption.

5.03. Recordation of Separate Property.

**SUBCHAPTER B. MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY**

5.21. Separate Property.

5.22. Community Property: General Rules.

5.23. Earnings of Child.

5.24. Protection of Third Persons.

5.25. Unusual Circumstances.

5.26. Spouse Missing on Public Service.

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**SUBCHAPTER C. PROPERTY AGREEMENTS**

5.41. Agreement in Contemplation of Marriage.

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**SUBCHAPTER E. HOMESTEAD RIGHTS**

5.81. Sale, Conveyance, or Encumbrance of Homestead.

5.82. Separate Homestead: Incompetent Spouse; Sale Without Joinder.

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5.84. Community Homestead: Incompetent Spouse; Sale Without Joinder.

5.85. Community Homestead: Unusual Circumstances; Sale Without Joinder.

5.86. Remedies and Powers Cumulative.

5.87. Community Homestead; Spouse Missing on Public Service; Sale Without Joinder.

**SUBCHAPTER A. SEPARATE AND COMMUNITY PROPERTY**

**§ 5.01. Marital Property Characterized**

(a) A spouse's separate property consists of:

- (1) the property owned or claimed by the spouse before marriage;

- (2) the property acquired by the spouse during marriage by gift, devise, or descent; and

- (3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

(b) Community property consists of the property, other than separate property, acquired by either spouse during marriage.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

**§ 5.02. Presumption**

Property possessed by either spouse during or on dissolution of marriage is presumed to be community property.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

**§ 5.03. Recordation of Separate Property**

A subscribed and acknowledged schedule of a spouse's separate property may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property is located. As to real property, a schedule of a spouse's separate property is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and recorded in the deed records of the county in which the real property is located.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1605, ch. 577, § 25, eff. Jan. 1, 1974.]

[Sections 5.04 to 5.20 reserved for expansion]

**SUBCHAPTER B. MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY**

**§ 5.21. Separate Property**

Each spouse has the sole management, control, and disposition of his or her separate property.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

**§ 5.22. Community Property: General Rules**

(a) During marriage, each spouse has the sole management, control, and disposition of the community property that he or she would have owned if single, including but not limited to:

- (1) personal earnings;
- (2) revenue from separate property;
- (3) recoveries for personal injuries; and
- (4) the increase and mutations of, and the revenue from, all property subject to his or her sole management, control, and disposition.

(b) If community property subject to the sole management, control, and disposition of one spouse is mixed or combined with community property subject to the sole management, control, and disposition of the other spouse, then the mixed or combined community property is subject to the joint management, control, and disposition of the spouses, unless

the spouses provide otherwise by power of attorney in writing or other agreement.

(c) Except as provided in Subsection (a) of this section, the community property is subject to the joint management, control, and disposition of the husband and wife, unless the spouses provide otherwise by power of attorney in writing or other agreement.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1606, ch. 577, § 26, eff. Jan. 1, 1974.]

### § 5.23. Earnings of Child

The earnings of an unemancipated minor are subject to the management, control, and disposition of the parent or parents having custody of the minor.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

### § 5.24. Protection of Third Persons

(a) During marriage, property is presumed to be subject to the sole management, control, and disposition of a spouse if it is held in his or her name, as shown by muniment, contract, deposit of funds, or other evidence of ownership, or if it is in his or her possession and is not subject to such evidence of ownership.

(b) A third person dealing with a spouse is entitled to rely (as against the other spouse or anyone claiming from that spouse) on that spouse's authority to deal with the property if:

(1) the property is presumed to be subject to the sole management, control, and disposition of the spouse; and

(2) the person dealing with the spouse:

(A) is not a party to a fraud upon the other spouse or another person; and

(B) does not have actual or constructive notice of the spouse's lack of authority.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1606, ch. 577, § 27, eff. Jan. 1, 1974.]

### § 5.25. Unusual Circumstances

(a) If (1) a spouse is unable to manage, control, or dispose of the community property subject to his or her sole or joint management, control, and disposition, (2) a spouse disappears and his or her location remains unknown to the other spouse, except under circumstances in which Section 5.26 of this code is applicable, (3) a spouse permanently abandons the other, or (4) the spouses are permanently separated, then not less than 60 days thereafter the capable spouse, or the remaining spouse, or the abandoned spouse, or either spouse in the case of permanent separation, may file a sworn petition stating the facts that make it desirable for the petitioning spouse to manage, control, and dispose of community property (described or defined in the petition) that would otherwise be subject to the sole or joint management, control, and disposition of the other.

(b) The petition shall be filed in a district court of the county in which the petitioner resided at the

time the incapacity or separation began, or the abandonment or disappearance occurred. If both spouses are nonresidents of the state at that time, the petition shall be filed in the district court of any county in which any part of the described or defined community property is located.

(c) The court may appoint an attorney for the suit for the respondent and shall award a reasonable fee for the attorney's services as a part of the costs of the suit.

(d) A notice stating that the petition has been filed and specifying the date of the hearing, accompanied by a copy of the petition, shall be issued and served on the attorney for the suit, if one is appointed, or, if an attorney is not appointed, on the respondent as in other cases.

(e) If the residence of the respondent is unknown, notice shall be published in a newspaper of general circulation published in the county in which the petition was filed. If that county has no newspaper of general circulation, notice shall be published in a newspaper of general circulation in an adjacent county or in the nearest county in which a newspaper of general circulation is published. The notice shall be published once a week for two consecutive weeks before the hearing, but the first publication shall not be less than 20 days before the date set for the hearing.

(f) After hearing the evidence, the court, on terms it deems just and equitable, shall enter an order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during marriage. The court may impose any conditions and restrictions it deems necessary to protect the rights of the respondent, require a bond conditioned on the faithful administration of the property, and require payment of all or a portion of the proceeds of sale of the property to the registry of the court, to be disbursed in accordance with the court's further directions.

(g) The jurisdiction of the court is continuing, and on motion of either spouse, after notice has been given in the same manner that notice is given under Subsection (d) or (e) of this section, the court shall amend or vacate the original order if:

(1) the incapable spouse's capacity is restored;

(2) the spouse who disappeared reappears; or

(3) the abandonment or permanent separation ends.

(h) An order authorized by Subsection (f) of this section affecting real property is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the order is recorded in the deed records of the county in which the real property is located.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1606, ch. 577, § 28, eff. Jan. 1, 1974.]

### § 5.26. Spouse Missing on Public Service

(a) If a spouse is reported by an executive department of the United States to be a prisoner of war or

missing on the public service of the United States then not less than six months thereafter the spouse of the prisoner of war or missing person may file a sworn petition stating the facts that make it desirable for the petitioner to manage, control, and dispose of the community property (described or defined in the petition) that would otherwise be subject to the sole or joint management, control, and disposition of the other.

(b) The petition shall be filed in the district court of the county in which the petitioner resided at the time the report was made. If both spouses were nonresidents of the state at that time, the petition shall be filed in the district court of any county in which any part of the described or defined property is located.

(c) The court shall appoint an attorney for the suit for the respondent and shall allow him a reasonable fee for his services to be taxed as a part of the costs.

(d) A notice stating that the petition has been filed and specifying the date of the hearing, accompanied by a copy of the petition, shall be issued and served on the attorney representing the respondent as in other cases.

(e) After hearing the evidence, the court, on terms it deems just and equitable, shall enter an order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during marriage. The court may impose any conditions and restrictions it deems necessary to protect the rights of the respondent, require a bond conditioned on the faithful administration of the property, and require payment of all or a portion of the proceeds of sale of the property to the registry of the court, to be disbursed in accordance with the court's further directions.

(f) The jurisdiction of the court is continuing, and on motion of either spouse, after notice stating that the motion has been filed and specifying the date of the hearing, accompanied by a copy of the motion, has been issued and served on the respondent as in other cases, the court shall amend or vacate the original order if the spouse who was a prisoner of war or missing returns.

(g) An order authorized by Subsection (e) of this section affecting real property is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the order is recorded in the deed records of the county in which the real property is located.

[Acts 1971, 62nd Leg., p. 2712, ch. 884, § 1, eff. June 10, 1971; Acts 1973, 63rd Leg., p. 1607, ch. 577, § 29, eff. Jan. 1, 1974.]

**§ 5.27. Remedies Cumulative**

The remedies provided in Sections 5.25 and 5.26 of this code are cumulative of other rights, powers, and remedies afforded spouses by law.

[Acts 1973, 63rd Leg., p. 1608, ch. 577, § 30, eff. Jan. 1, 1974.]

[Sections 5.28 to 5.40 reserved for expansion]

**SUBCHAPTER C. PROPERTY AGREEMENTS**

**§ 5.41. Agreement in Contemplation of Marriage**

(a) Before marriage, persons intending to marry may enter into a marital property agreement as they may desire.

(b) The agreement must be in writing and subscribed by all parties.

(c) A minor capable of marrying but not otherwise capable of entering into a binding agreement may enter into a marital property agreement with the subscribed, written consent of the guardian of the minor's estate and with the approval of the probate court after the application, notice, and hearing required in the Probate Code for the sale of a minor's real estate.

(d) A marital property agreement does not prejudice the rights of preexisting creditors.

(e) A marital property agreement may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property affected or to be affected is located. As to real property, a marital property agreement is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and recorded in the county in which the real property is located.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1608, ch. 577, § 31, eff. Jan. 1, 1974.]

**§ 5.42. Partition or Exchange of Community Property**

(a) At any time, the spouses may partition between themselves, in severalty or in equal undivided interests, all or any part of their community property. They may exchange between themselves the interest of one spouse in any community property for the interest of the other spouse in other community property. A partition or exchange must be in writing and subscribed by both parties.

(b) Subject to the rules stated in Subsections (c) and (d) of this section, property or a property interest transferred to a spouse under a partition or exchange becomes his or her separate property.

(c) A partition or exchange does not prejudice the rights of preexisting creditors.

(d) A partition or exchange agreement may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property affected is located. As to real property, a partition or exchange agreement is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and

recorded in the county in which the real property is located.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1608, ch. 577, § 32, eff. Jan. 1, 1974.]

[Sections 5.43 to 5.60 reserved for expansion]

#### SUBCHAPTER D. MARITAL PROPERTY LIABILITIES

##### § 5.61. Rules of Marital Property Liability

(a) A spouse's separate property is not subject to liabilities of the other spouse unless both spouses are liable by other rules of law.

(b) Unless both spouses are liable by other rules of law, the community property subject to a spouse's sole management, control, and disposition is not subject to:

- (1) any liabilities that the other spouse incurred before marriage; or
- (2) any nontortious liabilities that the other spouse incurs during marriage.

(c) The community property subject to a spouse's sole or joint management, control, and disposition is subject to the liabilities incurred by him or her before or during marriage.

(d) All the community property is subject to tortious liability of either spouse incurred during marriage.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

##### § 5.62. Order in Which Property is Subject to Execution

(a) A judge may determine, as he deems just and equitable, the order in which particular separate or community property will be subject to execution and sale to satisfy a judgment, if the property subject to liability for a judgment includes any combination of:

- (1) a spouse's separate property;
- (2) community property subject to a spouse's sole management, control, and disposition;
- (3) community property subject to the other spouse's sole management, control, and disposition; and
- (4) community property subject to the spouses' joint management, control, and disposition.

(b) In determining the order in which particular property will be subject to execution and sale, the judge shall consider the facts surrounding the transaction or occurrence upon which the suit is based.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

[Sections 5.63 to 5.80 reserved for expansion]

#### SUBCHAPTER E. HOMESTEAD RIGHTS

##### § 5.81. Sale, Conveyance, or Encumbrance of Homestead

Whether the homestead is the separate property of either spouse or community property, neither

spouse may sell, convey, or encumber it without the joinder of the other spouse except as provided in Section 5.82, 5.83, 5.84, or 5.85 of this code or by other rules of law.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

##### § 5.82. Separate Homestead: Incompetent Spouse; Sale Without Joinder

If the homestead is the separate property of a spouse and the other spouse has been judicially declared incompetent, the owner may sell, convey, or encumber it without the joinder of the other spouse.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

##### § 5.83. Separate Homestead: Unusual Circumstances; Sale Without Joinder

(a) If the homestead is the separate property of a spouse and the other spouse (1) is incompetent (whether judicially declared incompetent or not), (2) disappears and his or her location remains unknown to the owner, (3) permanently abandons the homestead and the owner, or (4) permanently abandons the homestead and the spouses are permanently separated, then not less than 60 days thereafter the owner may file a sworn petition giving a description of the property and stating the facts that make it desirable for the owner to sell, convey, or encumber the homestead without the joinder of the other spouse.

(b) The petition shall be filed in a district court of the county in which any portion of the property is located. The court may appoint an attorney for the suit for the respondent and shall award a reasonable fee for his services as a part of the costs of the suit. Notice shall be issued and served in the manner provided in Subsection (d) or (e) of Section 5.25 of this code.

(c) After hearing the evidence, the court shall enter an order it deems just and equitable with respect to sale, conveyance, or encumbrance of the homestead.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1609, ch. 577, § 33, eff. Jan. 1, 1974.]

##### § 5.831. Separate Homestead: Spouse Missing on Public Service; Sale Without Joinder

(a) If the homestead is the separate property of a spouse and the other spouse is reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States, not less than six months thereafter the owner may file a sworn petition giving a description of the property and stating the facts that make it desirable for the owner to sell, convey, or encumber the homestead without the joinder of the other spouse.

(b) The petition shall be filed in a district court of the county in which any portion of the property is located. The court shall appoint an attorney for the suit for the respondent and shall award a reasonable fee for the attorney's service as a part of costs of the

suit. Notice shall be issued and served in the manner provided in Subsection (d) of Section 5.26 of this code.

(c) After hearing the evidence, the court shall enter an order it deems just and equitable with respect to sale, conveyance, or encumbrance of the homestead.

[Acts 1973, 63rd Leg., p. 1609, ch. 577, § 34, eff. Jan. 1, 1974.]

**§ 5.84. Community Homestead: Incompetent Spouse; Sale Without Joinder**

If the homestead is the community property of the spouses and one spouse has been judicially declared incompetent, the competent spouse may sell, convey, or encumber the homestead without the joinder of the other spouse.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

**§ 5.85. Community Homestead: Unusual Circumstances; Sale Without Joinder**

(a) If the homestead is the community property of the spouses and if (1) a spouse is incompetent (whether judicially declared incompetent or not), (2) a spouse disappears and his or her location remains unknown to the other spouse, (3) a spouse permanently abandons the homestead and the other spouse, or (4) a spouse permanently abandons the homestead and the spouses are permanently separated, not less than 60 days thereafter the competent spouse, the remaining spouse, the abandoned spouse, or the spouse who has not abandoned the homestead in a case of permanent separation, who desires to sell, convey, or encumber the community homestead of the spouses, may file a sworn petition giving a description of the property and stating the facts that make it desirable for the petitioner to sell, convey, or encumber the homestead without the joinder of the other spouse.

(b) The petition shall be filed in a district court of the county in which any portion of the property is located. The court may appoint an attorney for the suit for the respondent and shall award a reasonable fee for the attorney's service as a part of costs of the suit. Notice shall be issued and served in the manner provided in Subsection (d) or (e) of Section 5.25 of this code.

(c) After hearing the evidence, the court, on terms it deems just and equitable, shall enter an order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during marriage. The court may impose any conditions and restrictions it deems necessary to protect the rights of the respondent, require a bond conditioned on the faithful administration of the property, and require payment of all or a portion of the proceeds of sale of the property to the registry of the court to be disbursed in accordance with the court's further directions.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1609, ch. 577, § 35, eff. Jan. 1, 1974.]

**§ 5.86. Remedies and Powers Cumulative**

The remedies provided by Sections 5.83, 5.831, 5.85, and 5.87 of this code, and the powers of a spouse under Sections 5.82 and 5.84 of this code, are cumulative of the other rights, powers, and remedies afforded the spouses by law.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970; Acts 1973, 63rd Leg., p. 1610, ch. 577, § 36, eff. Jan. 1, 1974.]

**§ 5.87. Community Homestead; Spouse Missing on Public Service; Sale Without Joinder**

(a) If the homestead is the community property of the spouses and if a spouse is reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States, not less than six months thereafter the spouse of the prisoner of war or missing person, who desires to sell, convey, or encumber the community homestead of the spouses, may file a sworn petition giving a description of the property and stating the facts that make it desirable for the petitioning spouse to sell, convey, or encumber the homestead without the joinder of the other spouse.

(b) The petition shall be filed in a district court of the county in which any portion of the property is located. The court shall appoint an attorney for the suit for the respondent, and shall award a reasonable fee for the attorney's service as a part of the costs of the suit. Notice shall be issued and served in the manner provided in Subsection (d) of Section 5.26 of this code.

(c) After hearing the evidence, the court shall enter an order granting relief if it appears necessary or advisable, and on terms the court deems advisable. The court may impose any conditions and restrictions it deems necessary to protect the rights of the respondent, may require a bond conditioned on the faithful administration of the property, or may require payment of all or a portion of the proceeds of sale of the property to the registry of the court to be disbursed in accordance with the court's further directions.

[Acts 1971, 62nd Leg., p. 2712, ch. 884, § 2, eff. June 10, 1971; Acts 1973, 63rd Leg., p. 1610, ch. 577, § 37, eff. Jan. 1, 1974.]

**TITLE 2. PARENT AND CHILD**

**Enactment**

*Title 2 of the Texas Family Code was added by Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, effective January 1, 1974. Section 4 thereof provides:*

*"(a) This Act takes effect on January 1, 1974, and governs all proceedings, orders, judgments, and decrees in suits and actions brought after it takes effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the court its application in an action pending when this Act takes effect would*

not be feasible or would work injustice. All things properly done under any previously existing rule or statute prior to the taking effect of this Act shall be treated as valid.

"(b) Any action or suit commenced after January 1, 1974, that has as its object the modification of an order, judgment, or decree entered prior to January 1, 1974, but which under this Act would be a suit affecting the parent-child relationship, is governed by the provisions of this Act, and shall be treated as the commencement of a suit affecting the parent-child relationship in which no court has continuing exclusive jurisdiction."

SUBTITLE A. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP  
CHAPTER 11. GENERAL PROVISIONS

Section

- 11.01. Definitions.
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§ 11.01. Definitions

As used in this subtitle and Subtitle C of this title,<sup>1</sup> unless the context requires a different definition:

(1) "Child" or "minor" means a person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes. "Adult" means any other person.

(2) "Court" means the district court, court of domestic relations, juvenile court, or other court having jurisdiction of a suit under this subtitle.

(3) "Parent" means the mother, a man as to whom the child is legitimate, or an adoptive mother or father, but does not include a parent as to whom the parent-child relationship has been terminated.

(4) "Parent-child relationship" means the rights, privileges, duties, and powers existing between a parent and child as provided by Section 12.04 of this code.

(5) "Suit affecting the parent-child relationship" means a suit brought under this subtitle in which the appointment of a managing conservator or a possessory conservator, access to or

support of a child, or establishment or termination of the parent-child relationship is sought.

(6) "Managing conservatorship" means the relationship between a child and a managing conservator appointed by court order or designated in an affidavit of relinquishment under this subtitle.

(7) "Authorized agency" means a public social agency authorized to care for children or to place children for adoption, or a private association, corporation, or person approved for that purpose by the State Department of Public Welfare through a license, certification, or other means.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]  
<sup>1</sup> Section 31.01 et seq.

§ 11.02. Suit Authorized; Scope of Suit

(a) A suit affecting the parent-child relationship may be brought as provided in this subtitle.

(b) One or more matters covered by this subtitle may be determined in the suit. The court, on its own motion, may require the parties to replead in order that any issue affecting the parent-child relationship may be determined in the suit.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 11.03. Who May Bring Suit

A suit affecting the parent-child relationship may be brought by any person with an interest in the child, including the child (through a representative authorized by the court), any agency of the state or of a political subdivision of the state, and any authorized agency.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 11.04. Venue

(a) Except as otherwise provided in this subtitle, a suit affecting the parent-child relationship shall be brought in the county where the child resides.

(b) A suit in which adoption is sought may be brought in the county where the child resides, the petitioners reside, or if the child is placed for adoption by an authorized agency, in the county where the authorized agency is located.

(c) A child resides in the county where his parents (or parent if only one parent is living) reside, except that:

(1) if a managing conservator has been appointed by court order or designated in an affidavit of relinquishment, the child resides in the county where the managing conservator resides;

(2) if a guardian of the person has been appointed by order of a county or probate court and a managing conservator has not been appointed, the child resides in the county where the guardian of the person resides;

(3) if the parents of the child do not reside in the same county and neither a managing conservator nor a guardian of the person has been appointed, the child resides in the county where

the parent having care and control of the child resides;

(4) if the child is under the care and control of an adult other than a parent and (A) neither a managing conservator nor a guardian of the person has been appointed or (B) the whereabouts of the managing conservator or the guardian of the person is unknown or (C) the person whose residence determines the residence of the child under this section has left the child under the care and control of the adult, the child resides where the adult having care and control of the child resides;

(5) if a guardian or custodian of the child has been appointed by order of a court of another state or nation, the child resides in the county where the guardian or custodian resides; or

(6) if it appears that the child is not under the care and control of an adult, the child resides where he is found.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 11.05. Continuing Jurisdiction

(a) Except as provided in Subsections (b) and (c) of this section, when a court acquires jurisdiction of a suit affecting the parent-child relationship, that court retains continuing jurisdiction of all matters provided for under this subtitle in connection with the child, and no other court has jurisdiction of a suit affecting the parent-child relationship with regard to that child except on transfer as provided in Section 11.06 of this code.

(b) A final decree of adoption ends a court's continuing jurisdiction over the child, and any subsequent suit affecting the child shall be commenced as though the child had not been the subject of a suit for adoption or any other suit affecting the parent-child relationship prior to the adoption.

(c) A court shall have jurisdiction over a suit affecting the parent-child relationship if it has been informed by the State Department of Public Welfare that the child has not been the subject of a suit affecting the parent-child relationship and the petition states that no other court has continuing jurisdiction over the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 11.06. Transfer of Proceedings

(a) If venue is improperly laid in the court in which a suit affecting the parent-child relationship is filed, and no other court has continuing jurisdiction of the suit, the court, on the timely motion of any party other than the petitioner, and on a showing that venue is proper in another county, shall transfer the proceeding to the county where venue is proper.

(b) If a petition or a motion to modify a decree is filed in a court having continuing jurisdiction of the suit, the court, on the timely motion of any party, and on a showing that venue is proper in another county or that a suit for dissolution of marriage has

been filed in another court, shall transfer the proceeding to the county where venue is proper or to the court where the suit for dissolution of the marriage is pending. However, if the basis of the motion is that the child resides in another county, the court may deny the motion if it is shown that the child has not resided in that county for at least six months. In computing the period of time during which the child has resided in that county, the court shall not require that the period of residence be continuous and uninterrupted but shall look to the child's principal residence during the said six-months period.

(c) For the convenience of the parties and witnesses and in the interest of justice, the court, on the timely motion of any party, may transfer the proceeding to a proper court in any other county in the state.

(d) If a court has continuing jurisdiction over a child but another court has acquired jurisdiction over the child in a suit affecting the parent-child relationship under Section 11.05(c) of this code, the court previously having jurisdiction over the child, on a motion of any party or on the court's motion, shall transfer the proceeding to the court which has acquired jurisdiction under Section 11.05(c) of this code.

(e) A motion under Subsection (a), (b), or (c) of this section must be made on or before the day on which answer is required.

(f) Each party to the suit is entitled to 10 days' notice and a hearing on the transfer which shall be held within 30 days after the day of filing the motion to transfer. Only evidence pertaining to venue shall be taken at the hearing. An order transferring or refusing to transfer the proceeding is not appealable.

(g) The court transferring a proceeding shall send to the proper court in the county to which transfer is made the complete file in the suit affecting the child, certified copies of all entries in the minutes, and a certified copy of any decree of dissolution of marriage issued in a suit joined with the suit affecting the parent-child relationship.

(h) A court to which a transfer is made becomes the court of continuing jurisdiction, and all proceedings in the suit are continued as if it were brought there originally.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 11.07. Commencement of Suit

(a) A suit affecting the parent-child relationship shall be commenced by the filing of a petition as provided in this chapter.

(b) On the commencement of a suit affecting the parent-child relationship in a court which has not already acquired continuing jurisdiction, the court shall request from the State Department of Public Welfare identification of the court which last had jurisdiction of the child in a suit affecting the parent-child relationship unless the information from

the department is attached to the petition. The court shall identify the child by name, birthdate, and place of birth. If another court is determined to have continuing jurisdiction over the parent-child relationship, the court in which the suit was commenced shall dismiss the suit without prejudice.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 11.08. Contents of Petition

(a) The petition and all other documents in a proceeding brought under this subtitle (except a suit for adoption of an adult) shall be entitled "In the interest of \_\_\_\_\_, a child." In a suit in which adoption of a child is sought, the style shall be, "In the interest of a child."

(b) The petition must be verified by the petitioner and must include to the best of the petitioner's information and belief:

(1) a statement that no other court has continuing jurisdiction of the suit;

(2) the name, sex, place and date of birth, and place of residence of the child, except that if adoption of a child is sought, the name of the child may be omitted;

(3) the full name, age, and place of residence of the petitioner and his relationship to the child or the fact that no relationship exists;

(4) the names, ages, and place of residence of the parents, except in a suit in which adoption is sought;

(5) the name and place of residence of the managing conservator, if any;

(6) the names and places of residence of the guardians of the person and estate of the child, if any;

(7) the names and places of residence of possessory conservators or other persons, if any, having access to the child under an order of the court;

(8) a full description and statement of value of all property owned or possessed by the child;

(9) a statement describing what action the court is requested to make concerning the child and the statutory grounds on which the request is made; and

(10) any other information required by other provisions of this subtitle.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 11.09. Citation

(a) The following persons are entitled to service of citation on the commencement of a suit affecting the parent-child relationship:

(1) the managing conservator, if any;

(2) possessory conservators, if any;

(3) persons, if any, having access to the child under an order of the court;

(4) persons, if any, required by law or by order of a court to provide for the support of a child;

(5) the guardian of the person of the child, if any;

(6) the guardian of the estate of the child, if any; and

(7) each parent, including the alleged father of an illegitimate child, as to whom the parent-child relationship has not been terminated or process has not been waived under Section 15.03(c)(2) of this code.

(b) Citation on the commencement of a suit affecting the parent-child relationship or notice of a hearing shall be issued and served as in other civil cases except that citation or notice may be given by registered or certified mail, return receipt requested. In such cases, the clerk shall mail the citation and a copy of the petition to the person so notified marked for delivery to the addressee only. The filing of the returned receipt indicating delivery by registered or certified mail to the proper person shall be sufficient proof of the fact of service.

(c) Citation may be given by publication as in other civil cases to persons entitled to service of citation who cannot be notified by personal service or registered or certified mail and to persons whose names are unknown. The notice shall be published one time. If the name of a person entitled to service of citation is unknown, the notice to be published shall be addressed to "All Whom It May Concern." One or more causes to be heard on a certain day may be included in one notice and hearings may be continued from time to time without further notice.

(d) Notice by publication shall be sufficient if given in substantially the following form:

#### "STATE OF TEXAS

To (names of persons entitled to service of citation), and to all whom it may concern (if the name of any person entitled to service of citation is unknown), Respondent(s),

GREETINGS:

"YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court, \_\_\_\_\_ Judicial District, \_\_\_\_\_ County, Texas, at the Courthouse of said county in \_\_\_\_\_, Texas, at or before 10 o'clock a. m. of the Monday next after the expiration of 20 days from the date of service of the citation, then and there to answer the petition of \_\_\_\_\_, Petitioner, filed in said Court on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, against \_\_\_\_\_, Respondent(s), and said suit being number \_\_\_\_\_ on the docket of said Court, and entitled 'In the interest of \_\_\_\_\_, a child,' the nature of which suit is a request to (statement of relief sought, e. g., 'terminate the parent-child relationship'). Said child was born the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in (place of birth).

"The court has authority in this suit to enter any judgment or decree in the child's interest which will be binding upon you, including the termination of the parent-child relationship and the appointment of

a conservator with authority to consent to the child's adoption.

"Issued and given under my hand and seal of said Court at \_\_\_\_\_, Texas, this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

".....,  
Clerk of the District Court of  
..... County, Texas.

By \_\_\_\_\_, Deputy."

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 11.10. Guardian Ad Litem**

(a) In any suit in which termination of the parent-child relationship is sought, the court shall appoint a guardian ad litem to represent the interests of the child, unless the child is a petitioner. In any other suit under this subtitle, the court may appoint a guardian ad litem. The managing conservator may be appointed guardian ad litem if he is not a parent of the child or a person petitioning for adoption of the child and if he has no personal interest in the suit.

(b) A guardian ad litem shall be appointed to represent any other person entitled to service of citation under the provisions of Section 11.09 of this code if the person is incompetent or a child.

(c) The court may appoint an attorney to represent the interests of a minor child in any suit under this subtitle in which a guardian ad litem has not been appointed.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 11.11. Temporary Orders**

(a) In a suit affecting the parent-child relationship, the court may make any temporary order for the safety and welfare of the child, including but not limited to an order:

- (1) for the temporary conservatorship of the child;
- (2) for the temporary support of the child;
- (3) restraining any party from molesting or disturbing the peace of the child or another party;
- (4) taking the child into the possession of the court or of a person designated by the court; or
- (5) attaching the body of the child or prohibiting a person from removing the child beyond the jurisdiction of the court as under a writ of ne exeat.

(b) Temporary orders under this section are governed by the rules governing temporary restraining orders and temporary injunctions in civil cases generally.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 11.12. Social Study**

(a) In a suit affecting the parent-child relationship, the court may order the preparation of a social study into the circumstances and condition of the child and of the home of any person seeking managing conservatorship or possession of the child.

(b) In a suit in which adoption is sought, the social study authorized by this section is mandatory.

(c) The social study may be made by any state agency, including the State Department of Public Welfare, or any private agency, or any person appointed by the court. If an authorized agency is the managing conservator, the social study shall be made by the authorized agency. The social study shall be made according to criteria established by the court.

(d) The agency or person making the social study shall file its findings and conclusions with the court on a date set by the court. The date may not be later than 60 days after the day the study is ordered, and in cases of adoption it may not be later than 60 days after the day the petition is filed. The report shall be made a part of the record of the suit. [Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 11.13. Jury**

(a) In a suit affecting the parent-child relationship, except a suit in which adoption is sought, any party may demand a jury trial.

(b) The verdict of the jury is binding on the court except with respect to the issues of managing conservatorship, possession, and support of and access to a child, on which the verdict is advisory only, provided, however, the court may not enter a decree that contravenes the verdict of the jury on the issues of managing conservatorship, possession of, or access to a child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 11.14. Hearing**

(a) Except as otherwise provided in this subtitle, proceedings shall be as in civil cases generally.

(b) On the agreement of all parties to the suit, the court may limit attendance at the hearing to only those persons who have a direct interest in the suit or in the work of the court.

(c) The court may compel the attendance of witnesses necessary for the proper disposition of the petition, including a representative of the agency making the social study, who may be compelled to testify.

(d) A record shall be made as in civil cases generally unless waived by the parties with the consent of the court.

(e) The rules of evidence apply as in other civil cases.

(f) When information contained in a report, study, or examination is before the court, the person making the report, study, or examination is subject to both direct examination and cross-examination as in civil cases generally.

(g) The hearing may be adjourned from time to time.

(h) In any suit in which a social study is ordered, the court shall set a time and place for a hearing, which must be held not more than 60 days after the

date the study was ordered; except that in adoption cases the hearing shall be held not less than 40 days nor more than 60 days after the day the investigator is appointed. However, for good cause shown the court may set the hearing at any time which provides adequate time for filing the report of the study. On or before the day set for hearing, the court, for good cause shown, may change the time of the hearing to any day after the day on which the report of the social study is presented to the court. The person or agency appointed to make the social study is entitled to at least five days' notice of the change.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 11.15. Findings

The court's findings shall be based on a preponderance of the evidence under rules generally applicable to civil cases.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 11.16. Decree

The decree in a suit affecting the parent-child relationship shall recite the names and addresses of the parties to the suit, the basis of the court's jurisdiction, and relevant facts on which the findings and orders are based.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 11.17. Central Record File

(a) Except as provided by Subsection (b) of this section, the clerk of each court having jurisdiction of suits affecting the parent-child relationship shall transmit to the State Department of Public Welfare a copy of the decree entered in each suit affecting the parent-child relationship, together with the name and all prior names, birthdate, and place of birth of the child. The department shall maintain these records in a central file according to the name, birthdate, and place of birth of the child, the court which rendered the decree, and the docket number of the suit.

(b) On entry of a decree of adoption, the clerk of the court shall transmit to the department the complete file in the case, including all pleadings, papers, studies, and records in the suit other than the minutes of the court. When the department receives the complete file, it shall close the records concerning that child; and except for statistical purposes, it shall not disclose any information concerning the prior proceedings affecting the child. Any subsequent inquiries concerning the child shall be handled as though the child had not been previously the subject of a suit affecting the parent-child relationship. On the receipt of additional records concerning a child who has been the subject of an adoption decree, a new file shall be made and maintained as other records required by this section.

(c) On the written request of a court or of an attorney, the department shall identify the court which last had jurisdiction of the child in a suit affecting the parent-child relationship and give the

docket number of the suit, or state that the child has not been the subject of a suit affecting the parent-child relationship. The child shall be identified in the request by name, birthdate, and place of birth. The department shall transmit this information within 10 days after the day the request is received and may charge a reasonable fee to cover the cost of this service.

(d) The records required to be maintained by the department are confidential, and no person is entitled to access to or information from these records except as provided by this section or on an order of a district court of Travis County for good cause.

(e) The department may utilize microfilm or other suitable means for maintaining the central record file. A certified reproduction of a document maintained by the department is admissible in evidence as the original document.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 11.18. Costs

(a) In any proceeding under this subtitle, the court may award costs as in other civil cases. Reasonable attorney's fees may be taxed as costs; and may be ordered paid directly to the attorney, who may enforce the order for fees in his own name.

(b) No separate filing fee is required in any suit affecting the parent-child relationship joined with a suit for dissolution of marriage under Title 1 of this code.<sup>1</sup> Additional filing fees shall not be required if more than one form of relief is requested in a suit affecting the parent-child relationship.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> Section 1.01 et seq.

#### § 11.19. Appeal

(a) Appeals from orders, decrees, or judgments entered in suits affecting the parent-child relationship, when allowed under this section or under other provisions of law, shall be as in civil cases generally.

(b) An appeal may be taken by any party to a suit affecting the parent-child relationship from an order, decree, or judgment:

(1) entered under Chapter 13 of this code;<sup>1</sup>

(2) entered under Chapter 14 of this code<sup>2</sup> appointing or refusing to appoint a managing conservator; appointing or refusing to appoint a possessory conservator; ordering or refusing to order payments for support of a child; or modifying any such order previously entered;

(3) entered under Chapter 15 of this code<sup>3</sup> terminating or refusing to terminate the parent-child relationship; or appointing a managing conservator;

(4) entered under Chapter 16 of this code<sup>4</sup> granting or refusing an adoption.

(c) An appeal from an order, judgment, or decree, with or without a supersedeas bond, does not suspend the order, decree, or judgment unless suspension is ordered by the court entering the order, decree, or judgment. The appellate court, on a

proper showing, may permit the order, decree, or judgment to be suspended.

(d) On the motion of the parties or on its own motion the appellate court in its opinion may identify the parties by fictitious names or by their initials only.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

- <sup>1</sup> Section 13.01 et seq.
- <sup>2</sup> Section 14.01 et seq.
- <sup>3</sup> Section 15.01 et seq.
- <sup>4</sup> Section 16.01 et seq.

**CHAPTER 12. THE PARENT-CHILD RELATIONSHIP**

Section

- 12.01. Relation of Child to Mother.
- 12.02. Relation of Child to Father.
- 12.03. Artificial Insemination.
- 12.04. Rights, Privileges, Duties, and Powers of Parent.

**§ 12.01. Relation of Child to Mother**

A child is the legitimate child of his mother. [Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 12.02. Relation of Child to Father**

(a) A child is the legitimate child of a man if the child is born or conceived before or during the marriage of his mother and the man.

(b) A child is the legitimate child of a man if at any time his mother and the man have attempted to marry in apparent compliance with the laws of this state or another state or nation, although the attempted marriage is or might be declared void, and the child is born or conceived before or during the attempted marriage.

(c) A child is the legitimate child of a man if the man's paternity is established under the provisions of Chapter 13 of this code.<sup>1</sup>

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> Section 13.01 et seq.

**§ 12.03. Artificial Insemination**

(a) If a husband consents to the artificial insemination of his wife, any resulting child is the legitimate child of both of them. The consent must be in writing and must be acknowledged.

(b) If a woman is artificially inseminated, the resulting child is not the child of the donor unless he is the husband.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 12.04. Rights, Privileges, Duties, and Powers of Parent**

Except as otherwise provided by judicial order or by an affidavit of relinquishment of parental rights executed under Section 15.03 of this code, the parent of a child has the following rights, privileges, duties, and powers:

- (1) the right to have physical possession of the child and to establish its legal domicile;
- (2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;

(3) the duty to support the child, including providing the child with clothing, food, shelter, medical care, and education;

(4) the duty to manage the estate of the child;

(5) the right to the services and earnings of the child;

(6) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

(7) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(8) the power to receive and give receipt for payments for the support of the child and to hold or disburse any funds for the benefit of the child;

(9) the right to inherit from and through the child; and

(10) any other right, privilege, duty, or power existing between a parent and child by virtue of law.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**CHAPTER 13. VOLUNTARY LEGITIMATION**

Section

- 13.01. Voluntary Legitimation.
- 13.02. Statement of Paternity.
- 13.03. Effect of Statement of Paternity.
- 13.04. Validation of Prior Statements.
- 13.05. Managing Conservatorship, Support, Etc.
- 13.06. Birth Certificate.

**§ 13.01. Voluntary Legitimation**

(a) The father of a child not the legitimate child of another man may institute a suit for a decree designating him as the father of the child unless the parent-child relationship has been terminated under Chapter 15 of this code.<sup>1</sup> With the consent of the mother or the managing conservator, if one has been appointed, and the court, and on the filing of a statement of paternity executed by the father and submitted with the petition, and after notice to the wife, if any, of the father of the child, the court shall enter a decree declaring the child to be the child of the father.

(b) If a statement of paternity is filed with the State Department of Public Welfare, the father, the mother, or the department may institute a suit for a decree establishing the child as the legitimate child of the person executing the statement. On the consent of the mother, the managing conservator, or the court, and on the filing of the statement of paternity with the petition, the court shall enter a decree declaring the child to be the legitimate child of the person executing the statement of paternity.

(c) A suit for voluntary legitimation may be joined with a suit for termination under Chapter 15 of this code.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> Section 15.01 et seq.

### § 13.02. Statement of Paternity

The statement of paternity authorized to be used in Section 13.01 of this code must be executed by the father of the child as an affidavit and witnessed by two credible adults. The affidavit must clearly state that the father acknowledges the child as his child, that he and the mother, who is named in the affidavit, were not married to each other at the time of conception of the child or at any subsequent time, that the child is not the legitimate child of another man, and that the child is entitled to support from the father. The statement must be executed before a person authorized to administer oaths under the laws of this state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 13.03. Effect of Statement of Paternity

(a) A statement of paternity executed as provided in Section 13.02 of this code is prima facie evidence that the child is the child of the person executing the statement and that the person has an obligation to support the child.

(b) If the father's address is unknown or he is outside the jurisdiction of the court at the time a suit is instituted under Section 13.01 of this code, his statement of paternity, in the absence of controverting evidence, is sufficient for the court to enter a decree establishing his paternity of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 13.04. Validation of Prior Statements

A statement acknowledging paternity or an obligation to support a child which was signed by the father before January 1, 1974, is valid and binding even though the statement is not executed as provided in Section 13.02 of this code and is not filed with the State Department of Public Welfare or with the court.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 13.05. Managing Conservatorship, Support, Etc.

In a suit in which voluntary legitimation is sought, the court may provide for the managing conservatorship, possession, and support of and access to the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 13.06. Birth Certificate.

On voluntary legitimation under this chapter, the clerk of the court, unless directed otherwise by the court, shall transmit a copy of the decree to the State Registrar of Vital Statistics. The decree shall state the name of the child. The registrar shall substitute for the original a new birth certificate based on the decree in accordance with the provisions of the laws which permit the correction or substitution of birth certificates for adopted children or children legitimated by the subsequent marriage of their parents and in accordance with the rules and

regulations promulgated by the State Department of Health.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

## CHAPTER 14. CONSERVATORSHIP, POSSESSION AND SUPPORT OF CHILDREN

### Section

- 14.01. Court Appointment of Managing Conservator.
- 14.02. Rights, Privileges, Duties, and Powers of Managing Conservator.
- 14.03. Possession of and Access to Child.
- 14.04. Rights, Privileges, Duties, and Powers of Possessory Conservator.
- 14.05. Support of Child.
- 14.06. Agreements Concerning Conservatorship.
- 14.07. Best Interest of Child.
- 14.08. Modification of Order.
- 14.09. Enforcement of Order.
- 14.10. Habeas Corpus.

### § 14.01. Court Appointment of Managing Conservator

(a) In any suit affecting the parent-child relationship, the court may appoint a managing conservator, who must be a suitable, competent adult, or a parent, or an authorized agency. If the court finds that the parents are or will be separated, the court shall appoint a managing conservator.

(b) A parent shall be appointed managing conservator of the child unless the court finds that appointment of the parent would not be in the best interest of the child. In determining which parent to appoint as managing conservator, the court shall consider the qualifications of the respective parents without regard to the sex of the parent.

(c) A qualified person or authorized agency designated managing conservator of the child in an unrevoked or irrevocable affidavit of relinquishment of parental rights executed pursuant to Section 15.03 of this code shall be appointed managing conservator of the child unless the court finds that appointment of the person or agency would not be in the best interest of the child.

(d) A person appointed managing conservator who is not a parent of the child shall each 12 months after his appointment file with the court a report of facts concerning the child's welfare, including his whereabouts and physical condition. The report may not be admitted in evidence in any subsequent suit affecting the parent-child relationship.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 14.02. Rights, Privileges, Duties, and Powers of Managing Conservator

(a) A parent appointed managing conservator of the child retains all the rights, privileges, duties, and powers of a parent to the exclusion of the other parent, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child.

(b) A managing conservator who is not the parent of the child has the following rights, privileges, duties, and powers, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child:

- (1) the right to have physical possession of the child and to establish its legal domicile;
- (2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;
- (3) the duty to provide the child with clothing, food, shelter, and education;
- (4) the right to the services and earnings of the child;
- (5) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;
- (6) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
- (7) the power to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child; and
- (8) if the parent-child relationship has been terminated with respect to the parents, or only living parent, or if there is no living parent, the power to consent to the adoption of the child and to make any other decision concerning the child that a parent could make.

(c) A person or authorized agency designated managing conservator of a child in an affidavit of relinquishment executed pursuant to Section 15.03 of this code shall have the rights, privileges, duties, and powers given by Section 14.04 of this code to a possessory conservator until such time as these rights, privileges, duties, and powers are modified or terminated by court order.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 14.03. Possession of and Access to Child**

(a) If a managing conservator is appointed, the court may appoint one or more possessory conservators and set the time and conditions for possession of or access to the child by the possessory conservators and others.

(b) On the appointment of a possessory conservator, the court shall prescribe the rights, privileges, duties, and powers of the possessory conservator.

(c) The court may not deny possession of or access to a child to either or both parents unless it finds that parental possession or access is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child.

(d) The court may grant reasonable visitation rights to either the maternal or paternal grandpar-

ents of the child and issue any necessary orders to enforce said decree.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 14.04. Rights, Privileges, Duties, and Powers of Possessory Conservator**

A possessory conservator has the following rights, privileges, duties, and powers during the period of possession, subject to any limitations expressed in the decree:

- (1) the duty of care, control, protection, and reasonable discipline of the child;
- (2) the duty to provide the child with clothing, food, and shelter;
- (3) the power to consent to medical and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and
- (4) any other right, privilege, duty, or power of a managing conservator expressly granted in the decree awarding possession of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 14.05. Support of Child**

(a) The court may order either or both parents to make periodic payments or a lump-sum payment, or both, for the support of the child until he is 18 years of age in the manner and to the persons specified by the court in the decree. In addition, the court may order a parent obligated to support a child to set aside property to be administered for the support of the child in the manner and by the persons specified by the court in the decree.

(b) If the court finds that the child, whether institutionalized or not, requires continuous care and personal supervision because of a mental or physical disability and will not be able to support himself, the court may order that payments for the support of the child shall be continued after the 18th birthday and extended for an indefinite period.

(c) The court may order the trustees of a spendthrift or other trust to make disbursements for the support of the child to the extent the trustees are required to make payments to a beneficiary who is required to make support payments under this section. If disbursement of the assets of the trust is discretionary in the trustees, the court may order payments for the benefit of the child from the income of the trust, but not from the principal.

(d) Unless otherwise agreed to in writing or expressly provided in the decree, provisions for the support of a child are terminated by the marriage of the child, the removal of the child's disabilities for general purposes, or the death of a parent obligated to support the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 14.06. Agreements Concerning Conservatorship**

(a) To promote the amicable settlement of disputes between the parties to a suit under this chapter, the parties may enter into a written agreement

containing provisions for conservatorship and support of the child.

(b) If the court finds the agreement is not in the child's best interest the court may request the parties to submit a revised agreement or the court may make orders for the conservatorship and support of the child.

(c) If the court finds that the agreement is in the child's best interest, its terms shall be set forth in the decree and the parties shall be ordered to perform them.

(d) Terms of the agreement set forth in the decree may be enforced by all remedies available for enforcement of a judgment, including contempt, but are not enforceable as contract terms unless the agreement so provides.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 14.07. Best Interest of Child

(a) The best interest of the child shall always be the primary consideration of the court in determining questions of managing conservatorship, possession, and support of and access to the child. If the child is 14 years of age or older, he may, by writing filed with the court, choose the managing conservator, subject to the approval of the court.

(b) In determining the best interest of the child, the court shall consider the circumstances of the parents.

(c) The court may interview the child in chambers to ascertain the child's wishes as to his conservator. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be made part of the record in the case.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 14.08. Modification of Order

(a) Any party affected by an order of the court providing for managing conservatorship or support of a child, or setting the terms and conditions for possession of or access to a child, may file a motion requesting the court to modify its former order. The motion shall allege that the circumstances of the child have materially and substantially changed since the entry of the order sought to be modified, set forth the alleged circumstances, and be sworn to by the party seeking modification.

(b) All parties to the suit are entitled to notice and hearing.

(c) After a hearing and on a finding that the circumstances of the child have materially and substantially changed and that modification is in the best interest of the child, any order or part of an order may be modified, except that an order providing for support of a child may be modified only as to obligations accruing subsequent to the motion to modify.

(d) No motion to modify the decree of conservatorship may be made earlier than one year after the date of the initial decree unless the court decides on

the basis of affidavit that there is reason to believe that the child's present environment may endanger his physical health or significantly impair his emotional development. The affidavit shall set forth facts supporting the requested modification and shall be submitted with the motion to modify. The court shall deny the motion to modify unless it finds adequate cause for hearing the motion, in which case the motion shall be set for hearing.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 14.09. Enforcement of Order

(a) Any order of the court may be enforced by contempt.

(b) A court may enforce an order for support as provided in Rule 308A of the Texas Rules of Civil Procedure or any subsequent version of the rule promulgated by the supreme court.

(c) On the motion of any party entitled to receive payments for the benefit of a child, the court may render judgment against a defaulting party for any amount unpaid and owing after 10 days' notice to the defaulting party of his failure or refusal to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgments for debts.

(d) A parent may be compelled to testify fully in regard to his ability to support the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 14.10. Habeas Corpus

(a) If the right to possession of a child is presently governed by a court order, the court in a habeas corpus proceeding involving the right to possession of the child shall compel return of the child to the relator if and only if it finds that the relator is presently entitled to possession by virtue of the court order.

(b) The court shall disregard any cross action or motion pending for modification of the decree determining managing conservatorship, possession, or support of or access to the child unless it finds that the previous order was granted by a court of another state or nation and that:

(1) the court did not have jurisdiction of the parties; or

(2) the child has been within the state for at least 12 months immediately preceding the filing of the petition for the writ.

(c) The court may issue any appropriate temporary order if there is a serious immediate question concerning the welfare of the child.

(d) While in this state for the sole purpose of compelling the return of a child through a habeas corpus proceeding, the relator is not amenable to civil process and is not subject to the jurisdiction of any civil court except the court in which the writ is pending and in that court only for the purpose of prosecuting the writ.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**CHAPTER 15. TERMINATION OF THE PARENT-CHILD RELATIONSHIP**

Section

- 15.01. Termination When Parent is Petitioner.
- 15.02. Termination When Parent is not Petitioner.
- 15.03. Affidavit of Relinquishment of Parental Rights.
- 15.04. Affidavit of Status of Child.
- 15.05. Decree.
- 15.06. Dismissal of Petition.
- 15.07. Effect of Decree.

**§ 15.01. Termination When Parent is Petitioner**

A parent may file a petition requesting termination of the parent-child relationship with his child. The petition may be granted if the court finds that termination is in the best interest of the child. [Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 15.02. Termination When Parent is not Petitioner**

A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the court finds that:

- (1) the parent has:
  - (A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return; or
  - (B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months; or
  - (C) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; or
  - (D) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; or
  - (E) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition; or
  - (F) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence; or
  - (G) contumaciously refused to submit to a reasonable and lawful order of a court under Section 34.05 of this code; or
  - (H) been the major cause of:
    - (i) the child's repeated violations of the compulsory school attendance laws; or
    - (ii) the child's absence from his home without the consent of his parents or guardian for a substantial length of time or without the intent to return; or

(I) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Section 15.03 of this code; and

(2) termination is in the best interest of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 15.03. Affidavit of Relinquishment of Parental Rights**

(a) An affidavit for voluntary relinquishment of parental rights must be signed by the parent, whether or not a minor, whose parental rights are to be relinquished, witnessed by two credible persons, and acknowledged before any person authorized to take oaths.

(b) The affidavit must contain:

- (1) the name, address, and age of the parent whose parental rights are being relinquished;
- (2) the name, age, and birthdate of the child;
- (3) the names and addresses of the guardians of the person and estate of the child, if any;
- (4) a statement that the affiant is or is not presently obligated by court order to make payments for the support of the child;
- (5) a full description and statement of value of all property owned or possessed by the child;
- (6) allegations that termination of the parent-child relationship is in the best interest of the child;
- (7) one of the following, as applicable:
  - (A) the name and address of the other parent;
  - (B) a statement that the parental rights of the other parent have been terminated by death or court order; or
  - (C) a statement that the child is not the legitimate child of the father and that an affidavit of status of child has been executed as provided by Section 15.04 of this code;
- (8) a statement that the parent has been informed of his parental rights, powers, duties, and privileges; and
- (9) a statement that the relinquishment is revocable, or that the relinquishment is irrevocable, or that the relinquishment is irrevocable for a stated period of time.

(c) The affidavit may contain:

- (1) a designation of any qualified person, the State Department of Public Welfare, or any authorized agency as managing conservator of the child;
- (2) a waiver of process in a suit to terminate the parent-child relationship brought under Section 15.02(1)(G)<sup>1</sup> of this code, or in a suit to terminate joined with a petition for adoption under Section 16.03(e) of this code, for the period during which the affidavit is irrevocable; and

(3) a consent to the placement of the child for adoption by the State Department of Public Welfare or by an agency authorized by the State Department of Public Welfare to place children for adoption.

(d) An affidavit of relinquishment of parental rights which designates as the managing conservator of the child the State Department of Public Welfare or an agency authorized by the State Department of Public Welfare to place children for adoption is irrevocable. Any other affidavit of relinquishment is revocable unless it expressly provides that it is irrevocable for a stated period of time not to exceed 60 days after the date of its execution.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> So in enrolled bill; probably should read "15.02(1)(1)".

#### § 15.04. Affidavit of Status of Child

(a) If the child is not the legitimate child of the father, an affidavit shall be executed by the mother, whether or not a minor, subsequent to the birth of the child, witnessed by two credible persons, and acknowledged before any person authorized to take oaths.

(b) The affidavit must state that:

(1) the mother is not and has not been married to the father of the child;

(2) the mother and father have not attempted to marry under the laws of this state or another state or nation;

(3) paternity has not been established under the laws of any state or nation; and

(4) one of the following, as applicable:

(A) the father is unknown;

(B) the affiant does not know the whereabouts of the father;

(C) the father has executed a statement of paternity under Section 13.02 of this code and an affidavit of relinquishment of parental rights under Section 15.03 of this code and both affidavits have been filed with the court; or

(D) the name and whereabouts of the father.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 15.05. Decree

(a) If the court finds grounds for termination of the parent-child relationship, it shall enter a decree terminating the parent-child relationship.

(b) If the court terminates the parent-child relationship with respect to both parents or to the only living parent, the court shall appoint a suitable, competent adult or authorized agency as managing conservator of the child. An agency designated managing conservator in an unrevoked or irrevocable affidavit of relinquishment shall be appointed managing conservator. The order of appointment may refer to the docket number of the suit and need not refer to the parties nor be accompanied by any other papers in the record.

(c) If the court does not order termination of the parent-child relationship, it shall:

(1) dismiss the petition; or

(2) enter any order considered to be in the best interest of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 15.06. Dismissal of Petition

A petition for termination of the parent-child relationship may not be dismissed on the motion of the petitioner except by order of the court entered on the written motion of all parties to the proceeding. Unless otherwise stated in the court's order, the dismissal is without prejudice.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 15.07. Effect of Decree

A decree terminating the parent-child relationship divests the parent and the child of all legal rights, privileges, duties, and powers, with respect to each other, except that the child retains the right to inherit from its parent unless the court otherwise provides.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

## CHAPTER 16. ADOPTION

### SUBCHAPTER A. ADOPTION OF CHILDREN

#### Section

- 16.01. Who May be Adopted.
- 16.02. Who May Adopt.
- 16.03. Prerequisites to Petition.
- 16.04. Residence With Petitioner.
- 16.05. Consent Required.
- 16.06. Revocation of Consent.
- 16.07. Attendance Required.
- 16.08. Decree.
- 16.09. Effect of Adoption Decree.
- 16.10. Withdrawal or Denial of Petition.
- 16.11. Abatement.
- 16.12. Direct or Collateral Attack.

### SUBCHAPTER B. ADOPTION OF ADULTS

- 16.51. Who May Adopt.
- 16.52. Consent.
- 16.53. Petition.
- 16.54. Attendance at Hearing.
- 16.55. Effect of Adoption Decree.

### SUBCHAPTER A. ADOPTION OF CHILDREN

#### § 16.01. Who May be Adopted

Any child residing in this state at the time a petition requesting adoption is filed may be adopted.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 16.02. Who May Adopt

Any adult is eligible to adopt a child who is a resident of this state at the time the petition for adoption is filed.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 16.03. Prerequisites to Petition**

(a) If a petitioner is married, both spouses must join in the petition for adoption.

(b) Except as provided in Subsections (c), (d), and (e) of this section, no petition for adoption of a child may be considered unless there has been a decree terminating the parent-child relationship as to each living parent of the child.

(c) If a parent is presently the spouse of the petitioner, no termination decree is required with respect to the parental rights of that parent.

(d) If the child is not the legitimate child of its father and the mother is the spouse of the petitioner, the mother shall execute an affidavit in accordance with Section 15.04 of this code, and no termination decree is required with respect to the parental rights of the natural father. The affidavit must be attached to the petition.

(e) If an affidavit of relinquishment of parental rights contains a consent that the State Department of Public Welfare or an authorized agency may place the child for adoption and appoints the department or agency managing conservator of the child, no further consent by the parent is required and the adoption decree shall terminate all rights of the parent without further termination proceedings.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 16.04. Residence With Petitioner**

No petition for the adoption of a child shall be granted until the child has lived for at least six months in the home of the petitioner. However, if requested in the petition, the residence requirement may be waived by order of the court if the court is satisfied that the best interest of the child would be served.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 16.05. Consent Required**

(a) If a managing conservator has been appointed, his consent to the adoption must be given in writing and filed in the record unless he is a petitioner, in which case his consent need not be given.

(b) If a parent of the child is presently the spouse of the petitioner, that parent must join in the petition for adoption, and no further consent of that parent is required.

(c) If the child to be adopted is 12 years of age or older, his consent must be given in court or in writing in the form directed by the court. The court may waive this requirement if the best interest of the child would be served.

(d) The court may waive the requirement of consent to the adoption by the managing conservator if it finds that the consent is being refused, or has been revoked, without good cause.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 16.06. Revocation of Consent**

At any time before an order granting the adoption of the child is entered, a consent required by Section

16.05 of this code may be revoked by filing a signed revocation statement with the court.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 16.07. Attendance Required**

(a) If husband and wife are joint petitioners and it would be unduly difficult for one of the petitioners to appear, the court may waive the attendance of that petitioner if the other spouse is present.

(b) If the child to be adopted is 12 years of age or older, he shall attend the hearing unless the court finds it to be in the best interest of the child to waive this requirement.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 16.08. Decree**

(a) If the court is satisfied that the requirements for adoption have been met and the adoption is in the best interest of the child, the court shall make a decree granting the adoption, reciting the findings pertaining to the court's jurisdiction. If a request for termination of the parent-child relationship has been joined with the petition for adoption under Section 16.03(e) of this code, the court shall also enter in its decree a termination of the parent-child relationship.

(b) The name of the child may be changed in the decree if requested.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 16.09. Effect of Adoption Decree**

(a) On entry of a decree of adoption, the parent-child relationship exists between the adopted child and the adoptive parents as if the child were born to the adoptive parents during marriage.

(b) An adopted child is entitled to inherit from and through his adoptive parents as though he were the natural child of the parents.

(c) The terms "child," "descendant," "issue," and other terms indicating the relationship of parent and child include an adopted child unless the context or express language clearly indicates otherwise.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 16.10. Withdrawal or Denial of Petition**

In a suit in which the petition is withdrawn or denied, the court may order the removal of the child from the proposed adoptive home if removal is in the child's best interest, and may enter any order which is necessary for the welfare of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 16.11. Abatement**

(a) In the event of the death of the petitioner or petitioners, or the divorce of the petitioners, the proceeding abates and the petition for adoption shall be dismissed, unless the petition is amended to request adoption by one of the original petitioners.

(b) If one of two petitioners dies, the proceeding continues uninterrupted.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 16.12. Direct or Collateral Attack

The validity of an adoption decree is not subject to attack more than two years after the decree is entered.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

[Sections 16.13 to 16.50 reserved for expansion]

## SUBCHAPTER B. ADOPTION OF ADULTS

### § 16.51. Who May Adopt

Any adult resident of the state may petition the district court in the county of his residence to adopt an adult person.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 16.52. Consent

No petition for adoption of an adult shall be granted until the adult to be adopted has acknowledged and filed with the petition his consent to adoption by the petitioner.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 16.53. Petition

The petition to adopt an adult shall be entitled "In the interest of \_\_\_\_\_, an adult." A petition filed by a married person must be joined in by the spouse.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 16.54. Attendance at Hearing

The petitioner and the adult to be adopted shall be required to attend the hearing unless for good cause, shown by an order entered in the minutes of the court, the petitioner or adult to be adopted is unable to be present.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 16.55. Effect of Adoption Decree

On entry of the decree of adoption, the adopted adult is the son or daughter of the adoptive parents, and of the natural parents, for inheritance purposes. However, the natural parents may not inherit from the adopted adult.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

## CHAPTER 17. SUIT FOR PROTECTION OF CHILD IN EMERGENCY

### Section

- 17.01. Taking Possession in Emergency.
- 17.02. Hearing.
- 17.03. Notice.
- 17.04. Grounds and Disposition.
- 17.05. Duration of Order.
- 17.06. Modification.
- 17.07. Effect of Appeal.
- 17.08. Continuing Jurisdiction not Retained.
- 17.09. Civil Liability.

### § 17.01. Taking Possession in Emergency

An authorized representative of the State Department of Public Welfare, a law-enforcement officer, or a juvenile probation officer may take possession of a child to protect him from an immediate danger to his physical safety and deliver him to any court having jurisdiction of suits under this subtitle, whether or not the court has continuing jurisdiction under Section 11.05 of this code. The child shall be delivered immediately to the court.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 17.02. Hearing

Unless the child is taken into possession pursuant to a temporary order entered by a court under Section 11.11 of this code, the officer or representative shall file a petition in the court immediately on delivery of the child to the court, and a hearing shall be held to provide for the temporary care or protection of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 17.03. Notice

The proceeding under Section 17.02 of this code may be held without notice.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 17.04. Grounds and Disposition

On a showing that the child is apparently without support and is dependent on society for protection, or that the child is in immediate danger of physical or emotional injury, the court may make any appropriate order for the care and protection of the child and may appoint a temporary managing conservator for the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 17.05. Duration of Order

An order issued under Section 17.04 of this code expires at the end of the 10-day period following the date of the order, or on the issuance of temporary orders in a suit affecting the parent-child relationship under this subtitle, whichever occurs first.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 17.06. Modification

On the motion of a parent, managing conservator, or guardian of the person of the child, and notice to those persons involved in the original emergency hearing, the court shall conduct a hearing and may modify any emergency order made under this chapter if found to be in the best interest of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 17.07. Effect of Appeal

An appeal from an emergency order made under this chapter does not stay the order.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 17.08. Continuing Jurisdiction not Retained**

The court having jurisdiction of a child under this chapter does not retain continuing jurisdiction within the meaning of Section 11.05 of this code.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 17.09. Civil Liability**

A person who takes possession of a child under Section 17.01 of this code is immune from civil liability if, at the time possession is taken, he had reasonable cause to believe there was an immediate danger to the physical safety or emotional well-being of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**SUBTITLE B. UNIFORM ACTS AND INTER-STATE COMPACTS**

**CHAPTER 21. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

Section

- 21.01. Short Title.
- 21.02. Purposes.
- 21.03. Definitions.
- 21.04. Remedies.
- 21.05. Extent of Duty of Support.
- 21.06. Uniformity of Interpretation.

**SUBCHAPTER B. CRIMINAL ENFORCEMENT**

- 21.11. Interstate Rendition.
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**SUBCHAPTER C. CIVIL ENFORCEMENT**

- 21.21. Choice of Law.
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- 21.23. How Duties of Support are Enforced.
- 21.24. Jurisdiction.
- 21.25. Petition for Support.
- 21.26. Representation of Plaintiff.
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- 21.29. Costs.
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- 21.34. Continuation of the Case.
- 21.35. Testimony of Husband and Wife.
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- 21.38. Transmittal of Orders.
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- 21.40. Receipt and Disbursement of Payments—Responding State.
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**SUBCHAPTER D. REGISTRATION OF FOREIGN SUPPORT ORDERS**

- 21.61. Additional Remedies.
- 21.62. Registration.
- 21.63. Registry of Foreign Support Orders.
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- 21.65. Jurisdiction and Procedure.
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**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 21.01. Short Title**

This chapter may be cited as the Uniform Reciprocal Enforcement of Support Act.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.02. Purposes**

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.03. Definitions**

In this chapter, unless the context requires a different definition:

(1) "State" includes any state, territory, or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(2) "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "Responding state" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

(4) "Court" means the district court of this state and when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(5) "Law" includes both common and statute law.

(6) "Duty of support" includes any duty of support imposed or imposable by law, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise; but shall not include alimony for a former wife.

(7) "Obligor" means any person owing a duty of support.

(8) "Obligee" means any person to whom a duty of support is owed and a state or political subdivision thereof.

(9) "Governor" includes any person performing the functions of governor or the executive authority of any territory covered by the provisions of this chapter.

(10) "Support order" means any judgment, decree, or order of support, whether temporary or final, whether subject to modification, revocation, or remission, regardless of the kind of action in which it is entered.

(11) "Rendering state" means any state in which a support order is originally entered.

(12) "Registering court" means any court of this state in which the support order of the rendering state is registered.

(13) "Register" means to record in the Registry of Foreign Support Orders.

(14) "Certification" shall be in accordance with the laws of the certifying state.

(15) "Prosecuting attorney" means the criminal district attorney or county attorney, or the district attorney where there is no criminal district attorney or county attorney.

(16) "Custody" includes managing conservatorship.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 21.04. Remedies

The remedies herein provided are in addition to and not in substitution for any other remedies.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 21.05. Extent of Duty of Support

Duties of support arising under the law of this state, when applicable under Section 21.21 of this code, bind the obligor, present in this state, regardless of the presence or residence of the obligee.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 21.06. Uniformity of Interpretation

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

[Sections 21.07 to 21.10 reserved for expansion]

### SUBCHAPTER B. CRIMINAL ENFORCEMENT

#### § 21.11. Interstate Rendition

(a) The governor of this state may:

(1) demand from the governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state; and

(2) surrender on demand by the governor of any other state any person found in this state who is charged in such other state with the crime of failing to provide for the support of any person in such other state.

(b) The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 21.12. Conditions of Interstate Rendition

(a) Before making the demand on the governor of any other state for the surrender of a person charged in this state with the crime of failing to provide for the support of any person, the governor of this state may require any prosecuting attorney of this state to satisfy him that at least 60 days prior thereto the obligee brought an action for the support under this chapter, or that the bringing of an action would be of no avail.

(b) When under this chapter or a substantially similar act, a demand is made upon the governor of this state by the governor of another state for the surrender of a person charged in the other state with the crime of failing to provide support, the governor may call upon any prosecuting attorney to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this chapter or would be effective.

(c) If any action for the support would be effective and no action has been brought, the governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(d) If an action for support has been brought and the person demanded has prevailed in that action, the governor may decline to honor the demand.

(e) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the governor may decline to honor the demand so long as the person demanded is complying with the support order.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

[Sections 21.13 to 21.20 reserved for expansion]

### SUBCHAPTER C. CIVIL ENFORCEMENT

#### § 21.21. Choice of Law

Duties of support applicable under this chapter are those imposed or impossible under the laws of any state where the obligor was present during the period for which support is sought; but shall not include alimony for a former wife. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

#### § 21.22. State or Political Subdivision Furnishing Support

Whenever the state or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.23. How Duties of Support are Enforced**

All duties of support, including arrearages, are enforceable by a suit under this chapter, irrespective of the relationship between the obligor and the obligee.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.24. Jurisdiction**

Jurisdiction of all proceedings hereunder is vested in the district court. If the child for whom support is sought is the subject of a suit affecting the parent-child relationship, the court having continuing jurisdiction under Section 11.05 of this code has exclusive jurisdiction of a suit under this chapter.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.25. Petition for Support**

The petition shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information. The plaintiff may include in or attach to the petition any information which may help in locating or identifying the defendant, such as a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.26. Representation of Plaintiff**

The prosecuting attorney, upon the request of the court or the State Department of Public Welfare, shall represent the plaintiff in any proceeding under this chapter.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.27. Minor Petitioner**

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.28. Court of This State as Initiating State**

(a) When a petition is filed under this chapter in a court of this state which does not have continuing jurisdiction of the child for whom support is sought under Section 11.05 of this code, the court shall request from the State Department of Public Welfare identification of the court which last had jurisdiction of the child. The child shall be identified by name, birthdate, and place of birth. If it is found that another court in this state has continuing jurisdiction of the child, the case shall be transferred to the court with continuing jurisdiction.

(b) If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his

property, it shall so certify and shall cause three copies of the petition, its certificate, and this chapter to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.29. Costs**

There shall be no filing fee or other costs taxable to the obligee, but a court of this state, acting either as an initiating or responding state, may in its discretion direct that any part of or all fees and costs incurred in this state, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both plaintiff and defendant or either, be paid by the obligor or the county.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.30. Jurisdiction by Arrest**

When the court of this state, acting either as an initiating or responding state, has reason to believe that the defendant may flee the jurisdiction, it may:

(1) as an initiating state, request in its certificate that the court of the responding state obtain the body of the defendant by appropriate process if that be permissible under the law of the responding state; or

(2) as a responding state, obtain the body of the defendant by appropriate process.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.31. State Information Agency**

The State Department of Public Welfare of Austin, Texas, is hereby designated as the state information agency under this chapter, and it shall:

(1) compile a list of the courts and their addresses in this state having jurisdiction under this chapter and transmit the same to the state information agency of every other state which has adopted this chapter or a substantially similar act;

(2) maintain a register of such lists received from other states and transmit copies thereof as soon as possible after receipt to every court in this state having jurisdiction under this chapter; and

(3) on the request of a court of another state, transmit identification of the court in this state which last had jurisdiction of the child for whom support is sought or a statement that the child has not been the subject of a suit affecting the parent-child relationship in this state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 21.32. Duty of State as Responding State

(a) After the court of this state, acting as a responding state, has received from the court of the initiating state the aforesaid copies, the clerk of the court shall request from the State Department of Public Welfare identification of any court in this state which has continuing jurisdiction of the child for whom support is sought under Section 11.05 of this code. The child shall be identified by name, birthdate, and place of birth. If it is found that another court in this state has continuing jurisdiction of the child, the case shall be transferred to the court with continuing jurisdiction. If it is found that no court in this state has continuing jurisdiction of the child, the clerk of the court shall docket the case and notify the district judge or the judge of the domestic relations court, or both judges, of his action.

(b) It shall be the duty of the prosecuting attorney diligently to prosecute the case. He shall take all action necessary in accordance with the laws of this state to give the court jurisdiction of the defendant or his property and shall request the clerk of the court to set a time and place for a hearing. [Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 21.33. Duty of Prosecuting Attorney in Responding State

(a) The prosecuting attorney shall, on his own initiative, use all means at his disposal to trace the defendant or his property and if, due to inaccuracies of the petition or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the court in the initiating state.

(b) If the defendant or his property is not found in the judicial district and the prosecuting attorney discovers by any means that the defendant or his property may be found in another judicial district of this state or in another state, he shall so inform the court; and thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other judicial district or to a court in the other state or to the information agency or other proper official of the other state with a request that it forward the documents to the proper court. Thereupon, both the court of the judicial district and any court of this state receiving the documents and the prosecuting attorney have the same powers and duties under this chapter as if the documents had been originally addressed to them. When the clerk of a court of this state retransmits documents to another court, he shall notify forthwith the court from which the documents came.

(c) If the prosecuting attorney has no information as to the whereabouts of the obligor or his property he shall so inform the initiating court.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 21.34. Continuation of the Case

If the plaintiff is absent from the responding state and the defendant presents evidence which constitutes a defense, the court shall continue the case for further hearing and the submission of evidence by both parties.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 21.35. Testimony of Husband and Wife

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and support.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 21.36. Rules of Evidence

In any hearing under this chapter, the court shall be bound by the same rules of evidence that bind the district court.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 21.37. Support Order

If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 21.38. Transmittal of Orders

The court of this state when acting as a responding state shall cause to be transmitted to the court of the initiating state a copy of all orders of support or for reimbursement therefor.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 21.39. Enforcement Power of Court

In addition to the foregoing powers, the court of this state when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders, and in particular:

(1) to require the defendant to furnish a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant;

(2) to require the defendant to make payments at specified intervals to the district clerk or probation department of the court; and

(3) to punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

Acts 1973, 63rd Leg., p. 659, ch. 276 amended Vernon's Ann.Civ.St. art. 2328b-4, § 25, to read:

"In addition to the foregoing powers, the court of this State when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular: (a) To require the defendant to furnish a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

"(b) To require the defendant to make payments at specified intervals to the district clerk or probation department of the court.

"(c) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

"(d) To order the defendant (obligor) to pay as court costs a reasonable fee to any attorney or to the prosecuting attorney's office who represents the petitioner in any enforcement proceeding."

**§ 21.40. Receipt and Disbursement of Payments—  
Responding State**

The court of this state when acting as a responding state shall have the following duties which may be carried out through the district clerk or probation department of the court:

(1) on the receipt of payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state; and

(2) on request, to furnish to the court of the initiating state a certified statement of all payments made by the defendant.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.41. Receipt and Disbursement of Payments—  
Initiating State**

The court of this state when acting as an initiating state shall have the duty which may be carried out through the district clerk or probation department of the court to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.42. Stay of Proceedings**

No proceeding under this chapter shall be stayed because of the existence of a pending suit for divorce, separation, annulment, dissolution, habeas corpus, or custody proceeding.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.43. Application of Payments**

No order of support issued by a court of this state when acting as a responding state shall supersede any other order of support, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.44. Participation in Proceeding**

Participation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.45. Interdistrict Application**

(a) This chapter is applicable when both the plaintiff and the defendant are in this state but in different judicial districts.

(b) When a petition is filed in a court which does not have continuing jurisdiction of the child for whom support is sought under Section 11.05 of this code, the court shall request from the State Department of Public Welfare identification of the court

which last had jurisdiction of the child. The child shall be identified by name, birthdate, and place of birth. If it is found that another court in this state has continuing jurisdiction of the child, the case shall be transferred to the court with continuing jurisdiction, and that court shall act as the initiating court. If it is found that no other court in this state has continuing jurisdiction of the child, the court in which the petition was filed shall proceed as the initiating court.

(c) If the initiating court finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and finds that another court in this state may obtain jurisdiction of the defendant or his property, the clerk of the court shall send three copies of the petition and a certification of the findings to the court of the judicial district in which the defendant or his property is found. The clerk of the court receiving these copies shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court to which the copies are forwarded shall then have duties corresponding to those imposed upon them when acting for the state as a responding state.

(d) In a suit under this section, no defense may be raised other than payment and satisfaction of the support obligation or invalidity of the decree or judgment creating the obligation.

(e) If the defendant in a suit filed under this section files a motion to modify a prior order in a court with continuing jurisdiction of the child for whom support is sought under Section 14.08 of this code, the proceeding under this section shall be abated.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

[Sections 21.46 to 21.60 reserved for expansion]

SUBCHAPTER D. REGISTRATION OF  
FOREIGN SUPPORT ORDERS

**§ 21.61. Additional Remedies**

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided by this subchapter.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.62. Registration**

The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.63. Registry of Foreign Support Orders**

The clerk of the court shall maintain a registry of foreign support orders in which he shall record foreign support orders.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 21.64. Petition for Registration**

The petition for registration shall be verified and shall set forth the amount remaining unpaid and a

list of any other states in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof. The foreign support order is registered upon the filing of the petition subject only to subsequent order of confirmation.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 21.65. Jurisdiction and Procedure

The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases. The obligor may assert any defense available to a defendant in an action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If the obligor appears and a hearing is held, the court shall adjudicate the issues including the amounts remaining unpaid.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 21.66. Effect and Enforcement of Support Order

The support order as confirmed shall have the same effect and may be enforced as if originally entered in the court of this state. The procedures for the enforcement thereof shall be as in civil cases, including the power to punish the defendant for contempt as in the case of other orders for payment of temporary alimony, maintenance, or support entered in this state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

[Chapters 22 to 24 reserved for expansion]

## CHAPTER 25. UNIFORM INTERSTATE COMPACT ON JUVENILES

### Section

- 25.01. Short Title.
- 25.02. Execution of Interstate Compact.
- 25.03. Execution of Additional Article.
- 25.04. Execution of Amendment.
- 25.05. Juvenile Compact Administrator.
- 25.06. Supplementary Agreements.
- 25.07. Financial Arrangements.
- 25.08. Enforcement.
- 25.09. Additional Procedures not Precluded.

### § 25.01. Short Title

This chapter may be cited as the Uniform Interstate Compact on Juveniles.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 25.02. Execution of Interstate Compact

The governor shall execute a compact on behalf of the state with any other state or states legally joining in it in substantially the following form:

#### "INTERSTATE COMPACT ON JUVENILES

"The contracting states solemnly agree:

##### ARTICLE I. FINDINGS AND PURPOSE

"That juveniles who are not under proper supervision and control, or who have absconded, escaped, or

run away are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformatory, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

#### ARTICLE II. EXISTING RIGHTS AND REMEDIES

"That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures, and shall not be in derogation of parental rights and responsibilities.

#### ARTICLE III. DEFINITIONS

"That, for the purpose of this compact, 'delinquent juvenile' means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; 'probation or parole' means any kind of conditional release of juveniles authorized under the laws of the states party hereto; 'court' means any court having jurisdiction over delinquent, neglected, or dependent children; 'state' means any state, territory, or possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and 'residence' or any variant thereof means a place at which a home or regular place of abode is maintained.

#### ARTICLE IV. RETURN OF RUNAWAYS

"(a) That the parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner, and the basis of entitlement to the juvenile's custo-

dy, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is

in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

"Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

"(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

"(c) That 'juvenile' as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

#### ARTICLE V. RETURN OF ESCAPEES AND ABSCONDERS

"(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal

custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

“Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with this<sup>1</sup> legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned

without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

“(b) That the state to which a delinquent juvenile is returned under this article shall be responsible for the payment of the transportation costs of such return.

<sup>1</sup> So in enrolled bill; probably should read “his”.

#### ARTICLE VI. VOLUNTARY RETURN PROCEDURE

“That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(a) or of Article V(a), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing in writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

#### ARTICLE VII. COOPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES

“(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called ‘sending state’) may permit any delin-

quent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called 'receiving state') while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

"(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

"(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceedings to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

"(d) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or

of returning any delinquent juvenile to the sending state.

ARTICLE VIII. RESPONSIBILITY FOR COSTS

"(a) That the provisions of Articles IV(b), V(b), and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

"(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b), or VII(d) of this compact.

ARTICLE IX. DETENTION PRACTICES

"That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup nor be detained or transported in association with criminal, vicious, or dissolute persons.

ARTICLE X. SUPPLEMENTARY AGREEMENTS

"That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI. ACCEPTANCE OF FEDERAL  
AND OTHER AID

"That any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government, or any agency thereof and from any person, firm, or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same, subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

ARTICLE XII. COMPACT ADMINISTRATORS

"That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII. EXECUTION OF COMPACT

"That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or execution to be in accordance with the laws of the executing state.

ARTICLE XIV. RENUNCIATION

"That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months renunciation notice of the present article.

ARTICLE XV. SEVERABILITY

"That the provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters." [Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 25.03. Execution of Additional Article

The governor shall also execute on the behalf of the state with any other state or states legally joining in it, an additional article to the Interstate Compact on Juveniles in substantially the following form:

ARTICLE XVI. ADDITIONAL ARTICLE

"That this article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

"For the purposes of this article, 'child,' as used herein, means any minor within the jurisdictional age limits of any court in the home state.

"When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence."

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 25.04. Execution of Amendment

The governor shall also execute on the behalf of the state with any other state or states legally joining in it, an amendment to the Interstate Compact on Juveniles in substantially the following form:

RENDITION AMENDMENT

"(a) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

"(b) All provisions and procedures of Articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed."

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 25.05. Juvenile Compact Administrator**

Under the compact, the governor may designate an officer as the compact administrator. The administrator, acting jointly with like officers of other party states, shall adopt regulations to carry out more effectively the terms of the compact. The compact administrator serves at the pleasure of the governor. The compact administrator shall cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of a supplementary agreement entered into by this state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 25.06. Supplementary Agreements**

A compact administrator may make supplementary agreements with appropriate officials of other states pursuant to the compact. If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service of this state, the supplementary agreement has no force or effect until approved by the head of the department or agency under whose jurisdiction the institution is operated, or whose department or agency is charged with performing the service.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 25.07. Financial Arrangements**

The compact administrator may make or arrange for the payments necessary to discharge the financial obligations imposed upon this state by the compact or by a supplementary agreement made under the compact, subject to legislative appropriations.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 25.08. Enforcement**

The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to effectuate its purposes and intent which are within their respective jurisdictions.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 25.09. Additional Procedures not Precluded**

In addition to the procedures provided in Articles IV and VI of the compact for the return of a runaway juvenile, the particular states, the juvenile, or his parents, the courts, or other legal custodian involved may agree upon and adopt any plan or procedure legally authorized under the laws of this state and the other respective party states for the return of the runaway juvenile.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**SUBTITLE C. MISCELLANEOUS PROVISIONS**

**CHAPTER 31. REMOVAL OF DISABILITIES OF MINORITY**

**Section**

31.01. Petition.

31.02. Requisites of Petition.

**Section**

31.03. Venue.

31.04. Guardian Ad Litem.

31.05. Nonresident: Appearance.

31.06. Decree.

31.07. Effect of General Removal.

31.08. Registration of Decrees of Another State or Nation.

**§ 31.01. Petition**

(a) A minor who is a resident of this state and is at least 18 years of age, or is at least 16 years of age, living separate and apart from his parents, managing conservator, or guardian and is self-supporting and managing his own financial affairs, may petition to have his disabilities of minority removed for limited purposes or for general purposes.

(b) A minor who is not a resident of this state and is at least 18 years of age may petition to have his disabilities of minority removed for a limited purpose or for general purposes if he is an adult under the laws of the state of his residence, though not yet 21 years of age.

(c) A minor may institute suit under this section in his own name and need not be represented by next friend.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 31.02. Requisites of Petition**

(a) The petition for removal of disabilities of minority must state:

(1) the name, age, and residence address of the petitioner;

(2) the name and residence address of each living parent;

(3) the name and residence address of the guardian of the person and the guardian of the estate, if any;

(4) the name and residence address of the managing conservator, if any;

(5) the reasons why removal would be in the best interest of the child; and

(6) the purposes for which removal is sought.

(b) If the petitioner is not a resident of this state, the following shall be attached to the petition:

(1) a birth certificate or other adequate proof of the petitioner's age; and

(2) a copy of the applicable law, certified by the secretary of state, or one holding a similar office, in the minor's state of residence.

(c) The petition must be verified by each living parent of the petitioner, except that if a managing conservator or guardian of the person has been appointed, the petition must be verified by the person so appointed. If the person who is to verify the petition is unavailable or his whereabouts are unknown, the guardian ad litem shall verify the petition after his appointment.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 31.03. Venue**

(a) If the petitioner is a resident of this state, the petition shall be filed in the district court of the county where the petitioner resides.

(b) If the petitioner is not a resident of this state, the petition may be filed in any district court.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 31.04. Guardian Ad Litem**

The court shall appoint a guardian ad litem to represent the interest of the petitioner at the hearing.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 31.05. Nonresident: Appearance**

If the petitioner is not a resident of this state, his disabilities of minority may be removed for a limited purpose without personal appearance of the petitioner. The petitioner may appear through an attorney or a guardian ad litem.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 31.06. Decree**

After a hearing, the court may remove the disabilities of minority as requested in the petition if found to be in the best interest of the petitioner. The decree shall specify the purposes for which disabilities are removed.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 31.07. Effect of General Removal**

Except for specific constitutional and statutory age requirements, a minor whose disabilities are removed for general purposes has the power and capacity of an adult, including the capacity to contract.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 31.08. Registration of Decrees of Another State or Nation**

(a) Any nonresident minor who has had his disabilities of minority removed in the state of his residence may file a certified copy of the decree or judgment removing his disabilities in the deed records of any county of this state.

(b) When a certified copy of the decree or judgment of a court of another state or nation is filed as provided in Subsection (a) of this section, the minor has the power and capacity of an adult, except as limited by Section 31.07 of this code and by the terms of the decree or judgment filed.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**CHAPTER 32. CHANGE OF NAME****SUBCHAPTER A. CHANGE OF NAME OF MINOR****Section**

32.01. Who May File.

32.02. Petition.

32.03. Citation.

**Section**

32.04. Decree.

32.05. Effect of Change of Name.

**SUBCHAPTER B. CHANGE OF NAME OF ADULT**

32.21. Petition.

32.22. Decree.

32.23. Effect of Change of Name.

32.24. Change of Name in Divorce Suit.

**SUBCHAPTER A. CHANGE OF NAME OF MINOR****§ 32.01. Who May File**

A parent, managing conservator, or guardian of the person of a minor may file a petition requesting a change of name of the minor.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 32.02. Petition**

(a) A verified petition to change the name of a minor must be filed in a district court of the county where the minor resides and must state:

(1) the present name and address of the minor;

(2) the reason for which a change of name is requested;

(3) the full name to be given the minor; and

(4) whether or not the minor is subject to the continuing jurisdiction of a court under Subtitle A of this title.<sup>1</sup>

(b) If the minor is 12 years of age or older, his written consent to the change of name must be attached to the petition.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> Section 11.01 et seq. (see § 11.05).

**§ 32.03. Citation**

(a) The following persons are entitled to citation in a suit under this subchapter:

(1) each parent whose parental rights have not been terminated;

(2) the managing conservator, if one has been appointed; and

(3) the guardian of the person of the child, if one has been appointed.

(b) Citation must be given in the same manner as provided in Section 11.09(b) of this code.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 32.04. Decree**

After a hearing, for good cause shown, the court may order the name of the minor changed as requested in the petition if it finds that the change is in the best interest of the minor. A copy of the decree shall be sent to the State Department of Public Welfare if the petition alleged that the minor is subject to the continuing jurisdiction of a court under Subtitle A of this title.<sup>1</sup>

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> Section 11.01 et seq. (see § 11.05).

§ 32.05. Effect of Change of Name

A change of name does not release a minor from any liability incurred in his previous name or defeat any right which the child held in his previous name. [Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

[Sections 32.06 to 32.20 reserved for expansion]

SUBCHAPTER B. CHANGE OF NAME OF ADULT

§ 32.21. Petition

Any adult may petition the district court in the county of his residence for a change of name. The petition must state the present name and address of the petitioner, the requested name, and the reason for which a change is desired.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 32.22. Decree

For good cause shown the court shall order a change of name as requested if it finds that the change is in the interest or to the benefit of the petitioner.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 32.23. Effect of Change of Name

A change of name does not release a person from any liability incurred in his previous name or defeat any right which the person held in his previous name.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 32.24. Change of Name in Divorce Suit

On the final disposition of a suit for divorce, annulment, or to declare a marriage void, the court, in its discretion, may enter a decree changing the name of either party specially praying for the change.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

CHAPTER 33. LIABILITY OF PARENTS FOR CONDUCT OF CHILD

Section

- 33.01. Liability.
- 33.02. Limits of Recovery.
- 33.03. Venue.

§ 33.01. Liability

A parent or other person who has the duty of control and reasonable discipline of a child is liable for any property damage proximately caused by:

(1) the negligent conduct of the child if the conduct is reasonably attributable to the negligent failure of the parent or other person to exercise that duty; or

(2) the wilful and malicious conduct of a child who is at least 12 years of age but under 18 years of age.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 33.02. Limits of Recovery

Recovery for damage caused by wilful and malicious conduct is limited to actual damages, not to exceed \$5,000, plus court costs and reasonable attorneys' fees.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 33.03. Venue

A suit under this chapter may be brought in the county where the conduct of the child occurred or in the county where the defendant resides.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

CHAPTER 34. REPORT OF CHILD ABUSE

Section

- 34.01. Persons Required to Report.
- 34.02. Contents of Report: to Whom Made.
- 34.03. Immunities.
- 34.04. Privileged Communications.
- 34.05. Investigation and Report of Receiving Agency.
- 34.06. Central Registry.

§ 34.01. Persons Required to Report

Any person having cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect shall report in accordance with Section 34.02 of this code.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 34.02. Contents of Report: to Whom Made

(a) Nonaccusatory reports reflecting the reporter's belief that a child has been or will be abused or neglected, has violated the compulsory school attendance laws on three or more occasions, or has, on three or more occasions, been voluntarily absent from his home without the consent of his parent or guardian for a substantial length of time or without the intent to return shall be made to:

- (1) the county welfare unit;
- (2) the county agency responsible for the protection of juveniles; or
- (3) any local or state law enforcement agency.

(b) All reports must contain the name and address of the child, the name and address of the person responsible for the care of the child, if available, and any other pertinent information.

(c) All reports received by any local or state law enforcement agency shall be referred to the county child welfare unit, or to the county agency responsible for the protection of juveniles.

(d) An oral report shall be made immediately on learning of the abuse or neglect as prescribed in Subsection (a) of this section, and a written report shall be made within five days to the same agency or department. Anonymous reports, while not encouraged, will be received and acted on in the same manner as acknowledged reports.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 34.03. Immunities

Any person reporting pursuant to this chapter is immune from liability, civil or criminal, that might otherwise be incurred or imposed. Immunity extends to participation in any judicial proceeding resulting from the report. Persons reporting in bad faith or malice are not protected by this section. [Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 34.04. Privileged Communications

In any proceeding regarding the abuse or neglect of a child or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of communications between attorney and client. [Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 34.05. Investigation and Report of Receiving Agency

(a) The county child welfare unit, or the county agency responsible for the protection of juveniles, shall make a thorough investigation promptly after receiving either the oral or written report. The primary purpose of the investigation shall be the protection of the child.

(b) In the investigation the unit or agency shall determine:

- (1) the nature, extent, and cause of the abuse or neglect;
- (2) the identity of the person responsible for the abuse or neglect;
- (3) the names and conditions of the other children in the home;
- (4) an evaluation of the parents of persons responsible for the care of the child;
- (5) the adequacy of the home environment;
- (6) the relationship of the child to the parents or persons responsible for the care of the child;
- (7) all other pertinent data.

(c) The investigation shall include a visit to the child's home, a physical and psychological or psychiatric examination of all the children in that home, and an interview with the subject child. If admission to the home, school, or any place where the child may be, or permission of the parents or persons responsible for the child's care for the physical and psychological or psychiatric examinations cannot be obtained, then the juvenile court, or the district court, upon cause shown, shall order the parents or the persons responsible for the care of the children, or the person in charge of any place where the child may be, to allow entrance for the interview, above examinations, and investigation.

(d) If, before the investigation is complete, the opinion of the investigators is that immediate removal is necessary to protect the child from further abuse or neglect, the investigators shall file a petition pursuant to Chapter 17 of this code<sup>1</sup> for temporary care and protection of the child.

(e) The county agency responsible for the protection of juveniles, or the county child welfare unit, shall make a complete written report of the investigation together with its recommendations to the juvenile court or the district court, the district attorney, and the appropriate law enforcement agency.

(f) On the receipt of the report and recommendation required by Subsection (e) of this section, the court may direct the investigator to file a petition seeking appropriate relief under Subtitle A of this title.<sup>2</sup>

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> Section 17.01 et seq.

<sup>2</sup> Section 11.01 et seq.

### § 34.06. Central Registry

The State Department of Public Welfare shall establish and maintain in Austin, Texas, a central registry of reported cases of child abuse or neglect. The department may adopt rules and regulations as are necessary in carrying out the provisions of this section. The rules shall provide for cooperation with local child service agencies, including hospitals, clinics, and schools, and cooperation with other states in exchanging reports to effect a national registration system.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

## CHAPTER 35. CONSENT TO MEDICAL TREATMENT

### Section

35.01. Who May Consent.

35.02. Consent Form.

35.03. Consent to Treatment by Minor.

### § 35.01. Who May Consent

Any of the following persons may consent to medical treatment of a minor when the person having the power to consent as otherwise provided by law cannot be contacted and actual notice to the contrary has not been given by that person:

- (1) a grandparent;
- (2) an adult brother or sister;
- (3) an adult aunt or uncle;
- (4) an educational institution in which the minor is enrolled that has received written authorization to consent from the person having the power to consent as otherwise provided by law;
- (5) any adult who has care and control of the minor and has written authorization to consent from the person having the power to consent as otherwise provided by law; or
- (6) any court having jurisdiction of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

### § 35.02. Consent Form

(a) Consent to medical treatment under Section 35.01 of this code shall be in writing, signed by the

person giving consent, and given to the doctor, hospital, or other medical facility that administers the treatment.

(b) The consent must contain:

- (1) the name of the minor;
- (2) the name of one or both parents, if known, and the name of the managing conservator or guardian of the person, if either has been appointed;
- (3) the name of the person giving consent and his relation to the minor child;
- (4) a statement of the nature of the medical treatment to be given; and
- (5) the date on which the treatment is to begin.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**§ 35.03. Consent to Treatment by Minor**

(a) A minor may consent to the furnishing of hospital, medical, surgical, and dental care by a licensed physician or dentist if the minor:

- (1) is on active duty with the armed services of the United States of America;
- (2) is 16 years of age or older and resides separate and apart from his parents, managing conservator, or guardian, whether with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of such residence, and is managing his own financial affairs, regardless of the source of the income;
- (3) consents to the diagnosis and treatment of any infectious, contagious, or communicable disease which is required by law or regulation adopted pursuant to law to be reported by the licensed physician or dentist to a local health officer;
- (4) is unmarried and pregnant, and consents to hospital, medical, or surgical treatment, other than abortion, related to her pregnancy;
- (5) is 18 years of age or older and consents to the donation of his blood and the penetration of tissue necessary to accomplish the donation; or
- (6) consents to examination and treatment for drug addiction, drug dependency, or any other condition directly related to drug use.

(b) Consent by a minor to hospital, medical, surgical, or dental treatment under this section is not subject to disaffirmance because of minority.

(c) Consent of the parents, managing conservator, or guardian of a minor is not necessary in order to authorize hospital, medical, surgical, or dental care under this section.

(d) A licensed physician or dentist may, with or without the consent of a minor who is a patient, advise the parents, managing conservator, or guardian of the minor of the treatment given to or needed by the minor.

(e) A physician or dentist licensed to practice medicine or dentistry in this state or a hospital or medical facility shall not be liable for the examination and treatment of minors under this section except for his or its own acts of negligence.

(f) A physician, dentist, hospital, or medical facility may rely on the written statement of the minor containing the grounds on which the minor has capacity to consent to his own medical treatment under this section.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

**TITLE 3. DELINQUENT CHILDREN AND CHILDREN IN NEED OF SUPERVISION**

**Enactment**

*Title 3 of the Texas Family Code was added by Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, effective September 1, 1973. Sections 4 and 5 thereof provide:*

*"Sec. 4. This Act takes effect on September 1, 1973, and governs all proceedings, orders, and judgments brought after it takes effect, and also further proceedings in actions then pending, except to the extent that in the opinion of the court its application in an action pending when this Act takes effect would not be feasible or would work injustice. All things properly done under any previously existing rule or statute prior to the taking effect of this Act shall be treated as valid.*

*"Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."*

**CHAPTER 51. GENERAL PROVISIONS**

Section

- 51.01. Purpose and Interpretation.
- 51.02. Definitions.
- 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision.
- 51.04. Jurisdiction.
- 51.05. Court Sessions and Facilities.
- 51.06. Venue.
- 51.07. Transfer to Another County.
- 51.08. Transfer from Criminal Court.
- 51.09. Waiver of Rights.
- 51.10. Right to Assistance of Attorney; Compensation.
- 51.11. Guardian Ad Litem.
- 51.12. Place and Conditions of Detention.
- 51.13. Effect of Adjudication or Disposition.
- 51.14. Files and Records.
- 51.15. Fingerprints and Photographs.
- 51.16. Sealing of Files and Records.
- 51.17. Procedure.

### § 51.01. Purpose and Interpretation

This title shall be construed to effectuate the following public purposes:

(1) to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions;

(2) to protect the welfare of the community and to control the commission of unlawful acts by children;

(3) consistent with the protection of the public interest, to remove from children committing unlawful acts the taint of criminality and the consequences of criminal behavior and to substitute a program of treatment, training, and rehabilitation;

(4) to achieve the foregoing purposes in a family environment whenever possible, separating the child from his parents only when necessary for his welfare or in the interest of public safety and when a child is removed from his family, to give him the care that should be provided by parents; and

(5) to provide a simple judicial procedure through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

### § 51.02. Definitions

In this title:

(1) "Child" means a person who is:

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

(2) "Parent" means the mother, a father as to whom the child is legitimate, or an adoptive parent, but does not include a parent whose parental rights have been terminated.

(3) "Guardian" means the person who, under court order, is the guardian of the person of the child or the public or private agency with whom the child has been placed by a court.

(4) "Custodian" means the adult with whom the child resides.

(5) "Juvenile court" means a court designated under Section 51.04 of this code to exercise jurisdiction over proceedings under this title.

(6) "Judge" or "juvenile court judge" means the judge of a juvenile court.

(7) "Prosecuting attorney" means the county attorney, district attorney, or other attorney

who regularly serves in a prosecutory capacity in a juvenile court.

(8) "Law-enforcement officer" means a peace officer as defined by Article 2.12, Texas Code of Criminal Procedure.

(9) "Traffic offense" means:

(A) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 802e, Vernon's Texas Penal Code);<sup>1</sup> or

(B) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

(10) "Party" means the state, a child who is the subject of proceedings under this subtitle, or the child's parent, spouse, guardian, or guardian ad litem.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

<sup>1</sup> Transferred to Civil Statutes, art. 6701I-4.

### § 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision

(a) Delinquent conduct is conduct, other than a traffic offense, that violates:

(1) a penal law of this state punishable by imprisonment or by confinement in jail; or

(2) a reasonable and lawful order of a juvenile court entered under Section 54.04 or 54.05 of this code; except that a violation of a reasonable and lawful order of a juvenile court entered pursuant to a determination that the child engaged in conduct indicating a need for supervision as defined in Section 51.03(b)(2) or 51.03(b)(3) of this code does not constitute delinquent conduct.

(b) Conduct indicating a need for supervision is:

(1) conduct, other than a traffic offense, that on three or more occasions violates either of the following:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) conduct which violates the compulsory school attendance laws;

(3) the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return; or

(4) the violation of an order of a juvenile court entered under Section 54.04 or 54.05 of this code pursuant to a determination that the child engaged in conduct which violates the compulsory school attendance laws or the voluntary absence of the child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return.

(c) Nothing in this title prevents criminal proceedings against a child for perjury.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 51.04. Jurisdiction**

(a) The juvenile court has exclusive original jurisdiction over proceedings under this title.

(b) In a county having a juvenile board, the board shall designate one or more district, criminal district, domestic relations, juvenile, or county courts or county courts at law as the juvenile court, subject to Subsection (d) of this section.

(c) In a county not having a juvenile board, the judges of the district, criminal district, domestic relations, juvenile, and county courts and county courts at law shall designate one or more of their courts as the juvenile court, subject to Subsection (d) of this section.

(d) A court may not be designated as the juvenile court unless its judge is an attorney licensed to practice law in this state.

(e) A designation made under Subsection (b) or (c) of this section may be changed from time to time by the authorized boards or judges for the convenience of the people and the welfare of children. However, there must be at all times a juvenile court designated for each county. It is the intent of the legislature that in selecting a court to be the juvenile court of each county, the selection shall be made as far as practicable so that the court designated as the juvenile court will be one which is presided over by a judge who has a sympathetic understanding of the problems of child welfare and that changes in the designation of juvenile courts be made only when the best interest of the public requires it.

(f) If the judge of the juvenile court or any alternate judge named under Subsection (b) or (c) of this section is not in the county or is otherwise unavailable, any magistrate may conduct the detention hearing provided for in Section 54.01 of this code.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 51.05. Court Sessions and Facilities**

The juvenile court shall be deemed in session at all times. Suitable quarters shall be provided by the commissioners court of each county for the hearing of cases and for the use of the judge, the probation officer, and other employees of the court.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 51.06. Venue**

(a) A proceeding under this title shall be commenced in:

- (1) the county in which the child resides; or
- (2) the county in which the alleged delinquent conduct or conduct indicating a need for supervision occurred.

(b) An application for a writ of habeas corpus brought by or on behalf of a child who has been committed to an institution under the jurisdiction of the Texas Youth Council and which attacks the validity of the judgment of commitment shall be brought in the county in which the court that entered the judgment of commitment is located.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 51.07. Transfer to Another County**

(a) When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Section 54.03 of this code, the juvenile court, with the consent of the child and appropriate adult given in accordance with Section 51.09 of this code, may transfer the case and transcripts of records and documents to the juvenile court of the county where the child resides for disposition of the case under Section 54.04 of this code.

(b) When a child who is on probation moves with his family from one county to another, the juvenile court may transfer the case to the juvenile court in the county of the child's new residence if the transfer is in the best interest of the child. In all other cases of transfer, consent of the receiving court is required. The transferring court shall forward transcripts of records and documents in the case to the judge of the receiving court.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 51.08. Transfer from Criminal Court**

If the defendant in a criminal proceeding is a child who is charged with an offense other than perjury or a traffic offense, unless he has been transferred to criminal court under Section 54.02 of this code, the court exercising criminal jurisdiction shall transfer the case to the juvenile court, together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case, and shall order that the child be taken to the place of detention designated by the juvenile court, or shall release him to the custody of his parent, guardian, or custodian, to be brought before the juvenile court at a time designated by that court.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 51.09. Waiver of Rights**

Unless a contrary intent clearly appears elsewhere in this title, any right granted to a child by this title or by the constitution or laws of this state or the United States may be waived in proceedings under this title if:

- (1) the waiver is made by the child and the attorney for the child;
- (2) the child and the attorney waiving the right are informed of and understand the right and the possible consequences of waiving it;

(3) the waiver is voluntary; and

(4) the waiver is made in writing or in court proceedings that are recorded.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 51.10. Right to Assistance of Attorney; Compensation**

(a) A child may be represented by an attorney at every stage of proceedings under this title, including:

(1) the detention hearing required by Section 54.01 of this code;

(2) the hearing to consider transfer to criminal court required by Section 54.02 of this code;

(3) the adjudication hearing required by Section 54.03 of this code;

(4) the disposition hearing required by Section 54.04 of this code;

(5) the hearing to modify disposition required by Section 54.05 of this code;

(6) hearings required by Chapter 55 of this code;<sup>1</sup>

(7) habeas corpus proceedings challenging the legality of detention resulting from action under this title; and

(8) proceedings in a court of civil appeals or the Texas Supreme Court reviewing proceedings under this title.

(b) The child's right to representation by an attorney shall not be waived in:

(1) a hearing to consider transfer to criminal court as required by Section 54.02 of this code;

(2) an adjudication hearing as required by Section 54.03 of this code;

(3) a disposition hearing as required by Section 54.04 of this code;

(4) a hearing prior to commitment to the Texas Youth Council as a modified disposition in accordance with Section 54.05(f) of this code; or

(5) hearings required by Chapter 55 of this code.

(c) If the child was not represented by an attorney at the detention hearing required by Section 54.01 of this code and a determination was made to detain the child, the child shall immediately be entitled to representation by an attorney. The court may order the retention of an attorney according to Section 51.10(d) of this code or appoint an attorney according to Section 51.10(f) of this code.

(d) The court shall order a child's parent or other person responsible for support of the child to employ an attorney to represent the child, if:

(1) the child is not represented by an attorney;

(2) after giving the appropriate parties an opportunity to be heard, the court determines that the parent or other person responsible for

support of the child is financially able to employ an attorney to represent the child; and

(3) the child's right to representation by an attorney:

(A) has not been waived under Section 51.09 of this code; or

(B) may not be waived under Subsection (b) of this section.

(e) The court may enforce orders under Subsection (c) of this section by proceedings under Section 54.07 of this code or by appointing counsel and ordering the parent or other person responsible for support of the child to pay a reasonable attorney's fee set by the court. The order may be enforced under Section 54.07 of this code.

(f) The court shall appoint an attorney to represent the interest of a child entitled to representation by an attorney, if:

(1) the child is not represented by an attorney;

(2) the court determines that the child's parent or other person responsible for support of the child is financially unable to employ an attorney to represent the child; and

(3) the child's right to representation by an attorney:

(A) has not been waived under Section 51.09 of this code; or

(B) may not be waived under Subsection (b) of this section.

(g) The juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

(h) Any attorney representing a child in proceedings under this title is entitled to 10 days to prepare for any adjudication or transfer hearing under this title.

(i) Except as provided in Subsection (d) of this section, an attorney appointed under this section to represent the interests of a child shall be paid from the general fund of the county in which the proceedings were instituted according to the schedule in Article 26.05 of the Texas Code of Criminal Procedure, 1965. For this purpose, a bona fide appeal to a court of civil appeals or proceedings on the merits in the Texas Supreme Court are considered the equivalent of a bona fide appeal to the Texas Court of Criminal Appeals.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

<sup>1</sup> Section 55.01 et seq.

**§ 51.11. Guardian Ad Litem**

(a) If a child appears before the juvenile court without a parent or guardian, the court shall appoint a guardian ad litem to protect the interests of the child. The juvenile court need not appoint a guardian ad litem if a parent or guardian appears with the child.

(b) In any case in which it appears to the juvenile court that the child's parent or guardian is incapable or unwilling to make decisions in the best interest of the child with respect to proceedings under this title, the court may appoint a guardian ad litem to protect the interests of the child in the proceedings.

(c) An attorney for a child may also be his guardian ad litem. A law-enforcement officer, probation officer, or other employee of the juvenile court may not be appointed guardian ad litem.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 51.12. Place and Conditions of Detention**

(a) Except after transfer to criminal court for prosecution under Section 54.02 of this code, a child shall not be detained in or committed to a compartment of a jail or lockup in which adults arrested for, charged with, or convicted of crime are detained or committed, nor be permitted contact with such persons.

(b) The proper authorities in each county shall provide a suitable place of detention for children who are parties to proceedings under this title, but the juvenile court shall control the conditions and terms of detention and detention supervision and shall permit visitation with the child at all reasonable times.

(c) In each county, the juvenile board, or if there is none, the judge of the juvenile court, shall personally inspect the detention facilities at least annually and shall certify in writing to the authorities responsible for operating and giving financial support to the facilities that they are suitable or unsuitable for the detention of children in accordance with:

- (1) the requirements of Subsection (a) of this section;
- (2) the requirements of Article 5115, Revised Civil Statutes of Texas, 1925, as amended, defining "safe and suitable jails," if the detention facility is a county jail; and
- (3) recognized professional standards for the detention of children.

(d) No child shall be placed in a facility that has not been certified under Subsection (c) of this section as suitable for the detention of children. A child detained in a facility that has not been certified under Subsection (c) of this section as suitable for the detention of children shall be entitled to immediate release from custody in that facility.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 51.13. Effect of Adjudication or Disposition**

(a) An order of adjudication or disposition in a proceeding under this title is not a conviction of crime, and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

(b) The adjudication or disposition of a child or evidence adduced in a hearing under this title may be used only in subsequent proceedings under this title in which the child is a party or in subsequent sentencing proceedings in criminal court against the child to the extent permitted by the Texas Code of Criminal Procedure, 1965.

(c) A child may not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of crime, except:

- (1) for temporary detention in a jail or lockup pending juvenile court hearing or disposition under conditions meeting the requirements of Section 51.12 of this code; or
- (2) after transfer for prosecution in criminal court under Section 54.02 of this code.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 51.14. Files and Records**

(a) All files and records of a juvenile court, a clerk of court, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) an attorney for a party to the proceeding;
- (3) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (4) with leave of juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(b) All files and records of a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court are open to inspection only by:

- (1) the professional staff or consultants of the agency or institution;
- (2) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (3) an attorney for the child; or
- (4) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the work of the agency or institution.

(c) Law-enforcement files and records concerning a child shall be kept separate from files and records of arrests of adults and shall be maintained on a local basis only and not sent to a central state or federal depository.

(d) Except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be dis-

closed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

#### § 51.15. Fingerprints and Photographs

(a) No child may be fingerprinted in the investigation of a crime except as provided in Subsection (f) of this section. However, if a child 15 years of age or older is referred to the juvenile court for a felony, his fingerprints may be taken and filed by a law-enforcement officer investigating the case.

(b) No child taken into custody may be photographed without the consent of the juvenile court unless the child is transferred to criminal court for prosecution under Section 54.02 of this code.

(c) Fingerprint and photograph files or records of children shall be kept separate from those of adults, and fingerprints or photographs known to be those of a child shall be maintained on a local basis only and not sent to a central state or federal depository.

(d) Fingerprint and photograph files or records of children are subject to inspection as provided in Subsections (a) and (d) of Section 51.14 of this code.

(e) Fingerprints and photographs of a child shall be removed from files or records and destroyed if:

(1) a petition alleging that the child engaged in delinquent conduct or conduct indicating a need for supervision is not filed, or the proceedings are dismissed after a petition is filed, or the child is found not to have engaged in the alleged conduct; or

(2) the person reaches 18 years of age and there is no record that he committed a criminal offense after reaching 17 years of age.

(f) If latent fingerprints are found during the investigation of an offense, and a law-enforcement officer has reasonable cause to believe that they are those of a particular child, if otherwise authorized by law, he may fingerprint the child regardless of the age or offense for purpose of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken shall be destroyed immediately. If the comparison is positive, and the child is referred to the juvenile court, the fingerprint card and other copies of the fingerprints taken shall be delivered to the court for disposition. If the child is not referred to the court, the fingerprint card and other copies of the fingerprints taken shall be destroyed immediately.

(g) When destruction of fingerprints or photographs is required by Subsection (e) or (f) of this section, the agency with custody of the fingerprints or photographs shall proceed with destruction with-

out judicial order. However, if the fingerprints or photographs are not destroyed, the juvenile court, on its own motion or on application by the person fingerprinted or photographed, shall order the destruction as required by this section.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

#### § 51.16. Sealing of Files and Records

(a) On the application of a person who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision, or a person taken into custody to determine whether he engaged in delinquent conduct or conduct indicating a need for supervision, or on the juvenile court's own motion, the court, after hearing, shall order the sealing of the files and records in the case, including those specified in Sections 51.14 and 51.15 of this code, if the court finds that:

(1) two years have elapsed since final discharge of the person, or since the last official action in his case if there was no adjudication;

(2) since the time specified in Subdivision (1) of this subsection, he has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision, and no proceeding is pending seeking conviction or adjudication; and

(3) it is unlikely the person will engage in further delinquent conduct or conduct indicating a need for supervision or will commit a felony or a misdemeanor involving moral turpitude.

(b) The court may grant the relief authorized in Subsection (a) of this section at any time after final discharge of the person or after the last official action in his case if there was no adjudication.

(c) Reasonable notice of the hearing shall be given to:

(1) the person who made the application or who is the subject of the files or records named in the motion;

(2) the prosecuting attorney for the juvenile court;

(3) the authority granting the discharge if the final discharge was from an institution or from parole;

(4) the public or private agency or institution having custody of files or records named in the application or motion; and

(5) the law-enforcement agency having custody of files or records named in the application or motion.

(d) Copies of the sealing order shall be sent to each agency or official therein named.

(e) On entry of the order:

(1) all law-enforcement, prosecuting attorney, clerk of court, and juvenile court files and records ordered sealed shall be sent to the court issuing the order;

(2) all files and records of a public or private agency or institution ordered sealed shall be sent to the court issuing the order;

(3) all index references to the files and records ordered sealed shall be deleted;

(4) the juvenile court, clerk of court, prosecuting attorney, public or private agency or institution, and law-enforcement officers and agencies shall properly reply that no record exists with respect to such person upon inquiry in any matter; and

(5) the adjudication shall be vacated and the proceeding dismissed and treated for all purposes, including the purpose of showing a prior finding of delinquency, as if it had never occurred.

(f) Inspection of the sealed files and records may be permitted thereafter by an order of the juvenile court on the petition of the person who is the subject of the files or records and only by those persons named in the order.

(g) On the final discharge of a child or on the last official action in his case if there is no adjudication, the child shall be given a written explanation of his rights under this section and a copy of the provisions of this section.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 51.17. Procedure**

Except when in conflict with a provision of this title, the Texas Rules of Civil Procedure govern proceedings under this title. Particular reference is made to the burden of proof to be borne by the state in adjudicating a child to be delinquent or in need of supervision [Section 54.03(f)].

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**CHAPTER 52. PROCEEDINGS BEFORE AND INCLUDING REFERRAL TO JUVENILE COURT**

**Section**

- 52.01. Taking Into Custody; Issuance of Warning Notice.
- 52.02. Release or Delivery to Court.
- 52.03. Disposition Without Referral to Court.
- 52.04. Referral to Juvenile Court.

**§ 52.01. Taking Into Custody; Issuance of Warning Notice**

(a) A child may be taken into custody:

- (1) pursuant to an order of the juvenile court under the provisions of this subtitle;
- (2) pursuant to the laws of arrest;
- (3) by a law-enforcement officer if there are reasonable grounds to believe that the child has engaged in delinquent conduct or conduct indicating a need for supervision; or

(4) by a probation officer if there are reasonable grounds to believe that the child has violated a condition of probation imposed by the juvenile court.

(b) The taking of a child into custody is not an arrest except for the purpose of determining the validity of taking him into custody or the validity of a search under the laws and constitution of this state or of the United States.

(c) A law-enforcement officer authorized to take a child into custody under Subdivisions (2) and (3) of Subsection (a) of this section may issue a warning notice to the child in lieu of taking him into custody if:

- (1) guidelines for warning disposition have been issued by the law-enforcement agency in which the officer works;
- (2) the guidelines have been approved by the juvenile court of the county in which the disposition is made;
- (3) the disposition is authorized by the guidelines;
- (4) the warning notice identifies the child and describes his alleged conduct;
- (5) a copy of the warning notice is sent to the child's parent, guardian, or custodian as soon as practicable after disposition; and
- (6) a copy of the warning notice is filed with the law-enforcement agency and the office or official designated by the juvenile court.

(d) A warning notice filed with the office or official designated by the juvenile court may be used as the basis of further action if necessary.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 52.02. Release or Delivery to Court**

(a) A person taking a child into custody, without unnecessary delay and without first taking the child elsewhere, shall do one of the following:

- (1) release the child to his parent, guardian, custodian, or other responsible adult upon that person's promise to bring the child before the juvenile court when requested by the court;
- (2) bring the child before the office or official designated by the juvenile court;
- (3) bring the child to a detention facility designated by the juvenile court;
- (4) bring the child to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment; or
- (5) dispose of the case under Section 52.03 of this code.

(b) A person taking a child into custody shall promptly give notice of his action and a statement of the reason for taking the child into custody, to:

- (1) the child's parent, guardian, or custodian; and

(2) the office or official designated by the juvenile court.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

#### § 52.03. Disposition Without Referral to Court

(a) A law-enforcement officer authorized by this title to take a child into custody may dispose of the case of a child taken into custody without referral to juvenile court, if:

(1) guidelines for such disposition have been issued by the law-enforcement agency in which the officer works;

(2) the guidelines have been approved by the juvenile court of the county in which the disposition is made;

(3) the disposition is authorized by the guidelines; and

(4) the officer makes a written report of his disposition to the law-enforcement agency, identifying the child and specifying the grounds for believing that the taking into custody was authorized.

(b) No disposition authorized by this section may involve:

(1) keeping the child in law-enforcement custody; or

(2) requiring periodic reporting of the child to a law-enforcement officer, law-enforcement agency, or other agency.

(c) A disposition authorized by this section may involve:

(1) referral of the child to an agency other than the juvenile court; or

(2) a brief conference with the child and his parent, guardian, or custodian.

(d) Statistics indicating the number and kind of dispositions made by a law-enforcement agency under the authority of this section shall be reported at least annually to the office or official designated by the juvenile court, as ordered by the court.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

#### § 52.04. Referral to Juvenile Court

(a) The following shall accompany referral of a child or a child's case to the office or official designated by the juvenile court or be provided as quickly as possible after referral:

(1) all information in the possession of the person or agency making the referral pertaining to the identity of the child and his address, the name and address of the child's parent, guardian, or custodian, the names and addresses of any witnesses, and the child's present whereabouts;

(2) a complete statement of the circumstances of the alleged delinquent conduct or conduct indicating a need for supervision;

(3) when applicable, a complete statement of the circumstances of taking the child into custody; and

(4) when referral is by an officer of a law-enforcement agency, a complete statement of all prior contacts with the child by officers of that law-enforcement agency.

(b) The office or official designated by the juvenile court may refer the case to a law-enforcement agency for the purpose of conducting an investigation to obtain necessary information.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

### CHAPTER 53. PROCEEDINGS PRIOR TO JUDICIAL PROCEEDINGS

#### Section

53.01. Preliminary Investigation and Determinations; Notice to Parents.

53.02. Release from Detention.

53.03. Intake Conference and Adjustment.

53.04. Court Petition; Answer.

53.05. Time Set for Hearing.

53.06. Summons.

53.07. Service of Summons.

#### § 53.01. Preliminary Investigation and Determinations; Notice to Parents

(a) On referral of a child or a child's case to the office or official designated by the juvenile court, the intake officer, probation officer, or other person authorized by the court shall conduct a preliminary investigation to determine whether:

(1) the person referred to juvenile court is a child within the meaning of this title;

(2) there is probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision; and

(3) further proceedings in the case are in the interest of the child or the public.

(b) If it is determined that the person is not a child, or there is no probable cause, or further proceedings are not warranted, the child shall immediately be released and proceedings terminated.

(c) When custody of a child is given to the office or official designated by the juvenile court, the intake officer, probation officer, or other person authorized by the court shall promptly give notice of the whereabouts of the child and a statement of the reason he was taken into custody to the child's parent, guardian, or custodian unless the notice given under Section 52.02(b) of this code provided fair notice of the child's present whereabouts.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

#### § 53.02. Release from Detention

(a) If a child is brought before the court or delivered to a detention facility designated by the court, the intake or other authorized officer of the court

shall immediately make an investigation and shall release the child unless it appears that his detention is warranted under Subsection (b) of this section. The release may be conditioned upon requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and filed with the office or official designated by the court and a copy furnished to the child.

(b) A child taken into custody may be detained prior to hearing on the petition only if:

- (1) he is likely to abscond or be removed from the jurisdiction of the court;
- (2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person; or
- (3) he has no parent, guardian, custodian, or other person able to return him to the court when required.

(c) If the child is not released, a request for detention hearing shall be made and promptly presented to the court, and an informal detention hearing as provided in Section 54.01 of this code shall be held promptly, but not later than the next working day after he was taken into custody.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 53.03. Intake Conference and Adjustment**

(a) If the preliminary investigation required by Section 53.01 of this code results in a determination that further proceedings in the case are authorized and warranted, the probation officer or other designated officer of the court, subject to the direction of the juvenile court, may advise the parties for a reasonable period of time not to exceed six months concerning an informal adjustment and voluntary rehabilitation of a child if:

- (1) advice without a court hearing would be in the interest of the public and the child;
- (2) the child and his parent, guardian, or custodian consent with knowledge that consent is not obligatory; and
- (3) the child and his parent, guardian, or custodian are informed that they may terminate the adjustment process at any point and petition the court for a court hearing in the case.

(b) Except as otherwise permitted by this title, the child may not be detained during or as a result of the adjustment process.

(c) An incriminating statement made by a participant to the person giving advice and in the discussions or conferences incident thereto may not be used against the declarant in any court hearing.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 53.04. Court Petition; Answer**

(a) If the preliminary investigation, required by Section 53.01 of this code results in a determination that further proceedings are authorized and war-

ranted, a petition for an adjudication or transfer hearing of a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision may be made as promptly as practicable by a prosecuting attorney who has knowledge of the facts alleged or is informed and believes that they are true.

(b) The proceedings shall be styled "In the matter of \_\_\_\_\_."

(c) The petition may be on information and belief.

(d) The petition must state:

(1) with reasonable particularity the time, place, and manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts;

(2) the name, age, and residence address, if known, of the child who is the subject of the petition;

(3) the names and residence addresses, if known, of the parent, guardian, or custodian of the child and of the child's spouse, if any; and

(4) if the child's parent, guardian, or custodian does not reside or cannot be found in the state, or if their places of residence are unknown, the name and residence address of any known adult relative residing in the county or, if there is none, the name and residence address of the known adult relative residing nearest to the location of the court.

(e) An oral or written answer to the petition may be made at or before the commencement of the hearing. If there is no answer, a general denial of the alleged conduct is assumed.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 53.05. Time Set for Hearing**

(a) After the petition has been filed, the juvenile court shall set a time for the hearing.

(b) The time set for the hearing shall not be later than 10 days after the day the petition was filed if:

- (1) the child is in detention; or
- (2) the child will be taken into custody under Section 53.06(d) of this code.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 53.06. Summons**

(a) The juvenile court shall direct issuance of a summons to:

- (1) the child named in the petition;
- (2) the child's parent, guardian, or custodian;
- (3) the child's guardian ad litem; and
- (4) any other person who appears to the court to be a proper or necessary party to the proceeding.

(b) The summons must require the persons served to appear before the court at the time set to answer the allegations of the petition. A copy of the petition must accompany the summons.

(c) The court may endorse on the summons an order directing the parent, guardian, or custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing. A person who violates an order entered under this subsection may be proceeded against under Section 54.07 of this code.

(d) If it appears from an affidavit filed or from sworn testimony before the court that immediate detention of the child is warranted under Section 53.02(b) of this code, the court may endorse on the summons an order that a law-enforcement officer shall serve the summons and shall immediately take the child into custody and bring him before the court.

(e) A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

#### § 53.07. Service of Summons

(a) If a person to be served with a summons is in this state and can be found, the summons shall be served upon him personally at least two days before the day of the adjudication hearing. If he is in this state and cannot be found, but his address is known or can with reasonable diligence be ascertained, the summons may be served on him by mailing a copy by registered or certified mail, return receipt requested, at least five days before the day of the hearing. If he is outside this state but he can be found or his address is known, or his whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to him personally or mailing a copy to him by registered or certified mail, return receipt requested, at least five days before the day of the hearing.

(b) The juvenile court has jurisdiction of the case if after reasonable effort a person other than the child cannot be found nor his post-office address ascertained, whether he is in or outside this state.

(c) Service of the summons may be made by any suitable person under the direction of the court.

(d) The court may authorize payment from the general funds of the county of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(e) Witnesses may be subpoenaed in accordance with the Texas Code of Criminal Procedure, 1965. [Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

### CHAPTER 54. JUDICIAL PROCEEDINGS

#### Section

54.01. Detention Hearing.

54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court.

#### Section

54.03. Adjudication Hearing.

54.04. Disposition Hearing.

54.05. Hearing to Modify Disposition.

54.06. Judgments for Support.

54.07. Enforcement of Order.

54.08. Public Access to Court Hearings.

54.09. Recording of Proceedings.

#### § 54.01. Detention Hearing

(a) If the child is not released under Section 53.02 of this code, a detention hearing without a jury shall be held promptly, but not later than the next working day after he is taken into custody.

(b) Reasonable notice of the detention hearing, either oral or written, shall be given, stating the time, place, and purpose of the hearing. Notice shall be given to the child and, if they can be found, to his parents, guardian, or custodian. Prior to the commencement of the hearing, the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent and of the child's right to remain silent with respect to any allegations of delinquent conduct or conduct indicating a need for supervision.

(c) At the detention hearing, the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. Prior to the detention hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in making the detention decision. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(d) A detention hearing may be held without the presence of the child's parents if the court has been unable to locate them. If no parent or guardian is present, the court shall appoint counsel or a guardian ad litem for the child.

(e) At the conclusion of the hearing, the court shall order the child released from detention unless it finds that:

(1) he is likely to abscond or be removed from the jurisdiction of the court;

(2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person; or

(3) he has no parent, guardian, custodian, or other person able to return him to the court when required.

(f) A release may be conditioned on requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and a copy furnished to the child.

(g) No statement made by the child at the detention hearing shall be admissible against the child at any other hearing.

(h) A detention order extends to the conclusion of the disposition hearing, if there is one, but in no event for more than 10 days. Further detention orders may be made following subsequent detention hearings. Subsequent detention hearings may be waived in accordance with the requirements of Section 51.09 of this code, but each detention order shall extend for no more than 10 days.

(i) A child in custody may be detained for as long as 10 days without the hearing described in Subsection (a) of this section if:

(1) a written request for shelter in detention facilities pending arrangement of transportation to his place of residence in another state or country or another county of this state is voluntarily executed by the child not later than the next working day after he was taken into custody;

(2) the request for shelter contains:

(A) a statement by the child that he voluntarily agrees to submit himself to custody and detention for a period of not longer than 10 days without a detention hearing;

(B) an allegation by the person detaining the child that the child has left his place of residence in another state or country or another county of this state, that he is in need of shelter, and that an effort is being made to arrange transportation to his place of residence; and

(C) a statement by the person detaining the child that he has advised the child of his right to demand a detention hearing under Subsection (a) of this section; and

(3) the request is signed by the juvenile court judge to evidence his knowledge of the fact that the child is being held in detention.

(j) The request for shelter may be revoked by the child at any time, and on such revocation, if further detention is necessary, a detention hearing shall be held not later than the next working day in accordance with Subsections (a) through (g) of this section.

(k) Notwithstanding anything in this title to the contrary, the child may sign a request for shelter without the concurrence of an adult specified in Section 51.09 of this code.

(l) The juvenile board or, if there is none, the juvenile court, may appoint a referee to conduct the detention hearing. The referee shall be an attorney licensed to practice law in this state. Such payment or additional payment as may be warranted for referee services shall be provided from county funds. Before commencing the detention hearing, the referee shall inform the parties who have appeared that they are entitled to have the hearing before the juvenile court judge or a substitute judge authorized by Section 51.04(f) of this code. If a party objects to the referee conducting the detention hearing, an

authorized judge shall conduct the hearing within 24 hours. At the conclusion of the hearing, the referee shall transmit written findings and recommendations to the juvenile court judge or substitute judge. The juvenile court judge or substitute judge shall adopt, modify, or reject the referee's recommendations within 24 hours. Failure to act within that time results in release of the child by operation of law. A recommendation that the child be released operates to secure his immediate release, subject to the power of the juvenile court judge or substitute judge to reject or modify that recommendation. The effect of an order detaining a child shall be computed from the time of the hearing before the referee.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court**

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:

(1) the child is alleged to have violated a penal law of the grade of felony;

(2) the child was 15 years of age or older at the time he is alleged to have committed the offense and no adjudication hearing has been conducted concerning that offense; and

(3) after full investigation and hearing the juvenile court determines that because of the seriousness of the offense or the background of the child the welfare of the community requires criminal proceedings.

(b) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering discretionary transfer to criminal court.

(c) The juvenile court shall conduct a hearing without a jury to consider transfer of the child for criminal proceedings.

(d) Prior to the hearing, the juvenile court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.

(e) At the transfer hearing the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. At least one day prior to the transfer hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in making the transfer decision. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood

of receiving information from the same or similar sources in the future.

(f) In making the determination required by Subsection (a) of this section, the court shall consider, among other matters:

- (1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
- (2) whether the alleged offense was committed in an aggressive and premeditated manner;
- (3) whether there is evidence on which a grand jury may be expected to return an indictment;
- (4) the sophistication and maturity of the child;
- (5) the record and previous history of the child; and
- (6) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

(g) If the juvenile court retains jurisdiction, the child is not subject to criminal prosecution at any time for any offense alleged in the petition or for any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the proceedings.

(h) If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and transfer the child to the appropriate court for criminal proceedings. On transfer of the child for criminal proceedings, he shall be dealt with as an adult and in accordance with the Texas Code of Criminal Procedure, 1965. The transfer of custody is an arrest. The examining trial shall be conducted by the court to which the case was transferred, which may remand the child to the jurisdiction of the juvenile court.

(i) If the child's case is brought to the attention of the grand jury and the grand jury does not indict for the offense charged in the complaint forwarded by the juvenile court, the district court or criminal district court shall certify the grand jury's failure to indict to the juvenile court. On receipt of the certification, the juvenile court may resume jurisdiction of the case.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

### § 54.03. Adjudication Hearing

(a) A child may be found to have engaged in delinquent conduct or conduct indicating a need for supervision only after an adjudication hearing conducted in accordance with the provisions of this section.

(b) At the beginning of the adjudication hearing, the juvenile court judge shall explain to the child and his parent, guardian, or guardian ad litem:

- (1) the allegations made against the child;
- (2) the nature and possible consequences of the proceedings;
- (3) the child's privilege against self-incrimination;
- (4) the child's right to trial and to confrontation of witnesses;
- (5) the child's right to representation by an attorney if he is not already represented; and
- (6) the child's right to trial by jury.

(c) Trial shall be by jury unless jury is waived in accordance with Section 51.09 of this code.

(d) Only material, relevant, and competent evidence in accordance with the requirements for the trial of civil cases may be considered in the adjudication hearing. Except in a detention or discretionary transfer hearing, a social history report or social service file shall not be viewed by the court before the adjudication decision and shall not be viewed by the jury at any time.

(e) A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision need not be a witness against nor otherwise incriminate himself. An extrajudicial statement which was obtained without fulfilling the requirements of this title or of the constitution of this state or the United States, may not be used in an adjudication hearing. A statement made by the child out of court is insufficient to support a finding of delinquent conduct or conduct indicating a need for supervision unless it is corroborated in whole or in part by other evidence. Evidence illegally seized or obtained is inadmissible in an adjudication hearing.

(f) At the conclusion of the adjudication hearing, the court or jury shall find whether or not the child has engaged in delinquent conduct or conduct indicating a need for supervision. The finding must be based on competent evidence admitted at the hearing. The child shall be presumed to be innocent of the charges against him and no finding that a child has engaged in delinquent conduct or conduct indicating a need for supervision may be returned unless the state has proved such beyond a reasonable doubt. In all jury cases the jury will be instructed that the burden is on the state to prove that a child has engaged in delinquent conduct or is in need of supervision beyond a reasonable doubt.

(g) If the court or jury finds that the child did not engage in delinquent conduct or conduct indicating a need for supervision, the court shall dismiss the case with prejudice.

(h) If the finding is that the child did engage in delinquent conduct or conduct indicating a need for supervision, the court or jury shall state which of the allegations in the petition were found to be estab-

lished by the evidence. The court shall also set a date and time for the disposition hearing.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 54.04. Disposition Hearing**

(a) The disposition hearing shall be separate, distinct, and subsequent to the adjudication hearing. There is no right to a jury at the disposition hearing.

(b) At the disposition hearing, the juvenile court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. Prior to the disposition hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in disposition. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(c) No disposition may be made under this section unless the court finds that the child is in need of rehabilitation or that the protection of the public or the child requires that disposition be made. If the court does not so find, it shall dismiss the child and enter a final judgment without any disposition.

(d) If the court makes the finding specified in Subsection (c) of this section, it may:

(1) place the child on probation on such reasonable and lawful terms as the court may determine for a period not to exceed one year, subject to extensions not to exceed one year each:

- (A) in his own home or in the custody of a relative or other fit person;
- (B) in a suitable foster home; or
- (C) in a suitable public or private institution or agency, except the Texas Youth Council; or

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct, the court may commit the child to the Texas Youth Council.

(e) The Texas Youth Council shall accept a child properly committed to it by a juvenile court even though the child may be 17 years of age or older at the time of commitment.

(f) The court shall state specifically in the order its reasons for the disposition and shall furnish a copy of the order to the child. If the child is placed on probation, the terms of probation shall be written in the order.

(g) In no event may the court commit a child to the Texas Youth Council because the child engaged in conduct defined in Subdivision (2), (3), or (4) of Section 51.03(b) of this code.

(h) At the conclusion of the dispositional hearing, the court shall inform the child of his right to appeal, as required by Section 56.01 of this code.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 54.05. Hearing to Modify Disposition**

(a) Any disposition, except a commitment to the Texas Youth Council, may be modified by the juvenile court as provided in this section until:

- (1) the child reaches his 18th birthday; or
- (2) the child is earlier discharged by the court or operation of law.

(b) All dispositions automatically terminate when the child reaches his 18th birthday.

(c) There is no right to a jury at a hearing to modify disposition.

(d) A hearing to modify disposition shall be held on the petition of the child and his parent, guardian, guardian ad litem, or attorney, or on the petition of the state, a probation officer, or the court itself. Reasonable notice of a hearing to modify disposition shall be given to all parties.

(e) At the hearing to modify disposition, the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. Prior to the hearing to modify disposition, the court shall provide the attorney for the child with access to all written matter to be considered by the court in deciding whether to modify disposition. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(f) A disposition based on a finding that the child engaged in delinquent conduct may be modified so as to commit the child to the Texas Youth Council if the court after a hearing to modify disposition finds beyond a reasonable doubt that the child violated a reasonable and lawful order of the court.

(g) A disposition based solely on a finding that the child engaged in conduct indicating a need for supervision may not be modified to commit the child to the Texas Youth Council. A new finding in compliance with Section 54.03 of this code must be made that the child engaged in delinquent conduct as defined in Section 51.03(a) of this code.

(h) A hearing shall be held prior to commitment to the Texas Youth Council as a modified disposition. In other disposition modifications, the child and his parent, guardian, guardian ad litem, or attorney may waive hearing in accordance with Section 51.09 of this code.

(i) The court shall specifically state in the order its reasons for modifying the disposition and shall furnish a copy of the order to the child.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

#### § 54.06. Judgments for Support

(a) When a child has been placed on probation outside his home, the juvenile court, after giving the parent or other person responsible for the child's support a reasonable opportunity to be heard, may order the parent or other person to pay in a manner directed by the court a reasonable sum for the support in whole or in part of the child.

(b) Orders for support may be enforced as provided in Section 54.07 of this code.

(c) Nothing in this section shall be construed so as to authorize support payments for a child committed to the Texas Youth Council.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

#### § 54.07. Enforcement of Order

(a) Any order of the juvenile court may be enforced by contempt.

(b) The juvenile court may enforce its order for support by civil contempt proceedings after 10 days' notice to the defaulting person of his failure or refusal to carry out the terms of the order.

(c) On the motion of any person or agency entitled to receive payments for the benefit of a child, the juvenile court may render judgment against a defaulting person for any amount unpaid and owing after 10 days' notice to the defaulting person of his failure or refusal to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgments for other debts.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

#### § 54.08. Public Access to Court Hearings

The general public may be excluded from hearings under this title. The court in its discretion may admit such members of the general public as it deems proper.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

#### § 54.09. Recording of Proceedings

All judicial proceedings under this chapter except detention hearings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. Upon request of any party, a detention hearing shall be recorded.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

### CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS, RETARDATION, DISEASE, OR DEFECT

#### Section

55.01. Physical or Mental Examination.

55.02. Mentally Ill Child.

#### Section

55.03. Mentally Retarded Child.

55.04. Mental Disease or Defect Excluding Fitness to Proceed.

55.05. Mental Disease or Defect Excluding Responsibility.

#### § 55.01. Physical or Mental Examination

At any stage of proceedings under this title, the juvenile court may cause the child to be examined by a physician, psychiatrist, or psychologist.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

#### § 55.02. Mentally Ill Child

(a) If it appears to the juvenile court, on suggestion of a party or on the court's own notice, that a child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be mentally ill, the court shall initiate proceedings to order temporary hospitalization of the child for observation and treatment.

(b) The Texas Mental Health Code (5547-1 et seq., Vernon's Texas Civil Statutes) governs proceedings for temporary hospitalization except that the juvenile court shall conduct the proceedings whether or not the juvenile court is also a county court.

(c) If the juvenile court enters an order of temporary hospitalization of the child, the child shall be cared for, treated, and released in conformity to the Texas Mental Health Code except:

(1) a juvenile court order of temporary hospitalization of a child automatically expires when the child becomes 21 years of age;

(2) the head of a mental hospital shall notify the juvenile court that ordered temporary hospitalization at least 10 days prior to discharge of the child; and

(3) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title.

(d) If the juvenile court orders temporary hospitalization of a child, the proceedings under this title then pending in juvenile court shall be stayed.

(e) If the child is discharged from the mental hospital before reaching 21 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of temporary hospitalization had been made.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

#### § 55.03. Mentally Retarded Child

(a) If it appears to the juvenile court, on the suggestion of a party or on the court's own notice, that a child alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be mentally retarded, the court shall initiate proceedings to order commitment of the child to a facility for the care and treatment of mentally retarded persons.

(b) The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes) governs proceedings for commitment of a mentally retarded child except that the juvenile court shall conduct the proceedings whether or not the juvenile court is also a county court.

(c) If the juvenile court enters an order committing the child for care and treatment in a facility for mentally retarded persons, the child shall be cared for, treated, and released in conformity to the Mentally Retarded Persons Act except:

(1) the juvenile court that ordered commitment of the child shall be notified at least 10 days prior to discharge of the child; and

(2) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title.

(d) If the juvenile court orders commitment of a child to a facility for the care and treatment of mentally retarded persons, the proceedings under this title then pending in juvenile court shall be stayed.

(e) If the child is discharged from the facility for the care and treatment of mentally retarded persons before reaching 21 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of commitment had been made.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 55.04. Mental Disease or Defect Excluding Fitness to Proceed**

(a) No child who as a result of mental disease or defect lacks capacity to understand the proceedings in juvenile court or to assist in his own defense shall be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such incapacity endures.

(b) If it appears to the juvenile court, on suggestion of a party or on the court's own notice, that a child alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be unfit to proceed, the court shall order appropriate medical and psychiatric inquiry to assist in determining whether the child is unfit to proceed because of mental disease or defect.

(c) The court or jury shall determine from the psychiatric and other evidence at a hearing separate from, but conducted in accordance with the requirements for, the adjudication hearing whether the child is fit or unfit to proceed.

(d) Unfitness to proceed must be proved by a preponderance of the evidence.

(e) If the court or jury determines that the child is fit to proceed, the juvenile court shall continue with proceedings under this title as though no question of fitness to proceed had been raised.

(f) If the court or jury determines that the child is unfit to proceed, the court or jury shall determine whether the child should be committed for a period of temporary hospitalization for observation and treatment in accordance with Section 55.02 of this code or committed to a facility for mentally retarded persons for care and treatment in accordance with Section 55.03 of this code.

(g) Proceedings to determine fitness to proceed may be joined with proceedings under Sections 55.02 and 55.03 of this code.

(h) The fact that the child is unfit to proceed does not preclude any legal objection to the juvenile court proceedings which is susceptible of fair determination prior to the adjudication hearing and without the personal participation of the child.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

**§ 55.05. Mental Disease or Defect Excluding Responsibility**

(a) A child is not responsible for delinquent conduct or conduct indicating a need for supervision if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(b) If it appears to the juvenile court, on suggestion of a party or on the court's own notice, that a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision may not be responsible as a result of mental disease or defect, the court shall order appropriate medical and psychiatric inquiry to assist in determining whether the child is or is not responsible.

(c) The issue of whether the child is not responsible for his conduct as a result of mental disease or defect shall be tried to the court or jury in the adjudication hearing.

(d) Mental disease or defect excluding responsibility must be proved by a preponderance of the evidence.

(e) In its findings or verdict the court or jury must state whether the child is not responsible for his conduct as a result of mental disease or defect.

(f) If the court or jury finds the child responsible for his conduct the proceedings shall continue as though no question of mental disease or defect excluding responsibility had been raised.

(g) If the court or jury finds that the child is not responsible for his conduct as a result of mental disease or defect, the court shall dismiss the proceedings with prejudice, and the court shall initiate proceedings under Section 55.02 or 55.03 of this code to determine whether the child should be committed for care and treatment as a mentally ill or mentally retarded child.

(h) A child declared not responsible for his conduct because of mental disease or defect shall not thereafter be subject to proceedings under this title with respect to such conduct, other than proceedings under Section 55.02 or 55.03 of this code.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

## CHAPTER 56. APPEAL

## Section

56.01. Right to Appeal.

56.02. Transcript on Appeal.

## § 56.01. Right to Appeal

(a) An appeal from an order of a juvenile court is to the Texas Court of Civil Appeals and the case may be carried to the Texas Supreme Court by writ of error or upon certificate, as in civil cases generally.

(b) The requirements governing an appeal are as in civil cases generally.

(c) An appeal may be taken by or on behalf of the child from:

(1) an order entered under Section 54.02 of this code respecting transfer of the child to criminal court for prosecution as an adult;

(2) an order entered under Section 54.03 of this code with regard to delinquent conduct or conduct indicating a need for supervision;

(3) an order entered under Section 54.04 of this code disposing of the case;

(4) an order entered under Section 54.05 of this code respecting modification of a previous juvenile court disposition; or

(5) an order entered under Chapter 55 of this code<sup>1</sup> committing a child to a facility for the mentally ill or mentally retarded.

(d) Notice of appeal shall be given to the juvenile court as in civil cases generally.

(e) On entry of an order that is appealable under this section, the court shall instruct the attorney to advise the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. If the child and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with the juvenile court and inform the court whether or not he will handle the appeal.

(f) On entering an order that is appealable under this section, the juvenile court, if the child is not represented by an attorney, shall give notice to the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. Counsel shall be appointed under the standards provided in Section 51.10 of this code

unless the right to appeal is waived in accordance with Section 51.09 of this code.

(g) An appeal does not suspend the order of the juvenile court, nor does it release the child from the custody of that court or of the person, institution, or agency to whose care the child is committed, unless the juvenile court so orders. However, the appellate court may provide for a personal bond.

(h) If the order appealed from takes custody of the child from his parent, guardian, or custodian, the appeal has precedence over all other cases.

(i) The appellate court may affirm, reverse, or modify the judgment or order, including an order of disposition or modified disposition, from which appeal was taken. It may reverse or modify an order of disposition or modified order of disposition while affirming the juvenile court adjudication that the child engaged in delinquent conduct or conduct indicating a need for supervision.

(j) Neither the child nor his family shall be identified in an appellate opinion rendered in an appeal or habeas corpus proceedings related to juvenile court proceedings under this title. The appellate opinion shall be styled, "In the matter of . . . . .," identifying the child by his initials only.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

<sup>1</sup> Section 55.01 et seq.

## § 56.02. Transcript on Appeal

(a) The attorney representing a child on appeal who desires to have included in the record on appeal a transcription of notes of the reporter has the responsibility of obtaining and paying for the transcription and furnishing it to the clerk in duplicate in time for inclusion in the record.

(b) The juvenile court shall order the reporter to furnish a transcription without charge to the attorney if the court finds, after hearing or on an affidavit filed by the child's parent or other person responsible for support of the child that he is unable to pay or to give security therefor.

(c) On certificate of the court that this service has been rendered, payment therefor shall be made from the general funds of the county in which the proceedings appealed from occurred.

(d) The court reporter shall report any portion of the proceedings requested by either party or directed by the court and shall report the proceedings in question and answer form unless a narrative transcript is requested.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

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# PENAL CODE

Acts 1973, 63rd Leg., Ch. 399

Effective January 1, 1974

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### Enactment

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, enacted the new Texas Penal Code, effective January 1, 1974. Section 2 thereof made various conforming amendments in the Texas Civil Statutes and Codes and § 3 repealed articles of the Texas Penal Code of 1925 and Vernon's Texas Penal Code, as amended.

Sections 4 to 7 of the 1973 Act provided:

"Sec. 4. Effective date. This Act takes effect on January 1, 1974.

"Sec. 5. Disposition of un repealed articles.<sup>1</sup> (a) The purpose of this section is to provide for transfer of articles of the Penal Code of Texas,

1925, which are not repealed by this Act to the civil statutes or other appropriate places within the framework of Texas statute law, without reenactment and without altering the meaning or effect of the unrepealed articles, so that when this Act takes effect there will be only one Texas Penal Code without the confusion that would result if remnants of the old Penal Code were allowed to continue to exist in that form in the statute books.

“(b) In order to carry out the purpose of this section, the Texas Legislative Council shall prepare and submit to the secretary of state, for publication with the Acts of the 63rd Legislature, Regular Session, 1973, an appendix listing the unrepealed articles of the Penal Code of Texas, 1925, as amended, and prescribing for each unrepealed title, chapter, or article a new official citation. The council may include in the appendix any comments that may be helpful to users of the statute books.

“(c) In order that the five-volume Vernon’s Texas Penal Code Annotated may be completely replaced, the council in the appendix authorized by Subsection (b) of this section may also recommend transfer and reclassification of statutes which were not enacted as part of the Penal Code of Texas, 1925, but were compiled as articles of Vernon’s Texas Penal Code.

“(d) Nothing in this section or done under its authority alters the meaning or effect of any statute of this state.

“Sec. 6. Saving provisions. (a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act’s effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date.

“(b) Conduct constituting an offense under existing law that is repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct constituting an offense under laws repealed by this Act is valid and unaffected by this Act. For purposes of this section, “conviction” means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final.

“(c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins.

“Sec. 7. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.”

<sup>1</sup> See Table 2, Disposition of Unrepealed Articles of the Texas Penal Code of 1925 and Vernon’s Texas Penal Code, at the end of this Code.

## TITLE 1. INTRODUCTORY PROVISIONS

### CHAPTER 1. GENERAL PROVISIONS

Section

- 1.01. Short Title.
- 1.02. Objectives of Code.
- 1.03. Effect of Code.
- 1.04. Territorial Jurisdiction.
- 1.05. Construction of Code.
- 1.06. Computation of Age.
- 1.07. Definitions.
- 1.08. Preemption.

#### § 1.01. Short Title

This code shall be known and may be cited as the Penal Code.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 1.02. Objectives of Code

The general purposes of this code are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which state protection is appropriate. To this end, the provisions of this code are intended, and shall be construed, to achieve the following objectives:

- (1) to insure the public safety through:
  - (A) the deterrent influence of the penalties hereinafter provided;
  - (B) the rehabilitation of those convicted of violations of this code; and
  - (C) such punishment as may be necessary to prevent likely recurrence of criminal behavior;
- (2) by definition and grading of offenses to give fair warning of what is prohibited and of the consequences of violation;
- (3) to prescribe penalties that are proportionate to the seriousness of offenses and that permit recognition of differences in rehabilitation possibilities among individual offenders;
- (4) to safeguard conduct that is without guilt from condemnation as criminal;
- (5) to guide and limit the exercise of official discretion in law enforcement to prevent arbitrary or oppressive treatment of persons accused or convicted of offenses; and
- (6) to define the scope of state interest in law enforcement against specific offenses and to systematize the exercise of state criminal jurisdiction.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 1.03. Effect of Code

(a) Conduct does not constitute an offense unless it is defined as an offense by statute, municipal

ordinance, order of a county commissioners court, or rule authorized by and lawfully adopted under a statute.

(b) The provisions of Titles 1, 2, and 3 of this code apply to offenses defined by other laws, unless the statute defining the offense provides otherwise; however, the punishment affixed to an offense defined outside this code shall be applicable unless the punishment is classified in accordance with this code.

(c) This code does not bar, suspend, or otherwise affect a right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil suit for conduct this code defines as an offense, and the civil injury is not merged in the offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 1.04. Territorial Jurisdiction

(a) This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which he is criminally responsible if:

(1) either the conduct or a result that is an element of the offense occurs inside this state;

(2) the conduct outside this state constitutes an attempt to commit an offense inside this state;

(3) the conduct outside this state constitutes a conspiracy to commit an offense inside this state, and an act in furtherance of the conspiracy occurs inside this state; or

(4) the conduct inside this state constitutes an attempt, solicitation, or conspiracy to commit, or establishes criminal responsibility for the commission of, an offense in another jurisdiction that is also an offense under the laws of this state.

(b) If the offense is criminal homicide, a "result" is either the physical impact causing death or the death itself. If the body of a criminal homicide victim is found in this state, it is presumed that the death occurred in this state. If death alone is the basis for jurisdiction, it is a defense to the exercise of jurisdiction by this state that the conduct that constitutes the offense is not made criminal in the jurisdiction where the conduct occurred.

(c) An offense based on an omission to perform a duty imposed on an actor by a statute of this state is committed inside this state regardless of the location of the actor at the time of the offense.

(d) This state includes the land and water (and the air space above the land and water) over which this state has power to define offenses.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 1.05. Construction of Code

(a) The rule that a penal statute is to be strictly construed does not apply to this code. The provisions of this code shall be construed according to the fair import of their terms, to promote justice and effect the objectives of the code.

(b) Unless a different construction is required by the context, Sections 2.01, 2.02, 2.04, 2.05, and 3.01 through 3.12 of the Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) apply to the construction of this code.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

1 West's Tex. Stats. & Codes—51

#### § 1.06. Computation of Age

A person attains a specified age on the day of the anniversary of his birthdate.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 1.07. Definitions

(a) In this code:

(1) "Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

(2) "Actor" means a person whose criminal responsibility is in issue in a criminal action.

(3) "Agency" includes authority, board, bureau, commission, committee, council, department, district, division, and office.

(4) "Another" means a person other than the actor.

(5) "Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

(6) "Benefit" means anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

(7) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(8) "Conduct" means an act or omission and its accompanying mental state.

(9) "Consent" means assent in fact, whether express or apparent.

(10) "Criminal negligence" is defined in Section 6.03 of this code (Culpable Mental States).

(11) "Deadly weapon" means:

(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or

(B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(12) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by force, threat, or fraud;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or

(D) given solely to detect the commission of an offense.

(13) "Element of offense" means:

(A) the forbidden conduct;

(B) the required culpability;

(C) any required result; and

(D) the negation of any exception to the offense.

(14) "Felony" means an offense so designated by law or punishable by death or confinement in a penitentiary.

(15) "Government" means the state; a county, municipality, or political subdivision of the state; or any branch or agency of the state, a county, municipality, or political subdivision.

(16) "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.

(17) "Individual" means a human being who has been born and is alive.

(18) "Intentional" is defined in Section 6.03 of this code (Culpable Mental States).

(19) "Knowing" is defined in Section 6.03 of this code (Culpable Mental States).

(20) "Law" means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute.

(21) "Misdemeanor" means an offense so designated by law or punishable by fine, by confinement in jail, or by both fine and confinement in jail.

(22) "Oath" includes affirmation.

(23) "Omission" means failure to act.

(24) "Owner" means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor.

(25) "Peace officer" means a person so designated by the Code of Criminal Procedure, 1965.

(26) "Penal institution" means a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.

(27) "Person" means an individual, corporation, or association.

(28) "Possession" means actual care, custody, control, or management.

(29) "Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(30) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

(31) "Reasonable belief" means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.

(32) "Reckless" is defined in Section 6.03 of this code (Culpable Mental States).

(33) "Rule" includes regulation.

(34) "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(35) "Swear" includes affirm.

(36) "Unlawful" means criminal or tortious or both and includes what would be criminal or tortious but for a defense not amounting to justification or privilege.

(b) The definition of a term in this code applies to each grammatical variation of the term.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 1.08. Preemption

No governmental subdivision or agency may enact or enforce a law that makes any conduct covered by this code an offense subject to a criminal penalty. This section shall apply only as long as the law governing the conduct proscribed by this code is legally enforceable.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

CHAPTER 2. BURDEN OF PROOF

Section

2.01. Proof Beyond a Reasonable Doubt.

2.02. Exception.

2.03. Defense.

2.04. Affirmative Defense.

2.05. Presumption.

2.06. Prima Facie Case.

§ 2.01. Proof Beyond a Reasonable Doubt

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 2.02. Exception

(a) An exception to an offense in this code is so labeled by the phrase: "It is an exception to the application of . . ."

(b) The prosecuting attorney must negate the existence of an exception in the accusation charging commission of the offense and prove beyond a reasonable doubt that the defendant or defendant's conduct does not fall within the exception.

(c) This section does not affect exceptions applicable to offenses enacted prior to the effective date of this code.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 2.03. Defense

(a) A defense to prosecution for an offense in this code is so labeled by the phrase: "It is a defense to prosecution . . ."

(b) The prosecuting attorney is not required to negate the existence of a defense in the accusation charging commission of the offense.

(c) The issue of the existence of a defense is not submitted to the jury unless evidence is admitted supporting the defense.

(d) If the issue of the existence of a defense is submitted to the jury, the court shall charge that a reasonable doubt on the issue requires that the defendant be acquitted.

(e) A ground of defense in a penal law that is not plainly labeled in accordance with this chapter has the procedural and evidentiary consequences of a defense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 2.04. Affirmative Defense

(a) An affirmative defense in this code is so labeled by the phrase: "It is an affirmative defense to prosecution . . . ."

(b) The prosecuting attorney is not required to negate the existence of an affirmative defense in the accusation charging commission of the offense.

(c) The issue of the existence of an affirmative defense is not submitted to the jury unless evidence is admitted supporting the defense.

(d) If the issue of the existence of an affirmative defense is submitted to the jury, the court shall charge that the defendant must prove the affirmative defense by a preponderance of evidence.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 2.05. Presumption

When this code or another penal law establishes a presumption with respect to any fact, it has the following consequences:

(1) if there is sufficient evidence of the facts that give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted to the jury, the court shall charge the jury, in terms of the presumption and the specific element to which it applies, as follows:

(A) that the facts giving rise to the presumption must be proven beyond a reasonable doubt;

(B) that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find;

(C) that even though the jury may find the existence of such element, the state must prove beyond a reasonable doubt each of the other elements of the offense charged; and

(D) if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the element to which the presumption applies, or any other element of the offense charged, it shall acquit the defendant and say by its verdict not guilty.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 2.06. Prima Facie Case

When a statute declares that given facts constitute a prima facie case, proof of such facts warrants

submission of a case to the jury with the usual instructions on burden of proof.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### CHAPTER 3. MULTIPLE PROSECUTIONS

#### Section

3.01. Definition.

3.02. Consolidation and Joinder of Prosecutions.

3.03. Sentences for Offenses Arising Out of Same Criminal Episode.

3.04. Severance.

#### § 3.01. Definition

In this chapter, "criminal episode" means the repeated commission of any one offense defined in Title 7 of this code (Offenses Against Property).<sup>1</sup>

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> Section 28.01 et seq.

#### § 3.02. Consolidation and Joinder of Prosecutions

(a) A defendant may be prosecuted in a single criminal action for all offenses arising out of the same criminal episode.

(b) When a single criminal action is based on more than one charging instrument within the jurisdiction of the trial court, the state shall file written notice of the action not less than 30 days prior to the trial.

(c) If a judgment of guilt is reversed, set aside, or vacated, and a new trial ordered, the state may not prosecute in a single criminal action in the new trial any offense not joined in the former prosecution unless evidence to establish probable guilt for that offense was not known to the appropriate prosecuting official at the time the first prosecution commenced.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 3.03. Sentences for Offenses Arising Out of Same Criminal Episode

When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, sentence for each offense for which he has been found guilty shall be pronounced. Such sentences shall run concurrently.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 3.04. Severance

(a) Whenever two or more offenses have been consolidated or joined for trial under Section 3.02 of this code, the defendant shall have a right to a severance of the offenses.

(b) In the event of severance under this section, the provisions of Section 3.03 of this code do not apply, and the court in its discretion may order the sentences to run either concurrently or consecutively.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

#### CHAPTER 6. CULPABILITY GENERALLY

#### Section

6.01. Requirement of Voluntary Act or Omission.

6.02. Requirement of Culpability.

Section

- 6.03. Definitions of Culpable Mental States.
- 6.04. Causation: Conduct and Results.

**§ 6.01. Requirement of Voluntary Act or Omission**

(a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession, in violation of a statute that provides that the conduct is an offense.

(b) Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.

(c) A person who omits to perform an act does not commit an offense unless a statute provides that the omission is an offense or otherwise provides that he has a duty to perform the act.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 6.02. Requirement of Culpability**

(a) Except as provided in Subsection (b) of this section, a person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.

(b) If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.

(c) If the definition of an offense does not prescribe a culpable mental state, but one is nevertheless required under Subsection (b) of this section, intent, knowledge, or recklessness suffices to establish criminal responsibility.

(d) Culpable mental states are classified according to relative degrees, from highest to lowest, as follows:

- (1) intentional;
- (2) knowing;
- (3) reckless;
- (4) criminal negligence.

(e) Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 6.03. Definitions of Culpable Mental States**

(a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and

degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 6.04. Causation: Conduct and Results**

(a) A person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient.

(b) A person is nevertheless criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated, or risked is that:

- (1) a different offense was committed; or
- (2) a different person or property was injured, harmed, or otherwise affected.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER**

**SUBCHAPTER A. COMPLICITY**

Section

- 7.01. Parties to Offenses.
- 7.02. Criminal Responsibility for Conduct of Another.
- 7.03. Defenses Excluded.

**SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS**

- 7.21. Definitions.
- 7.22. Criminal Responsibility of Corporation or Association.
- 7.23. Criminal Responsibility of Person for Conduct in Behalf of Corporation or Association.
- 7.24. Defense to Criminal Responsibility of Corporation or Association.

**SUBCHAPTER A. COMPLICITY**

**§ 7.01. Parties to Offenses**

(a) A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.

(b) Each party to an offense may be charged with commission of the offense.

(c) All traditional distinctions between accomplices and principals are abolished by this section, and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 7.02. Criminal Responsibility for Conduct of Another

(a) A person is criminally responsible for an offense committed by the conduct of another if:

(1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;

(2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or

(3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

(b) If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 7.03. Defenses Excluded

In a prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor may be convicted on proof of commission of the offense and that he was a party to its commission, and it is no defense:

(1) that the actor belongs to a class of persons that by definition of the offense is legally incapable of committing the offense in an individual capacity; or

(2) that the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 7.04 to 7.20 reserved for expansion]

## SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS

### § 7.21. Definitions

In this subchapter:

(1) "Agent" means a director, officer, employee, or other person authorized to act in behalf of a corporation or association.

(2) "High managerial agent" means:

(A) a partner in a partnership;

(B) an officer of a corporation or association;

(C) an agent of a corporation or association who has duties of such responsibility that his conduct reasonably may be assumed to represent the policy of the corporation or association.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 7.22. Criminal Responsibility of Corporation or Association

(a) If conduct constituting an offense is performed by an agent acting in behalf of a corporation or association and within the scope of his office or employment, the corporation or association is criminally responsible for an offense defined:

(1) in this code where corporations and associations are made subject thereto;

(2) by law other than this code in which a legislative purpose to impose criminal responsibility on corporations or associations plainly appears; or

(3) by law other than this code for which strict liability is imposed, unless a legislative purpose not to impose criminal responsibility on corporations or associations plainly appears.

(b) A corporation is criminally responsible for a felony offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

(1) a majority of the board of directors acting in behalf of the corporation or association; or

(2) a high managerial agent acting in behalf of the corporation or association and within the scope of his office or employment.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 7.23. Criminal Responsibility of Person for Conduct in Behalf of Corporation or Association

(a) An individual is criminally responsible for conduct that he performs in the name of or in behalf of a corporation or association to the same extent as if the conduct were performed in his own name or behalf.

(b) An agent having primary responsibility for the discharge of a duty to act imposed by law on a corporation or association is criminally responsible for omission to discharge the duty to the same extent as if the duty were imposed by law directly on him.

(c) If an individual is convicted of conduct constituting an offense performed in the name of or on behalf of a corporation or association, he is subject to the sentence authorized by law for an individual convicted of the offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 7.24. Defense to Criminal Responsibility of Corporation or Association

(a) It is an affirmative defense to prosecution of a corporation or association under Section 7.22(a)(1) or (a)(2) of this code that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

(b) Subsection (a) of this section does not apply if it is plainly inconsistent with the legislative purpose expressed in the law defining the particular offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

## CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

### Section

8.01. Insanity.

8.02. Mistake of Fact.

Section

- 8.03. Mistake of Law.
- 8.04. Intoxication.
- 8.05. Duress.
- 8.06. Entrapment.
- 8.07. Age Affecting Criminal Responsibility.

§ 8.01. Insanity

(a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of mental disease or defect, either did not know that his conduct was wrong or was incapable of conforming his conduct to the requirements of the law he allegedly violated.

(b) The term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 8.02. Mistake of Fact

(a) It is a defense to prosecution that the actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense.

(b) Although an actor's mistake of fact may constitute a defense to the offense charged, he may nevertheless be convicted of any lesser included offense of which he would be guilty if the fact were as he believed.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 8.03. Mistake of Law

(a) It is no defense to prosecution that the actor was ignorant of the provisions of any law after the law has taken effect.

(b) It is an affirmative defense to prosecution that the actor reasonably believed the conduct charged did not constitute a crime and that he acted in reasonable reliance upon:

(1) an official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(2) a written interpretation of the law contained in an opinion of a court of record or made by a public official charged by law with responsibility for interpreting the law in question.

(c) Although an actor's mistake of law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the law were as he believed.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 8.04. Intoxication

(a) Voluntary intoxication does not constitute a defense to the commission of crime.

(b) Evidence of temporary insanity caused by intoxication may be introduced by the actor in mitigation of the penalty attached to the offense for which he is being tried.

(c) When temporary insanity is relied upon as a defense and the evidence tends to show that such insanity was caused by intoxication, the court shall charge the jury in accordance with the provisions of this section.

(d) For purposes of this section "intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 8.05. Duress

(a) It is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another.

(b) In a prosecution for an offense that does not constitute a felony, it is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by force or threat of force.

(c) Compulsion within the meaning of this section exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure.

(d) The defense provided by this section is unavailable if the actor intentionally, knowingly, or recklessly placed himself in a situation in which it was probable that he would be subjected to compulsion.

(e) It is no defense that a person acted at the command or persuasion of his spouse, unless he acted under compulsion that would establish a defense under this section.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 8.06. Entrapment

(a) It is a defense to prosecution that the actor engaged in the conduct charged because he was induced to do so by a law enforcement agent using persuasion or other means likely to cause persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

(b) In this section "law enforcement agent" includes personnel of the state and local law enforcement agencies as well as of the United States and any person acting in accordance with instructions from such agents.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 8.07. Age Affecting Criminal Responsibility

(a) Except as provided by Subsection (c) of this section, a person may not be prosecuted or convicted for any offense that he committed when younger than 15 years.

(b) Except as provided by Subsection (c) of this section, a person who is younger than 17 years may not be prosecuted or convicted for any offense, unless the juvenile court waives jurisdiction and certifies him for criminal prosecution.

(c) Subsections (a) and (b) of this section shall not apply to prosecutions for:

(1) aggravated perjury, when it appears by proof that the actor had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended;<sup>1</sup> or

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town.

(d) No person who has been adjudged a delinquent child may be convicted of any offense alleged in the petition to adjudge him a delinquent child or any offense within the knowledge of the juvenile judge as evidenced by anything in the record of the juvenile proceeding.

(e) No person may, in any case, be punished by death for an offense committed while he was younger than 17 years.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> See Vernon's Ann.Civ.St. art. 6701I-4.

## CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

### SUBCHAPTER A. GENERAL PROVISIONS

#### Section

- 9.01. Definitions.
- 9.02. Justification as a Defense.
- 9.03. Confinement as Justifiable Force.
- 9.04. Threats as Justifiable Force.
- 9.05. Reckless Injury of Innocent Third Person.
- 9.06. Civil Remedies Unaffected.

### SUBCHAPTER B. JUSTIFICATION GENERALLY

- 9.21. Public Duty.
- 9.22. Necessity.

### SUBCHAPTER C. PROTECTION OF PERSONS

- 9.31. Self-Defense.
- 9.32. Deadly Force in Defense of Person.
- 9.33. Defense of Third Person.
- 9.34. Protection of Life or Health.

### SUBCHAPTER D. PROTECTION OF PROPERTY

- 9.41. Protection of One's Own Property.
- 9.42. Deadly Force to Protect Property.
- 9.43. Protection of Third Person's Property.
- 9.44. Use of Device to Protect Property.

### SUBCHAPTER E. LAW ENFORCEMENT

- 9.51. Arrest and Search.
- 9.52. Prevention of Escape from Custody.

### SUBCHAPTER F. SPECIAL RELATIONSHIPS

- 9.61. Parent—Child.
- 9.62. Educator—Student.
- 9.63. Guardian—Incompetent.

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 9.01. Definitions.

In this chapter:

(1) "Custody" means:

- (A) under arrest by a peace officer; or
- (B) under restraint by a public servant pursuant to an order of a court.

(2) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole.

(3) "Deadly force" means force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 9.02. Justification as a Defense

It is a defense to prosecution that the conduct in question is justified under this chapter.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 9.03. Confinement as Justifiable Force

Confinement is justified when force is justified by this chapter if the actor takes reasonable measures to terminate the confinement as soon as he knows he safely can unless the person confined has been arrested for an offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 9.04. Threats as Justifiable Force

The threat of force is justified when the use of force is justified by this chapter. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 9.05. Reckless Injury of Innocent Third Person

Even though an actor is justified under this chapter in threatening or using force or deadly force against another, if in doing so he also recklessly injures or kills an innocent third person, the justification afforded by this chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 9.06. Civil Remedies Unaffected

The fact that conduct is justified under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 9.07 to 9.20 reserved for expansion]

### SUBCHAPTER B. JUSTIFICATION GENERALLY

#### § 9.21. Public Duty

(a) Except as qualified by Subsections (b) and (c) of this section, conduct is justified if the actor reasonably believes the conduct is required or authorized by law, by the judgment or order of a competent court or other governmental tribunal, or in the execution of legal process.

(b) The other sections of this chapter control when force is used against a person to protect persons (Subchapter C),<sup>1</sup> to protect property (Subchapter D),<sup>2</sup> for law enforcement (Subchapter E),<sup>3</sup> or by virtue of a special relationship (Subchapter F).<sup>4</sup>

(c) The use of deadly force is not justified under this section unless the actor reasonably believes the deadly force is specifically required by statute or unless it occurs in the lawful conduct of war. If deadly force is so justified, there is no duty to retreat before using it.

(d) The justification afforded by this section is available if the actor reasonably believes:

- (1) the court or governmental tribunal has jurisdiction or the process is lawful, even though

the court or governmental tribunal lacks jurisdiction or the process is unlawful; or

(2) his conduct is required or authorized to assist a public servant in the performance of his official duty, even though the servant exceeds his lawful authority.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

- <sup>1</sup> Section 9.31 et seq.
- <sup>2</sup> Section 9.41 et seq.
- <sup>3</sup> Section 9.51 et seq.
- <sup>4</sup> Section 9.61 et seq.

§ 9.22. Necessity

Conduct is justified if:

(1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm;

(2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law prescribing the conduct; and

(3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 9.23 to 9.30 reserved for expansion]

SUBCHAPTER C. PROTECTION OF PERSONS

§ 9.31. Self-Defense

(a) Except as provided in Subsection (b) of this section, a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force.

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c) of this section;

(3) if the actor consented to the exact force used or attempted by the other; or

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor.

(c) The use of force to resist an arrest or search is justified:

(1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary

to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

(d) The use of deadly force is not justified under this subchapter except as provided in Sections 9.32, 9.33, and 9.34 of this code.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.32. Deadly Force in Defense of Person

A person is justified in using deadly force against another:

(1) if he would be justified in using force against the other under Section 9.31 of this code;

(2) if a reasonable person in the actor's situation would not have retreated; and

(3) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to protect himself against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, rape, aggravated rape, robbery, or aggravated robbery.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.33. Defense of Third Person

A person is justified in using force or deadly force against another to protect a third person if:

(1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 of this code in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and

(2) the actor reasonably believes that his intervention is immediately necessary to protect the third person.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.34. Protection of Life or Health

(a) A person is justified in using force, but not deadly force, against another when and to the degree he reasonably believes the force is immediately necessary to prevent the other from committing suicide or inflicting serious bodily injury to himself.

(b) A person is justified in using both force and deadly force against another when and to the degree he reasonably believes the force or deadly force is immediately necessary to preserve the other's life in an emergency.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 9.35 to 9.40 reserved for expansion]

SUBCHAPTER D. PROTECTION OF PROPERTY

§ 9.41. Protection of One's Own Property

(a) A person in lawful possession of land or tangible, movable property is justified in using force against another when and to the degree the actor reasonably believes the force is immediately neces-

sary to prevent or terminate the other's trespass on the land or unlawful interference with the property.

(b) A person unlawfully dispossessed of land or tangible, movable property by another is justified in using force against the other when and to the degree the actor reasonably believes the force is immediately necessary to reenter the land or recover the property if the actor uses the force immediately or in fresh pursuit after the dispossession and:

(1) the actor reasonably believes the other had no claim of right when he dispossessed the actor; or

(2) the other accomplished the dispossession by using force, threat, or fraud against the actor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 9.42. Deadly Force to Protect Property

A person is justified in using deadly force against another to protect land or tangible, movable property:

(1) if he would be justified in using force against the other under Section 9.41 of this code; and

(2) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to prevent the other's imminent commission of arson, burglary, robbery, aggravated robbery, theft during the nighttime, or criminal mischief during the nighttime; or

(B) to prevent the other who is fleeing immediately after committing burglary, robbery, aggravated robbery, or theft during the nighttime from escaping with the property; and

(3) he reasonably believes that:

(A) the land or property cannot be protected or recovered by any other means; or

(B) the use of force other than deadly force to protect or recover the land or property would expose the actor or another to a substantial risk of death or serious bodily injury.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 9.43. Protection of Third Person's Property

A person is justified in using force or deadly force against another to protect land or tangible, movable property of a third person if, under the circumstances as he reasonably believes them to be, the actor would be justified under Section 9.41 or 9.42 of this code in using force or deadly force to protect his own land or property and:

(1) the actor reasonably believes the unlawful interference constitutes attempted or consummated theft of or criminal mischief to the tangible, movable property; or

(2) the actor reasonably believes that:

(A) the third person has requested his protection of the land or property;

(B) he has a legal duty to protect the third person's land or property; or

(C) the third person whose land or property he uses force or deadly force to protect is the

actor's spouse, parent, or child, resides with the actor, or is under the actor's care.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 9.44. Use of Device to Protect Property

The justification afforded by Sections 9.41 through 9.43 of this code applies to the use of a device to protect land or tangible, movable property if:

(1) the device is not designed to cause, or known by the actor to create a substantial risk of causing, death or serious bodily injury; and

(2) use of the device is reasonable under all the circumstances as the actor reasonably believes them to be when he installs the device.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 9.45 to 9.50 reserved for expansion]

### SUBCHAPTER E. LAW ENFORCEMENT

#### § 9.51. Arrest and Search

(a) A peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:

(1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and

(2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

(b) A person other than a peace officer (or one acting at his direction) is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making a lawful arrest, or to prevent or assist in preventing escape after lawful arrest if, before using force, the actor manifests his purpose to and the reason for the arrest or reasonably believes his purpose and the reason are already known by or cannot reasonably be made known to the person to be arrested.

(c) A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use of force would have been justified under Subsection (a) of this section and:

(1) the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.

(d) A person other than a peace officer acting in a peace officer's presence and at his direction is justi-

fied in using deadly force against another when and to the degree the person reasonably believes the deadly force is immediately necessary to make a lawful arrest, or to prevent escape after a lawful arrest, if the use of force would have been justified under Subsection (b) of this section and:

(1) the actor reasonably believes the felony or offense against the public peace for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to another if the arrest is delayed.

(e) There is no duty to retreat before using deadly force justified by Subsection (c) or (d) of this section.

(f) Nothing in this section relating to the actor's manifestation of purpose or identity shall be construed as conflicting with any other law relating to the issuance, service, and execution of an arrest or search warrant either under the laws of this state or the United States.

(g) Deadly force may only be used under the circumstances enumerated in Subsections (c) and (d) of this section.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 9.52. Prevention of Escape from Custody**

The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody, except that a guard employed by a penal institution or a peace officer is justified in using any force, including deadly force, that he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention of persons charged with or convicted of a crime.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 9.53 to 9.60 reserved for expansion]

**SUBCHAPTER F. SPECIAL RELATIONSHIPS**

**§ 9.61. Parent—Child**

(a) The use of force, but not deadly force, against a child younger than 18 years is justified:

(1) if the actor is the child's parent or step-parent or is acting in loco parentis to the child; and

(2) when and to the degree the actor reasonably believes the force is necessary to discipline the child or to safeguard or promote his welfare.

(b) For purposes of this section, "in loco parentis" includes grandparent and guardian, any person acting by, through, or under the direction of a court with jurisdiction over the child, and anyone who has express or implied consent of the parent or parents.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 9.62. Educator—Student**

The use of force, but not deadly force, against a person is justified:

(1) if the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and

(2) when and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 9.63. Guardian—Incompetent**

The use of force, but not deadly force, against a mental incompetent is justified:

(1) if the actor is the incompetent's guardian or someone similarly responsible for the general care and supervision of the incompetent; and

(2) when and to the degree the actor reasonably believes the force is necessary:

(A) to safeguard and promote the incompetent's welfare; or

(B) if the incompetent is in an institution for his care and custody, to maintain discipline in the institution.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**TITLE 3. PUNISHMENTS**

**CHAPTER 12. PUNISHMENTS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Section**

- 12.01. Punishment in Accordance with Code.
- 12.02. Classification of Offenses.
- 12.03. Classification of Misdemeanors.
- 12.04. Classification of Felonies.

**SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS**

- 12.21. Class A Misdemeanor Punishment.
- 12.22. Class B Misdemeanor Punishment.
- 12.23. Class C Misdemeanor Punishment.

**SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS**

- 12.31. Capital Felony.
- 12.32. First-Degree Felony Punishment.
- 12.33. Second-Degree Felony Punishment.
- 12.34. Third-Degree Felony Punishment.

**SUBCHAPTER D. EXCEPTIONAL SENTENCES**

- 12.41. Classification of Offenses Outside this Code.
- 12.42. Penalties for Repeat and Habitual Felony Offenders.
- 12.43. Penalties for Repeat and Habitual Misdemeanor Offenders.
- 12.44. Reduction of Third Degree Felony to Misdemeanor.
- 12.45. Admission of Unadjudicated Offense.

**SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS**

- 12.51. Authorized Punishments for Corporations and Associations.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 12.01. Punishment in Accordance with Code**

(a) A person adjudged guilty of an offense under this code shall be punished in accordance with this chapter and the Code of Criminal Procedure, 1965.

(b) Penal laws enacted after the effective date of this code shall be classified for punishment purposes in accordance with this chapter.

(c) This chapter does not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend or cancel a license or permit,

remove a person from office, cite for contempt, or impose any other civil penalty. The civil penalty may be included in the sentence.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 12.02. Classification of Offenses

Offenses are designated as felonies or misdemeanors.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 12.03. Classification of Misdemeanors

(a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:

- (1) Class A misdemeanors;
- (2) Class B misdemeanors;
- (3) Class C misdemeanors.

(b) An offense designated a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor.

(c) Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 12.04. Classification of Felonies

(a) Felonies are classified according to the relative seriousness of the offense into four categories:

- (1) capital felonies;
- (2) felonies of the first degree;
- (3) felonies of the second degree;
- (4) felonies of the third degree.

(b) An offense designated a felony in this code without specification as to category is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1125, ch. 426, art. 2, § 3, eff. Jan. 1, 1974.]

[Sections 12.05 to 12.20 reserved for expansion]

### SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

#### § 12.21. Class A Misdemeanor

An individual adjudged guilty of a Class A misdemeanor shall be punished by:

- (1) a fine not to exceed \$2,000;
- (2) confinement in jail for a term not to exceed one year; or
- (3) both such fine and imprisonment.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 12.22. Class B Misdemeanor

An individual adjudged guilty of a Class B misdemeanor shall be punished by:

- (1) a fine not to exceed \$1,000;
- (2) confinement in jail for a term not to exceed 180 days; or
- (3) both such fine and imprisonment.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 12.23. Class C Misdemeanor

An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$200.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 12.24 to 12.30 reserved for expansion]

### SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

#### § 12.31. Capital Felony

(a) An individual adjudged guilty of a capital felony shall be punished by confinement in the Texas Department of Corrections for life or by death.

(b) Prospective jurors shall be informed that a sentence of life imprisonment or death is mandatory on conviction of a capital felony. A prospective juror shall be disqualified from serving as a juror unless he states under oath that the mandatory penalty of death or imprisonment for life will not affect his deliberations on any issue of fact.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, § 2, eff. Jan. 1, 1974.]

#### § 12.32. First-Degree Felony Punishment

An individual adjudged guilty of a felony of the first degree shall be punished by confinement in the Texas Department of Corrections for life or for any term of not more than 99 years or less than 5 years.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, § 2, eff. Jan. 1, 1974.]

#### § 12.33. Second-Degree Felony Punishment

(a) An individual adjudged guilty of a felony of the second degree shall be punished by confinement in the Texas Department of Corrections for any term of not more than 20 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, § 2, eff. Jan. 1, 1974.]

#### § 12.34. Third-Degree Felony Punishment

(a) An individual adjudged guilty of a felony of the third degree shall be punished by confinement in the Texas Department of Corrections for any term of not more than 10 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$5,000.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, § 2, eff. Jan. 1, 1974.]

[Sections 12.35 to 12.40 reserved for expansion]

### SUBCHAPTER D. EXCEPTIONAL SENTENCES

#### § 12.41. Classification of Offenses Outside this Code

For purposes of this subchapter, any conviction not obtained from a prosecution under this code shall be classified as follows:

(1) "felony of the third degree" if confinement in a penitentiary is affixed to the offense as a possible punishment;

(2) "Class B misdemeanor" if the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment;

(3) "Class C misdemeanor" if the offense is punishable by fine only.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 12.42. Penalties for Repeat and Habitual Felony Offenders**

(a) If it be shown on the trial of a third-degree felony that the defendant has been once before convicted of any felony, on conviction he shall be punished for a second-degree felony.

(b) If it be shown on the trial of a second-degree felony that the defendant has been once before convicted of any felony, on conviction he shall be punished for a first-degree felony.

(c) If it be shown on the trial of a first-degree felony that the defendant has been once before convicted of any felony, on conviction he shall be punished by confinement in the Texas Department of Corrections for life, or for any term of not more than 99 years or less than 15 years.

(d) If it be shown on the trial of any felony offense that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction he shall be punished by confinement in the Texas Department of Corrections for life.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 12.43. Penalties for Repeat and Habitual Misdemeanor Offenders**

(a) If it be shown on the trial of a Class A misdemeanor that the defendant has been before convicted of a Class A misdemeanor or any degree of felony, on conviction he shall be punished by confinement in jail for any term of not more than one year or less than 90 days.

(b) If it be shown on the trial of a Class B misdemeanor that the defendant has been before convicted of a Class A or Class B misdemeanor or any degree of felony, on conviction he shall be punished by confinement in jail for any term of not more than 180 days or less than 30 days.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 12.44. Reduction of Third-Degree Felony to Misdemeanor**

(a) A court may set aside a judgment or verdict of guilty of a felony of the third degree and enter a judgment of guilt and punish for a Class A misdemeanor if, after considering the gravity and circumstances of the felony committed and the history, character, and rehabilitative needs of the defendant, the court finds that such sentence would best serve the ends of justice.

(b) When a court is authorized to enter judgment of guilt and sentence for a lesser category of offense as provided in Subsection (a) of this section, the court may authorize the prosecuting attorney to prosecute initially for the lesser category of offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 12.45. Admission of Unadjudicated Offense**

(a) An individual may, with the consent of the attorney for the state, admit during the sentencing hearing his guilt of one or more unadjudicated offenses and request the court to take each into

account in determining sentence for the offense or offenses of which he stands adjudged guilty.

(b) Before a court may take into account an admitted offense over which exclusive venue lies in another county or district, the court must obtain permission from the prosecuting attorney with jurisdiction over the offense.

(c) If a court lawfully takes into account an admitted offense, prosecution is barred for that offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 12.46 to 12.50 reserved for expansion]

**SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS**

**§ 12.51. Authorized Punishments for Corporations and Associations**

(a) If a corporation or association is adjudged guilty of an offense that provides a penalty consisting of a fine only, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense.

(b) If a corporation or association is adjudged guilty of an offense that provides a penalty including imprisonment, or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

- (1) \$10,000 if the offense is a felony of any category;
- (2) \$2,000 if the offense is a Class A or Class B misdemeanor; or
- (3) \$200 if the offense is a Class C misdemeanor.

(c) In lieu of the fines authorized by Subsections (a) and (b)(1) and (b)(2) of this section, if a court finds that the corporation or association gained money or property through the commission of a felony or Class A or Class B misdemeanor, the court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed double the amount gained.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**TITLE 4. INCHOATE OFFENSES**

**CHAPTER 15. PREPARATORY OFFENSES**

Section	
15.01.	Criminal Attempt.
15.02.	Criminal Conspiracy.
15.03.	Criminal Solicitation.
15.04.	Renunciation Defense.
15.05.	No Offense.

**§ 15.01. Criminal Attempt**

(a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

(c) An offense under this section is one category lower than the offense attempted, and if the offense attempted is a felony of the third degree, the offense is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 15.02. Criminal Conspiracy

(a) A person commits criminal conspiracy if, with intent that a felony be committed:

(1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and

(2) he or one or more of them performs an overt act in pursuance of the agreement.

(b) An agreement constituting a conspiracy may be inferred from acts of the parties.

(c) It is no defense to prosecution for criminal conspiracy that:

(1) one or more of the coconspirators is not criminally responsible for the object offense;

(2) one or more of the coconspirators has been acquitted, so long as two or more coconspirators have not been acquitted;

(3) one or more of the coconspirators has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution;

(4) the actor belongs to a class of persons that by definition of the object offense is legally incapable of committing the object offense in an individual capacity; or

(5) the object offense was actually committed.

(d) An offense under this section is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a felony of the third degree, the offense is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 15.03. Criminal Solicitation

(a) A person commits an offense if, with intent that a capital felony or felony of the first degree be committed, he requests, commands, or attempts to induce another to engage in specific conduct that, under the circumstances surrounding his conduct as the actor believes them to be, would constitute the felony or make the other a party to its commission.

(b) A person may not be convicted under this section on the uncorroborated testimony of the person allegedly solicited and unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the other person act on the solicitation.

(c) It is no defense to prosecution under this section that:

(1) the person solicited is not criminally responsible for the felony solicited;

(2) the person solicited has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution;

(3) the actor belongs to a class of persons that by definition of the felony solicited is legally incapable of committing the offense in an individual capacity; or

(4) the felony solicited was actually committed.

(d) An offense under this section is:

(1) a felony of the first degree if the offense solicited is a capital offense; or

(2) a felony of the second degree if the offense solicited is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 15.04. Renunciation Defense

(a) It is an affirmative defense to prosecution under Section 15.01 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor avoided commission of the offense attempted by abandoning his criminal conduct or, if abandonment was insufficient to avoid commission of the offense, by taking further affirmative action that prevented the commission.

(b) It is an affirmative defense to prosecution under Section 15.02 or 15.03 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor countermanded his solicitation or withdrew from the conspiracy before commission of the object offense and took further affirmative action that prevented the commission of the object offense.

(c) Renunciation is not voluntary if it is motivated in whole or in part:

(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

(d) Evidence that the defendant renounced his criminal objective by abandoning his criminal conduct, countermanding his solicitation, or withdrawing from the conspiracy before the criminal offense was committed and made substantial effort to prevent the commission of the object offense shall be admissible as mitigation at the hearing on punishment if he has been found guilty of criminal attempt, criminal solicitation, or criminal conspiracy; and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided for the offense committed.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 15.05. No Offense

Attempt or conspiracy to commit, or solicitation of, a preparatory offense defined in this chapter is not an offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

## CHAPTER 16. CRIMINAL INSTRUMENTS

### Section

16.01. Unlawful Use of Criminal Instrument.

§ 16.01. Unlawful Use of Criminal Instrument

- (a) A person commits an offense if:
  - (1) he possesses a criminal instrument with intent to use it in the commission of an offense; or
  - (2) with knowledge of its character and with intent to use or aid or permit another to use in the commission of an offense, he manufactures, adapts, sells, installs, or sets up a criminal instrument.

(b) For purposes of this section, "criminal instrument" means anything that is specially designed, made, or adapted for the commission of an offense.

(c) An offense under this section is a felony of the third degree.  
 [Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**TITLE 5. OFFENSES AGAINST THE PERSON**

**CHAPTER 19. CRIMINAL HOMICIDE**

- Section
- 19.01. Types of Criminal Homicide.
  - 19.02. Murder.
  - 19.03. Capital Murder.
  - 19.04. Voluntary Manslaughter.
  - 19.05. Involuntary Manslaughter.
  - 19.06. Evidence.
  - 19.07. Criminally Negligent Homicide.

§ 19.01. Types of Criminal Homicide

(a) A person commits criminal homicide if he intentionally, knowingly, recklessly, or with criminal negligence causes the death of an individual.

(b) Criminal homicide is murder, capital murder, voluntary manslaughter, involuntary manslaughter, or criminally negligent homicide.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

§ 19.02. Murder

- (a) A person commits an offense if he:
  - (1) intentionally or knowingly causes the death of an individual;
  - (2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or
  - (3) commits or attempts to commit a felony, other than voluntary or involuntary manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

(b) An offense under this section is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

§ 19.03. Capital Murder

(a) A person commits an offense if he commits murder as defined under Section 19.02(a)(1) of this code and:

(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;

(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated rape, or arson;

(3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

(4) the person commits the murder while escaping or attempting to escape from a penal institution; or

(5) the person, while incarcerated in a penal institution, murders another who is employed in the operation of the penal institution.

(b) An offense under this section is a capital felony.

(c) If the jury does not find beyond a reasonable doubt that the defendant is guilty of an offense under this section, he may be convicted of murder or of any other lesser included offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

§ 19.04. Voluntary Manslaughter

(a) A person commits an offense if he causes the death of an individual under circumstances that would constitute murder under Section 19.02 of this code, except that he caused the death under the immediate influence of sudden passion arising from an adequate cause.

(b) "Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.

(c) "Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.

(d) An offense under this section is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

§ 19.05. Involuntary Manslaughter

- (a) A person commits an offense if he:
  - (1) recklessly causes the death of an individual; or
  - (2) by accident or mistake when operating a motor vehicle while intoxicated and, by reason of such intoxication, causes the death of an individual.

(b) For purposes of this section, "intoxication" means that the actor does not have the normal use of his mental or physical faculties by reason of the voluntary introduction of any substance into his body.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

### § 19.06. Evidence

In all prosecutions for murder or voluntary manslaughter, the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

### § 19.07. Criminally Negligent Homicide

(a) A person commits an offense if he causes the death of an individual by criminal negligence.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

## CHAPTER 20. KIDNAPPING AND FALSE IMPRISONMENT

### Section

- 20.01. Definitions.
- 20.02. False Imprisonment.
- 20.03. Kidnapping.
- 20.04. Aggravated Kidnapping.

### § 20.01. Definitions

In this chapter:

(1) "Restrain" means to restrict a person's movements without consent, so as to interfere substantially with his liberty, by moving him from one place to another or by confining him. Restraint is "without consent" if it is accomplished by:

(A) force, intimidation, or deception; or

(B) any means, including acquiescence of the victim, if he is a child less than 14 years of age or an incompetent person and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement or confinement.

(2) "Abduct" means to restrain a person with intent to prevent his liberation by:

(A) secreting or holding him in a place where he is not likely to be found; or

(B) using or threatening to use deadly force.

(3) "Relative" means a parent or stepparent, ancestor, sibling, or uncle or aunt, including an adoptive relative of the same degree through marriage or adoption.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 20.02. False Imprisonment

(a) A person commits an offense if he intentionally or knowingly restrains another person.

(b) It is an affirmative defense to prosecution under this section that:

(1) the person restrained was a child less than 14 years of age;

(2) the actor was a relative of the child; and

(3) the actor's sole intent was to assume lawful control of the child.

(c) An offense under this section is a Class B misdemeanor unless the actor recklessly exposes the victim to a substantial risk of serious bodily injury, in which event it is a felony of the third degree.

(d) It is no offense to detain or move another under this section when it is for the purpose of effecting a lawful arrest or detaining an individual lawfully arrested.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 20.03. Kidnapping

(a) A person commits an offense if he intentionally or knowingly abducts another person.

(b) It is an affirmative defense to prosecution under this section that:

(1) the abduction was not coupled with intent to use or to threaten to use deadly force;

(2) the actor was a relative of the person abducted; and

(3) the actor's sole intent was to assume lawful control of the victim.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 20.04. Aggravated Kidnapping

(a) A person commits an offense if he intentionally or knowingly abducts another person with the intent to:

(1) hold him for ransom or reward;

(2) use him as a shield or hostage;

(3) facilitate the commission of a felony or the flight after the attempt or commission of a felony;

(4) inflict bodily injury on him or violate or abuse him sexually;

(5) terrorize him or a third person; or

(6) interfere with the performance of any governmental or political function.

(b) An offense under this section is a felony of the first degree unless the actor voluntarily releases the victim alive and in a safe place, in which event it is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

## CHAPTER 21. SEXUAL OFFENSES

### Section

- 21.01. Definitions.
- 21.02. Rape.
- 21.03. Aggravated Rape.
- 21.04. Sexual Abuse.
- 21.05. Aggravated Sexual Abuse.
- 21.06. Homosexual Conduct.
- 21.07. Public Lewdness.
- 21.08. Indecent Exposure.
- 21.09. Rape of a Child.
- 21.10. Sexual Abuse of a Child.
- 21.11. Indecency with a Child.
- 21.12. General Provisions.

§ 21.01. Definitions

In this chapter:

- (1) "Deviate sexual intercourse" means any contact between any part of the genitals of one person and the mouth or anus of another person.
- (2) "Sexual contact" means any touching of the anus or any part of the genitals of another person or the breast of a female 10 years or older with intent to arouse or gratify the sexual desire of any person.
- (3) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 21.02. Rape

(a) A person commits an offense if he has sexual intercourse with a female not his wife without the female's consent.

(b) The intercourse is without the female's consent under one or more of the following circumstances:

- (1) he compels her to submit or participate by force that overcomes such earnest resistance as might reasonably be expected under the circumstances;
- (2) he compels her to submit or participate by any threat that would prevent resistance by a woman of ordinary resolution;
- (3) she has not consented and he knows she is unconscious or physically unable to resist;
- (4) he knows that as a result of mental disease or defect she is at the time of the intercourse incapable either of appraising the nature of the act or of resisting it;
- (5) she has not consented and he knows that she is unaware that sexual intercourse is occurring;
- (6) he knows that she submits or participates because she erroneously believes that he is her husband; or
- (7) he has intentionally impaired her power to appraise or control her conduct by administering any substance without her knowledge.

(c) An offense under this section is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 21.03. Aggravated Rape

(a) A person commits an offense if he commits rape as defined in Section 21.02 of this code or rape of a child as defined in Section 21.09 of this code and he:

- (1) causes serious bodily injury or attempts to cause death to the victim or another in the course of the same criminal episode; or
- (2) compels submission to the rape by threat of death, serious bodily injury, or kidnapping to be imminently inflicted on anyone.

(b) An offense under this section is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 21.04. Sexual Abuse

(a) A person commits an offense if, without the other person's consent and with intent to arouse or gratify the sexual desire of any person, the actor:

- (1) engages in deviate sexual intercourse with the other person, not his spouse, whether the other person is of the same or opposite sex; or
- (2) compels the other person to engage in sexual intercourse or deviate sexual intercourse with a third person, whether the other person is of the same sex as or opposite sex from the third person.

(b) The intercourse is without the other person's consent under one or more of the following circumstances:

- (1) the actor compels the other person to submit or participate by force that overcomes such earnest resistance as might be reasonably expected under the circumstances;
- (2) the actor compels the other person to submit or participate by any threat that would prevent resistance by a person of ordinary resolution;
- (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
- (4) the actor knows that as a result of mental disease or defect the other person is at the time of the deviate sexual intercourse incapable either of appraising the nature of the act or of resisting it;
- (5) the other person has not consented and the actor knows the other person is unaware that deviate sexual intercourse is occurring;
- (6) the actor knows that the other person submits or participates because of the erroneous belief that he is the other person's spouse; or
- (7) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge.

(c) An offense under this section is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 21.05. Aggravated Sexual Abuse

(a) A person commits an offense if he commits sexual abuse as defined in Section 21.04 of this code or sexual abuse of a child as defined in Section 21.10 of this code and he:

- (1) causes serious bodily injury or attempts to cause death to the victim or another in the course of the same criminal episode; or
- (2) compels submission to the sexual abuse by threat of death, serious bodily injury, or kidnapping to be imminently inflicted on anyone.

(b) An offense under this section is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 21.06. Homosexual Conduct

(a) A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 21.07. Public Lewdness

(a) A person commits an offense if he knowingly engages in any of the following acts in a public place or, if not in a public place, he is reckless about whether another is present who will be offended or alarmed by his act:

- (1) an act of sexual intercourse;
- (2) an act of deviate sexual intercourse;
- (3) an act of sexual contact;
- (4) an act involving contact between the person's mouth or genitals and the anus or genitals of an animal or fowl.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 21.08. Indecent Exposure

(a) A person commits an offense if he exposes his anus or any part of his genitals with intent to arouse or gratify the sexual desire of any person, and he is reckless about whether another is present who will be offended or alarmed by his act.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 21.09. Rape of a Child

(a) A person commits an offense if he has sexual intercourse with a female not his wife and she is younger than 17 years.

(b) It is a defense to prosecution under this section that the female was at the time of the alleged offense 14 years or older and had, prior to the time of the alleged offense, engaged promiscuously in sexual intercourse.

(c) It is an affirmative defense to prosecution under this section that the actor was not more than two years older than the victim.

(d) An offense under this section is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 21.10. Sexual Abuse of a Child

(a) A person commits an offense if, with intent to arouse or gratify the sexual desire of any person, he engages in deviate sexual intercourse with a child, not his spouse, whether the child is of the same or opposite sex, and the child is younger than 17 years.

(b) It is a defense to prosecution under this section that the child was of the opposite sex, was at the time of the alleged offense 14 years or older, and had, prior to the alleged offense, engaged promiscuously in sexual intercourse or deviate sexual intercourse.

(c) It is an affirmative defense to prosecution under this section that the actor was of the opposite sex and was not more than two years older than the victim.

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(d) An offense under this section is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 21.11. Indecency with a Child

(a) A person commits an offense if, with a child younger than 17 years and not his spouse, whether the child is of the same or opposite sex, he:

- (1) engages in sexual contact with the child; or
- (2) exposes his anus or any part of his genitals, knowing the child is present, with intent to arouse or gratify the sexual desire of any person.

(b) It is a defense to prosecution under this section that the child was at the time of the alleged offense 14 years or older and had, prior to the time of the alleged offense, engaged promiscuously in:

- (1) sexual intercourse;
- (2) deviate sexual intercourse;
- (3) sexual contact; or
- (4) indecent exposure as defined in Subsection (a)(2) of this section.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 21.12. General Provisions

The exclusion of conduct with a spouse from the definitions of offenses in Sections 21.02 through 21.05 of this code (Rape, Aggravated Rape, Sexual Abuse, Aggravated Sexual Abuse) extends to the conduct of persons while cohabiting, regardless of the legal status of their relationship and of whether they hold themselves out as husband and wife.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### CHAPTER 22. ASSAULTIVE OFFENSES

#### Section

- 22.01. Assault.
- 22.02. Aggravated Assault.
- 22.03. Deadly Assault on a Peace Officer.
- 22.04. Injury to a Child.
- 22.05. Reckless Conduct.
- 22.06. Consent as Defense to Assaultive Conduct.
- 22.07. Terroristic Threat.
- 22.08. Aiding Suicide.

#### § 22.01. Assault

(a) A person commits an offense if he:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another; or
- (2) intentionally or knowingly threatens another with imminent bodily injury; or
- (3) intentionally or knowingly causes physical contact with another when he knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under this section is a Class A misdemeanor unless the offense is committed under Subsection (a)(2) or (a)(3) of this section, in which event it is a Class C misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 22.02. Aggravated Assault

(a) A person commits an offense if he commits assault as defined in Section 22.01 of this code and he:

- (1) causes serious bodily injury to another;
- (2) causes bodily injury to a peace officer in the lawful discharge of official duty when he knows or has been informed the person assaulted is a peace officer; or
- (3) uses a deadly weapon.

(b) The actor is presumed to have known the person assaulted was a peace officer if he was wearing a distinctive uniform indicating his employment as a peace officer.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 22.03. Deadly Assault on a Peace Officer

(a) A person commits an offense if, with a firearm or a prohibited weapon, he intentionally or knowingly causes serious bodily injury to a peace officer in the lawful discharge of official duty where he knows or has been informed the person assaulted is a peace officer.

(b) The actor is presumed to have known the person assaulted was a peace officer if he was wearing a distinctive uniform indicating his employment as a peace officer.

(c) An offense under this section is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 22.04. Injury to a Child

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct that causes serious bodily injury, serious physical or mental deficiency or impairment, or deformity to a child who is 14 years of age or younger.

(b) An offense under this section is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 22.05. Reckless Conduct

(a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.

(b) Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.

(c) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 22.06. Consent as Defense to Assaultive Conduct

The victim's effective consent or the actor's reasonable belief that the victim consented to the actor's conduct is a defense to prosecution under Section 22.01 (Assault), 22.02 (Aggravated Assault), or 22.05 (Reckless Conduct) of this code if:

- (1) the conduct did not threaten or inflict serious bodily injury; or
- (2) the victim knew the conduct was a risk of:
  - (A) his occupation;
  - (B) recognized medical treatment; or

(C) a scientific experiment conducted by recognized methods.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 22.07. Terroristic Threat

(a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:

- (1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;
- (2) place any person in fear of imminent serious bodily injury; or
- (3) prevent or interrupt the occupation or use of a building; room; place of assembly; place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of conveyance; or other public place.

(b) An offense under this section is a Class B misdemeanor unless it is committed under Subsection (a)(3) of this section, in which event it is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 22.08. Aiding Suicide

(a) A person commits an offense if, with intent to promote or assist the commission of suicide by another, he aids or attempts to aid the other to commit or attempt to commit suicide.

(b) An offense under this section is a Class C misdemeanor unless the actor's conduct causes suicide or attempted suicide that results in serious bodily injury, in which event the offense is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

TITLE 6. OFFENSES AGAINST THE FAMILY

CHAPTER 25. OFFENSES AGAINST THE FAMILY

Section

- 25.01. Bigamy.
- 25.02. Incest.
- 25.03. Interference with Child Custody.
- 25.04. Enticing a Child.
- 25.05. Criminal Nonsupport.

§ 25.01. Bigamy

(a) An individual commits an offense if:

(1) he is legally married and he:

(A) purports to marry or does marry a person other than his spouse in this state, or any other state or foreign country, under circumstances that would, but for the actor's prior marriage, constitute a marriage; or

(B) lives with a person other than his spouse in this state under the appearance of being married; or

(2) he knows that a married person other than his spouse is married and he:

(A) purports to marry or does marry that person in this state, or any other state or foreign country, under circumstances that

would, but for the person's prior marriage, constitute a marriage; or

(B) lives with that person in this state under the appearance of being married.

(b) For purposes of this section, "under the appearance of being married" means holding out that the parties are married with cohabitation and an intent to be married by either party.

(c) It is a defense to prosecution under Subsection (a)(1) of this section that the actor reasonably believed that his marriage was void or had been dissolved by death, divorce, or annulment.

(d) For the purposes of this section, the lawful wife or husband of the actor may testify both for or against the actor concerning proof of the original marriage.

(e) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 25.02. Incest

(a) An individual commits an offense if he engages in sexual intercourse or deviate sexual intercourse with a person he knows to be, without regard to legitimacy:

(1) his ancestor or descendant by blood or adoption;

(2) his stepchild or stepparent, while the marriage creating that relationship exists;

(3) his parent's brother or sister of the whole or half blood;

(4) his brother or sister of the whole or half blood or by adoption; or

(5) the children of his brother or sister of the whole or half blood or by adoption.

(b) For purposes of this section:

(1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person with intent to arouse or gratify the sexual desire of any person.

(2) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 25.03. Interference with Child Custody

(a) A person commits an offense if he takes or retains a child younger than 18 years out of this state when he:

(1) knows that his taking or retention violates a temporary or permanent judgment or order of a court disposing of the child's custody; or

(2) has not been awarded custody of the child by a court of competent jurisdiction and knows that a suit for divorce, or a civil suit or application for habeas corpus to dispose of the child's custody, has been filed.

(b) It is a defense to prosecution under Subsection (a)(2) of this section that the actor returned the child to this state within seven days after the date of the commission of the offense.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 25.04. Enticing a Child

(a) A person commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices, persuades, or takes the child from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such child.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 25.05. Criminal Nonsupport

(a) An individual commits an offense if he intentionally or knowingly fails to provide support that he can provide and that he was<sup>1</sup> legally obligated to provide for his children younger than 18 years, or for his spouse who is in needy circumstances.

(b) Proof that the actor has contributed no support or insufficient support to his child, or to his spouse who is in needy circumstances, is prima facie evidence of a violation of this section.

(c) For purposes of this section, "insufficient support" means support less than the support needed by a child or spouse to meet the minimal requirements of the child or spouse necessary for food, clothing, shelter, and medical care.

(d) For purposes of this section, "child" includes a child born out of wedlock whose paternity has been admitted by the actor or has been established in a civil suit.

(e) Under this section, a conviction may be had on the uncorroborated testimony of a party to the offense and a spouse shall be a competent witness.

(f) It is an affirmative defense to prosecution under this section that the actor could not provide the support that he was legally obligated to provide.

(g) During the pendency of a prosecution under this section, the court, after notice and a hearing, may enter temporary orders providing for support and enforce such orders by contempt proceedings.

(h) Except as provided in Subsection (i) of this section, an offense under this section is a Class A misdemeanor.

(i) An offense under this section is a felony of the third degree if the actor:

(1) has been convicted one or more times under this section; or

(2) commits the offense while residing in another state.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> So in enrolled bill; probably should read "is".

Penal Code (1925) arts. 602, 602-A (source articles of this section), repealed by Acts 1973, 63rd Leg., p. 991, ch. 399, § 3, were also amended by Acts 1973, 63rd Leg., p. 603, ch. 257, §§ 1, 2, to read:

"Art. 602.

"(a) Any husband who shall wilfully desert, neglect or refuse to provide for the support and maintenance of his wife who may be in necessitous circumstances, or any parent who shall wilfully desert, neglect or refuse to provide for the support and maintenance of his or her child or children under eighteen years of age, shall be guilty of a misdemeanor, and upon conviction, shall be punished by confinement in the County Jail for not more than two years.

"(b) In making proof sufficient for a prima facie case of violation of this statute, as to wilful desertion, neglect or refusal, it is provided that introduction of evidence by the prosecution to show failure to provide for support and maintenance for a period of sixty consecutive days, accompanied by a showing of the ability of the defendant to provide for support and maintenance, shall give rise to a rebuttable presumption of wilful refusal or neglect to provide for such support and maintenance.

"Art. 602-A.

"(a) Any husband who has been convicted of the misdemeanor offense of deserting, neglecting or refusing to provide for the support and maintenance of his wife who may be in necessitous circumstances, or any parent who has been convicted of the misdemeanor offense of deserting, neglecting, or refusing to provide for the support and maintenance of his or her child or children under eighteen years of age, and who shall thereafter wilfully desert, neglect or refuse to provide for the support and maintenance of his or her child or children under eighteen years of age, shall for each and every subsequent such violation be guilty of a felony; any husband who shall wilfully desert, neglect, or refuse to provide for support and maintenance of his wife who may be in necessitous circumstances, or any husband who shall wilfully desert, neglect, or refuse to provide for the support and maintenance of his child or children under eighteen years of age, and who shall desert said wife or children by leaving the State of Texas and by going into some other state, shall be guilty of a felony; and upon conviction shall be punished by confinement in the County Jail not less than ten days nor more than two years, or by confinement in the State Penitentiary for not more than five years.

"(b) In making proof sufficient for a prima facie case of violation of this statute, it is provided that introduction of evidence by the prosecution to show failure to provide for support and maintenance for a period of sixty consecutive days, accompanied by a showing of the ability of the defendant to provide for support and maintenance, shall give rise to a rebuttable presumption of wilful refusal or neglect to provide for such support and maintenance."

Section 3 of the 1973 Act added an article 602-B to the Penal Code of 1925, which read:

"Art. 602-B.

"The County or District Attorney, or the State Department of Public Welfare, in the event it is furnishing support or assistance on behalf of a child, may institute charges and file a complaint against any person violating these Articles."

**TITLE 7. OFFENSES AGAINST PROPERTY**

**CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION**

Section

- 28.01. Definitions.
- 28.02. Arson.
- 28.03. Criminal Mischief.
- 28.04. Reckless Damage or Destruction.
- 28.05. Actor's Interest in Property.
- 28.06. Amount of Pecuniary Loss.

**§ 28.01. Definitions**

In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Property" means:

(A) real property;

(B) tangible or intangible personal property, including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 28.02. Arson**

(a) A person commits an offense if he starts a fire or causes an explosion:

(1) without the effective consent of the owner and with intent to destroy or damage the owner's building or habitation; or

(2) with intent to destroy or damage any building or habitation to collect insurance for the damage or destruction.

(b) An offense under this section is a felony of the second degree, unless any bodily injury less than death is suffered by any person by reason of the commission of the offense, in which event it is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 28.03. Criminal Mischief**

(a) A person commits an offense if, without the effective consent of the owner:

(1) he intentionally or knowingly damages or destroys the tangible property of the owner; or

(2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person.

(b) An offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than \$5; or

(B) except as provided in Subdivision (4)(B) of this subsection, it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is \$5 or more but less than \$20;

(3) a Class A misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$200;

(4) a felony of the third degree if:

(A) the amount of pecuniary loss is \$200 or more but less than \$10,000;

(B) regardless of the amount of pecuniary loss, the actor causes impairment or interruption of public communications, public transportation, public water, gas, or power supply, or other public service;

(C) regardless of the amount of pecuniary loss, the property is one or more head of cattle, horses, sheep, swine, or goats;

(D) regardless of the amount of pecuniary loss, the property was a fence used for the production of cattle, horses, sheep, swine, or goats; or

(E) regardless of the amount of pecuniary loss, the damage or destruction was inflicted by branding one or more head of cattle, horses, sheep, swine, or goats.

(5) a felony of the second degree if the amount of the pecuniary loss is \$10,000 or more.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 28.04. Reckless Damage or Destruction**

(a) A person commits an offense if, without the effective consent of the owner, he recklessly damages or destroys property of the owner.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 28.05. Actor's Interest in Property**

It is no defense to prosecution under this chapter that the actor has an interest in the property damaged or destroyed if another person also has an interest that the actor is not entitled to infringe.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 28.06. Amount of Pecuniary Loss

(a) The amount of pecuniary loss under this chapter, if the property is destroyed, is:

(1) the fair market value of the property at the time and place of the destruction; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the destruction.

(b) The amount of pecuniary loss under this chapter, if the property is damaged, is the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred.

(c) The amount of pecuniary loss under this chapter for documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of the destruction or damage if the document is other than evidence of a debt.

(d) If the amount of pecuniary loss cannot be ascertained by the criteria set forth in Subsections (a) through (c) of this section, the amount of loss is deemed to be greater than \$20 but less than \$200.

(e) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property involved, the value of the interest so proven shall be deducted from:

(1) the amount of pecuniary loss if the property is destroyed; or

(2) the amount of pecuniary loss to the extent of an amount equal to the ratio the value of the interest bears to the total value of the property, if the property is damaged.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

## CHAPTER 29. ROBBERY

### Section

- 29.01. Definitions.  
29.02. Robbery.  
29.03. Aggravated Robbery.

### § 29.01. Definitions

In this chapter:

(1) "In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft.

(2) "Property" means:

(A) tangible or intangible personal property including anything severed from land; or

(B) a document, including money, that represents or embodies anything of value.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 29.02. Robbery

(a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 of this code<sup>1</sup> and with intent to obtain or maintain control of the property, he:

(1) intentionally, knowingly, or recklessly causes bodily injury to another; or

(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

(b) An offense under this section is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> Section 31.01 et seq.

### § 29.03. Aggravated Robbery

(a) A person commits an offense if he commits robbery as defined in Section 29.02 of this code, and he:

(1) causes serious bodily injury to another; or

(2) uses or exhibits a deadly weapon.

(b) An offense under this section is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

## CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

### Section

- 30.01. Definitions.  
30.02. Burglary.  
30.03. Burglary of Coin-Operated Machines.  
30.04. Burglary of Vehicles.  
30.05. Criminal Trespass.

### § 30.01. Definitions

In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation, except such devices as are classified as "habitation."

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 30.02. Burglary

(a) A person commits an offense if, without the effective consent of the owner, he:

(1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony or theft; or

(2) remains concealed, with intent to commit a felony or theft, in a building or habitation; or

(3) enters a building or habitation and commits or attempts to commit a felony or theft.

(b) For purposes of this section, "enter" means to intrude:

(1) any part of the body; or

(2) any physical object connected with the body.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a felony of the second degree.

(d) An offense under this section is a felony of the first degree if:

- (1) the premises are a habitation; or
- (2) any party to the offense is armed with explosives or a deadly weapon; or
- (3) any party to the offense injures or attempts to injure anyone in effecting entry or while in the building or in immediate flight from the building.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 30.03. Burglary of Coin-Operated Machines**

(a) A person commits an offense if, without the effective consent of the owner, he breaks or enters into any coin-operated machine or other coin-operated contrivance, apparatus, or equipment used for the purpose of providing lawful amusement, sales of goods, services, or other valuable things, or telecommunications with intent to obtain property or services.

(b) For purposes of this section, "entry" includes every kind of entry except one made with the effective consent of the owner.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 30.04. Burglary of Vehicles**

(a) A person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.

(b) For purposes of this section, "enter" means to intrude:

- (1) any part of the body; or
- (2) any physical object connected with the body.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 30.05. Criminal Trespass**

(a) A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:

- (1) had notice that the entry was forbidden; or
- (2) received notice to depart but failed to do so.

(b) For purposes of this section:

- (1) "entry" means the intrusion of the entire body; and
- (2) "notice" means:
  - (A) oral or written communication by the owner or someone with apparent authority to act for the owner;
  - (B) fencing or other enclosure obviously designed to exclude intruders; or
  - (C) signs posted to be reasonably likely to come to the attention of intruders.

(c) An offense under this section is a Class C misdemeanor unless it is committed in a habitation, in which event it is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**CHAPTER 31. THEFT**

Section	
31.01.	Definitions.
31.02.	Consolidation of Theft Offenses.
31.03.	Theft.
31.04.	Theft of Service.
31.05.	Theft of Trade Secrets.
31.06.	Presumption for Theft by Check.
31.07.	Unauthorized Use of a Vehicle.
31.08.	Value.
31.09.	Aggregation of Amounts Involved in Theft.
31.10.	Actor's Interest in Property.

**§ 31.01. Definitions**

In this chapter:

(1) "Coercion" means a threat, however communicated:

- (A) to commit an offense;
- (B) to inflict bodily injury in the future on the person threatened or another;
- (C) to accuse a person of any offense; or
- (D) to expose a person to hatred, contempt, or ridicule;
- (E) to harm the credit or business repute of any person; or
- (F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(2) "Deception" means:

- (A) creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe to be true;
- (B) failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or confirmed by words or conduct, and that the actor does not now believe to be true;
- (C) preventing another from acquiring information likely to affect his judgment in the transaction;

(D) selling or otherwise transferring or encumbering property without disclosing a lien, security interest, adverse claim, or other legal impediment to the enjoyment of the property, whether the lien, security interest, claim, or impediment is or is not valid, or is or is not a matter of official record; or

(E) promising performance that is likely to affect the judgment of another in the transaction and that the actor does not intend to perform or knows will not be performed, except that failure to perform the promise in issue without other evidence of intent or knowledge is not sufficient proof that the actor did not intend to perform or knew the promise would not be performed.

## (3) "Deprive" means:

(A) to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner;

(B) to restore property only upon payment of reward or other compensation; or

(C) to dispose of property in a manner that makes recovery of the property by the owner unlikely.

(4) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception or coercion;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions; or

(D) given solely to detect the commission of an offense.

(5) "Obtain" means to bring about a transfer or purported transfer of a nonpossessory interest in property, whether to the actor or another.

(6) "Property" means:

(A) real property;

(B) tangible or intangible personal property including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(7) "Service" includes:

(A) labor and professional service;

(B) telecommunication, public utility, and transportation service;

(C) lodging, restaurant service, and entertainment; and

(D) the supply of a motor vehicle or other property for use.

(8) "Steal" means to acquire property or service by theft.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 31.02. Consolidation of Theft Offenses

Theft as defined in Section 31.03 of this code constitutes a single offense superseding the separate offenses previously known as theft, theft by false pretext, conversion by a bailee, theft from the person, shoplifting, acquisition of property by threat, swindling, swindling by worthless check, embezzlement, extortion, receiving or concealing embezzled property, and receiving or concealing stolen property.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 31.03. Theft

(a) A person commits an offense if, with intent to deprive the owner of property:

(1) he obtains the property unlawfully; or

(2) he exercises control over the property, other than real property, unlawfully.

(b) Obtaining or exercising control over property is unlawful if:

(1) the actor obtains or exercises control over the property without the owner's effective consent; or

(2) the property is stolen and the actor obtains it from another or exercises control over the property obtained by another knowing it was stolen.

(c) For purposes of Subsection (b)(2) of this section:

(1) evidence that the actor has previously participated in recent transactions other than, but similar to, that which the prosecution is based is admissible for the purpose of showing knowledge or intent and the issues of knowledge or intent are raised by the actor's plea of not guilty;

(2) the testimony of an accomplice shall be corroborated by proof that tends to connect the actor to the crime, but the actor's knowledge or intent may be established by the uncorroborated testimony of the accomplice.

(d) An offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than \$5;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is \$5 or more but less than \$20; or

(B) the value of the property stolen is less than \$5 and the defendant has previously been convicted of any grade of theft;

(3) a Class A misdemeanor if the value of the property stolen is \$20 or more but less than \$200;

(4) a felony of the third degree if:

(A) the value of the property stolen is \$200 or more but less than \$10,000, or the property is one or more head of cattle, horses, sheep, swine, or goats or any part thereof under the value of \$10,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave; or

(C) the value of the property stolen is less than \$200 and the defendant has been previously convicted two or more times of any grade of theft;

(5) a felony of the second degree if the value of the property stolen is \$10,000 or more.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 31.04. Theft of Service

(a) A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation:

(1) he intentionally or knowingly secures performance of the service by deception, threat, or false token; or

(2) having control over the disposition of services of another to which he is not entitled, he intentionally or knowingly diverts the other's services to his own benefit or to the benefit of another not entitled to them.

(b) For purposes of this section, intent to avoid payment is presumed if the actor absconded without paying for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, restaurants, and comparable establishments.

(c) An offense under this section is:

- (1) a Class C misdemeanor if the value of the service stolen is less than \$5;
- (2) a Class B misdemeanor if the value of the service stolen is \$5 or more but less than \$20;
- (3) a Class A misdemeanor if the value of the service stolen is \$20 or more but less than \$200;
- (4) a felony of the third degree if the value of the service stolen is \$200 or more but less than \$10,000;
- (5) a felony of the second degree if the value of the service stolen is \$10,000 or more.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 31.05. Theft of Trade Secrets**

(a) For purposes of this section:

(1) "Article" means any object, material, device, or substance or any copy thereof, including a writing, recording, drawing, sample, specimen, prototype, model, photograph, microorganism, blueprint, or map.

(2) "Copy" means a facsimile, replica, photograph, or other reproduction of an article or a note, drawing, or sketch made of or from an article.

(3) "Representing" means describing, depicting, containing, constituting, reflecting, or recording.

(4) "Trade secret" means the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.

(b) A person commits an offense if, without the owner's effective consent, he knowingly:

- (1) steals a trade secret;
- (2) makes a copy of an article representing a trade secret; or
- (3) communicates or transmits a trade secret.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 31.06. Presumption for Theft by Check**

(a) If the actor obtained property or secured performance of service by issuing or passing a check or similar sight order for the payment of money, when the issuer did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding, his intent to deprive the owner of property under Section 31.03 of this code (Theft) or to avoid payment for service under Section 31.04 of this code (Theft of Service) is presumed (except in the case of a postdated check or order) if:

- (1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds, on presentation within 30 days after issue, and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(b) For purposes of Subsection (a)(2) of this section, notice may be actual notice or notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the issuer at his address shown on:

- (1) the check or order;
- (2) the records of the bank or other drawee; or
- (3) the records of the person to whom the check or order has been issued or passed.

(c) If written notice is given in accordance with Subsection (b) of this section, it is presumed that the notice was received no later than five days after it was sent.

(d) Nothing in this section prevents the prosecution from establishing the requisite intent by direct evidence.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 31.07. Unauthorized Use of a Vehicle**

(a) A person commits an offense if he intentionally or knowingly operates another's boat, airplane, or motor-propelled vehicle without the effective consent of the owner.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 31.08. Value**

(a) Subject to the additional criteria of Subsections (b) and (c) of this section, value under this chapter is:

- (1) the fair market value of the property or service at the time and place of the offense; or
- (2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the theft.

(b) The value of documents, other than those having a readily ascertainable market value, is:

- (1) the amount due and collectible at maturity less that part which has been satisfied, if the document constitutes evidence of a debt; or
- (2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) of this section, the property or service is deemed to have a value of more than \$20 but less than \$200.

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value

of the property or service ascertained under Subsection (a), (b), or (c) of this section to determine value for purposes of this chapter.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 31.09. Aggregation of Amounts Involved in Theft

When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 31.10. Actor's Interest in Property

It is no defense to prosecution under this chapter that the actor has an interest in the property or service stolen if another person has the right of exclusive possession of the property.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

## CHAPTER 32. FRAUD

### SUBCHAPTER A. GENERAL PROVISIONS

#### Section

- 32.01. Definitions.
- 32.02. Value.
- 32.03. Aggregation of Amounts Involved in Fraud.

### SUBCHAPTER B. FORGERY

- 32.21. Forgery.
- 32.22. Criminal Simulation.

### SUBCHAPTER C. CREDIT

- 32.31. Credit Card Abuse.
- 32.32. False Statement to Obtain Property or Credit.
- 32.33. Hindering Secured Creditors.
- 32.34. Fraud in Insolvency.
- 32.35. Receiving Deposit, Premium, or Investment in Failing Financial Institution.

### SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

- 32.41. Issuance of Bad Check.
- 32.42. Deceptive Business Practices.
- 32.43. Commercial Bribery.
- 32.44. Rigging Publicly Exhibited Contest.
- 32.45. Misapplication of Fiduciary Property or Property of Financial Institution.
- 32.46. Securing Execution of Document by Deception.
- 32.47. Fraudulent Destruction, Removal, or Concealment of Writing.
- 32.48. Endless Chain Scheme.

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 32.01. Definitions

In this chapter:

- (1) "Financial institution" means a bank, trust company, insurance company, credit union, building and loan association, investment trust, investment company, or any other organization held out to the public as a place for deposit of

funds or medium of savings or collective investment.

(2) "Property" means:

- (A) real property;
- (B) tangible or intangible personal property including anything severed from land; or
- (C) a document, including money, that represents or embodies anything of value.

(3) "Service" includes:

- (A) labor and professional service;
- (B) telecommunication, public utility, and transportation service;
- (C) lodging, restaurant service, and entertainment; and
- (D) the supply of a motor vehicle or other property for use.

(4) "Steal" means to acquire property or service by theft.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 32.02. Value

(a) Subject to the additional criteria of Subsections (b) and (c) of this section, value under this chapter is:

- (1) the fair market value of the property or service at the time and place of the offense; or
- (2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense.

(b) The value of documents, other than those having a readily ascertainable market value, is:

- (1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or
- (2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) of this section, the property or service is deemed to have a value of more than \$20 but less than \$200.

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) of this section to determine value for purposes of this chapter.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 32.03. Aggregation of Amounts Involved in Fraud

When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 32.04 to 32.20 are reserved for expansion]

SUBCHAPTER B. FORGERY

§ 32.21. Forgery

(a) For purposes of this section:

(1) "Forge" means:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

(i) to be the act of another who did not authorize that act;

(ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or

(iii) to be a copy of an original when no such original existed;

(B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A) of this subdivision; or

(C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B) of this subdivision.

(2) "Writing" includes:

(A) printing or any other method of recording information;

(B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and

(C) symbols of value, right, privilege, or identification.

(b) A person commits an offense if he forges a writing with intent to defraud or harm another.

(c) Except as provided in Subsections (d) and (e) of this section an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the writing is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check or similar sight order for payment of money, contract, release, or other commercial instrument.

(e) An offense under this section is a felony of the second degree if the writing is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock, bonds, or other instruments representing interests in or claims against another person.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.22. Criminal Simulation

(a) A person commits an offense if, with intent to defraud or harm another:

(1) he makes or alters an object, in whole or in part, so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have;

(2) he sells, passes, or otherwise utters an object so made or altered;

(3) he possesses an object so made or altered, with intent to sell, pass, or otherwise utter it; or

(4) he authenticates or certifies an object so made or altered as genuine or as different from what it is.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 32.23 to 32.30 are reserved for expansion]

SUBCHAPTER C. CREDIT

§ 32.31. Credit Card Abuse

(a) For purposes of this section:

(1) "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued.

(2) "Credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on credit. It includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the property or service.

(3) "Expired credit card" means a credit card bearing an expiration date after that date has passed.

(b) A person commits an offense if:

(1) with intent to obtain property or service fraudulently, he presents or uses a credit card with knowledge that:

(A) the card, whether or not expired, has not been issued to him and is not used with the effective consent of the cardholder; or

(B) the card has expired or has been revoked or cancelled;

(2) with intent to obtain property or service, he uses a fictitious credit card or the pretended number or description of a fictitious credit card;

(3) he receives property or service that he knows has been obtained in violation of this section;

(4) he steals a credit card or, with knowledge that it has been stolen, receives a credit card with intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder;

(5) he buys a credit card from a person who he knows is not the issuer;

(6) not being the issuer, he sells a credit card;

(7) he uses or induces the cardholder to use the cardholder's credit card to obtain property or service for the actor's benefit for which the cardholder is financially unable to pay;

(8) not being the cardholder, and without the effective consent of the cardholder, he signs or writes his name or the name of another on a credit card with intent to use it;

(9) he possesses two or more incomplete credit cards that have not been issued to him with intent to complete them without the effective consent of the issuer. For purposes of this subdivision, a credit card is incomplete if part of the matter that an issuer requires to appear on the credit card before it can be used (other than the signature of the cardholder) has not yet

been stamped, embossed, imprinted, or written on it;

(10) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or the cardholder, furnishes goods or services on presentation of a credit card obtained or retained in violation of this section or a credit card that is forged, expired, or revoked; or

(11) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or a cardholder, fails to furnish goods or services that he represents in writing to the issuer that he has furnished.

(c) It is presumed that a person who used a revoked, cancelled, or expired credit card had knowledge that the card had been revoked, cancelled, or expired if he had received notice of revocation, cancellation, or expiration from the issuer. For purposes of this section, notice may be either notice given orally in person or by telephone, or in writing by mail or by telegram. If written notice was sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested, addressed to the cardholder at the last address shown by the records of the issuer, it is presumed that the notice was received by the cardholder no later than five days after sent.

(d) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 32.32. False Statement to Obtain Property or Credit

(a) For purposes of this section, "credit" includes:

- (1) a loan of money;
- (2) furnishing property or service on credit;
- (3) extending the due date of an obligation;
- (4) comaking, endorsing, or guaranteeing a note or other instrument for obtaining credit;
- (5) a line or letter of credit; and
- (6) a credit card, as defined in Section 32.31 of this code (Credit Card Abuse).

(b) A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit for himself or another.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 32.33. Hindering Secured Creditors

(a) For purposes of this section:

- (1) "Remove" means transport, without the effective consent of the secured party, from the state in which the property was located when the security interest or lien attached.
- (2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(b) A person who has signed a security agreement creating a security interest in property or a mortgage or deed of trust creating a lien on property commits an offense if, with intent to hinder enforcement of that interest or lien, he destroys, removes,

conceals, encumbers, transfers, or otherwise harms or reduces the value of the property.

(c) For purposes of this section, a person is presumed to have intended to hinder enforcement of the security interest or lien if, when any part of the debt secured by the security interest or lien was due, he failed:

(1) to pay the part then due; and

(2) if the secured party had made demand, to deliver possession of the secured property to the secured party.

(d) Except as provided in Subsection (e) of this section, an offense under this section is a Class A misdemeanor.

(e) If the actor removes the property, the offense is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 32.34. Fraud in Insolvency

(a) A person commits an offense if, when proceedings have been or are about to be instituted for the appointment of a trustee, receiver, or other person entitled to administer property for the benefit of creditors, or when any other assignment, composition, or liquidation for the benefit of creditors has been or is about to be made:

(1) he destroys, removes, conceals, encumbers, transfers, or otherwise harms or reduces the value of the property with intent to defeat or obstruct the operation of a law relating to administration of property for the benefit of creditors;

(2) he intentionally falsifies any writing or record relating to the property or any claim against the debtor; or

(3) he intentionally misrepresents or refuses to disclose to a trustee or receiver, or other person entitled to administer property for the benefit of creditors, the existence, amount, or location of the property, or any other information that the actor could legally be required to furnish in relation to the administration.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 32.35. Receiving Deposit, Premium, or Investment in Failing Financial Institution

(a) A person directing or participating in the direction of a financial institution commits an offense if he receives or permits the receipt of a deposit, premium payment, or investment in the institution knowing that, due to the financial condition of the institution:

(1) it is unable to make payment of the deposit on demand, if it is a deposit ordinarily payable on demand; or

(2) it is about to suspend operations or go into receivership.

(b) It is a defense to prosecution under this section that the person making the deposit, premium payment, or investment was adequately informed of the financial condition of the institution.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 32.36 to 32.40 reserved for expansion]

SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

§ 32.41. Issuance of Bad Check

(a) A person commits an offense if he issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.

(b) This section does not prevent the prosecution from establishing the required knowledge by direct evidence; however, for purposes of this section, the issuer's knowledge of insufficient funds is presumed (except in the case of a postdated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds on presentation within 30 days after issue and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(c) Notice for purposes of Subsection (b)(2) of this section may be notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the issuer at his address shown on:

(1) the check or order;

(2) the records of the bank or other drawee; or

(3) the records of the person to whom the check or order has been issued or passed.

(d) If notice is given in accordance with Subsection (c) of this section, it is presumed that the notice was received no later than five days after it was sent.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.42. Deceptive Business Practices

(a) For purposes of this section:

(1) "Adulterated" means varying from the standard of composition or quality prescribed by law or set by established commercial usage.

(2) "Business" includes trade and commerce and advertising, selling, and buying service or property.

(3) "Commodity" means any tangible or intangible personal property.

(4) "Contest" includes sweepstake, puzzle, and game of chance.

(5) "Deceptive sales contest" means a sales contest:

(A) that misrepresents the participant's chance of winning a prize;

(B) that fails to disclose to participants on a conspicuously displayed permanent poster (if the contest is conducted by or through a retail outlet) or on each card game piece, entry blank, or other paraphernalia required for

participation in the contest (if the contest is not conducted by or through a retail outlet):

(i) the geographical area or number of outlets in which the contest is to be conducted;

(ii) an accurate description of each type of prize;

(iii) the minimum number and minimum amount of cash prizes; and

(iv) the minimum number of each other type of prize; or

(C) that is manipulated or rigged so that prizes are given to predetermined persons or retail establishments. A sales contest is not deceptive if the total value of prizes to each retail outlet is in a uniform ratio to the number of game pieces distributed to that outlet.

(6) "Misabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

(7) "Prize" includes gift, discount, coupon, certificate, gratuity, and any other thing of value awarded in a sales contest.

(8) "Sales contest" means a contest in connection with the sale of a commodity or service by which a person may, as determined by drawing, guessing, matching, or chance, receive a prize and which is not regulated by the rules of a federal regulatory agency.

(9) "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit and offer to buy, and every disposition for value.

(b) A person commits an offense if in the course of business he intentionally, knowingly, recklessly, or with criminal negligence commits one or more of the following deceptive business practices:

(1) using, selling, or possessing for use or sale a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) selling less than the represented quantity of a property or service;

(3) taking more than the represented quantity of property or service when as a buyer the actor furnishes the weight or measure;

(4) selling an adulterated or mislabeled commodity;

(5) passing off property or service as that of another;

(6) representing that a commodity is original or new if it is deteriorated, altered, rebuilt, reconditioned, reclaimed, used, or secondhand;

(7) representing that a commodity or service is of a particular style, grade, or model if it is of another;

(8) advertising property or service with intent:

(A) not to sell it as advertised, or

(B) not to supply reasonably expectable public demand, unless the advertising adequately discloses a time or quantity limit;

(9) representing the price of property or service falsely or in a way tending to mislead;

(10) making a materially false or misleading statement of fact concerning the reason for, existence of, or amount of a price or price reduction;

(11) conducting a deceptive sales contest; or

(12) making a materially false or misleading statement:

(A) in an advertisement for the purchase or sale of property or service; or

(B) otherwise in connection with the purchase or sale of property or service.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 32.43. Commercial Bribery

(a) For purposes of this section:

(1) "Beneficiary" means a person for whom a fiduciary is acting.

(2) "Fiduciary" means:

(A) an agent or employee;

(B) a trustee, guardian, custodian, administrator, executor, conservator, receiver, or similar fiduciary;

(C) a lawyer, physician, accountant, appraiser, or other professional advisor; or

(D) an officer, director, partner, manager, or other participant in the direction of the affairs of a corporation or association.

(b) A person who is a fiduciary commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit as consideration for:

(1) violating a duty to a beneficiary; or

(2) otherwise causing harm to a beneficiary by act or omission.

(c) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (b) of this section.

(d) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 32.44. Rigging Publicly Exhibited Contest

(a) A person commits an offense if, with intent to affect the outcome (including the score) of a publicly exhibited contest:

(1) he offers, confers, or agrees to confer any benefit on, or threatens harm to:

(A) a participant in the contest to induce him not to use his best efforts; or

(B) an official or other person associated with the contest; or

(2) he tampers with a person, animal, or thing in a manner contrary to the rules of the contest.

(b) A person commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit the conferring of which is an offense under Subsection (a) of this section.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the actor's conduct is in connection with betting or wagering on the contest.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 32.45. Misapplication of Fiduciary Property or Property of Financial Institution

(a) For purposes of this section:

(1) "Fiduciary" includes:

(A) trustee, guardian, administrator, executor, conservator, and receiver;

(B) any other person acting in a fiduciary capacity, but not a commercial bailee; and

(C) an officer, manager, employee, or agent carrying on fiduciary functions on behalf of a fiduciary.

(2) "Misapply" means deal with property contrary to:

(A) an agreement under which the fiduciary holds the property; or

(B) a law prescribing the custody or disposition of the property.

(b) A person commits an offense if he intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary or property of a financial institution in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held.

(c) An offense under this section is:

(1) a Class A misdemeanor if the value of the property misapplied is less than \$200;

(2) a felony of the third degree if the value of the property is \$200 or more but less than \$10,000;

(3) a felony of the second degree if the value of the property is \$10,000 or more.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 32.46. Securing Execution of Document by Deception

(a) A person commits an offense if, with intent to defraud or harm any person, he, by deception, causes another to sign or execute any document affecting property or service or the pecuniary interest of any person.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 32.47. Fraudulent Destruction, Removal, or Concealment of Writing

(a) A person commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes, or otherwise impairs the verity, legibility, or availability of a writing, other than a governmental record.

(b) For purposes of this section, "writing" includes:

(1) printing or any other method of recording information;

(2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks;

(3) symbols of value, right, privilege, or identification; and

(4) labels, price tags, or markings on goods.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the writing:

(1) is a will or codicil of another, whether or not the maker is alive or dead and whether or not it has been admitted to probate; or

(2) is a deed, mortgage, deed of trust, security instrument, security agreement, or other writing for which the law provides public recording or filing, whether or not the writing has been acknowledged.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 32.48. Endless Chain Scheme**

(a) For the purposes of this section:

(1) "Endless chain" means any scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when a person introduced by the participant introduces a new participant.

(2) "Compensation" does not mean or include payment based on sales made to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme.

(b) A person commits an offense if he contrives, prepares, sets up, proposes, operates, promotes, or participates in an endless chain.

(c) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION**

**CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE**

Section

- 36.01. Definitions.
- 36.02. Bribery.
- 36.03. Coercion of Public Servant or Voter.
- 36.04. Improper Influence.
- 36.05. Tampering with Witness.
- 36.06. Retaliation.
- 36.07. Compensation for Past Official Behavior.
- 36.08. Gift to Public Servant by Person Subject to His Jurisdiction.
- 36.09. Offering Gift to Public Servant.
- 36.10. Defenses.

**§ 36.01. Definitions**

In this chapter:

(1) "Coercion" means a threat, however communicated:

(A) to commit any offense;

(B) to inflict bodily injury on the person threatened or another;

(C) to accuse any person of any offense;

(D) to expose any person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(2) "Custody" means:

(A) detained or under arrest by a peace officer; or

(B) under restraint by a public servant pursuant to an order of a court.

(3) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.

(4) "Party official" means a person who holds any position or office in a political party, whether by election, appointment, or employment.

(5) "Vote" means to cast a ballot in an election regulated by law.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 36.02. Bribery**

(a) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant, party official, or voter:

(1) with intent to influence the public servant or party official in a specific exercise of his official powers or a specific performance of his official duties; or

(2) with intent to influence the voter not to vote or to vote in a particular manner.

(b) A public servant or party official commits an offense if he knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he will be influenced in a specific exercise of his official powers or a specific performance of his official duties.

(c) A voter commits an offense if he knowingly accepts or agrees to accept any benefit on the representation or understanding that he will not vote or will vote in a particular manner.

(d) An offense under this section is a felony of the third degree unless committed under Subsection (b) of this section, in which event it is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 36.03. Coercion of Public Servant or Voter**

(a) A person commits an offense if by means of coercion he:

(1) influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty; or

(2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

(b) An offense under this section is a Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 36.04. Improper Influence**

(a) A person commits an offense if he privately addresses a representation, entreaty, argument, or other communication to any public servant who exercises or will exercise official discretion in an adju-

dicatory proceeding with an intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law.

(b) For purposes of this section, "adjudicatory proceeding" means any proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 36.05. Tampering with Witness

(a) A person commits an offense if, with intent to influence the witness, he offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding or coerces a witness or prospective witness in an official proceeding:

- (1) to testify falsely;
- (2) to withhold any testimony, information, document, or thing;
- (3) to elude legal process summoning him to testify or supply evidence; or
- (4) to absent himself from an official proceeding to which he has been legally summoned.

(b) A witness or prospective witness in an official proceeding commits an offense if he knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he will do any of the things specified in Subsection (a) of this section.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 36.06. Retaliation

(a) A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act in retaliation for or on account of the service of another as a public servant, witness, or informant.

(b) For purposes of this section, "informant" means a person who has communicated information to the government in connection with any governmental function.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 36.07. Compensation for Past Official Behavior

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer any benefit on a public servant for the public servant's having exercised his official powers or performed his official duties in favor of the actor or another.

(b) A public servant commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit for having exercised his official powers or performed his official duties in favor of another.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 36.08. Gift to Public Servant by Person Subject to His Jurisdiction

(a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

(b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be in his custody or the custody of his agency.

(c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.

(d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A public servant who is a member of or employed by the legislature or by an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in any matter pending before or contemplated by the legislature or an agency of the legislature.

(g) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 36.09. Offering Gift to Public Servant

(a) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 36.10. Defenses

It is a defense to prosecution under Section 36.07 (Compensation for Past Official Behavior), 36.08 (Gift to Public Servant), or 36.09 (Offering Gift to Public Servant) of this code that the benefit involved was:

- (1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

(3) a trivial benefit incidental to personal, professional, or business contacts that involves no substantial risk of undermining official impartiality; or

(4) a contribution made under the election laws for the political campaign of an elective public servant when he is a candidate for nomination or election to public office.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**CHAPTER 37. PERJURY AND OTHER FALSIFICATION**

Section

- 37.01. Definitions.
- 37.02. Perjury.
- 37.03. Aggravated Perjury.
- 37.04. Materiality.
- 37.05. Retraction.
- 37.06. Inconsistent Statements.
- 37.07. Irregularities No Defense.
- 37.08. False Report to Peace Officer.
- 37.09. Tampering with or Fabricating Physical Evidence.
- 37.10. Tampering with Governmental Record.
- 37.11. Impersonating Public Servant.

**§ 37.01. Definitions**

In this chapter:

- (1) "Governmental record" means anything:
  - (A) belonging to, received by, or kept by government for information; or
  - (B) required by law to be kept by others for information of government.

(2) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.

(3) "Statement" means any representation of fact.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 37.02. Perjury**

(a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:

- (1) he makes a false statement under oath or swears to the truth of a false statement previously made; and
- (2) the statement is required or authorized by law to be made under oath.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 37.03. Aggravated Perjury**

(a) A person commits an offense if he commits perjury as defined in Section 37.02 of this code, and the false statement:

- (1) is made during or in connection with an official proceeding; and
- (2) is material.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 37.04. Materiality**

(a) A statement is material, regardless of the admissibility of the statement under the rules of evidence, if it could have affected the course or outcome of the official proceeding.

(b) It is no defense to prosecution under Section 37.03 of this code (Aggravated Perjury) that the declarant mistakenly believed the statement to be immaterial.

(c) Whether a statement is material in a given factual situation is a question of law.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 37.05. Retraction**

It is a defense to prosecution under Section 37.03 of this code (Aggravated Perjury) that the actor retracted his false statement:

- (1) before completion of the testimony at the official proceeding; and
- (2) before it became manifest that the falsity of the statement would be exposed.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 37.06. Inconsistent Statements**

An information or indictment for perjury under Section 37.02 of this code or aggravated perjury under Section 37.03 of this code that alleges that the declarant has made statements under oath, both of which cannot be true, need not allege which statement is false. At the trial the prosecution need not prove which statement is false.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 37.07. Irregularities No Defense**

(a) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) of this code that the oath was administered or taken in an irregular manner, or that there was some irregularity in the appointment or qualification of the person who administered the oath.

(b) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) of this code that a document was not sworn to if the document contains a recital that it was made under oath, the declarant was aware of the recital when he signed the document, and the document contains the signed jurat of a public servant authorized to administer oaths.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 37.08. False Report to Peace Officer**

(a) A person commits an offense if he:

- (1) reports to a peace officer an offense or incident within the officer's concern, knowing that the offense or incident did not occur; or
- (2) makes a report to a peace officer relating to an offense or incident within the officer's concern knowing that he has no information relating to the offense or incident.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 37.09. Tampering With or Fabricating Physical Evidence

(a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) This section shall not apply if the record, document, or thing concealed is privileged or is the work product of the parties to the investigation or official proceeding.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 37.10. Tampering with Governmental Record

(a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record; or

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record.

(b) It is an exception to the application of Subsection (a)(3) of this section that the governmental record is destroyed pursuant to legal authorization.

(c) An offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 37.11. Impersonating Public Servant

(a) A person commits an offense if he impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts.

(b) An offense under this section is a Class A misdemeanor unless the person impersonated a peace officer, in which event it is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

## CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

### Section

- 38.01. Definitions.
- 38.02. Failure to Identify as Witness.
- 38.03. Resisting Arrest or Search.
- 38.04. Evading Arrest.
- 38.05. Hindering Apprehension or Prosecution.
- 38.06. Compounding.
- 38.07. Escape.
- 38.08. Permitting or Facilitating Escape.
- 38.09. Effect of Unlawful Custody.
- 38.10. Implements for Escape.

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### Section

- 38.11. Bail Jumping and Failure to Appear.
- 38.12. Barratry.
- 38.13. Hindering Proceedings by Disorderly Conduct.

### § 38.01. Definitions

In this chapter:

(1) "Complaining witness" means the victim of a crime or a person who signs a criminal complaint.

(2) "Custody" means detained or under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court.

(3) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole.

(4) "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

(5) "Official proceeding" means:

(A) a proceeding before a magistrate, court, or grand jury of this state;

(B) a proceeding before the legislature or an inquiry authorized by either house or any joint committee established by a joint or concurrent resolution of the two houses of the legislature or any committee or subcommittee of either house of the legislature;

(C) a proceeding in which pursuant to lawful authority a court orders attendance or the production of evidence; or

(D) a proceeding that otherwise is made expressly subject to this chapter.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 38.02. Failure to Identify as Witness

(a) A person commits an offense if he intentionally refuses to report or gives a false report of his name and residence address to a peace officer who has lawfully stopped him and requested the information.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 38.03. Resisting Arrest or Search

(a) A person commits an offense if he intentionally prevents or obstructs a person he knows is a peace officer or a person acting in a peace officer's presence and at his direction from effecting an arrest or search of the actor or another by using force against the peace officer or another.

(b) It is no defense to prosecution under this section that the arrest or search was unlawful.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the actor uses a deadly weapon to resist the arrest or search.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 38.04. Evading Arrest**

(a) A person commits an offense if he intentionally flees from a person he knows is a peace officer attempting to arrest him.

(b) It is an exception to the application of this section that the attempted arrest is unlawful.

(c) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 38.05. Hindering Apprehension or Prosecution**

(a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense, he:

(1) harbors or conceals the other;

(2) provides or aids in providing the other with any means of avoiding arrest or effecting escape; or

(3) warns the other of impending discovery or apprehension.

(b) It is a defense to prosecution under Subsection (a)(3) of this section that the warning was given in connection with an effort to bring another into compliance with the law.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 38.06. Compounding**

(a) A complaining witness commits an offense if, after criminal proceedings have been instituted, he solicits, accepts, or agrees to accept any benefit in consideration of abstaining from, discontinuing, or delaying the prosecution of another for an offense.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 38.07. Escape**

(a) A person arrested for, charged with, or convicted of an offense commits an offense if he escapes from custody.

(b) Except as provided in Subsections (c) and (d) of this section, an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if the actor:

(1) is under arrest for, charged with, or convicted of a felony; or

(2) is confined in a penal institution.

(d) An offense under this section is a felony of the second degree if the actor used or threatened to use a deadly weapon to effect his escape.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 38.08. Permitting or Facilitating Escape**

(a) An official or employee of an institution that is responsible for maintaining persons in custody commits an offense if he intentionally, knowingly, or recklessly permits or facilitates the escape of a person in custody.

(b) A person commits an offense if he intentionally or knowingly causes or facilitates the escape of one who is in custody pursuant to:

(1) an allegation or adjudication of delinquency; or

(2) a statutory procedure authorizing involuntary commitment for mental illness, alcoholism, or drug addiction.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if:

(1) the person in custody was under arrest for, charged with or convicted of a felony;

(2) the person in custody was confined in a penal institution;

(3) the actor used or threatened to use a deadly weapon to effect the escape; or

(4) the offense under Subsection (a) of this section was committed intentionally.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 38.09. Effect of Unlawful Custody**

It is no defense to prosecution under Section 38.07 (Escape) or 38.08 (Facilitating Escape) of this code that the custody was unlawful.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 38.10. Implements for Escape**

(a) A person commits an offense if, with intent to facilitate escape, he introduces into a penal institution, or provides an inmate with, a deadly weapon or anything that may be useful for escape.

(b) An offense under this section is a felony of the third degree unless the actor introduced or provided a deadly weapon, in which event the offense is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 38.11. Bail Jumping and Failure to Appear**

(a) A person lawfully released from custody, with or without bail, on condition that he subsequently appear commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release.

(b) This section does not apply to appearances incident to probation or parole.

(c) It is a defense to prosecution under this section that the actor had a reasonable excuse for his failure to appear in accordance with the terms of his release.

(d) Except as provided in Subsections (e) and (f) of this section, an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only.

(f) An offense under this section is a felony of the third degree if the offense for which the actor's appearance was required is classified as a felony.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 38.12. Barratry**

(a) A person commits an offense if, with intent to obtain a benefit for himself or to harm another he:

(1) institutes any suit or claim in which he knows he has no interest;

(2) institutes any suit or claim that he knows is false;

(3) solicits employment for himself or another to prosecute or defend a suit or to collect a claim; or

(4) procures another to solicit for him employment to prosecute or defend a suit or to collect a claim.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 38.13. Hindering Proceedings by Disorderly Conduct

(a) A person commits an offense if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

(b) A person commits an offense if he recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance and continues after explicit official request to desist.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

## CHAPTER 39. ABUSE OF OFFICE

### Section

39.01. Official Misconduct.

39.02. Official Oppression.

39.03. Misuse of Official Information.

### § 39.01. Official Misconduct

(a) A public servant commits an offense if, with intent to obtain a benefit for himself or to harm another, he intentionally or knowingly:

(1) commits an act relating to his office or employment that constitutes an unauthorized exercise of his official power;

(2) commits an act under color of his office or employment that exceeds his official power;

(3) refrains from performing a duty that is imposed on him by law or that is clearly inherent in the nature of his office or employment;

(4) violates a law relating to his office or employment; or

(5) takes or misapplies any thing of value belonging to the government that may have come into his custody or possession by virtue of his employment, or secretes it with intent to take or misapply it, or pays or delivers it to any person knowing that such person is not entitled to receive it.

(b) For purposes of Subsection (a)(2) of this section, a public servant commits an act under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) An offense under Subsections (a)(1) through (a)(4) of this section is a Class A misdemeanor. An offense under Subsection (a)(5) of this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 39.02. Official Oppression

(a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure,

dispossession, assessment, or lien that he knows is unlawful; or

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

### § 39.03. Misuse of Official Information

(a) A public servant commits an offense if, in reliance on information to which he has access in his official capacity and which has not been made public, he:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information; or

(2) speculates or aids another to speculate on the basis of the information.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

## TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

### CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

#### Section

42.01. Disorderly Conduct.

42.02. Riot.

42.03. Obstructing Highway or Other Passageway.

42.04. Defense When Conduct Consists of Speech or Other Expression.

42.05. Disrupting Meeting or Procession.

42.06. False Alarm or Report.

42.07. Harassment.

42.08. Public Intoxication.

42.09. Desecration of Venerated Object.

42.10. Abuse of Corpse.

42.11. Cruelty to Animals.

42.12. Shooting on Public Road.

### § 42.01. Disorderly Conduct

(a) A person commits an offense if he intentionally or knowingly:

(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;

(3) creates, by chemical means, a noxious and unreasonable odor in a public place;

(4) abuses or threatens a person in a public place in an obviously offensive manner;

(5) makes unreasonable noise in a public place or in or near a private residence that he has no right to occupy;

(6) fights with another in a public place;

(7) enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;

(8) discharges a firearm in a public place;

(9) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm; or

(10) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act.

(b) It is a defense to prosecution under Subsection (a)(4) of this section that the actor had significant provocation for his abusive or threatening conduct.

(c) For purposes of this section, an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence.

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(8) or (a)(9) of this section, in which event it is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 42.02. Riot

(a) For the purpose of this section, "riot" means the assemblage of seven or more persons resulting in conduct which:

(1) creates an immediate danger of damage to property or injury to persons;

(2) substantially obstructs law enforcement or other governmental functions or services; or

(3) by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.

(b) A person commits an offense if he knowingly participates in a riot.

(c) It is a defense to prosecution under this section that the assembly was at first lawful and when one of those assembled manifested an intent to engage in conduct enumerated in Subsection (a) of this section, the actor retired from the assembly.

(d) It is no defense to prosecution under this section that another who was a party to the riot has been acquitted, has not been arrested, prosecuted, or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

(e) Except as provided in Subsection (f) of this section, an offense under this section is a Class B misdemeanor.

(f) An offense under this section is an offense of the same classification as any offense of a higher grade committed by anyone engaged in the riot if the offense was:

(1) in the furtherance of the purpose of the assembly; or

(2) an offense which should have been anticipated as a result of the assembly.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 42.03. Obstructing Highway or Other Passageway

(a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:

(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(2) disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(A) to prevent obstruction of a highway or any of those areas mentioned in Subdivision (1) of this subsection; or

(B) to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(c) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 42.04. Defense When Conduct Consists of Speech or Other Expression

(a) If conduct that would otherwise violate Section 42.01(a)(5) (Unreasonable Noise) or 42.03 (Obstructing Passageway) of this code consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.

(b) The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.

(c) It is a defense to prosecution under Section 42.01(a)(5) or 42.03 of this code:

(1) that in circumstances in which this section requires an order no order was given;

(2) that an order, if given, was manifestly unreasonable in scope; or

(3) that an order, if given, was promptly obeyed.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 42.05. Disrupting Meeting or Procession

(a) A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.

(b) An offense under this section is a Class B misdemeanor.  
[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 42.06. False Alarm or Report

(a) A person commits an offense if he knowingly initiates, communicates, circulates, or broadcasts a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:

(1) cause action by an official or volunteer agency organized to deal with emergencies;

(2) place a person in fear of imminent serious bodily injury; or

(3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

(b) An offense under this section is a Class A misdemeanor.  
[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 42.07. Harassment

(a) A person commits an offense if he intentionally:

(1) communicates by telephone or in writing in vulgar, profane, obscene, or indecent language or in a coarse and offensive manner and by this action intentionally, knowingly, or recklessly annoys or alarms the recipient or intends to annoy or alarm the recipient;

(2) threatens, by telephone or in writing, to take unlawful action against any person and by this action intentionally, knowingly, or recklessly annoys or alarms the recipient or intends to annoy or alarm the recipient; or

(3) places one or more telephone calls anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication and by this action intentionally, knowingly, or recklessly annoys or alarms the recipient or intends to annoy or alarm the recipient.

(b) For purposes of Subsection (a)(3) of this section, a person places a telephone call as soon as he dials a complete telephone number, whether or not a conversation ensues.

(c) An offense under this section is a Class B misdemeanor.  
[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 42.08. Public Intoxication

(a) An individual commits an offense if he appears in a public place under the influence of alcohol or any other substance, to the degree that he may endanger himself or another.

(b) A peace officer or magistrate may release from custody an individual arrested under this section if he believes imprisonment is unnecessary for the protection of the individual or others.

(c) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes by a licensed physician.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 42.09. Desecration of Venerated Object

(a) A person commits an offense if he intentionally or knowingly desecrates:

(1) a public monument;

(2) a place of worship or burial; or

(3) a state or national flag.

(b) For purposes of this section, "desecrate" means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 42.10. Abuse of Corpse

(a) A person commits an offense if, not authorized by law, he intentionally or knowingly:

(1) disinters, disturbs, removes, dissects, in whole or in part, carries away, or treats in a seriously offensive manner a human corpse;

(2) conceals a human corpse knowing it to be illegally disinterred;

(3) sells or buys a human corpse or in any way traffics in a human corpse; or

(4) transmits or conveys, or procures to be transmitted or conveyed, a human corpse to a place outside the state.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 42.11. Cruelty to Animals

(a) A person commits an offense if he intentionally or knowingly:

(1) tortures or seriously overworks an animal;

(2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody;

(3) abandons unreasonably an animal in his custody;

(4) transports or confines an animal in a cruel manner;

(5) kills, injures, or administers poison to an animal belonging to another without legal authority or the owner's effective consent; or

(6) causes one animal to fight with another.

(b) It is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.

(c) For purposes of this section, "animal" means a domesticated living creature and wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.

(d) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 42.12. Shooting on Public Road

(a) A person commits an offense if he intentionally or knowingly shoots or discharges any gun, pistol, or firearm on, along, or across a public road.

(b) An offense under this section is a Class C misdemeanor.  
 [Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**CHAPTER 43. PUBLIC INDECENCY**

**SUBCHAPTER A. PROSTITUTION**

Section

- 43.01. Definitions.
- 43.02. Prostitution.
- 43.03. Promotion of Prostitution.
- 43.04. Aggravated Promotion of Prostitution.
- 43.05. Compelling Prostitution.
- 43.06. Accomplice Witness: Testimony and Immunity.

**SUBCHAPTER B. OBSCENITY**

- 43.21. Definitions.
- 43.22. Obscene Display or Distribution.
- 43.23. Commercial Obscenity.
- 43.24. Sale, Distribution, or Display of Harmful Material to Minor.

**SUBCHAPTER A. PROSTITUTION**

**§ 43.01. Definitions**

In this subchapter:

- (1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person.
- (2) "Prostitution" means the offense defined in Section 43.02 of this code.
- (3) "Sexual contact" means any touching of the anus or any part of the genitals of another person or of the breast of a female 10 years or older with intent to arouse or gratify the sexual desire of any person.
- (4) "Sexual conduct" includes deviate sexual intercourse, sexual contact, and sexual intercourse.
- (5) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 43.02. Prostitution**

- (a) A person commits an offense if he knowingly:
  - (1) offers to engage, agrees to engage, or engages in sexual conduct in return for a fee payable to the actor; or
  - (2) solicits another in a public place to engage with him in sexual conduct for hire.

(b) An offense is established under Subsection (a)(2) of this section whether the actor solicits a person to hire him or offers to hire the person solicited.

(c) An offense under this section is a Class C misdemeanor, unless the actor has been convicted previously under this section, in which event it is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 43.03. Promotion of Prostitution**

(a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he knowingly receives money or other property pursuant to an agreement to participate in the proceeds of prostitution.

(b) An offense under this section is a Class A misdemeanor.  
 [Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 43.04. Aggravated Promotion of Prostitution**

(a) A person commits an offense if he knowingly owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 43.05. Compelling Prostitution**

- (a) A person commits an offense if he knowingly:
  - (1) causes another by force, threat, or fraud to commit prostitution; or
  - (2) causes by any means a person younger than 17 years to commit prostitution.

(b) An offense under this section is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 43.06. Accomplice Witness: Testimony and Immunity**

(a) A party to an offense under this subchapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this subchapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this subchapter may be had upon the uncorroborated testimony of a party to the offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 43.07 to 43.20 reserved for expansion]

**SUBCHAPTER B. OBSCENITY**

**§ 43.21. Definitions**

In this subchapter:

- (1) "Obscene" means having as a whole a dominant theme that:
  - (A) appeals to a prurient interest in sex, nudity, or excretion;
  - (B) is patently offensive because it affronts contemporary community standards relating to the description or representation of sex, nudity, or excretion; and
  - (C) is utterly without redeeming social value.

(2) "Material" means a book, magazine, newspaper, or other printed or written material; a picture, drawing, photograph, motion picture, or other pictorial representation; a statue or other figure; a recording, transcription, or mechan-

cal, chemical, or electrical reproduction; or other article, equipment, or machine.

(3) "Prurient interest" means a shameful or morbid interest in nudity, sex, or excretion that goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience, the appeal of the subject matter shall be judged with reference to such audience.

(4) "Distribute" means to transfer possession, whether with or without consideration.

(5) "Commercially distribute" means to transfer possession for valuable consideration.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 43.22. Obscene Display or Distribution

(a) A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

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

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 43.23. Commercial Obscenity

(a) A person commits an offense if, knowing the content of the material:

(1) he sells, commercially distributes, commercially exhibits, or possesses for sale, commercial distribution, or commercial exhibition any obscene material;

(2) he presents or directs an obscene play, dance, or performance or participates in that portion of the play, dance, or performance that makes it obscene; or

(3) he hires, employs, or otherwise uses a person under the age of 17 years to achieve any of the purposes set out in Subdivisions (1) and (2) of this subsection.

(b) It is an affirmative defense to prosecution under this section that the obscene material was possessed by a person having scientific, educational, governmental, or other similar justification.

(c) An offense under this section is a Class B misdemeanor unless committed under Subsection (a)(3) of this section, in which event it is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 43.24. Sale, Distribution, or Display of Harmful Material to Minor

(a) For purposes of this section:

(1) "Minor" means an individual younger than 17 years.

(2) "Harmful material" means material whose dominant theme taken as a whole:

(A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;

(B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

(C) is utterly without redeeming social value for minors.

(b) A person commits an offense if, knowing that the material is harmful:

(1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or

(3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2) of this section.

(c) It is a defense to prosecution under this section that:

(1) the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification; or

(2) the sale, distribution, or exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) of this section in which event it is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

## TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

### CHAPTER 46. WEAPONS

Section	
46.01.	Chapter Definitions.
46.02.	Unlawful Carrying Weapons.
46.03.	Non-Applicable.
46.04.	Places Weapons Prohibited.
46.05.	Unlawful Possession of Firearm by Felon.
46.06.	Prohibited Weapons.
46.07.	Unlawful Transfer of Firearm.
46.08.	Interstate Purchase.

#### § 46.01. Chapter Definitions

In this chapter:

(1) "Club" means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following:

(A) blackjack;

(B) nightstick;

(C) mace;

(D) tomahawk.

(2) "Explosive weapon" means any explosive, incendiary, or poison gas bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, and includes a device principally designed, made, or adapted for delivery or shooting an explosive weapon.

(3) "Firearm" means any device designed, made, or adapted to expel a projectile through a

barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Firearm does not include antique or curio firearms that were manufactured prior to 1899 and that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter.

(4) "Firearm silencer" means any device designed, made, or adapted to muffle the report of a firearm.

(5) "Handgun" means any firearm that is designed, made, or adapted to be fired with one hand.

(6) "Illegal knife" means a:

- (A) knife with a blade over five and one-half inches;
- (B) throw-blade knife;
- (C) dagger, including but not limited to a dirk, stiletto, and poniard;
- (D) bowie knife;
- (E) sword; or
- (F) spear.

(7) "Knife" means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument.

(8) "Knuckles" means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

(9) "Machine gun" means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

(10) "Short-barrel firearm" means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.

(11) "Switchblade knife" means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that:

- (A) opens automatically by pressure applied to a button or other device located on the handle; or
- (B) opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 46.02. Unlawful Carrying Weapons**

(a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

(b) Except as provided in Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if it occurs on any premises licensed or issued a permit by this state for the sale or service of alcoholic beverages.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 46.03. Non-Applicable**

The provisions of Section 46.02 of this code do not apply to a person:

- (1) in the actual discharge of his official duties as a peace officer, a member of the armed forces or national guard, or a guard employed by a penal institution;
- (2) on his own premises or premises under his control;
- (3) traveling; or
- (4) engaging in lawful hunting or fishing or other lawful sporting activity.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 46.04. Places Weapons Prohibited**

(a) A person commits an offense if, with a firearm, he intentionally, knowingly, or recklessly goes:

- (1) on the premises of a school or an educational institution, whether public or private, unless pursuant to written regulations or written authorization of the institution; or
- (2) on the premises of a polling place on the day of an election.

(b) It is a defense to prosecution under this section that the actor was in the actual discharge of his official duties as a peace officer or a member of the armed forces or national guard.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 46.05. Unlawful Possession of Firearm by Felon**

(a) A person who has been convicted of a felony involving an act of violence or threatened violence to a person or property commits an offense if he possesses a firearm away from the premises where he lives.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 46.06. Prohibited Weapons**

(a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

- (1) an explosive weapon;
- (2) a machine gun;
- (3) a short-barrel firearm;
- (4) a firearm silencer;
- (5) a switchblade knife; or
- (6) knuckles.

(b) It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a penal institution.

(c) It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended.<sup>1</sup>

(d) It is an affirmative defense to prosecution under this section that the actor's conduct was incidental to dealing with a switchblade knife, spring-blade knife, or short-barrel firearm solely as an antique or curio.

(e) An offense under this section is a felony of the second degree unless it is committed under Subsection (a)(5) or (a)(6) of this section, in which event it is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]  
<sup>1</sup> 26 U.S.C.A. § 5801 et seq.

#### § 46.07. Unlawful Transfer of Firearm

(a) A person commits an offense if he:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years any firearm; or

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated.

(b) For purposes of this section, "intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(c) It is an affirmative defense to prosecution under Subsection (a)(2) of this section that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.

(d) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

#### § 46.08. Interstate Purchase

A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in contiguous states. This authorization is enacted in conformance with Section 922(b)(3)(A), Public Law 90-618, 90th Congress.<sup>1</sup>

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

<sup>1</sup> 18 U.S.C.A. § 922(b)(3)(A).

### CHAPTER 47. GAMBLING

#### Section

- 47.01. Definitions.
- 47.02. Gambling.
- 47.03. Gambling Promotion.
- 47.04. Keeping a Gambling Place.
- 47.05. Communicating Gambling Information.
- 47.06. Possession of Gambling Device or Equipment.
- 47.07. Possession of Gambling Paraphernalia.
- 47.08. Evidence.
- 47.09. Testimonial Immunity.

#### § 47.01. Definitions

In this chapter:

(1) "Bet" means an agreement that, dependent on chance even though accompanied by some skill, one stands to win or lose something of value. A bet does not include:

(A) contracts of indemnity of<sup>1</sup> guaranty, or life, health, property, or accident insurance; or

(B) an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in a contest.

(2) "Gambling place" means any real estate, building, room, tent, vehicle, boat, or other property whatsoever, one of the uses of which is the making or settling of bets, the receiving, holding, recording, or forwarding of bets or offers to bet, or the conducting of a lottery or the playing of gambling devices.

(3) "Gambling device" means any mechanical contrivance that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance.

(4) "Altered gambling equipment" means any contrivance that has been altered in some manner, including, but not limited to, shaved dice, loaded dice, magnetic dice, mirror rings, electronic sensors, shaved cards, marked cards, and any other equipment altered and designed to enhance the actor's chances of winning.

(5) "Gambling paraphernalia" means any book, instrument, or apparatus by means of which bets have been or may be recorded or registered; any record, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking, wagering pools, lotteries, numbers, policy, or similar games.

(6) "Lottery" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or some other name.

(7) "Private place" means a place to which the public does not have access, and excludes, among other places, streets, highways, restaurants, taverns, nightclubs, schools, hospitals, and the common areas of apartment houses, hotels, motels, office buildings, transportation facilities, and shops.

(8) "Thing of value" means any benefit, but does not include an unrecorded and immediate right of replay not exchangeable for value.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]  
<sup>1</sup> So in enrolled bill; probably should read "or".

#### § 47.02. Gambling

(a) A person commits an offense if he:

(1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;

(2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(3) plays and bets for money or other thing of value at any game played with cards, dice, or balls.

(b) It is a defense to prosecution under this section that:

- (1) the actor engaged in gambling in a private place;
- (2) no person received any economic benefit other than personal winnings; and
- (3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) An offense under this section is a Class C misdemeanor.  
[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 47.03. Gambling Promotion**

(a) A person commits an offense if he intentionally or knowingly does any of the following acts:

- (1) operates or participates in the earnings of a gambling place;
- (2) receives, records, or forwards a bet or offer to bet;
- (3) for gain, becomes a custodian of anything of value bet or offered to be bet;
- (4) sells chances on the partial or final result of or on the margin of victory in any game or contest or on the performance of any participant in any game or contest or on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or
- (5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possesses for transfer, or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participation in any lottery.

(b) An offense under this section is a felony of the third degree.  
[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 47.04. Keeping a Gambling Place**

(a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.

(b) It is an affirmative defense to prosecution under this section that:

- (1) the actor engaged in gambling in a private place;
- (2) no person received any economic benefit other than personal winnings; and
- (3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) An offense under this section is a felony of the third degree.  
[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 47.05. Communicating Gambling Information**

(a) A person commits an offense if, with the intent to further gambling, he knowingly communicates information as to bets, betting odds, or changes in betting odds or he knowingly provides, installs, or maintains equipment for the transmission or receipt of such information.

(b) An offense under this section is a felony of the third degree.  
[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 47.06. Possession of Gambling Device or Equipment**

(a) A person commits an offense if he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device.

(b) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses any altered gambling equipment that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of such device.

(c) An offense under this section is a felony of the third degree.  
[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 47.07. Possession of Gambling Paraphernalia**

(a) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia.

(b) An offense under this section is a Class A misdemeanor.  
[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 47.08. Evidence**

(a) Proof that an actor communicated gambling information or possessed a gambling device, equipment, or paraphernalia is prima facie evidence that the actor did so knowingly and with the intent to further gambling.

(b) In any prosecution under this chapter in which it is relevant to prove the occurrence of a sporting event, a published report of its occurrence in a daily newspaper, magazine, or other periodically printed publication of general circulation shall be admissible in evidence and is prima facie evidence that the event occurred.  
[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**§ 47.09. Testimonial Immunity**

(a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this chapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this chapter may be had upon the uncorroborated testimony of a party to the offense.  
[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

# TABLE 1 DISPOSITION

Showing where provisions of former articles of the Penal Code of 1925 are covered in the new Penal Code or in other units of the Texas Statutes and Codes.

See Table 2 for Disposition of unrepealed articles of the Penal Code of 1925, as amended.

P.C. Article	Penal Code Section	P.C. Article	Penal Code Section
1, 2	1.02	47	12.02
3	1.03(a)		12.03
4, 5	1.05(b)		12.04
6	1.02	48	12.03
7	1.05(a)	49, 50	—
8	1.05(b)	51	12.01(c)
9	2.01	52	12.03
10	1.03	53 to 60	—
11	—	61	12.43
12	8.03	62 to 64	12.42
13	—	65	7.01
to	—		7.02
18	—	66 to 71	7.02
19	1.05(b)	72	7.01
	1.07(a)(17)	73	6.04
20, 21	1.05(b)	74 to 76	—
22	1.07(a)(27)	77 to 79	38.05
23	1.07(a)(2)	80	7.03(2)
24	—	81	38.05
to	—	83 to 85	—
26	—	86, 87	39.01
27	1.07(a)(22)	88	—
28	—	89 to 91	39.01
29	1.04(a)	92	1.07(a)(30)
30	8.07	93 to 96	39.01
31	8.07	98, 99	—
32	8.05	100, 101	39.01
33	—	107f	39.01
34	8.01	108	39.01
35	—	109	—
36	8.04	110	39.01
37	9.21	111	—
38	8.05	112 to 119	39.01
39	6.01	120	36.03
	6.03		39.01
40	8.03	121 to 131	—
41	8.02	132 to 139	—
42 to 44	6.04	141	—
45	2.05	142, 143	39.01
46	2.03	144	39.03
	2.04	145, 146	39.01
		147, 147c	37.11
		147d § 2	—
		148	42.09

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P.C. Article	Penal Code Section	P.C. Article	Penal Code Section
149	—	341	38.03
152	42.09		38.04
153 to 157	—	342 to 345	—
158 to 160	36.02	346	1.07(a)(25)
160—a to 165	36.02	347	1.07(a)(11)
166, 167	32.43	348	—
168 to 174	36.02	349	39.02
177 to 178a	36.02	350 to 352	—
178b	32.44	353	39.02
184 to 187	—	353a, 353b	38.07
188 to 197	36.02	353d	38.07
198 to 200a	—	354 to 364	37.10
201 to 205	—	365 to 371	39.01
253	42.02	372	36.08
254	36.03	373	—
	42.02	379, 380	—
255	42.01	381 to 383	39.01
	42.02	384 to 395	39.01
256	36.03	396 to 403	39.01
257	46.04(a)(2)	407 to 414	39.01
258	36.03	415 to 418	39.01
261	39.02	418a	—
281	42.01	419	39.01
	42.05	420 to 422	39.01
282 to 287	—	423	39.01
302	37.02	425	39.01
	37.03	426, 427	39.01
303	37.02	427c	—
	37.03	428	38.06
304	37.07	428a	36.05
305	37.01	429	37.11
306	37.03	430	38.12
307	37.03	438c, 438d	37.10
	37.04	439	42.02
308	37.02	440, 441	36.03
	37.03	442 to 446	38.07
309	—		38.08
310	37.02	447, 448	36.03
311	37.01	449 to 452	42.02
312 to 314	—	453, 454	42.04
315	7.02	454a to 454g	—
316	36.05	455, 456	42.02
317 to 322	38.08	457	36.03
323, 324	39.01		42.02
325	—	458 to 463	38.06
326	38.08		42.02
	38.10	464	42.02
327	38.08	465	42.01
	38.10		42.02
328 to 330	38.08	466	42.02
331 to 333a	25.03	466a	42.01
334	38.08	467 to 470	42.02
335	38.05	471	—
336, 337	—	472	42.04
338, 339	38.03	472a	42.02
340	—		42.03
		473	42.01

TABLE 1—DISPOSITION

P.C. Article	Penal Code Section	P.C. Article	Penal Code Section
474	42.01	535	25.03
	42.03		25.04
	42.05	535a	—
475, 475a	42.01	535b	25.04
476	42.07	535c, 535d	21.11
477	42.08	560	32.45
478	—	565	32.35
479	30.05	567	32.45
480	42.01	567b	31.06
480a	42.12		32.41
481	—	602	25.05
482, 482a	42.01	602—A	25.05
483	46.02	603	1.04
484	46.03		C.C.P. 13.16
485	42.01	604	25.05
	46.04	605	25.05
486	46.03		C.C.P. 38.11
	46.04	606	—
487	—	607 §§ (1) to (8)	—
488	46.02	§ (9)	43.02
489	46.06	§§ (10) to (13)	—
	46.07	§ (14)	43.02
489a	—		43.03
489b	46.06	§ (15)	43.03
489c	46.05	§ (16)	21.07
489d	46.08		43.02
490 to 491	25.01	§§ (17), (18)	43.02
494	25.01	§ (19)	43.03
495	25.02	§ (20)	43.02
498 to 509	—	§ (21)	43.06
510 to 512	43.04	607a	43.02
513	43.21	608	—
	43.22	609	C.C.P. 14.03
	43.24	610 to 612	—
514	43.03	613	42.11
515	43.04	614	—
516	43.05	614b	—
517, 518	—	615 to 618	47.02
519	43.03	619 to 621	47.06
	to		47.07
	43.05	622	—
520	1.04	623	—
521	43.06	624	47.02
522	43.04	625	47.04
523	—		47.06
524	21.04		47.07
	to	626 to 629	47.04
	21.06	630	47.04
525	43.03		47.06
	43.04	631	—
527	43.21	632	—
	to	633	C.C.P. ch. 18
	43.23	634	R.C.S. 4667
528, 528a	42.09	635	—
529, 530	42.10	636 to 638	C.C.P. 18.18
534b	43.24	639	47.09
		640, 641	39.01
		642	—

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P.C. Article	Penal Code Section
642a to 642c	47.02
	to
	47.07
642c	47.09
643, 643a	47.02
644	—
645	47.01
646	47.02
646a to 648—2	47.02
	to
	47.04
649	47.04
650	47.03
	47.04
651	47.02
652	47.09
652a	47.02
	to
	47.07
654, 655	47.02
	to
	47.04
655a, 655b	—
695, 696	—
698c	Water Code
	§§ 21.551
	to
	21.564
698c	C.C.P. 17A.02
	to
	C.C.P. 17A.07
698d § 7	C.C.P. 17A.02
§ 8	C.C.P. 17A.03
§ 9	C.C.P. 17A.04
§ 10	C.C.P. 17A.06
§ 11	C.C.P. 17A.07
§ 12	—
699	—
701	—
702, 703	—
710 to 713	32.42
714 to 716	—
718	32.42
755 to 758	—
784	42.03
785, 786	42.03
790	—
791	9.22
796 to 797b	—
799	—
800, 801	—
802a	—
802a—1	19.05
802c	19.05
803	C.C.P. 14.03
813 to 817	—
831, 832	39.01
856	30.05

P.C. Article	Penal Code Section
857	42.03
858	30.05
859	28.03
860	—
861	30.03
862	28.03
864	28.03
978o	31.04
979 to 993	32.21
995, 996	32.21
997	16.01
998	32.21
999	—
1000, 1001	32.46
1002	32.21
	32.47
	37.10
1002a	32.21
	32.47
	37.10
1003	32.46
1004	32.21
1005	3.01
	to
	3.04
1006 to 1008	32.21
1009	1.04
1010, 1011	32.21
1012 to 1017	32.21
1026	32.21
1030	32.42
1041	39.01
1042	—
1044, 1045	32.42
1050, 1051	32.42
1053	32.42
1056	31.04
1057	—
1094 to 1100	—
1106a	32.42
1111b	28.03
1111m	—
1117	—
1118 to 1121	37.03
1123	32.21
1137e, 1137e—1	31.04
1137f	28.03
	28.04
1137g	31.04
1137j	—
1138 to 1141	22.01
1142, subd. 1	9.61
	to
	9.63
subd. 2	9.21
subd. 3	9.22
	9.32

TABLE 1—DISPOSITION

P.C. Article	Penal Code Section	P.C. Article	Penal Code Section
1142 subd. 4	9.41	1177a	20.04
	to	1178	20.03
	9.43	1179 to 1182	20.02
subd. 5	9.51		43.05
subd. 6	9.31	1183 to 1186	21.02
	9.33		21.03
	9.43		21.09
subd. 7	9.31	1187	21.01
1143	9.31	1188	8.07
1144, 1145	22.01	1189	21.02
1146	22.01		21.03
	22.07		21.09
	42.01	1190	15.01
1146a	22.01		21.02
	22.05	1197 to 1200	—
1147	1.07(a)(11)	1201	19.01
	22.02	1202, 1203	6.04
	22.03		19.01
	22.04	1204, 1205	—
1148	22.02	1206	6.04
1148a	22.04	1207	9.32
1149	22.02	1208 to 1211	9.21
1150	—	1212	9.21
1151	22.02		9.51
1157	39.01		9.52
	39.02	1213	—
1158	39.01	1214 to 1218	9.21
	39.02		9.51
1159	15.01		9.52
	22.01	1219	9.32
	22.02		9.33
1160	15.01	1220	—
	19.02	1221	9.32
	22.01	1222	9.32
	22.02		9.33
1160a	15.01		9.42
	19.02	1223	—
	22.03	1224 to 1226	9.32
1161	46.01		9.33
1162	15.01		9.41
	21.02	1227	9.41
1163	15.01		to
	29.02		9.44
1164	15.01	1228	6.01
	30.02		to
1165	15.01		6.04
1166	22.02	1229	6.01
1167	22.01		to
	22.02		6.04
1168	22.02		9.61
1169 to 1172	20.02		to
1173	9.03		9.63
1174	20.02	1230	19.07
1175, 1176	39.02	1231	19.07
1177	20.02	1232	6.03
	20.03	1233	6.03
	25.03	1234, 1235	19.05

P.C. Article	Penal Code Section
1236	6.04
	19.05
1237 to 1243	19.05
1256, 1257	19.02
1257a	19.06
1257b	—
1257c	19.04
	19.05
1258	19.06
1259 to 1260a	19.02
	19.04
	22.01
	22.02
1265, 1266	22.07
1267	9.04
	22.07
1268, 1268a	22.07
1269, 1270	—
1271	32.21
1272 to 1294	—
1295, 1296	42.07
1297	—
1298	31.03
	38.12
1299	37.08
1300 to 1303	—
1304 to 1309	28.02
1310, 1311	9.22
1312	28.02
1313	28.05
1314, 1315	28.02
1316	15.01
	28.02
1317 to 1321b	28.03
	28.04
1322	31.03
1323	28.03
	28.04
1324	—
1325	19.02
1326	15.01
1329	—
1331	19.02
	28.03
1332	19.02
	28.03
1333	31.07
1334	28.03
1335	19.02
	42.03
1336, 1337	28.03
1338	28.03
	28.04
1339	22.01
	22.02
	22.05
1339b	42.01

P.C. Article	Penal Code Section
1340	—
1341, 1342	31.07
1343	28.03
1347	22.05
	28.03
	42.03
1348, 1349	31.03
1350	28.03
	28.04
	32.47
1350a	28.03
	28.04
1351	28.03
	30.05
1352 to 1355	28.03
	28.04
1358	28.03
	28.04
1359	28.03
	28.04
1364 to 1366	28.03
	28.04
1367	31.04
1368	28.03
	30.05
1372	28.03
	28.04
1373	28.03
	28.04
	42.11
1373—a	28.03
	28.04
	42.11
1374 to 1376	42.11
1377a	42.11
1377b	30.05
1377c	30.05
1379	28.03
	28.04
	31.03
1379a	28.03
	28.04
1380, 1381	—
1382	31.03
1383	28.03
	28.04
1384	28.03
	28.04
	31.03
1388a	28.03
	28.04
1388b—1	15.01
	28.03
	28.04
1389 to 1400	30.02
1401	31.03

TABLE 1—DISPOSITION

P.C. Article	Penal Code Section	P.C. Article	Penal Code Section
1402	15.01	1458, 1459	31.03
	30.02	1462 to 1466	31.03
1402a	30.03	1467, 1468	28.03
1402b	16.01	1469	31.03
1403	30.04		32.21
1404	30.04	1470	31.03
1404—a	15.01	1534 to 1536	31.03
	30.02	1537	32.34
1404b	30.04	1538	31.03
1405, 1406	30.02	1539 to 1541	31.03
1407	31.03		39.01
1407a	30.05	1542, 1543	31.03
1408	29.02	1544	31.01
	29.03	1544a	31.03
1409	29.02	1544b	31.03
	29.03		39.01
	31.03	1545	31.03
1410	31.03		31.04
1411	31.01	1546	31.03
1412 to 1414	31.03	1546a	31.03
1415	1.07(a)(28)		32.32
	31.01	1547	31.01
1416, 1417	31.03	1548 to 1550	31.03
1418, 1419	31.01	1551	31.04
1420 to 1423	31.03	1553a	31.04
1424	—	1555	—
1425	31.01	1555b, 1555c	32.31
1426 to 1426c	31.03	1556	32.33
1427	31.03	1559	1.04
	32.47		31.03
	37.09	1560	1.04
	37.10		31.03
1428 to 1430	31.03	1621b	42.02
1436b	31.03	1622 to 1627	15.02
1436c	31.03	1628	1.04
1436e to 1436g	31.03		15.02
1437, 1438	31.03	1629	1.04
1439	15.01		15.02
	31.03	1673	30.03
1440 to 1442c	31.03		31.03
1443, 1444	31.03	1723	46.02
1445	31.03	1723a, 1724	42.06

TABLE 2

DISPOSITION OF UNREPEALED ARTICLES  
OF THE TEXAS PENAL CODE OF 1925  
AND VERNON'S TEXAS PENAL CODE

Pursuant to the authority granted by Section 5 of Chapter 399, Acts of the 63rd Legislature, the Texas Legislative Council has compiled the following table showing the new official citations of unrepealed articles of the 1925 Texas Penal Code and the new classifications of unrepealed statutes compiled as articles of Vernon's Texas Penal Code. Unless otherwise indicated, the new citations or classifications are to the Civil Statutes of Texas. Footnotes have been dropped where the Council felt explanatory comments might be helpful.

Former Penal Code Article Number	New Article Number	Former Penal Code Article Number	1951 Election Code Section	V.A.T.S. Election Code Article Number
107e	1	209	314	15.14
108a	630c, § 1	210	315	15.15
108b	630c, § 2	212	316	15.16
108c	630c, § 3	212a	—	15.16a
108d	630c, § 4	213	317	15.17
131a	Tax.-Gen. 3.12	215	321	15.21
131c—1, § 16-a	2	216	322	15.22
§ 19	3	217	323	15.23
§ 25	4	218	324	15.24
§ 26	5	219	325	15.25
§ 26a	6	220	326	15.26
§ 27	5	221	327	15.27
§§ 28, 29	7	222	328	15.28
141e	Tax.-Gen. 12.10A	223	329	15.29
141f	7164b	225	330	15.30
142a	5421r	226	331	15.31
146a	6252—21	227	332	15.32
147d, §§ 1, 3	6252—22	228	333	15.33
167a	5428b	229	334	15.34
183—2	6252—23	230	335	15.35
		231	336	15.36
		231a	—	15.36a
		231b	—	15.36b
		232	341	15.41
		233	342	15.42
		234	343	15.43
		235	344	15.44
		236	345	15.45
		237	346	15.46

  

Former Penal Code Article Number	1951 Election Code Section	V.A.T.S. Election Code Article Number
200a—1	301	15.01 <sup>8</sup>
200a—3	302	15.02 <sup>8</sup>
205a	303	15.03 <sup>8</sup>
206	311	15.11
207	312	15.12
208	313	15.13

<sup>1</sup> This article was repealed by Acts 1951, 52nd Leg., p. 362, ch. 228, § 1.

<sup>2</sup> Repealed; see, now, Tax.-Gen. arts. 7.25, 7.26.

<sup>3</sup> Repealed; see, now, Tax.-Gen. art. 7.29.

<sup>4</sup> Repealed; see, now, Tax.-Gen. art. 7.36.

<sup>5</sup> Repealed; see, now, Tax.-Gen. art. 7.37.

<sup>6</sup> Expired.

<sup>7</sup> Repealed; see, now, Tax.-Gen. art. 7.38.

<sup>8</sup> This article was probably impliedly repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4 (the voter registration law of 1966).

851 TABLE 2—DISPOSITION OF UNREPEALED ARTICLES

Former Penal Code Article Number	1951 Election Code Section	V.A.T.S. Election Code Article Number
238	347	15.47
239	348	15.48
240	349	15.49
241	350	15.50
242	351	15.51
243	352	15.52
244	361	15.61
245	362	15.62
246	363	15.63
246a	—	15.63a
247	364	15.64
248	365	15.65
249	366	15.66
250	367	15.67
259	371	15.71
260	372	15.72

Former Penal Code Article Number	New Article Number
286a	9001
353c	6184m
380a	6252—24
383a	2558a, § 15
414a	4388a
414b	689a—21
422b	4413a—24
427b	974a, § 7
427c—1	6674s, § 19
431	1302—5.05, § B
432	5996a
to	to
438	5996g
454h	9002
454i	9003
531	4590.1
534	2338—1a
534a	2338—1b
561	548c
562	548d
563	548e
564	548f
566	548g

Former Penal Code Article Number	V.A.T.S. Insurance Code Article Number
568	21.02—1
569	21.02—2
570	21.02—3
570a	21.07A <sup>9</sup>
570b	21.15—1
571	21.51
571a	5.12—1
572	21.15—2
573	21.15—3

Former Penal Code Article Number	V.A.T.S. Insurance Code Article Number
574	21.15—4
575	3.56—1
576	21.15—5
577	3.67—1
578	21.21A
579	19.10—1
580	5.68—1
580a	14.37—1
580b	21.21B
581	10.41
582	10.42
583	10.43
584	10.44
585	10.45
586	11.18—1
588	14.56—1
589	15.19—1
590	15.19—2
591	18.01—1
592	18.03—1
593	18.11—1
594	18.16—1
595	18.22—1
596	5.41—1
597	5.48—1
597a	5.43—1
598	5.48—2
601	15.20—1

Former Penal Code Article Number	New Article Number
602	10
602—A	10
602—B	10
606a	695a, §§ 6, 7
614—1	8501—1
to	to
614—17c	8501—17c
656	8651
to	to
664	8659
666—1	
to	
666—58	11
667—1	
to	
667—33	11
696a	6674v—2
696a—1	4477—9
698d, §§ 1 to 6	
§§ 13, 14	4477—5b
700b	4476—9
701a	4442a, § 7
704	4445, § 10
705b—1	912a—26a
705d	4476—10

<sup>9</sup> This article was probably superseded and impliedly repealed by Insurance Code, art. 21.07, § 12.

<sup>10</sup> See Penal Code, § 25.05 note.

<sup>11</sup> These articles will be included in the Alcoholic Beverages Code, which the Texas Legislative Council plans to submit to the legislature in the regular session of 1975 for enactment as part of the Council's statutory revision program (see Civ.St. art. 5429b—1). In the interim these articles will be published as Penal Code Auxiliary Laws and will retain the same article number designations.

Former Penal Code Article Number	New Article Number	Former Penal Code Article Number	New Article Number
713a	4474a	782b	4420a
719	4476-1a	782c	4447p
719a	118c	782d	4447q
719b	118a, § 20	784a-1	6701d-4, § 1
719c-1	118b-1	784a-2	§ 2
719e	4476-3a	784a-3	§ 3
725e	4476-11	787	6701d-5
725f	4476-15	788	6701d-6
726-2	4476-12	792	6701d-7 <sup>12</sup>
726-3	4476-13	799a	6687-12
726d, §§ 1 to 6		802	6701l-1
§§ 8 to 15A	4476-14	802b	6701l-2
727	4476-16	802d	6701l-3
728	8401	802e	6701l-4
to	to	802f	6701l-5
734a	8407a	803a	6701d-8
734c	8451a	803b	6701d-9
739	4498.1	804	6675b-1
740	4504a	805	6675b-2
741	4510a	806	6675b-3
742	4510b	806a	6687-11
742-a	4590c, § 17	807a, § 14f	6675a-16a
742-b	4590c, § 18	807b	6675a-3e
742-c	4590c, § 19	808	6675b-4
743	4498a, § 2	809	6675b-5
744	4501a	811	6675b-6
744-a	4590c, § 20	812	6675b-7
744-b	4590c, § 21	821	6701m-1
745	4499.1	821a	6701m-2
746	4441a	826	6701d-10
747	4548a	827	4008b
748	4548b	827a	6701d-11
749	4546a	827a-2	6701d-12
750	4548c	to	to
751	4548d	827a-8	6701d-18
751a	4551h	827aa	2372a-2
752	4548e	827b	6675a-6e
752a	4548f	827c	6701d-19
752b	4548g	827c-1	118b-2
752c	4548h	827d	911j
753	4551b-1	827e	6701d-20 <sup>13</sup>
754	4548i	827f	6701d-21
754a	4551a-1	827g	6701d-22
754b	4548j	833	6674o-1
754c	4551g-1	836	6711b
758a	4542a, § 21	837	6712a
763	4457a	853	14
to	to	854	6799a
772	4457j	855	6799b
773	4505a	861a	678e-1
774	4505b	861b	678f-1
775	4505c	863	678e-2
778	4567b	865	3954-1
779	4567c	to	to
780	4567d	868	3954-4
781	4477b	869	3972.1
781a	4477c	870	3972.2
782	4477d		
782a	4420b		

<sup>12</sup> This article was probably impliedly repealed by virtue of the express repeal of arts. 790 and 791, to which it refers.

<sup>13</sup> This article was probably impliedly repealed by the Uniform Act Regulating Traffic on Highways (Civ.St. art. 6701d).

<sup>14</sup> Water Code, Table of Special Laws, art. 7849a.

853 TABLE 2—DISPOSITION OF UNREPEALED ARTICLES

Former Penal Code Article Number	New Article Number	Former Penal Code Article Number	New Article Number
871		1116	9005
to		1117a	Ins.Code 15.21
978n—2	15	1122	9006
1027	5679a—1 <sup>16</sup>	1124	5195a
1027a	5679a, §§ 9, 10	1125	1275a
1028	5679d	1125a	1287a, §§ 9 to 12
1029	5679e	1131	700a
1031	5679f	1137	1528h
1032	5679g	1137b	46f—2
1033	5679h	1137b—1	46f—3
1034	74a	1137e—2	1446b
1035	5722a	1137h	6626c
1036	5727a	1137i—1	9007
1037	5726a	1137k	9008
1038	5726b	1137l—10	9009
1039	5726c	1137n	9010
1040	5726d	1137o	6573b
1042b	5733a	1137q	9011
1043	5736—1 <sup>17</sup>	1137r	9012
1046	110a	1167a	9013
1047	5680a	1176a	6252—25
1048	5696a	1191	4512.1
1049	5698a	to	to
1052	5693a	1196	4512.6
1054	1440a	1333A	9206a <sup>18</sup>
1055	5707a	1334a	1432a
1057a	1124a, § 5	1351a	6942a
1057b	5736b	1369	6946a
1057c	5736c	1370	6946b
1057d	5714	1370a	6971a
1067	5924.1	1371	192—2
1068	5925a	1371a	192—3
1069	5927a	1378a	192b, §§ 11 to 13
1070	5927b	1384a	6143.1
1084	2485a	1385	7361a
1085	2486a	1386	7362a
1086	2489a	1387	7363.1
1087	2490a	1388	7363b
1088	2495a	1430a	9014
1089	2496a	1432	6687—3
1090	2497a	to	to
1091	2498a	1435	6687—6
1092	2499a	1435a	6687—8
1093	2499b	1436	6687—7
1101	8601	1436—1	6687—1
to	to	1436—2	6687—2
1106	8606	1436—3	6687—9
1107	8607	1436a	9015
to	to	1436d	6687—10
1111	8611	1444a	6983b
1111a—1	6032d	1446	6905a
1111c	6049f	1447	6908f—1
1111c—1	9201	1448	6908f—2
1112	9004	1449	6904a
1112b	6049g	1450	6908b

<sup>15</sup> These articles will be included in the Parks and Wildlife Code, which the Texas Legislative Council plans to submit to the legislature in the regular session of 1975 for enactment as part of the Council's statutory revision program (see Civ.St. art. 5429b—1). In the interim these articles will be published as Penal Code Auxiliary Laws and will retain the same article number designations.

<sup>16</sup> This article was probably impliedly repealed by Acts 1931, 42nd Leg., ch. 68 (Civ.St. art. 5679a). The penal provisions of Chapter 68 were originally designated as art. 1027a, Penal Code, but have now been incorporated in Civ.St. art. 5679a.

<sup>17</sup> This article was probably impliedly repealed when art. 1042, Penal Code of Texas, 1925, to which it is an exception, was repealed by Acts 1973, 63rd Leg., ch. 399, § 3 (adopting the new Penal Code).

<sup>18</sup> This article was probably impliedly repealed by P.C., art. 1722a, § 24(d); see, now, Civ.St., art. 9206, § 24(d).

Former Penal Code Article Number	New Article Number	Former Penal Code Article Number	New Article Number
1451	6908a	1561	5145a
1452	6908c	1562	5150a
1453	6908g	1563	5147a
1454	6908d	1564	5151b
1455	6909a	1565	5148a
1456	6910a	1566	5151c
1456a	6908e	1567	5178a
1457	6907a	1568	5179a
1460	6890a	1573	5181a
1461	6890b	to	to
1471	6985a	1578b	5181h
1472	6978a	1579	5165.1
1473	6978b	to	to
1474	6978c	1581	5165.3
1475	6978d	1581a	5159a, §§ 5, 6
1476	6998a	1582	5182—1
1477	6987a	1583a	1269o
1478	6990a	1583b	CCP 1041b
1479	6990b	1583—1	1269p
1480	6986a	1583—2	1269q
1481	6983a	1583—3	1269r
1482	6984a	1594	5901b
1483	6984b	1595	5901a
1484	6997a	1596	5904a
1485	6890c	1597	5906a
1486	6898a	1598	5907a
1487	6990c	1599	5908a
1488	7005—2	1600	5905a
1499	1281a	1601	5909a
1500	1282a	1602	5910a
1501	1286a	1603	5911a
1502	1286b	1604	5912a
1503	1285a	1605	5913a
1505	7009b <sup>19</sup>	1606	5914a
1505a	7014c	1607	5914b
1505b	7014d	1608	5915a
1512	7014e—2	1609	5917a
to	to	1610	5918a
1515	7014e—5	1611	5919a
1518	7014f—2	1612	5920a
to	to	1613	5196a
1521	7014f—5	1614	5196b
1522	7014b	1615	5201a
1523	7014f—6	1616	5196c
to	to	to	to
1525	7014f—8	1620	5196g
1525a	7014e—1	1621	5205a
1525b	7014f—1	1630	6057a
1525b—1	7014f—9	1631	6057b
to	to	1631a	6020b
1525b—3	7014f—11	1645	178a
1525c	7014g—1	to	to
1525d	7014f—12	1648	178d
to	to	1648a	9017
1525f	7014f—14	1649	6559g—1
1525g	7014g—2	1650	6559g—2
1533	564a	1651	4005a
1546b	9016	1652	4006a
1552	4596b	1653	4006b
1553	4596c		
1555a	67a, § 6		

<sup>19</sup> This article was probably impliedly repealed by Acts 1959, 56th Leg., ch. 192 (Civ.St. art. 7009a).

855 TABLE 2—DISPOSITION OF UNREPEALED ARTICLES

Former Penal Code Article Number	New Article Number	Former Penal Code Article Number	New Article Number
1654	4013a	1693	127a
1655	4015a	1694	127b
to	to	1695	119a
1658	4015d	1696	129a
1658a	4015e	1697	126b
1661	4015f	1698	135.1
1661a	6145c	1699	127c
1662	6559h—1	1700	127d
to	to	1700a—1	135a—1, § 9
1672	6559h—11	1700a—2	118b—3
1684	6559i—1	1700a—3	118b, § 21
to	to	1701	93d—1 <sup>21</sup>
1690	6559i—7	to	to
1690a	911a, § 14	1708	93d—8
1690b	911b, § 16	1720a	695c—3
1690d	20	1721	9202
1690e	911h	1721A	9203
1690f	911i	1722	9204
1691	123a	1722a	9206
1692	126a	1725	9205

Submitted by

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 Revisor of Statutes  
 Texas Legislative Council

Austin, Texas  
 October, 1973

<sup>20</sup> Deleted; identical to Civ.St. art. 911d, § 15.

<sup>21</sup> These articles were probably impliedly repealed by Acts 1929, 41st Leg., ch. 304; see, now, Civ.St. art. 93b, the Texas Seed Law.

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*Chapter 8 of Title 11 in the Penal Code of 1925, the Texas Liquor Control Act, consisting of articles 666-1 to 667-33, was not repealed by, nor incorporated into, the new Texas Penal Code. These articles will be included in the Alcoholic Beverages Code as a unit of the Texas Legislative Council's statutory revision program (see Civil Statutes, art. 5429b-1). In the interim these articles are published as Penal Auxiliary Laws and retain their original article number designations.*

## I. INTOXICATING LIQUORS

## Change of Name

*The name of the Texas Liquor Control Board was changed in 1969 to Texas Alcoholic Beverage Commission. See art. 666-5b.*

**Art. 666-1. Texas Liquor Control Act**

This Act may be cited as the "Texas Liquor Control Act."

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 1.]

**Art. 666-2. Exercise of Police Power**

This entire Act shall be deemed an exercise of the police power of the State for the protection of the welfare, health, peace, temperance, and safety of the people of the State, and all its provisions shall be liberally construed for the accomplishment of that purpose.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 2.]

**Art. 666-3. Possession of Certain Liquors by Wine or Beer Retailers Prohibited**

It shall be unlawful for any person to whom a Wine and Beer Retailer's Permit or Beer Retailer's License has been issued or any officer, agent, servant, or employee thereof to have in his possession on the licensed premises, any distilled spirits or any liquor containing alcohol in excess of fourteen per centum (14%) by volume.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 3; Acts 1937, 45th Leg., p. 1053, ch. 448, § 1; Acts 1943, 48th Leg., p. 509, ch. 325, § 1; Acts 1971, 62nd Leg., p. 681, ch. 65, § 1, eff. April 21, 1971.]

**Art. 666-3a. Definitions**

The following definitions of words and terms shall apply as used in this Act:

(1) "Alcoholic Beverage" shall mean alcohol and any beverage containing more than one-half of one per cent ( $\frac{1}{2}$  of 1%) of alcohol by volume which is capable of use for beverage purposes, either alone or when diluted.

(2) "Consignment Sale" shall mean the delivery of alcoholic beverages under any agreement, arrangement, condition, or system whereby the person receiving the same has the right at any time to relinquish possession to or return them to the shipper and whereby title to such remains in the shipper. It shall also mean the delivery of alcoholic beverages under any agreement, arrangement, condition, or system whereby the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver as well as the delivery of alcoholic beverages to a factor or broker or any other method employed by a shipper or seller whereby any person is placed in actual or constructive possession of alcoholic beverages without acquiring title thereto, or any method employed by a shipper or seller whereby any person designated as the purchaser does not in fact purchase the same. It is not intended that this definition shall exclude any other kind of transaction which in law may be construed as a consignment sale.

(3) "Distilled Spirits" shall mean alcohol, spirits of wine, whiskey, rum, brandy, gin, and any liquor produced in whole or in part by the

process of distillation, including all dilutions and mixtures thereof.

(4) "Illicit Beverage" shall mean and refer to any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, stored, possessed, imported, or transported in violation of this Act, or on which any tax imposed by the laws of this State has not been paid and the tax stamp affixed thereto; and any alcoholic beverage possessed, kept, stored, owned, or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse, store, or transport in violation of the provisions of this Act.

(5) "Liquor" shall mean any alcoholic beverage containing alcohol in excess of four (4) per centum by weight, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine, brandy, gin, rum, ale, malt liquor, tequila, mescal, habanero, or barreteago, shall be prima-facie evidence that the same is liquor as herein defined.

(6) "Person" shall mean and refer to any natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

(7) "Premise" shall mean the grounds as well as all of the buildings, vehicles, and appurtenances pertaining thereto, and shall also include any adjacent premises, if directly or indirectly under the control of the same person; provided, however, that subject to the approval of the Commission or Administrator, any Applicant, except an Applicant for a Package Store Permit or renewal thereof, may designate a portion of the grounds, buildings, vehicles, or appurtenances which shall not be a part of the licensed premises; provided further, however, that the provisions of Section 18, Article I, Texas Liquor Control Act,<sup>1</sup> which prohibit the licensing of only a portion of a building as premise for a Package Store Permit shall not apply to any Package Store Permit or a renewal thereof in effect on April 1, 1971, provided:

(a) Such permit was in good standing, not under suspension and was in actual operation and doing business as a Package Store on April 1, 1971, unless operation was temporarily prevented by natural disaster;

(b) No change in ownership with respect to such permit has occurred subsequent to April 1, 1971, except by devise or descent where the owner thereof was deceased on or after April 1, 1971;

(c) No change in location of the licensed premise has occurred subsequent to April 1, 1971;

(d) The holder of such permit shall, within ninety (90) days after the effective date

of this Act, clearly define the licensed premises by isolating such premise from the remainder of the store by the erection of a wall or screen in such manner that the licensed premise shall be accessible from the remainder of the building only through a door or archway, eight feet or less in width, in such wall or screen, and such door or archway shall be closed during the hours in which it is not legal to sell liquor; and

(e) The holder of such permit continues to comply with all of the provisions of Section 18 of Article I of the Texas Liquor Control Act, except the provision prohibiting the licensing of only a portion of a building as "premise."

All Package Store Permits subject to this exception as to the definition of premise, by complying with the terms hereof, shall be permitted to continue such operation only as long as there is no change in the location or size of the licensed premise and only so long as there is no change in the ownership of such permit, by majority stock transfer or otherwise; and should the right to continue operation under this exception ever terminate for any reason, such right shall not revive.

(8) "Wine and vinous liquor" shall mean the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, or berries.

(9) "Hotel" shall mean the premises of an establishment where, in consideration of payment therefor, food and lodging are furnished to travelers, and wherein are located, adequately furnished, at least ten (10) completely separate rooms with adequate facilities therein so comfortably disposed that persons usually apply for and receive overnight accommodations therein, in the course of usual and regular travel or as a residence, and which establishment operates a regular dining room constantly frequented by customers each day.

(10) "Applicant" shall mean any person who submits or files an original or renewal application with the County Judge or Board or Administrator for a license or permit.

(11) "Board" shall mean the Texas Liquor Control Board.

(12) "Permittee" shall mean any person who is the holder of a permit provided for in this Article, or any agent, servant, or employee of such person.

(13) "Ale" and "malt liquor" shall mean a malt beverage containing more than four per centum (4%) of alcohol by weight.

(14) "Container" shall mean any container holding liquor.

(15) "Mixed Beverage" means one or more servings of a beverage composed in whole or in part of any alcoholic beverage in sealed or un-

sealed containers of any legal size for consumption on the premises where served or sold by the holder of a Mixed Beverage Permit, the holder of a Daily Temporary Mixed Beverage Permit, the holder of a Caterer's Permit, the holder of a Mixed Beverage Late Hours Permit, the holder of a Private Club Registration Permit, or the holder of a Private Club Late Hours Permit.

Any definition contained herein shall apply to the same word in any form.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 3-a; Acts 1937, 45th Leg., p. 1053, ch. 448, § 2; Acts 1949, 51st Leg., p. 1011, ch. 543, § 1; Acts 1959, 56th Leg., p. 956, ch. 444, § 1, eff. Aug. 11, 1959; Acts 1971, 62nd Leg., p. 682, ch. 65, § 2, eff. April 21, 1971; Acts 1971, 62nd Leg., p. 1743, ch. 510, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Article 666-18.

Section 2 of Acts 1971, 62nd Leg., p. 1743, ch. 510, provided: "Sec. 2. In the event of conflict between any other provision of the Texas Liquor Control Act, as amended, and this Act, the provisions of this Act shall prevail, and to such extent the existing provisions of the Texas Liquor Control Act, as amended, are hereby modified."

#### Art. 666-4. Manufacture, Sale or Possession of Liquor Unlawful; Consumption in Public Place.

It shall not be unlawful to manufacture, distill, brew, sell, import, export, transport, distribute, warehouse, store, possess, possess for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process any liquor in this State, nor to possess any equipment or material designed for or capable of use for manufacturing liquor, provided that the rights or privileges so to do are granted by any provision of this Act. It is further expressly provided that any rights or privileges granted by the provisions of this Section, as exceptions to the prohibited acts in other sections shall be enjoyed and exercised only in the manner as provided. Any act done by any person which is not granted in this Act is hereby declared to be unlawful.

(a) It shall be unlawful for any person to manufacture, distill, brew, sell, possess for the purpose of sale, import into this state, export from the state, transport, distribute, warehouse, store, solicit orders for, take orders for, or for the purpose of sale to bottle, rectify, blend, treat, fortify, mix, or process any liquor in any wet area without first having procured a permit of the class required for such privilege.

(a-1) It shall not be deemed in violation of the above prohibitions in Section 4 of this article for the head of any family or an unmarried adult to produce for family use and not for sale an amount of wine not exceeding 200 gallons per annum, provided that prior to the beginning of the production process the head of the family or unmarried adult files with the Texas Alcoholic Beverage Commission and with the office of the Commission in the district wherein the wine is to be produced a statement of intent specifying (a) name, (b) address, (c) the ingredients to be used, (d) the number of gallons to be produced not to exceed 200 gallons, (e) the number of adult persons in the family, (f) any other in-

formation which the Commission may require and (g) accompanied by a filing fee of \$1. The Commission shall have the authority to prohibit the use of any ingredient found by it to be detrimental to health or susceptible of utilization to evade the provisions of this Act. The term "wine," as used here means the produce of normal alcoholic fermentation of the juices of grapes, dandelions, raisins, or other fruits. The possession of same shall not constitute violation of the provisions of Section 4, provided the head of household or unmarried adult files and complies with the statement herein required, the ingredients used conform with the statement, the wine is not distilled, fortified, or otherwise altered to increase its alcoholic content, and the specified fee has been paid. No person shall sell materials designed for the home production of wine unless the material is accompanied by the following statement, with the current mailing address of the Texas Alcoholic Beverage Commission inserted in the blank: "No person may commence the production of wine for family or personal use unless he has first filed the following information and a \$1 filing fee with the Texas Alcoholic Beverage Commission, whose address is:

Name  
 Post Office Address  
 Number of gallons of wine to be  
 produced not to exceed 200 gal-  
 lons  
 Ingredients to be used

**WARNING:** Violation of the filing requirement constitutes a misdemeanor under state law punishable by fine of not less than \$100 and not more than \$1,000, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment."

(b) It shall be unlawful for any person in any dry area to manufacture, distill, brew, sell, possess for the purpose of sale, import into this State, export from the State, transport, distribute, warehouse, store, solicit or take orders for, or for the purpose of sale to bottle, rectify, blend, treat, fortify, mix, or process any liquor, distilled spirits, whiskey, gin, brandy, wine, rum, beer or ale.

(b-1) Anything in this Act to the contrary notwithstanding, it shall not be unlawful for any person in any area wet for the limited purpose of the sale of beer, or the sale of beer and wine to apply for and be issued a Wholesaler's Permit, as described in Section 15, subsection (6) of Article I of this Act, and to exercise all rights and privileges of such permit holders.

(c) (1) It shall be unlawful for any person in a county of less than 300,000 population, according to the last preceding federal census, to consume any alcoholic beverage in any public place or for any person to possess any alcoholic beverage in any public place for the purpose of consuming the same in such public place at any time on Sunday between the hours of 1:15 a. m. and 12 noon, and on all other days at any time between the hours of 12:15 a. m. and 7 a. m.; except that the commissioners court of any county under 300,000 population, according to the last preceding federal census, may by order adopt for the unincorporated areas of that county the hours prescribed hereafter for counties of more than 300,000 population, according to the last preceding federal census, and the governing body of any incorporated city or town in any such county under 300,000 population, according to the last preceding federal census, may by ordinance adopt the hours prescribed hereafter for counties of more than 300,000 population, according to the last preceding federal census; violation of a commissioners court or a city ordinance made under this subsection is punishable as a violation of this Act. It shall be unlawful for any person in a county of 300,000 or more population, according to the last preceding federal census, to consume any alcoholic beverage in any public place or for any person to possess any alcoholic beverage in any public place for the purpose of consuming the same in such public place at any time on Sunday between the hours of 2:15 a. m. and 12 noon, and on all other days at any time between the hours of 2:15 a. m. and 7 a. m.

(2) Any alcoholic beverage possessed in violation of this Section is declared to be an illicit beverage and may be seized without warrant to be used as evidence of a violation of law, and any person in possession thereof or who otherwise violates any provision of this Section may be arrested without warrant.

(3) Any person who violates any provision of this Section shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding Fifty Dollars (\$50).

(d) Proof that an alcoholic beverage is possessed in violation of preceding Section 4(c) shall require evidence that the defendant has, on the date of the offense charged, consumed an alcoholic beverage in violation of said Section.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 4; Acts 1937, 45th Leg., p. 1053, ch. 448, §§ 3-5; Acts 1943, 48th Leg., p. 339, ch. 221, § 1; Acts 1943, 48th Leg., p. 509, ch. 325, § 2; Acts 1969, 61st Leg., p. 1535, ch. 466, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1697, ch. 552, § 1, eff. June 10, 1969; Acts 1971, 62nd Leg., p. 2554, ch. 839, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 762, ch. 336, § 1, eff. Aug. 27, 1973.]

Acts 1969, 61st Leg., p. 1535, ch. 466, which amended this article and articles 666-15(e), 667-3, 667-10 and added article 666-15(f), provided in section 6: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions

or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### Art. 666-5. Liquor Control Board

There is hereby created a Board named the Texas Liquor Control Board, consisting of three (3) persons, all of whom shall be appointed by the Governor, by and with the advice and consent of the Senate, and one of whom shall be designated by the Governor to be Chairman of the said Board, and said members shall receive their actual expenses while engaged in the performance of their duties and a per diem of Ten Dollars (\$10) per day for not exceeding sixty (60) days for any one year. Each member at the time of his appointment and qualification shall be a resident of the State of Texas and shall have resided in said State for a period of at least five (5) years next preceding his appointment and qualification, and he also shall be a qualified voter therein. Of the Members initially appointed each shall hold office from the date of his appointment for the following respective terms, and until their respective successors shall qualify: One member for two (2) years, one for four (4) years, and one for six (6) years from the effective date of the Act. Each member may be initially appointed on or subsequent to the date this Act goes into effect. The Governor, at the time of making and announcing the appointment of said three (3) members, as well as in the commission issued by him to each of them, shall designate which of said members shall serve for each of the said respective terms, and also which shall be the Chairman of the Board. Upon the expiration of each of said terms, the term of office of each member thereafter appointed shall be six (6) years from the time of his appointment and qualification, and until his successor shall qualify. In case any member shall be allowed to hold over after the expiration of his term, his successor shall be appointed for the balance of the unexpired term. Vacancies in said Board shall be filled by the Governor for the unexpired term. Each member shall be eligible for reappointment in the discretion of the Governor.

No person shall be eligible for appointment, nor shall hold the office of member of the Board, nor be appointed by the Board, nor hold any office or position under the Board, who has any connection with any association, firm, person, or corporation engaged in or conducting any alcoholic liquor business of any kind or who holds stocks or bonds therein, or who has pecuniary interest therein, nor shall any such person receive any commission or profit whatsoever from or have any interest whatsoever in any purchase or sales of any alcoholic liquors. The office of the Board shall be in the City of Austin, Texas. The said Board shall meet at such times within the City of Austin as the Board shall determine, and the members thereof shall be entitled to their reasonable expenses for each meeting so attended, and the per diem hereinabove referred to. A majority of the members shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any

power of the Board. The Board shall appoint an Administrator who shall serve at the Board's pleasure and who shall under the supervision of the Board administer the provisions of this Act. He shall receive a salary of Six Thousand Dollars (\$6,000) per annum, and shall execute a bond in the sum of Ten Thousand Dollars (\$10,000) payable to the State of Texas, conditioned as the Board shall require.

The Board or Administrator shall appoint all necessary clerks, stenographers, inspectors, and chemists, and other employees to properly enforce the provisions of this Act.

No person shall be eligible for any appointment who has any financial connection whatever with any person engaged in or conducting any liquor business of any kind, or who holds stock or bonds therein, or who has any pecuniary interest therein, nor shall any such person receive any commission or profit whatever from, or have any interest whatsoever in, the purchases or sales made by persons authorized by this Act to manufacture, purchase, sell, or otherwise deal in the liquor business.

The Administrator shall act as manager, secretary, and custodian of all records, unless the Board shall otherwise order.

The Administrator shall devote his entire time to said office.

The Board or Administrator shall fix the duties, salaries, and wages of all employees authorized by this Act but such compensation, salaries, and wages shall not be greater than the salaries fixed for similar positions and duties in other departments of the State Government. The Board shall likewise have power to require any employee authorized by this Act to give bond for the faithful performance of his duties in such an amount and under such conditions as it may deem adequate and proper. All appointments which have heretofore been made under the terms and provisions of Section 5, Article I, Chapter 467, Acts of the Second Called Session of the Forty-fourth Legislature<sup>1</sup> shall not be affected in any manner by the reenactment of this particular section as herein contained, but all such appointments shall continue as though this section had not been reenacted.

It shall be the duty of the Board, during the month of January of each year, to make a report to the Governor, concerning its administration of this Act.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 5; Acts 1937, 45th Leg., p. 1053, ch. 448, § 5½.]

<sup>1</sup> This article.

#### Change of Name

*The name of the Texas Liquor Control Board was changed in 1969 to Texas Alcoholic Beverage Commission. See art. 666-5b.*

#### Art. 666-5a. Assistant Administrator

The Administrator shall choose and designate an Assistant Administrator who shall have the same

qualifications as the Administrator. In the absence of the Administrator, or in case of his inability to act, the Assistant Administrator shall perform the duties devolving upon the Administrator by law or by delegation from the Board. At other times he shall perform such duties and have such functions, powers and authority as may be delegated to him by the Administrator. He shall take the Constitutional Oath, and make a bond in the same amount and conditioned as is the Administrator's bond.

In the event of a vacancy in the office of Administrator, the Assistant Administrator shall perform the duties of Administrator until an Administrator has been appointed by the Board.

[Acts 1949, 51st Leg., p. 1011, ch. 543, § 12.]

**Art. 666-5b. Change of Name; Texas Liquor Control Board to Texas Alcoholic Beverage Commission**

Effective January 1, 1970, the name of the Texas Liquor Control Board is changed to the Texas Alcoholic Beverage Commission. Wherever, in the Texas Liquor Control Act or in any other statute, a reference is made to the "Texas Liquor Control Board" or "Board," the reference shall be construed to mean the Texas Alcoholic Beverage Commission.

[Acts 1969, 61st Leg., p. 1048, ch. 341, § 1, eff. Jan. 1, 1970.]

**Art. 666-6. Powers and Duties of Board**

Among others, the functions, powers, and duties of the Board shall include the following:

(a) To supervise, inspect, and regulate every phase of the business of manufacturing, importation, exportation, transportation, storage, sale, distribution, possession for the purpose of sale, and possession of all alcoholic beverages, including the advertising and labeling thereof, in all respects necessary to accomplish the purposes of this Act. The Board is hereby vested with power and authority to prescribe all necessary rules and regulations to that end; to require the filing of such reports and other data by all persons engaged in any phase of the alcoholic beverage business, which it may deem necessary to accomplish the purposes of this Act; to supervise and regulate all licensees and permittees and their places of business in all matters affecting the general public, whether herein specifically mentioned or not, and to authorize its agents, servants, and employees under its direction to carry out the provisions hereof.

(b) To grant, refuse, suspend, or cancel permits or licenses for the purchase, transportation, importation, sale, or manufacture of alcoholic beverages or other permits in regard thereto.

(c) To investigate and aid in the prosecution of violations of this Act and other Acts relating to alcoholic beverages, to make seizures of alcoholic beverages manufactured, sold, kept, imported, or transported in contravention hereof,

and apply for the confiscation thereof whenever required by this Act, and cooperate in the prosecution of offenders before any court of competent jurisdiction.

(d) To exercise all other powers, duties, and functions conferred by this Act, and all powers incidental, convenient, or necessary to enable it to administer or carry out any of the provisions of this Act and to publish all necessary rules and regulations.

(e) In the event the United States Government shall provide any plan or method whereby the taxes on liquor shall be collected at the source, the Board shall have the right to enter into any and all contracts and comply with regulations, even to the extent of partially or wholly abrogating any provisions hereof which may be in conflict with Federal law or regulations to the end that the Board shall receive the portion thereof allocated to the State of Texas, and to distribute the same as in this Act is provided.

(f) To require by rule and regulation that any liquor sold in this state shall conform in all respects to the advertised quality of such products; to promulgate and enforce the rules and regulations governing labeling and advertising of all liquors sold in this state; to adopt and enforce a standard of quality, purity, and identity of all alcoholic beverages and to promulgate all such rules and regulations as shall be deemed necessary to fully safeguard the public health and to insure sanitary conditions in the manufacturing, refining, blending, mixing, purifying, bottling, and rebottling of any alcoholic beverage and the sale thereof; to adopt and enforce rules and regulations to standardize the size of containers in which liquors may be sold in this state, as well as to any representations required or allowed to be displayed or shown thereon or therein; provided that in respect to the sale of wine to retail dealers the maximum size of container shall be 4.9 gallons, and as to all types of liquor the minimum size container shall be as otherwise provided in this Act.

(g) To license, regulate, and control the use of alcohol and liquor for scientific, pharmaceutical, and industrial purposes, and to provide for the withdrawal thereof from warehouses and denaturing plants by regulation, and to prescribe the manner in which the same may be used for scientific research or in hospitals and in sanatoria, in industrial plants, and for other manufacturing purposes, tax free.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 6; Acts 1937, 45th Leg., p. 1053, ch. 448, § 6; Acts 1943, 48th Leg., p. 509, ch. 325, § 10; Acts 1973, 63rd Leg., p. 1231, ch. 444, § 1, eff. Aug. 27, 1973.]

**Art. 666-7. Subpoenas for Attendance of Witnesses; Contempt**

The Board, the Administrator and any inspector under the direction of the Board, shall, for the

purposes contemplated by this Act, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records, documents, and testimony.

If a witness in attendance before the Board or one of its authorized representatives refuses without reasonable cause to be examined or to answer a legal or pertinent question, or to produce a book, record, or paper when ordered to do so by the Board, the Board may apply to the Judge of the District Court of any county where such witness is in attendance, upon proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than five (5) days, directing such witness to show cause before the Judge who made the order, or any other District Judge of said county, why he should not be punished for contempt; upon the return of such order the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the District Court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Board shall be paid their fees and mileage by the Board out of funds herein appropriated.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 7.]

**Art. 666-7a. Notice Necessary before Adoption of Penal Rule or Regulation; Hearing; Publication of Rules and Regulations**

No rule or regulation for which a penalty is prescribed either by this Act or by the Board, shall be adopted by the Board except after notice and hearing. Notice of such hearing shall be given by publication in three (3) newspapers of general circulation in different sections of the State. Such notice shall specify the date and place of hearing and the subject matter of the proposed rule or regulation and shall constitute sufficient notice to all parties. The date of hearing shall be not less than ten (10) days from the date of publication of notice. At such hearing any person, either by himself or by attorney, may present relevant facts either in support or opposition thereto. The Board shall upon a finding of facts, have the authority and power to adopt, modify, nullify, or alter such rules or regulations.

Upon the final adoption of any rule or regulation, the Board shall cause the same to be published one time in a newspaper of general circulation in this State and the same shall have the force and effect of

law as of the date of publication, unless a different date is specified therein. The publication thereof shall be sufficient notice to all parties. Any person who violates any valid rule or regulation or any provision thereof shall be guilty of a misdemeanor and upon conviction thereof shall be subject to the penalty as prescribed in Section 41, Article I of this Act.<sup>1</sup>

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 7.]

<sup>1</sup> Article 666-41 of this chapter.

**Art. 666-7b. Oath of Office; Inspectors and Representatives; Bond**

All inspectors and representatives of the Board shall subscribe to the constitutional oath of office which shall be filed in the office of the Board. The Board or Administrator is empowered to commission such number of its inspectors and representatives which it deems necessary to enforce the provisions of this Act. Such commissioned inspectors and representatives shall have all the powers of a peace officer coextensive with the boundaries of this State. Such commissioned inspectors and representatives shall make and execute such bond as may be required by the Board.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 8.]

**Art. 666-7c. Additional Assistant Attorneys General to Enforce Act; Stenographers; Offices**

For the purpose of enabling the Board to more efficiently enforce the provisions of this Act, the Attorney General of the State of Texas is hereby directed to appoint as many as six (6) Assistant Attorneys General as the Board may determine to be necessary; and the Attorney General and such Assistants shall prosecute all suits requested by the Board and defend all suits against the Texas Liquor Control Board. The Board is directed to provide said Assistant Attorneys General with the necessary stenographers and office space; and such Assistant Attorneys General shall be paid by the Board out of funds appropriated to it for the purposes of administration of this Act and their compensation shall be upon the same basis as Assistant Attorneys General devoting their time to general State business.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 9.]

**Art. 666-7d. Appeal to Board; Representation for Compensation; Affidavit and Disclosure**

No person including members of the Legislature at any time during his term of office may appear for compensation before the Liquor Control Board on an appeal to the Board in any representative capacity for any person, firm or corporation being heard by the Board unless and until he files an affidavit supplied by the Board to this effect and makes a full disclosure of whom he is representing and that he is being compensated for same. The Board shall provide such forms and these records shall be a matter of public record with the Board.

[Acts 1969, 61st Leg., p. 80, ch. 38, § 17E, eff. Sept. 1, 1969.]

**Art. 666-8. Importation**

It shall be unlawful for military personnel stationed in Texas or any resident of the State of Texas to import into this state more than one (1) quart of liquor unless he is the holder of a permit as provided in Section 4(a) hereof. It shall further be unlawful for any non-resident of the State of Texas to import into this state more than one (1) gallon of liquor. In addition to the penalties set out in Section 41 of this Act,<sup>1</sup> any person violating any provision of this section shall forfeit the liquor so illegally imported to the Texas Liquor Control Board. It is further provided that any person importing any liquor into this state under the provisions of this section shall pay the state tax thereon as levied in Section 21, Article I, Texas Liquor Control Act,<sup>2</sup> and affix thereto the required State Tax Stamps.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 8; Acts 1957, 55th Leg., p. 51, ch. 29, § 1, eff. March 20, 1957.]

<sup>1</sup> Article 666-41.

<sup>2</sup> Article 666-21.

**Art. 666-9. Unnecessary to Negative Exceptions in Indictment**

It shall not be necessary for any information, complaint or indictment to negative any exception contained in this Act concerning any prohibited Act; provided, however, that any such exception made herein may be urged as a defense by any person charged by such complaint, information, or indictment.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 9.]

**Art. 666-10. Publication of Notice of Application for Permit**

Every applicant for a Pharmacist's Medicinal, Brewer's, Distiller's, Mixed Beverage, Winery (except Class B Winery), Wholesaler's, Class B Wholesaler's, Wine Bottler's, or Package Store Permit under this Act shall give notice of such application by publication for two (2) consecutive issues in a newspaper of general circulation published in the city or town in which applicant's place of business is located. Provided, however, that in such instances where no newspaper is published in the city or town, then the same shall be published in a newspaper of general circulation published in the county where the applicant's business is located, and if no newspaper is published in the county, the notice shall be published in a qualified newspaper which is published in the closest neighboring county and circulated in the county of applicant's residence. Such notice shall be printed in ten (10) point black face type and shall set forth the type of permit to be applied for, the exact location of the place of business, the name of the owner or owners thereof, and if operating under an assumed name, the trade name together with the names of all owners, and if a corporation, the names and titles of all officers. The cost of such notice shall be borne by the applicant. This Section does not apply to an applicant for either a Daily Temporary Mixed Beverage Permit or a Caterer's Permit.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 10; Acts 1937, 45th Leg., p. 1053, ch. 448, § 10; Acts 1971, 62nd Leg., p. 682, ch. 65, § 3, eff. April 21, 1971.]

**Art. 666-11. Refusal of Permit**

The Commission or Administrator may refuse to issue a permit, either on an original application or a renewal application, to any applicant either with or without a hearing if it has reasonable grounds to believe and finds any of the following to be true:

(1) That the applicant has been convicted in a court of competent jurisdiction for the violation of any provision of this Act<sup>1</sup> during the two (2) years next preceding the filing of his application, or that three (3) years have not elapsed since the termination of any sentence, by pardon or otherwise, imposed upon the applicant upon conviction for a felony.

(2) That the applicant has violated or caused to be violated, during the six (6) months period immediately preceding the date of his application, any provision of this Act or any rule or regulation of the Commission which involves a question of moral turpitude as distinguished from a technical violation of the Act or any rule or regulation.

(3) That the applicant has failed to answer or has falsely answered or has incorrectly answered any of the questions in his original application or any renewal application.

(4) That the applicant is indebted to the State for any taxes, fees, or payment of penalties imposed by this Act or by any rule or regulation of the Commission.

(5) That the applicant is not of good moral character, that his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad, or that he is under twenty-one (21) years of age.

(6) That the place or manner in which the applicant may conduct his business is of such a nature which, based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, warrants a refusal of a permit.

(7) That the applicant is in the habit of using alcoholic beverages to excess, or is physically or mentally incapacitated.

(8) That the Commission or Administrator believes or has reason to believe that the applicant will sell or knowingly permit any agent, servant, or employee to unlawfully sell liquor in a dry area or in any other manner contrary to law.

(9) That the applicant, except an applicant for a permit created by this Act authorizing the holder thereof to sell mixed beverages, has any financial interest in any permit or license authorizing the holder thereof to sell beer at retail other than is authorized in Section 23(a)(5) or Section 17(1) of Article I of the Texas Liquor Control Act.<sup>2</sup>

(10) That the applicant, except an applicant for a permit created by this Act authorizing the holder thereof to sell mixed beverages, is residentially domiciled with any person who has any financial interest in any permit or license authorizing the holder thereof to sell beer at retail other than as authorized in Section 23(a)(5) or Section 17(1) of Article I of the Texas Liquor Control Act.

(11) That the applicant is not a citizen of the United States or has not been a citizen of Texas for a period of three (3) years immediately preceding the filing of his application, provided, however, that this Section 11(11) shall not apply to any person who has been issued a permit or renewal thereof on or before September 1, 1948, and has at some time been a citizen of the United States.

(12) That the applicant does not have available an adequate building at the address for which the permit is sought.

(13) That the applicant is residentially domiciled with any person whose permit or license has been cancelled for cause within the twelve (12) months next preceding the date of the present application for a permit.

(14) That the applicant has failed or refused to furnish a true copy of his application to the Alcoholic Beverage Commission District Office in the district in which the premises sought to be covered by a permit are located.

(14a) That an applicant for a Mixed Beverage Permit, directly or indirectly, or through a subsidiary, affiliate, agent, or employee, or through an officer, director, or firm member, owns any interest of any kind in the premises, business, or permit of a package store, except as permitted in Subsection (5), Section 23(a), of this Article.

(14b) That an applicant for a Package Store Permit, directly or indirectly, or through a subsidiary, affiliate, agent, or employee, or through an officer, director, or firm member, owns any interest of any kind in the premises, business, or permit of a mixed beverage establishment, except as permitted in Subsection (5), Section 23(a), of this Article.

(15) The Commission or Administrator shall be vested with discretionary authority to refuse or grant such permits under the restrictions of this Section, as well as under any other pertinent provision of this Act.

(16) When the word "applicant" is used in Subsections (1) through (14b) of this Section, it shall also mean and include each member of a partnership or association and all officers and the owner or owners of the majority of the corporate stock of a corporation, as of the date of the application, except as permitted in Section 23(a)(5) and Section 17(1) of Article I of the Texas Liquor Control Act.

There may be sufficient legal reason to deny a permit if it is found that during the six (6) months immediately preceding the date of application the premise for which the permit is sought has been operated, used or frequented for any purpose or in any manner that is lewd, immoral, or offensive to public decency. In the granting or withholding of any permit to sell alcoholic beverages at retail, as provided in Article I, of the Texas Liquor Control Act,<sup>3</sup> the Commission or Administrator in forming his conclusions may give consideration to any recommendations made in writing by the District or County Attorney or County Judge or Commissioners Court of the county or the Sheriff of the county, or the Mayor or Chief of Police of any incorporated city or town wherein the applicant proposes to conduct his business and to any recommendations made by representatives of the Commission.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 11; Acts 1937, 45th Leg., p. 1053, ch. 448, § 11; Acts 1943, 48th Leg., p. 509, ch. 325, § 11; Acts 1949, 51st Leg., p. 1011, ch. 543, § 2; Acts 1971, 62nd Leg., p. 682, ch. 65, § 4, eff. April 21, 1971.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

<sup>2</sup> Articles 666-23a(5) and 666-17(1).

<sup>3</sup> Article 666-1 et seq.

#### Art. 666-11a. Application for Mixed Beverage Permit; Contents

In addition to the information required of applicants for permits under this Article, the applicant for a Mixed Beverage Permit must file with his original or renewal application a sworn statement in a form prescribed by the Commission or Administrator containing the following information:

- (1) The name and residential address of the lessor of the premises;
- (2) The name and address of the lessee of the premises;
- (3) The amount of monthly rental on the premises and the date of expiration of the lease;
- (4) Whether the lease or rental agreement includes furniture and fixtures;
- (5) Whether the business is to be operated under a franchise and if so the name and address of the franchisor;
- (6) The name and address of the accountant of the business;
- (7) A list of all bank accounts, including account numbers, used in connection with the business; and
- (8) Any information required by the Commission or Administrator relevant to the determination of all persons having a financial interest of any kind in the granting of a Mixed Beverage Permit.

[Acts 1971, 62nd Leg., p. 684, ch. 65, § 5, eff. April 21, 1971.]

#### Art. 666-12. Cancellation or Suspension of Permit; Grounds

The Commission or Administrator may cancel or may suspend for a period of time not exceeding

sixty (60) days, after notice and hearing, any permit or any renewal of such permit if it is found that any of the following is true:

(1) That the permittee has at any time been convicted for the violation of any provision of this Act.<sup>1</sup>

(2) That the permittee has violated any provision of this Act or any rule or regulation of the Commission at any time.

(3) That the permittee has made any false or misleading statement in connection with his application or renewal application, either in the formal application itself or in any other instrument in writing submitted to the Commission, its officers or its employees, relating to such application or renewal application.

(4) That the permittee is indebted to the State for any taxes, fees, or payment of penalties imposed by this Act or by any rule or regulation of the Commission.

(5) That the permittee is not of good moral character, or that his reputation for being a peaceable and law-abiding citizen in the community where he resides is bad.

(6) That the place or manner in which the permittee conducts his business is of such a nature which, based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, warrants the cancellation or suspension of the permit.

(7) That the permittee is not maintaining an acceptable bond.

(8) That the permittee, his agent, servant, or employee, maintains a noisy, lewd, disorderly or insanitary establishment or has been supplying impure or otherwise deleterious beverages.

(9) That the permittee is insolvent or mentally or physically unable to carry on the management of his establishment.

(10) That the permittee is in the habit of using alcoholic beverages to excess.

(11) That either the permittee, his agent, servant, or employee knowingly misrepresented to a customer or the public any liquor sold by him.

(12) That the permittee, his agent, servant, or employee was intoxicated on the licensed premises.

(13) That the permittee, his agent, servant, or employee sold or delivered alcoholic beverages to any intoxicated person.

(14) That the permittee, his agent, servant, or employee possessed on the premises covered by his permit any alcoholic beverage that he was not authorized by his permit to purchase and sell.

(15) That any Package Store or Wine Only Package Store permittee, his agent, servant, or employee transported, caused to be transported,

shipped or caused to be shipped liquor into a dry state, or into any dry area within this State.

(16) That the permittee, his agent, servant, or employee sold or delivered any liquor on Sunday, except as permitted by Section 25, Article I, of this Act.<sup>2</sup>

(17) That the permittee, his agent, servant, or employee knowingly sold or delivered liquor to any person under the age of twenty-one (21) years.

(18) That the permittee, his agent, servant, or employee sold or delivered any liquor in violation of Section 25, Article I, of this Act.

(19) That the permittee, his agent, servant, or employee employed any person to sell, handle, transport, or dispense, or to assist in selling, handling, transporting or dispensing any liquor in violation of Subsection (5), Section 17, Article I of this Act.<sup>3</sup>

(20) That the permittee is residentially domiciled with any person who has financial interest in any establishment engaged in the business of selling beer at retail other than an interest in a mixed beverage establishment or as provided in Section 23(a)(5), and Section 17(1) of Article I of this Act.<sup>4</sup>

(21) That the permittee is residentially domiciled with any person whose permit or license has been cancelled for cause within twelve (12) months next preceding the date of application.

(22) That the permittee, his agent, servant, or employee sold, offered for sale, distributed, or delivered any alcoholic beverage during any period of suspension of his permit by the Commission or Administrator.

(23) That the permittee is not a citizen of the United States or has not been a citizen of Texas for a period of three (3) years immediately preceding the filing of his application; provided, however, this Paragraph (23) shall not apply to any person who has been issued a permit or a renewal thereof on or before September 1, 1948, and has at some time been a citizen of the United States.

(24) That the permittee has been finally convicted of a felony during the period he is the holder of any permit or renewal thereof.

(25) That the permittee, his agent, servant, or employee permitted any intoxicated person to remain on the premises.

(26) That the retail permittee, his agent, servant, or employee, sold or delivered any liquor between 9:00 p. m. of any day and 10:00 a. m. of the following day, except as permitted in Section 25 of this Article.

(27) That the permittee, his agent, servant, or employee permitted any person to open any container or to possess any open container of alcoholic beverage on the licensed premises unless a Mixed Beverage Permit has been issued for the premises.

(28) Where the word "permittee" is used in this Section it also means and includes each member of a partnership or association and each officer and the owner or owners of the majority of the corporate stock of a corporation, except as provided in Section 23(a)(5) and Section 17(1) of Article I of this Act.

(29) In addition to the causes for cancellation or suspension hereinbefore set out, the Commission or Administrator may cancel or suspend the permit of any person upon satisfactory proof that the permittee has been finally convicted of any penal provisions of this Act.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 12; Acts 1937, 45th Leg., p. 1053, ch. 448, § 12; Acts 1943, 48th Leg., p. 509, ch. 325, § 12; Acts 1949, 51st Leg., p. 1011, ch. 543, § 3; Acts 1967, 60th Leg., p. 160, ch. 85, § 1, eff. Aug. 23, 1967; Acts 1971, 62nd Leg., p. 685, ch. 65, § 6, eff. April 21, 1971.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

<sup>2</sup> Article 666-25.

<sup>3</sup> Article 666-17(5).

<sup>4</sup> Articles 666-23a(5) and 666-17(1).

#### Art. 666-12a. Hearing as to Cancellation or Suspension of Permit; Notice; Procedure

(1). The Board or Administrator shall have the power upon its own motion, and it is hereby made its duty upon petition of any Mayor, Chief of Police, or any City Marshal, or the City Attorney of any city or town, or the County Judge, Sheriff, or County or District Attorney of any county of this State wherein may be located the place of business of any permittee complained of, which said petition shall be supported by the sworn statement of at least one credible person, to fix a date for hearing and give notice thereof to any permittee complained of for the purpose of determining whether the permit should be cancelled or suspended and notify such permittee that he may appear to show cause why such permit should not be cancelled or suspended in accordance with the provisions of this Act.

(2). In all cases where application is made for a permit, the Board or Administrator shall give due consideration to the recommendations of any of the above enumerated officers in granting or refusing such permit. In all instances where a protest against the issuance of a permit is made to the Board by the above enumerated officers, if upon a hearing or upon any finding of facts, it is determined that the issuance of a permit would be in conflict with the requirements as set out in this Act, the Board or Administrator shall enter its order accordingly. A copy of any order or refusal shall be mailed or delivered immediately to the applicant which said order shall set forth the reasons for refusal.

(3). The Board or Administrator may designate any of its members or other representatives to conduct any hearing, authorized by this Act, make a record thereof, and the Board or Administrator may upon such record render its decision as though the hearing had been held before all members of the

Board or Administrator. The Board may prescribe its own rules of procedure and evidence.

(4). All notices of hearing for refusal, cancellation, or suspension may be served personally or by any representative of the Board or by sending the same by United States registered mail addressed to the person cited at his last known address and no other notice shall be necessary. At least three (3) days notice shall be given in all instances where a hearing is provided for by this Act. Notice of cancellation or suspension stating the reason therefor, shall be served upon the permittee or upon whatever person may be in charge temporarily, or otherwise, of the licensed premises, or shall be affixed to the outside of the door of the licensed premises, or shall be sent by United States registered mail addressed to such permittee or licensee at the licensed premises, or said cancellation notice shall be published by the Board once a week for three (3) consecutive weeks in the county in which the licensed premises are located, or if no newspaper is published in the county, in a newspaper in a neighboring county. Cancellation or suspension shall take effect upon affixing, service, delivery, or first publication of such notice. Such affixing, service, or delivery, or publication of a cancellation or suspension shall be adequate notice to all parties concerned.

(5). Records of all violations of this Act by holders of licenses and permits and records introduced and made public at hearings, and decisions resulting therefrom relating to such violations shall be kept on file at the office of the Liquor Control Board at Austin, Texas, and such records shall be open to the public. The private records of any person, permittee or licensee (which shall be any records except the name, proposed location, and type of permit or license sought in any application for a permit or license or any renewal thereof, any periodic report covering the importation, distribution, or sale of any alcoholic beverages required by the Board to be regularly filed by a permittee or licensee) which are required or obtained by the Liquor Control Board or its agents in connection with any investigation, or otherwise, shall be privileged, unless introduced in evidence in a hearing before the Board or any court in this state or the United States. In all suits by the state or Board or in which the state or Board is a party or parties, a transcript from the papers, books, records, and proceedings of the Board purporting to contain a true statement of accounts between the Board or the state and any person, and all rules, regulations, orders, audits, bonds, contracts, or other instruments relating to or connected with any transaction had between the Board and any person, when certified by the Administrator or Chairman of the Board to be true copies of the originals on file with the Board and authenticated under the seal of the Board shall be admitted as prima facie evidence of their existence and validity and shall be entitled to the same degree of credit that would be due to the original papers if produced and proved in court; but when any suit is brought upon a bond or other

written instrument, executed by any person and he shall by plea under oath deny the execution of such instrument, the court shall require the production and proof of the same.

In the event the Attorney General shall file suit or claim for taxes and attach or file as an exhibit any report or audit of said permittee or licensee, and an affidavit made by the Administrator or his representative that the taxes shown to be due by said report or audit are past due and unpaid, that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas, of 1925, as amended by Chapter 239, Acts of the Regular Session of the 42nd Legislature,<sup>1</sup> said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

A certificate under the seal of the Board executed by any member or the Administrator setting forth the terms of any order, rule, regulation, bond, or other instrument referred to in this Section and that the same has been adopted, promulgated, and published or executed and filed with the Board and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation and the publication thereof, without further proof of such promulgation, adoption, or publication and without further proof of its contents and the same provision shall apply to any bond or other instrument referred to in this Section.

(6). It shall be the duty of the Board by its printed rules and regulations entered upon its minutes to immediately specify the duties and powers of the Administrator. In all instances whereby provisions of this Act, concurrent powers and duties are imposed upon the Board and Administrator, the Board shall designate such powers and duties which it delegates to the Administrator. All orders, decisions, and judgments entered and rendered by the Administrator in matters upon which he has been empowered to act shall not be subject to change, review, or revision by the Board. All other concurrent powers and duties which are not specifically delegated to the Administrator by the Board's order shall be considered as retained by the Board itself and all orders, decisions, and judgments rendered and entered by the Board shall not be subject to change, review, or revision by the Administrator. [Acts 1937, 45th Leg., p. 1053, ch. 448, § 13; Acts 1969, 61st Leg., p. 80, ch. 38, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Repealed. See, now, Vernon's Rules Civ.Proc., rule 185.

**Art. 666-12b. Cancellation or Suspension of Permit or License for Underage Sales; Notice and Hearing**

Regardless of any other provision of the Texas Liquor Control Act, the Board or Administrator may, for a first offense, cancel, or suspend for a

period of time not to exceed sixty (60) days, after notice and hearing, any retail permit or license or any private club registration permit granted under the provisions of the Texas Liquor Control Act upon finding that the Permittee or Licensee, his agent, servant, or employee, has knowingly sold, served, dispensed, or delivered any alcoholic beverages to any person under the age of twenty-one (21) years, or has permitted any person under the age of twenty-one (21) years, who is not accompanied by his parent, legal guardian, or adult spouse, to possess (unless such underage person is an employee of a Licensee or Permittee as permitted in the Texas Liquor Control Act) or consume any alcoholic beverage on his licensed premises. For the second such offense such permit or license may be cancelled, or suspended for a period of time not to exceed three (3) months. For a third such offense within a period of thirty-six (36) consecutive months, such permit or license may be cancelled or suspended for a period of time not to exceed twelve (12) months.

Provided, however, that if, at a hearing held for such purpose, such Permittee or Licensee establishes to the satisfaction of the Board or Administrator that the violation complained of occurred under such circumstances as could not have reasonably been prevented by such Permittee or Licensee with the exercise of due diligence or that the Permittee or Licensee was entrapped, or that an agent, servant, or employee of such Permittee or Licensee has violated the provisions of this Section without the knowledge of the Permittee or Licensee, then the Board or Administrator shall have the authority to relax the provisions of this Section concerning suspension and cancellation of the permit or license and to assess such sanctions as the Board or Administrator may deem just under the circumstances.

[Acts 1969, 61st Leg., p. 80, ch. 38, § 2, eff. Sept. 1, 1969.]

**Art. 666-13. Period of Permit; Permit as Personal Privilege; Renewal; Inspection of Premises; Sale by Financial Institution Holding Warehouse Receipts**

(a) All permits issued under this Act expire one year from the date of issue.

(b) Any permit or license issued under the terms of either Article I<sup>1</sup> or Article II<sup>2</sup> of this Act shall be purely a personal privilege, revocable in the manner and for the causes herein stated, subject to appeal as hereinafter provided, and shall not constitute property, nor shall it be subject to execution, nor shall it descend by the laws of testate or intestate devolution, but shall cease upon the death of the permittee or licensee; provided, however, that upon the death of the holder of any such permit or license or of any person having an interest therein, or upon the dissolution of any partnership, or conditions involving receivership or bankruptcy, the receiver or successor of any such business involved may make application to the County Judge of the county wherein such permit or license is located, and upon certification by the County Judge that such person is the receiver or

successor in interest of any such business involved, the Board or the Administrator shall, unless good cause for refusal be shown, by letter or by any other form that may be accepted for use by the Board, give permission to such receiver or successor in interest to operate said business under the said permit or license; such permission for the use of said permit or license shall thereafter be subject to cancellation for any of the reasons for which a permit or license may be cancelled; and further provided that the Board or the Administrator may cancel or suspend permission to operate under the said permit or license for any of the reasons for which a permit or license may be cancelled or suspended under the terms of this Act. No such permit or license shall be renewed. The receiver or the then owners, however, may make an original application for a permit or license.

(c) It is further provided that the Board may, by rule or regulation, provide for the manner and time in which the successor in interest of any deceased, insolvent, or bankrupt permittee or licensee or receiver, or any person whose permit or license has been cancelled or placed in suspense, may dispose in bulk of alcoholic beverages left on hand at the termination of the use of such affected permit or license.

(d) It is expressly provided that the acceptance of a permit or license issued under either Article I or Article II of this Act shall constitute an express agreement and consent on the part of the permittee or licensee that the Board, any of its authorized representatives, or any peace officer shall have at all times the right and privilege of freely entering upon the licensed premises for the purpose of conducting any investigation or for inspecting said premises for the purpose of performing any duty imposed by this Act upon the Board, its representative, or any peace officer.

(e) Any bank, trust company, or financial institution owning or possessing warehouse receipts for alcoholic beverages, which warehouse receipts were acquired by such bank, trust company, or financial institution as security for a loan, may, after permission has been given by the Board or Administrator, sell such alcoholic beverages to the holder of a permit or license authorized to purchase such alcoholic beverages.

(f) Notwithstanding any other provision of this Act, if the surviving spouse or surviving descendant of a holder of a Mixed Beverage Permit qualifies as the successor in interest to the permit as provided in Subsection (b) of this Section, the descendant or surviving spouse may continue to renew the permit by paying a renewal fee equal to the fee the permittee would be required to pay had he lived.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 13; Acts 1937, 45th Leg., p. 1053, ch. 448, § 14; Acts 1943, 48th Leg., p. 509, ch. 325, § 3; Acts 1949, 51st Leg., p. 1011, ch. 543, § 4; Acts 1971, 62nd Leg., pp. 686, 699, ch. 65, §§ 7, 26, eff. April 21, 1971.]

<sup>1</sup> Article 666-1 et seq.  
<sup>2</sup> Article 667-1 et seq.

**Art. 666-14. Review of Decision of Board by Appeal to District Court**

Unless specifically denied herein an appeal from any order of the Board or Administrator refusing, cancelling, or suspending a permit or license may be taken to the District Court of the County in which the aggrieved licensee or permittee, or the owner of involved real or personal property may reside. In all other suits against the Board venue shall be in Travis County, Texas. The proceeding on appeal shall be against the Board alone as defendant and the trial shall be de novo under the same rules as ordinary civil suits, with the following exceptions, which shall be considered literally, viz.:

a. All appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision or ruling of the Board or Administrator.

b. Such proceedings shall have precedence over all other causes of a different nature.

c. All such causes shall be tried before the Judge within ten (10) days from the filing thereof, and neither party shall be entitled to a jury.

d. The order, decision or ruling of the Board or Administrator may be suspended or modified by the District Court pending a trial on the merits, but the final judgment of the District Court shall not be modified or suspended pending appeal.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 14; Acts 1937, 45th Leg., p. 1053, ch. 448, § 15.]

**Art. 666-15. Classification of Permits**

Permits shall be of the following classes:

(1) Brewer's Permit. A Brewer's Permit shall authorize the holder thereof to:

(a) Manufacture, bottle, package, label, and sell malt liquors, and import ale and malt liquor acquired from a holder of a Nonresident Brewer's Permit;

(b) Sell same in this State to wholesale permit holders only;

(c) Sell same out of state to qualified persons.

Regardless of any other provision of the Texas Liquor Control Act, a person who holds a Non-resident Seller's Permit may have an interest in the business, assets, corporate stock, or permit of a person who holds a Brewer's Permit.

The annual State fee for a Brewer's Permit shall be One Thousand Dollars (\$1,000).

(1a) Non-resident Brewer's Permit. A Non-resident Brewer's Permit shall be required of each brewer located outside the State of Texas before his ale or malt liquor is imported into Texas or offered for sale in Texas.

The annual State fee for a Non-resident Brewer's Permit shall be One Thousand Dollars (\$1,000).

Section 15½A<sup>1</sup> is hereby specifically retained in Article I of the Texas Liquor Control Act, and it is hereby required that the holder of a Non-resident Brewer's Permit shall also be required to hold a Non-resident Seller's Permit.

(2) Distiller's Permit. A Distiller's Permit shall authorize the holder thereof to:

(a) Manufacture and rectify distilled spirits except alcohol, and bottle, package, label, and sell same. The privileges granted to a distiller are confined strictly to distilled spirits manufactured and rectified under his permit;

(b) Sell same in this State to the holders of Wholesaler's Permits only;

(c) Sell same out of State to qualified persons;

(d) Import distilled spirits for manufacturing purposes only from the holders of Non-resident Seller's Permits.

The annual State fee for a Distiller's Permit shall be One Thousand Dollars (\$1,000).

(3) Class A Winery Permit. A Class A Winery Permit shall authorize the holder thereof to:

(a) Manufacture, bottle, label, package and sell wine containing not more than twenty-four (24) per centum of alcohol by volume;

(b) Manufacture and import grape brandy for fortifying purposes only and to be used only on his licensed premises;

(c) Sell same in this State to permit holders authorized to sell same to the ultimate consumer in unbroken packages for off-premise consumption;

(d) Sell same out of State to qualified persons;

(e) Blend wines and for that purpose only to import wines or grape brandy only from the holders of Non-resident Seller's Permits. In such instances the State tax on such imported wines shall not accrue until the wine has been used for blending purposes and the resultant product placed in containers for sale.

Such permit to be granted only upon presentation of a "Winemaker's and Blender's Basic Permit" of the Federal Alcohol Tax Unit.

The annual State fee for a Class A Winery Permit shall be Fifty Dollars (\$50).

(4) Class B Winery Permit. A Class B Winery Permit shall authorize the holder thereof to:

(a) Manufacture, bottle, package, label, and sell wine from grapes, fruits, and ber-

ries grown on the permit holder's own premises only and containing not more than twenty-four (24) per centum of alcohol by volume;

(b) Manufacture and import grape brandy only from the holders of Non-resident Seller's Permits for fortifying purposes only and to be used only on his licensed premises;

(c) Sell same in this State to any permit holder authorized to sell the same and to the ultimate consumer in unbroken packages for off-premises consumption;

(d) Sell same to authorized persons out of State.

Such permit to be granted only upon presentation of a "Winemaker's and Blender's Basic Permit" of the Federal Alcohol Tax Unit.

The annual State fee for a Class B Winery Permit shall be Ten Dollars (\$10).

(5) Rectifier's Permit. A Rectifier's Permit shall authorize the holder thereof to:

(a) Rectify, purify, and refine distilled spirits and wines other than vermouth by any process other than as provided for on distillery premises;

(b) Mix wines, distilled spirits, or other liquors;

(c) Bottle, label, package, and sell his finished products;

(d) Sell same in this State to Wholesale Permit holders only;

(e) Sell same out of State to qualified persons;

(f) Import distilled spirits only from the holders of Non-resident Seller's Permits for rectification purposes but not for resale.

The annual State Fee for a Rectifier's Permit shall be One Thousand Dollars (\$1,000).

(6) Wholesaler's Permit. A Wholesaler's Permit shall authorize the holder thereof to:

(a) Purchase and import liquor from distillers, brewers, wineries, wine bottlers, rectifiers and manufacturers, who are the holders of Non-resident Seller's Permits, and their agents who are the holders of Manufacturer's Agent's Permits and purchase same from other wholesalers within this State;

(b) Sell liquor in original containers in which received in this State to retailers and wholesalers authorized to sell same;

(c) Sell liquor out of State to qualified persons;

(d) It is provided that a person applying for a Wholesaler's Permit shall be authorized to include in a single application his

petition for such permit, as well as for private storage, storage in a public bonded warehouse, and private carrier's permit, and any other permit which he is qualified to receive under the provisions of this Act. Provided, however, that such wholesaler shall pay the fees prescribed by this Act for each such permit covered in such Wholesaler's application. This same subdivision shall apply to a Class B Wholesaler's, Rectifier's, Brewer's, Distiller's, Class A Winery, and Class B Winery Permits.

The annual State fee for a Wholesaler's Permit shall be One Thousand, Two Hundred and Fifty Dollars (\$1,250).

(7) General Class B Wholesaler. A General Class B Wholesaler's Permit shall authorize the holder thereof to:

(a) Purchase and import malt and vinous liquors from brewers, wineries, rectifiers, and wine manufacturers and wine bottlers who are the holders of Non-resident Seller's Permits, and their agents who are the holders of Manufacturer's Agent Permits, and he is further authorized to purchase malt and vinous liquors from holders of Brewer's Permits under this Act and from other Wholesalers within the State;

(b) Sell same in original containers in which received by him to retailers and wholesalers authorized to sell same;

(c) Sell same out of State to qualified persons.

The annual State fee for a General Class B Wholesaler's Permit shall be Two Hundred Dollars (\$200).

(7a) Local Class B Wholesaler. A Local Class B Wholesaler's Permit shall authorize the holder thereof to:

(a) Purchase and import malt and vinous liquors from brewers, wineries, rectifiers, and wine manufacturers and wine bottlers who are the holders of Non-resident Seller's Permits, and their agents who are the holders of Manufacturer's Agent Permits, and he is further authorized to purchase malt and vinous liquors from holders of Brewer's Permits under this Act and from other Wholesalers within the State;

(b) Sell same in original containers in which received by him to retailers in the county of his residence and to other Class B Wholesalers.

The annual State fee for a Local Class B Wholesaler's Permit shall be Fifty Dollars (\$50).

(7b) United States Bonded Liquor Export Permit. A United States Bonded Liquor Export Permit shall authorize the holder thereof to:

(a) Purchase liquor in bond from holders of Texas Wholesalers' Permits or purchase liquor from distillers, brewers, wineries,

wine bottlers, rectifiers, and manufacturers who are holders of Non-resident Seller's Permits and import into the State of Texas at a United States bonded dock such liquor in transit for exportation purposes.

(b) Transport such liquor from the United States bonded dock at point of entry under United States bond to a United States bonded warehouse within the State of Texas.

(c) Warehouse such liquor under United States bond.

(d) For the purpose of exportation only, solicit orders for, take orders for, and accept payment for any quantity of said liquor in unbroken original containers.

(e) Cause such liquor to be withdrawn from a United States bonded warehouse for exportation, in compliance with United States Custom regulations, and delivered to a public common carrier for transportation, in compliance with such carrier's established rate schedule, into the country of export by such common carrier or by such common carrier's affiliated common carrier in the country of export, for delivery to the purchaser at a designated address outside the continental limits of the United States or for delivery to a named qualified person at a designated address outside the continental limits of the United States.

The annual state fee for a United States Bonded Liquor Export Permit shall be Seven Hundred and Fifty Dollars (\$750).

The privileges authorized by this Section are cumulative and not in lieu of requirements of Federal Law in the conduct of such operations. It is specifically provided, however, that permits under this Section shall not be required for the wholesale export of United States bonded liquor by the holder of any other type of permit which, under existing Statutes and the rules and regulations of the Texas Liquor Control Board, authorizes the wholesale exportation of liquor in compliance with Federal Law.

(8) Package Store Permit. A Package Store Permit shall authorize the holder thereof to:

(a) Purchase liquor from the holders in this State of Class A Winery, Class B Winery, Wholesaler's, Class B Wholesaler's and Wine Bottler's Permits;

(b) Sell liquor on or from licensed premises at retail to consumer for off-premises consumption only and not for the purpose of resale, in unbroken original containers only;

(c) Sell malt and vinous liquors in original containers of not less than six (6) ounces;

(d) Sell vinous liquors, but in quantities of not more than five (5) gallons in original containers in any single transaction.

(e) Any person holding more than one Package Store Permit may designate one of the licensed premises as the place for storage of liquor, and he shall be privileged to transfer liquor to and from such storage to and from his other licensed premises under such rules and regulations as may be prescribed by the Board.

The annual State fee for a Package Store Permit in cities and towns shall be based upon the population according to the last preceding Federal Census as follows:

<u>Population</u>	<u>Fee</u>
25,000 or less	\$125.00
25,001 to 75,000	175.00
75,001 or more	250.00

The annual State fee for a Package Store Permit outside of cities and towns shall be One Hundred and Twenty-five Dollars (\$125), except the annual State fee for a Package Store Permit outside of any incorporated city or town and within two (2) miles of the corporate limits shall be the same as the fee required in said incorporated city or town.

(9) Wine Only Package Store Permit. A Wine Only Package Store Permit shall authorize the holder thereof to:

(a) Purchase ale and wine and vinous liquors from the holders in this State of Class A Winery, Class B Winery, Wine Bottler's, Wholesaler's and Class B Wholesaler's Permits;

(b) Sell ale and wine and vinous liquors on or from licensed premises at retail to consumer for off-premises consumption only and not for the purpose of resale, in unbroken original containers only;

(c) Sell ale and wine and vinous liquors, in unbroken original containers of not less than six (6) ounces;

(d) Sell ale and wine and vinous liquors but in quantities of not more than five (5) gallons in unbroken original containers in any single transaction.

(e) Any person holding more than one Wine Only Package Store Permit may designate one of the licensed premises as the place for storage of ale and wine and vinous liquors, and he shall be privileged to transfer ale and wine and vinous liquors to and from such storage to and from his other licensed premises under such rules and regulations as may be prescribed by the Board.

The annual State fee for a Wine Only Package Store Permit in cities and towns shall be

based on population according to the last preceding Federal Census as follows:

<u>Population</u>	<u>Fee</u>
2,000 or less	\$ 5.00
2,001 to 5,000	7.50
5,001 to 10,000	10.00
10,001 or more	12.50

The annual State fee for a Wine Only Package Store Permit outside of cities and towns shall be Five Dollars (\$5), except the annual State fee for a Wine Only Package Store Permit within two (2) miles of the corporate limits of a city or town shall be the same as the fee required in said incorporated city or town.

(10) Agent's Permit. An Agent's Permit shall authorize the holder thereof to:

(a) Represent only the holders of permits within this State, other than retail permittees, authorized to sell liquor to retail dealers in Texas;

(b) Solicit and take orders for the sale of liquor from only authorized permit holders.

No such permit shall be granted to any person until he shall show to the satisfaction of the Board that he has been employed or authorized to act as agent for the holder of a permit required by this Act.

It is not intended that an Agent's Permit shall be required of the employee of a permit holder who sells liquor but who remains on the licensed premises in making such sale.

No person holding an Agent's Permit shall be entitled to a Manufacturer's Agent's Permit.

It shall be unlawful for the holder of an Agent's Permit to transport or carry liquor as samples; provided that nothing herein shall restrict such person from carrying or displaying empty sample containers.

The annual State fee for an Agent's Permit shall be Five Dollars (\$5).

(11) Industrial Permit. No other provisions of this Act shall apply to alcohol intended for industrial, medicinal, mechanical, or scientific purposes. Industrial Permits may be issued to persons desiring to import, transport, and use alcohol or denatured alcohol for the manufacture and sale of any of the following, tax-free:

(1) Denatured alcohol;

(2) Patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;

(3) Flavoring extracts, syrups, condiments, and food products;

(4) Scientific, chemical, mechanical, industrial, and medicinal products and purposes.

It shall be unlawful for any person to sell, possess, or divert any of the products enumerated in paragraphs (1), (2), (3), and (4), for beverage purposes, or to sell or divert any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to be to use them for such purpose.

It shall be unlawful for any person to purchase, transport, or use alcohol for any purpose enumerated in this Section unless and until he shall have secured an Industrial Permit. It is provided however that the following are exempt from procuring such permit:

(a) Druggists or pharmacists in the filling of prescriptions issued by a physician in the legitimate practice of medicine;

(b) All state institutions;

(c) All bona fide or chartered schools, colleges, universities for scientific or laboratory use;

(d) All hospitals, sanatoria, or other bona fide institutions for the treatment of the sick.

The annual State fee for an Industrial Permit shall be Ten Dollars (\$10).

(12) Carrier Permit. The word "carrier" when used in this Section shall mean and include water carriers, airplane lines, all steam, electric, and motor power railway carriers, and common carrier motor carriers operating under a certificate of convenience and necessity issued by the Railroad Commission of Texas or by certificates issued by the Interstate Commerce Commission. The holders of such certificates shall be authorized to transport liquor into and out of this State and between points within this State. Such carriers shall furnish such information concerning the transportation of liquor as may be required by the Board.

The annual State fee for a Carrier Permit shall be Five Dollars (\$5).

(13) Private Carrier Permit. Brewers, Distillers, Wineries, Rectifiers, Wholesalers, Class B Wholesalers, and Wine Bottlers Permittees shall be entitled to transport liquor from the place of purchase of such permittees to their place of business and from the place of sale or distribution to the purchaser, upon vehicles owned or leased in good faith by such permittees when such transportation is for a lawful purpose; provided, however, that such permittees shall not be permitted to engage in the business of transporting for hire such liquor in violation of the motor carrier laws of this state, and any such permittee desiring to engage in such business for hire shall first secure a certificate or permit, as the case may be, from the Railroad Commission of Texas under the terms of the motor carrier laws, and shall be required to comply with the provisions of such laws. Motor vehicles used for such transportation shall be fully described in the application for a Private

Carrier Permit and such application shall contain all information which shall be required by the Board. All vehicles used for such transportation within the state by such permittees shall have printed or painted on said vehicles such designation as may be required by the Board. It shall be unlawful for any such permittee above named to transport liquors in any vehicle not fully described in his application for a permit.

The annual state fee for a Private Carrier Permit shall be Five Dollars (\$5.00).

(14) Local Cartage Permit. The Board is hereby authorized to issue Local Cartage Permits to warehouse or transfer companies desiring to transport liquor for hire within the corporate limits of any city or town within this State. It shall be unlawful for any person to transport liquor for hire within any city or town unless and until he shall have secured such permit, or to transport the same in violation of the motor carrier laws of this State. In the case of local cartage, liquors shall not be transported by the holder of such Local Cartage Permit unless and until a description of each vehicle used in such transportation shall be furnished as may be required by the Board; and each such vehicle shall be plainly marked or lettered in such manner as to plainly indicate that such vehicle is being used for the transportation of liquors by the holder of a Local Cartage Permit. The transportation of liquor by the holder of a Local Cartage Permit in any vehicle not so described and marked shall be unlawful and shall constitute grounds for the cancellation of such permit. It shall be unlawful for the holder of a Local Cartage Permit to transport liquor for hire between incorporated cities or towns in this State.

The holder of a Package Store Permit or Wine Only Package Store Permit may also hold a Local Cartage Permit as provided in this Article. If the holder of a Package Store Permit or a Wine Only Package Store Permit is also the holder of a Local Cartage Permit as provided in this Section, he shall be privileged to transfer liquors as herein provided to or from any of his other licensed premises within the same county under said Local Cartage Permit.

The annual State fee for a Local Cartage Permit shall be Five Dollars (\$5).

(15) Bonded Warehouse Permits. A public bonded warehouse not located in dry area and which derives at least fifty per cent (50%) of its gross revenue in a bona fide manner during a period of each three (3) months from the storage of goods or merchandise other than liquors shall be qualified to obtain and hold a Bonded Warehouse Permit. Such Permit shall authorize the holder thereof to store liquors for any permittee who holds a permit to store in such public bonded warehouse. The holder of a Bonded Warehouse Permit shall furnish such informa-

tion concerning the liquor stored and withdrawn as may be required by the Board.

The annual State fee for a Bonded Warehouse Permit shall be One Hundred Dollars (\$100).

(16) Storage Permit. The holders of Brewer's, Distiller's, Winery, Rectifier's, Wholesaler's, Wine Bottler's, and Class B Wholesaler's Permits shall be authorized to procure Storage Permits. Storage Permits may be used to store in a public bonded warehouse for which a permit has been issued, as well as to store in private warehouses owned and operated by the applicant. A permit must be procured for each place of storage. No Storage Permit shall be granted for any county other than the county in which the business of such holder of the Brewer's, Distiller's, Winery, Rectifier's, Wholesaler's, Wine Bottler's, or Class B Wholesaler's Permit is located; and no Storage Permit shall be issued to be located in any dry area. No permit need be procured by the above-named permit holders for the storage of stock in trade kept on the licensed premises. No additional fee shall be paid for Storage Permits.

(17) Wine and Beer Retailer's Permit. The Board or Administrator is authorized to issue Wine and Beer Retailer's Permits. The holders of such permits shall be authorized to sell for consumption on or off premises where sold, but not for resale, wine, beer and malt liquors containing alcohol in excess of one half of one per cent ( $\frac{1}{2}$  of 1%) by volume and not more than fourteen per cent (14%) of alcohol by volume. All such permits shall be applied for and issued, unless denied, and fees paid, upon the same procedure and in the same manner and upon the same facts and under the same circumstances, and for the same duration of time, and shall be renewable in the same manner, as required, and provided to govern application for an issuance of Retail Beer Dealer's Licenses under Article II, of this Act,<sup>2</sup> and shall be subject to cancellation or suspension for any of the reasons that a Retail Beer Dealer's License may be cancelled or suspended, and under the same procedure. The holders of Wine and Beer Retailer's Permits shall also be subject to all provisions of Section 22, Article II of this Act.<sup>3</sup> All alcoholic beverages which the holders of such permits are authorized to sell shall be sold under the same restrictions as provided in Article II governing the sale of beer, as to hours of sale and delivery, local restrictions, sales to minors and intoxicated persons, age of employees, installation or maintenance of barriers or blinds, prohibition of the use of the word 'saloon' in the signs or advertising, and subject to the same restrictions upon consumption of wine as provided for beer in the case of Retail Beer Dealers in Section 15 of Article II of this Act.<sup>4</sup> For the violation of any applicable provisions of Article II, the holders of such permits shall be liable for penalties provid-

ed in Article II; for the violation of any other provision of this Act the holders of such permits shall be subject to penalties provided in Article I of this Act.<sup>5</sup>

The Annual State Fee for a Wine and Beer Retailer's Permit shall be Thirty Dollars (\$30); provided, however, that a Wine and Beer Retailer's Permit may be issued for railway dining, buffet, or club cars, upon the payment of a fee of Five Dollars (\$5) for each car; provided, however, that the Wine and Beer Retailer's Permit may be issued for a regularly scheduled excursion boat which has been duly licensed by the United States Coast Guard to carry passengers upon the navigable waters of the State of Texas; provided, however, that the said excursion boat shall have a tonnage of not less than thirty-five (35) tons, with a length of not less than fifty-five (55) feet, and passenger capacity of not less than forty-five (45) passengers, upon payment of a fee of Thirty-five Dollars (\$35); provided, however, that the railway and/or excursion boat application therefor and the payment of the fee shall be made direct to the Board; and provided, further, that any such permit for railway dining, buffet, or club car, and/or excursion boat shall be inoperative in any dry areas as the same is defined in this Act.

(17)-A Wine and Beer Retailer's Off-Premise Permit. The Commission or Administrator is authorized to issue Wine and Beer Retailer's Off-Premise Permits. The holders of such permits shall be authorized to sell for off premise consumption only, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent ( $\frac{1}{2}$  of 1%) by volume and not more than fourteen percent (14%) of alcohol by volume. All such permits shall be applied for and issued, unless denied, and fees paid, upon the same procedure and in the same manner and upon the same facts and under the same circumstances, and for the same duration of time, and shall be renewable in the same manner, as required, and provided to govern application for an issuance of Retail Beer Dealer's Licenses under Article II of this Act, and shall be subject to cancellation or suspension for any of the reasons that a Retail Beer Dealer's License may be cancelled or suspended, and under the same procedure. The holders of Wine and Beer Retailer's Off-Premise Permits shall also be subject to all provisions of Section 22, Article II of this Act.<sup>6</sup> All alcoholic beverages which the holders of such permits are authorized to sell shall be sold under the same restrictions as provided in Article II governing the sale of beer, as to hours of sale and delivery, local restrictions, sales to minors and intoxicated persons and age of employees. For the violation of any applicable provision of Article II, the holders of such permits shall be liable for penalties provided in Article II; for the violation of any

other provision of this Act the holders of such permits shall be subject to penalties provided in Article I of this Act.

The annual state fee for a Wine and Beer Retailer's Off-Premise Permit shall be Fifteen Dollars (\$15).

(17a) Temporary Wine and Beer Retailer's Permit. A Temporary Wine and Beer Retailer's Permit shall authorize the holder thereof to sell for consumption on or off the premises where sold, but not for resale, wine, beer and malt liquor containing alcohol in excess of one-half of one per cent ( $\frac{1}{2}$  of 1%) by volume and not more than fourteen per cent (14%) of alcohol by volume, in or from any lawful container to the ultimate consumer, and no such permit shall authorize the sale of such beverages at any point outside the county where same is issued. Temporary Wine and Beer Retailer's Permits shall be issued by the Commission, Administrator, or any authorized representative of the Commission. The Commission shall adopt all necessary rules and regulations to effectuate the issuance and use of Temporary Wine and Beer Retailer's Permits. A Temporary Wine and Beer Retailer's Permit shall not be issued to any person who does not also hold either a Wine and Beer Retailer's Permit or a Mixed Beverage Permit or Caterer's Permit. A Temporary Wine and Beer Retailer's Permit shall be issued for a period of not more than four (4) days. Fees collected from the issuance of Temporary Wine and Beer Retailer's Permits shall be retained by the Alcoholic Beverage Commission, and no fee shall be charged by any City or County for such permits; and no refund shall be allowed upon the surrender or non-use of any such permit. The Commission, Administrator, or any authorized representative of the Commission may issue such permits only for the sale of the beverages specified hereinabove at picnics, celebrations, or similar events, and may refuse to issue such permits if there is reason to believe the issuance of the permit would in any manner be detrimental to the public. The basic permit, under which the Temporary Wine and Beer Retailer's Permit was issued, may be suspended or cancelled for any violation on the premises covered by the temporary permit which would result in the cancellation or suspension of the permit if committed on the regularly licensed premises. The fee for a Temporary Wine and Beer Retailer's Permit shall be Five Dollars (\$5).

(18) Wine Bottler's Permit. A Wine Bottler's Permit shall authorize the holder thereof to:

(a) Purchase and import wine only from the holders of Non-resident Seller's Permits, and their agents who are the holders of Manufacturer's Agent's Permits, and purchase wine from Wholesalers, Class A Winery, Class B Winery and Wine Bottlers within this State;

(b) Bottle, re-bottle, label, package, and sell wine to permit holders in this State authorized to purchase and sell the same;

(c) Sell same to qualified persons out of the State;

(d) Withdraw wine from a container without State tax stamps and transfer the same to other containers, and affix the State tax stamps to such containers before selling same;

(e) Keep a permanent record of every purchase and sale, showing the names of persons bought from and sold to, the gallonage and the per centum of alcohol by volume.

The annual State fee for a Wine Bottler's Permit shall be One Hundred and Fifty Dollars (\$150).

(19) Medicinal Permits. The owner of a pharmacy properly qualified as a pharmacy under the laws of this State shall be entitled to receive a Medicinal Permit and to buy and dispense liquor at such pharmacy for medicinal purposes only. And such pharmacy must be a bona fide pharmacy, continuously operated and continuously located for a period of not less than two (2) years in the particular justice precinct, incorporated town or city in which located at the time a permit is sought; provided, however, no pharmacy which has moved within two (2) years immediately preceding the date of application into an incorporated town or city shall be entitled to a permit, and such pharmacy for which a permit is sought must, for a continuous period of two (2) years immediately preceding the date of application for a permit, have been registered with the State Board of Pharmacy and have had for such time employed in its service at all times a registered pharmacist. No permit shall be issued to any pharmacy previously holding a Medicinal Permit which had been cancelled after the effective date of this Act within a period of two (2) years from the date such cancellation had become effective.

Each and every applicant for a permit must present with such application a certificate issued by the State Board of Pharmacy, showing the registration record with that Board during the preceding two (2) years.

A Pharmacy Permit shall be cancelled by the Board or Administrator if the pharmacy for which the permit was issued moves into an incorporated town or city wherein such pharmacy has not been continuously located for a period of two (2) years or moves from the particular justice precinct in which the permit was issued.

It shall be unlawful for any holder of a Medicinal Permit, or the agent, servant, or employee thereof, to:

(a) Sell or dispense any liquor except upon a prescription issued by the holder of

a Physician's Permit as required by this Act.

(b) Sell or dispense any liquor upon a prescription which does not meet the specifications required by this Act.

(c) Sell or dispense any liquor more than once on any prescription required by this Act.

(d) Sell or dispense any liquor upon a prescription bearing a date more than three (3) days prior to the date upon which the prescription is presented for filling.

(e) Sell or dispense any liquor not meeting the standards established by the United States Pharmacopoeia or National Formulary.

(f) Sell or dispense any liquor upon a prescription with knowledge of the fact that such prescription was written without physical examination of the patient by the physician prescribing such liquor.

(g) Sell or dispense any liquor to any person with knowledge of the fact that the name of the person to whom the prescription was issued is other than the true name of such person.

(h) Sell or dispense any liquor for any other than medicinal purposes.

(hh) Permit any liquor to be consumed on the premises.

(i) Sell or dispense more than one pint of liquor to any one person in any one day.

(j) Sell or dispense any liquor to any person without having first obtained physical possession of the prescription for such liquor.

(k) Sell or dispense any liquor upon a prescription bearing any false statement or information.

(l) Sell or dispense any liquor without first carefully examining the prescription upon which such sale is made.

(m) Prepare any prescription for liquor.

(n) Have in physical possession more than ten (10) gallons of liquor at any one time.

(o) Fail to preserve and keep for a period of two (2) years for inspection of any representative of the Board, or any peace officer or county or district attorney, at all times, any prescription upon which liquor has been sold.

(p) Fail to make or keep and to produce upon demand of any representative of the Board, or any peace officer, or county attorney or district attorney, for a period of two (2) years, any other record required by the Board to be made and kept.

(q) Fail to make any report to the Board within the time required for such report to be made.

(r) Make or cause to be made to the Board any report required to be made which is false in any particular.

(s) Fail or refuse to divulge to any representative of the Board or to any peace officer or to any county or district attorney any information concerning the purchase, storage, or disposal of liquor.

(t) Compensate in any manner any physician in this State for writing a prescription; or to guarantee to any physician any income, more or less, for the writing of prescriptions for liquor.

(u) Sell or dispense liquor in any one week, beginning Sunday at Midnight, upon prescription exceeding in number prescriptions filled for other medicines, excluding narcotics.

(v) Fail to affix to any container of liquor sold a label bearing in the English language the full name and address of the pharmacy making the sale, name and address of the physician prescribing, the full name and address of the patient to whom the sale is made, directions for use, and the signature of the pharmacist filling the prescription; or to fail to place on such label the number of the prescription being filled.

(w) Purchase or acquire stocks of liquor from any other person except the holder of a Wholesaler's Permit in Texas.

(x) Sell or dispense any liquor, with or without a prescription, to any person under the age of twenty-one (21) years, unless such person presents with such prescription a written consent of a parent or guardian upon which liquor may be prescribed and sold to such person; or to fail to file written consent with the prescription for such liquor.

(y) Sell or dispense any liquor, with or without a prescription, to any person showing evidence of intoxication.

(z) Fail to produce prescriptions for each container of liquor disposed of or unaccounted for.

The Board shall have the right by rule and regulation to require the keeping of records and the making of reports such as it may deem necessary and to pass rules and regulations governing permit holders in order to properly enforce the provisions of this Act.

The annual State fee for a Medicinal Permit for pharmacies in dry areas shall be Ten Dollars (\$10), and in wet areas the annual State fee shall be the same as the annual State fee for a Package Store Permit.

(20) Physician's Permits. A physician licensed by the State Board of Medical Examin-

ers, authorizing the administration of internal medicine to human beings, may obtain a Physician's Permit. Such permit shall qualify such physician to write prescriptions for medical purposes, subject to restrictions herein contained.

No person who has been convicted for any violation of this Act, or who has had any permit provided by this Act cancelled within two (2) years preceding the date of filing an application for a permit, shall be entitled to a Physician's Permit.

Each applicant for a permit must present with the application a certificate issued by the State Board of Medical Examiners showing qualification to hold a permit under the terms of this Act.

The annual State fee for a Physician's Permit shall be One Dollar (\$1).

It shall be unlawful for any physician to:

(a) Prescribe liquor for any purpose unless he be the holder of a Physician's Permit.

(b) Prescribe liquor for any other than medicinal purposes.

(c) Issue prescriptions for liquor to any person without first having made a physical examination of the patient's person for the purpose of determining the disease or ailment afflicting such person.

(d) Issue to any person a prescription which does not bear thereon in the English language all of the information required by the specifications for prescriptions as defined by this Act.

(e) Accept any sort of compensation or guarantee as to income or material benefit from any holder of a Medicinal Permit for writing a prescription, or prescriptions, for medicinal liquor.

(f) Prescribe more than one (1) pint of liquor to any one (1) person in any one day.

(g) Prescribe liquor to any person showing evidence of intoxication.

(h) Prescribe liquor to any person under any name other than the true name of the person for whom such liquor is intended.

(i) Prescribe liquor for any person under the age of twenty-one (21) years, unless with the written consent of such person's parent or guardian.

(j) Fail or refuse to make and keep for a period of two (2) years any record of prescriptions issued for liquor as may be required by the Board; or to fail to make any reports as and when required by the Board; or to fail to divulge any information or to produce any records as to the issuance of prescriptions when called upon to do so by any representative of the Board, or any peace officer, or by any county or district attorney.

(k) Issue in the aggregate of more than one hundred (100) prescriptions in any period of ninety (90) days, beginning from the date desig-

nated by such physician in any order placed with the Board for such prescriptions.

Forms for prescriptions as referred to herein shall be only those forms prescribed and furnished by the Board in such form and manner as the Board may by rule and regulation determine. Such prescriptions, when issued, must bear thereon the date of issuance; the name and address of the issuing physician; the name, address, sex, and age of the patient, diagnosis of the disease or ailment of the patient; amount and type of liquor prescribed; directions as to the use by the patient; and the signature of the issuing physician. The prescribing of liquor on any form not obtained from the Board or in any manner not meeting the requirements herein specified shall be in violation of this Act. The Board shall have authority to adopt such regulations as to the printing of and issuances of prescription blanks, the keeping of records of prescriptions issued, the making of reports, and the disposal of unused, mutilated, or defaced blanks, as it may deem necessary to require physicians to strictly conform to the provisions of this Act.

(21) (a) Nothing in the Texas Liquor Control Act shall be deemed to prohibit the selling or serving of alcoholic beverages in or from any size container on a commercial passenger airplane operating in compliance with a valid license, permit, or certificate issued under the authority of the United States or the State of Texas, notwithstanding the fact that it may, during the course of its flight, traverse an area in which the sale of such alcoholic beverages is prohibited; provided, however, that a special Airline-Beverage Permit shall be obtained annually from the Board.

(b) The Board or Administrator is authorized to issue an Airline-Beverage Permit to each corporation operating a commercial airline in or through the State of Texas. The annual fee for an Airline-Beverage Permit shall be One Thousand Dollars (\$1,000). The provisions of Sections 15a1 and 18 of this Article shall not apply to Airline-Beverage Permits. Application and payment of the fee shall be made directly to the Board.

(c) Under rules and regulations promulgated by the Board, the holder of an Airline-Beverage Permit may store alcoholic beverages in sealed containers of any size within the boundaries of any airport served by the holder on a regular basis.

(d) As to all alcoholic beverages on board any commercial passenger aircraft departing from any airport in this state, the taxes imposed by the Texas Liquor Control Act shall be paid as prescribed by rules and regulations of the Board.

(e) Neither the preparation nor the serving of alcoholic beverages by the holder of an Airline-

Beverage Permit to its passengers shall be considered as a sale for consideration but shall be completely exempt from the provisions of the Limited Sales, Excise and Use Tax Act, as amended. In lieu of that tax, there is hereby imposed a special airline-beverage service fee in the amount of five cents (\$.05) for each individual serving of an alcoholic beverage served by such permit holder within the boundaries of this state. Such fee shall be imposed at the time of the delivery to the passenger of the container containing any alcoholic beverage, and the permit holder may absorb the cost of the fee or may collect the fee from the passenger. The fees shall be remitted monthly by the permit holder to the Board under a reporting system prescribed by rules and regulations of the Board.

(f) Only the holder of a Package Store Permit shall be authorized to sell liquor to the holder of an Airline-Beverage Permit; and for the purposes of this Act, any sale of liquor to the holder of an Airline-Beverage Permit shall be considered a sale at retail to a consumer. Notwithstanding any other provision of the Texas Liquor Control Act, the holder of a Package Store Permit may sell liquor in any size container to holders of Airline-Beverage Permits only, and may purchase liquor in any size container for resale from the holders of a Wholesaler's Permit who may import, sell, offer for sale or possess for purpose of resale liquor in any size container for resale only to holders of Airline-Beverage Permits, subject to any reasonable rules and regulations promulgated by the Board to insure proper enforcement of the Texas Liquor Control Act. Anyone who knowingly violates the provisions of this subsection will forfeit his permit as Package Store Permittee and/or an Airline-Beverage Permittee.

(22) Mixed Beverage Permit. (a) A Mixed Beverage Permit authorizes the holder to sell mixed beverages from unsealed containers, or from sealed containers containing no less than one fluid ounce but not more than two fluid ounces, for consumption on the premises for which the permit is issued. If a mixed beverage establishment is located in a hotel, the permittee may deliver wine and beer to individual rooms of the hotel without regard to whether the hotel rooms are part of the licensed premises.

(b) Notwithstanding the limitation set out in this subsection and in Section 20e of Article I of the Texas Liquor Control Act,<sup>7</sup> a Mixed Beverage Permit shall authorize the holder thereof to purchase wine, beer, and malt liquor in a container of any legal size containing alcohol of not more than twenty-one per centum (21%) by volume from the holder of any permit or license which authorizes the holder thereof to sell same for resale, and the Mixed Beverage Permit shall authorize the holder thereof to sell such wine, beer and malt liquor in a container of any legal

size for consumption on the premises for which the permit is issued.

(c) The annual fee for a Mixed Beverage Permit is Two Thousand Dollars (\$2,000.00) for an original permit, One Thousand, Five Hundred Dollars (\$1,500.00) for the first annual renewal, One Thousand Dollars (\$1,000.00) for the second annual renewal, and Five Hundred Dollars (\$500.00) for the third annual and each subsequent annual renewal.

(23) Daily Temporary Mixed Beverage Permit. (a) The Commission may, in its discretion, issue on a temporary basis a Daily Temporary Mixed Beverage Permit. The fee for the permit is Twenty-five Dollars (\$25) per day.

(b) The permit authorizes the sale of mixed beverages for consumption on the premises for which the permit is issued and may only be issued to a political party or political association supporting a candidate for public office or a proposed amendment to the State Constitution or other ballot measure, an organization formed for a specific charitable or civic purpose, a fraternal organization in existence for over five years with a regular membership, or a religious organization.

(c) Distilled spirits sold under a Daily Temporary Mixed Beverage Permit must be purchased from the holder of a Local Distributor's permit.

(d) All provisions of this Act applicable to a Mixed Beverage Permit also apply to a Daily Temporary Mixed Beverage Permit, unless there is a special provision to the contrary.

(e) The requirements which apply to the application and issuance of other permits contained in this Act do not apply to the application and issuance of a Daily Temporary Mixed Beverage Permit. The Commission may adopt such rules and regulations as it determines to be necessary to implement and administer the provisions of this Section, including, but not limited to, limitations on the number of times during any calendar year a qualified organization may be issued a license provided for by this Section.

(24) Mixed Beverage Late Hours Permit. A Mixed Beverage Late Hours Permit authorizes the holder to sell mixed beverages on Sunday between the hours of 1 a. m. and 2 a. m. and on any day except Sunday between the hours of 12 midnight and 2 a. m. if the premises covered by the permit are in an area where the sale of mixed beverages during those hours is authorized by this Act. All Sections of this Act which apply to a Mixed Beverage Permit also apply to a Mixed Beverage Late Hours Permit. The annual State fee for a Mixed Beverage Late Hours Permit is One Hundred Dollars (\$100).

(25) (a) Caterer's Permit. A Caterer's Permit may only be issued to the holder of a Mixed Beverage Permit. It authorizes the Mixed Beverage Permittee to sell mixed beverages on a temporary basis at a place other than the prem-

ises for which the Mixed Beverage Permit is issued, but only in an area where the sale of such beverages has been authorized by a local option election.

(b) The provisions of this Act which apply to the application and issuance of other permits do not apply to the application and issuance of a Caterer's Permit. The restrictions and regulations which apply to the sale of mixed beverages on the licensed premises also apply to the sale under the authority of a Caterer's Permit, and any act which is prohibited on the licensed premises is also prohibited when the permittee is operating other than on the licensed premises under a Caterer's Permit. Any act which, if done on the licensed premises would be a ground for cancellation or suspension of the Mixed Beverage Permit, is a ground for cancellation of both the Mixed Beverage Permit and the Caterer's Permit if done when the permittee is operating away from the licensed premises under the authority of a Caterer's Permit.

(c) A Caterer's Permit is auxiliary to the primary Mixed Beverage Permit held by the permittee. All receipts from the sale of mixed beverages under the authority of the Caterer's Permit shall be treated for tax purposes as if they were made under the authority of the primary permit. If the primary permit ceases to be valid for any reason, the Caterer's Permit ceases to be valid. All provisions of this Act applicable to the primary permit not inconsistent with this subsection apply to a Caterer's Permit.

(d) The Commission shall adopt rules and regulations governing the application, issuance, and use of Caterer's Permits.

(e) The annual fee for a Caterer's Permit is Two Hundred Fifty Dollars (\$250).

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 15; Acts 1937, 45th Leg., p. 1053, ch. 448, § 16; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, §§ 1-3; Acts 1941, 47th Leg., p. 471, ch. 298, §§ 1-3; Acts 1943, 48th Leg., p. 509, ch. 325, § 13; Acts 1949, 51st Leg., p. 1011, ch. 543, § 5; Acts 1951, 52nd Leg., p. 272, ch. 157, § 1; Acts 1955, 54th Leg., p. 1197, ch. 472, § 1, eff. June 15, 1955; Acts 1957, 55th Leg., p. 92, ch. 45, § 1, eff. April 5, 1957; Acts 1961, 57th Leg., p. 1066, ch. 478, § 1, eff. Aug. 28, 1961; Acts 1961, 57th Leg., p. 1126, ch. 511, § 1, eff. Aug. 28, 1961; Acts 1963, 58th Leg., p. 196, ch. 108, § 1, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 40, ch. 20, § 1, eff. Sept. 1, 1967; Acts 1969, 61st Leg., 2nd C.S., p. 5, ch. 1, art. 6, § 3, eff. Oct. 1, 1969; Acts 1971, 62nd Leg., p. 687, ch. 65, § 8, eff. April 21, 1971; Acts 1973, 63rd Leg., p. 513, ch. 219, § 5, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1527, ch. 551, § 2, eff. June 15, 1973; Acts 1973, 63rd Leg., p. 1643, ch. 599, § 1, eff. June 15, 1973.]

<sup>1</sup> Article 666-15½, subsec. A.

<sup>2</sup> Article 667-1 et seq.

<sup>3</sup> Article 667-22.

<sup>4</sup> Article 667-15.

<sup>5</sup> Article 666-1 et seq.

<sup>6</sup> Article 666-22.

<sup>7</sup> Article 666-20e.

Section 4 of the amendatory Act of 1941, provided that the amendment of any section or any portion of a section of the Texas Liquor Control Act by the enactment of this bill should not affect nor impair any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any cause before such amendment should take effect.

Section 5 provided that partial invalidity should not affect the remaining portions of the Act.

Acts 1961, 57th Leg., p. 1066, ch. 478, § 1 amended paragraph (7) and added paragraph (7b); section 2 of the Act of 1961 added art. 666-57; section 3 amended art. 667-5; section 4 added arts. 667-5A and 667-5B.

Acts 1963, 58th Leg., p. 196, ch. 108, which amended this article by inserting paragraph (7b), relating to the United States bonded liquor export permit, provided in § 2: "Any person who, on the effective date of this Act, is engaged in the business of exporting bonded liquor from the United States in compliance with Federal regulations may continue to engage in such operation until his application for a permit under this Act has been acted upon, provided, however, that such application is filed within thirty (30) days after the effective date of this Act."

Section 2 of Acts 1967, 60th Leg., p. 40, ch. 20, amended article 666-57, section 3 thereof was a savings clause and section 4 repealed conflicting laws.

Acts 1971, 62nd Leg., p. 700, ch. 65, § 29, was a severability provision, and section 30 thereof repealed conflicting laws.

**Art. 666-15a. Sacramental Wine**

Nothing in this Act shall be construed as limiting the right of any minister, priest, or rabbi, or religious organization from obtaining sacramental wine for sacramental purposes only, directly from any lawful source whatsoever, whether from within the limits of the State of Texas or from outside the State; nor shall any fee or tax be charged, directly or indirectly, for the exercise of this right. The Board shall have the power and authority to make rules and regulations concerning the importing of any such wine, for the purpose of preventing any unlawful use of such right.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 15a; Acts 1937, 45th Leg., p. 1053, ch. 448, § 20½.]

**Art. 666-15a1. Commissioners Courts and Cities and Towns Authorized to Levy Fee on Certain Permittees; Permits Displayed; Penalty**

Except as to Agent's, Industrial, Carrier's, Private Carrier's, Local Cartage, and Storage Permits, and as to such Wine and Beer Retailer's Permits as shall be issued to operators of dining, buffet, or club cars, and Class B Winery Permits, and except as to Mixed Beverage Permits during the first, second, and third years of their existence, the Commissioners Court of each county in this State shall have the power to levy and collect from every person that may be issued a permit hereunder in said county a fee equal to one-half (½) of the State fee; and the city or town wherein the licensed premises are located shall have the power to levy and collect a fee not to exceed one-half (½) of the State fee, but no other fee or tax shall be levied by either. Nothing herein contained shall be construed as preventing the levying, assessing, and collecting of general ad valorem taxes on the property of said persons. The Commission or Administrator may cancel the permit, or any renewal thereof, of any person upon finding that the permittee has not paid any fee levied by the county or city as provided in this Section. All permits shall be displayed in a conspicuous place at all times on the licensed premises. Any permittee or licensee who engages in the sale of any alcoholic beverage without having first paid the fees which may have been levied by the county or city as herein provided shall be guilty of a misdemeanor and upon conviction shall be fined not less than Ten Dollars (\$10) nor more than Two Hundred Dollars (\$200). Nothing herein shall be construed as a grant to any subdivi-

sion of any power or authority to regulate licensees or permittees hereunder, save and except the collection of the fees herein authorized, and save and except any power or authority to regulate as granted elsewhere in the Texas Liquor Control Act.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 17; Acts 1949, 51st Leg., p. 1011, ch. 453, § 6; Acts 1971, 62nd Leg., p. 689, ch. 65, § 10, eff. April 21, 1971.]

**Art. 666-15b. Fees Payable in Advance for Year; Exceptions; Computation of Time; Separate Outlets; Refunds**

All permit fees levied by this Act, except Wine and Beer Retailer's Permits issued to other than railway dining, buffet, or club cars, shall be paid in advance for one (1) year unless such fee be collected for only a portion of the year. In such event, the fee required shall cover the period of time from the date of the permit to midnight of August 31st succeeding, and only the proportionate part of the fee levied for such permit shall be collected. The fractional part of any month remaining shall be counted as one month in calculating the fee that shall be due. A separate permit shall be obtained and a separate fee paid for each outlet of liquor in this state. No refund of permit shall for any reason be made by the Board, except when the permittee is prevented from continuing in business by reason of the result of a local option election, or upon the rejection of an application for a permit by the Board or Administrator. So much of the proceeds derived from permit fees under the provisions of this Article as may be necessary are hereby appropriated for the purpose.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 18; Acts 1943, 48th Leg., p. 509, ch. 325, § 4.]

**Art. 666-15c. Application for Permits Other Than Wine and Beer Retailer's Permits; Renewals; Change of Location**

(1) All permits provided for in Article I<sup>1</sup> of this Act, except Wine and Beer Retailer's Permits other than for railway dining, buffet, or club cars shall be applied for and obtained from the Board. Notice of all applications filed with the Board, except Wine and Beer Retailer's, Carrier's, Private Carrier's, Industrial, Agent's, Manufacturer's Agent's, Bonded Warehouse and Storage Permits, shall be given to the County Judge of the county wherein applicant's place of business is located, except where such notice is waived in writing by the County Judge. Such notices shall be given by the Board. Each application shall be accompanied by a cashier's check or a money order for the amount of the fee due the state, payable to the order of the State Treasurer.

(2) No applicant for renewal of permit shall be required to publish notice of such application for renewal. Applications for renewal of permits shall be made under oath and shall contain all information required of the applicant by the Board or Administrator showing such applicant is not disqualified from holding a permit under this Act. Such application shall be accompanied by proper bond and remit-

tance of required fee. Upon finding that such applicant is qualified under the terms of this Act, the Board or Administrator is authorized to issue the permit sought to be renewed. All application forms shall be furnished by the Board.

(3) In the event any person holding a permit under the terms of this Article shall desire to change the location of his place of business, he may file his application for such change with the Board on a form to be prescribed by the Board, and the Board or Administrator may deny such application upon any grounds for which an original may be denied. Any such application may be subject to protest and hearing as though it were an application for a new permit.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 19; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 4; Acts 1943, 48th Leg., p. 509, ch. 325, § 5.]

<sup>1</sup> Article 666-1 et seq.

**Art. 666-15d. Loss of Permit; Duplicate or Corrected Permit; Sworn Statement of Corporate Stock Ownership; Penalty**

In case of loss or destruction of a permit or in case it is necessary to make any change in any such permit the Board is authorized to issue a duplicate or corrected permit. The Board shall have the power and authority to require at any time any officers or officer of a corporation, holding a permit or license under either Article I<sup>1</sup> or Article II<sup>2</sup> of this Act, to file a sworn statement showing the actual owners of its corporation stock, the amount of stock owned by each, the officers of such corporation, and all information concerning the qualifications of such officers and of the actual owners of such stock. Any person making any false statement therein shall be deemed guilty of perjury and punished as provided in this Act.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 20.]

<sup>1</sup> Article 666-1 et seq.

<sup>2</sup> Article 667-1 et seq.

**Art. 666-15e. Private Club Registration; Regulations; Permits; Licensing Fees; Violations; Penalties**

1. For purposes of this Act, the following definition of words and terms shall apply:

(a) "Private Club" shall mean an association of persons, whether unincorporated or incorporated under the laws of the State of Texas, for the promotion of some common object and whose members must be passed upon and elected as individuals, by a committee or board made of members of the club. No employee of the club shall be eligible to serve on such committee or board, and no application for membership shall be approved until said application has been filed with the chairman of the membership committee, or the board, as the case may be, and approved by such chairman. Such club shall own, lease or rent a building, or space in a building of such extent and character as in the

judgment of the Texas Alcoholic Beverage Commission, is suitable and adequate for its members and their guests and shall provide regular food service adequate for its members and their guests. Its aggregate annual membership fees or dues or other income, exclusive of any proceeds from disposition of alcoholic beverages (themselves not for service thereof), shall be sufficient to defray the annual rental of its leased or rented premises, or, if such premises are owned by the club, shall be sufficient to meet the taxes, insurance and repairs and the interest on any mortgage thereof. Its affairs and management shall be conducted by a board of directors, executive committee or similar body chosen by the members at their annual meeting. No member or any officer, agent or employee of the club shall be paid or, directly or indirectly, shall receive in the form of salary or other compensation any money from the disposition of any alcoholic beverages (themselves not for service thereof), to the members of the club and guests introduced by members.

The manager or other person in charge of the premises may allow temporary members to enter the club if he possesses a valid temporary membership card which shall have no erasures or changes with the temporary dates in a prominent position on the card he may enjoy its service and privileges for a period of not more than three days per invitation. A temporary member does not possess guest privileges. At the time of his admission the temporary member shall pay the club a fee of Two Dollars (\$2), which shall represent the fee payable by the permittee to the state. All fees and payments from temporary members shall be collected in cash or through credit cards approved by the Commission or Administrator. Temporary memberships shall be governed by such rules and regulations as may be promulgated by the Commission not inconsistent with the provisions hereof.

Guests shall be limited to those who accompany a member onto the premises or for whom the member has made prior arrangements with the management of the club. Except as set forth in this section, no guest shall be permitted to pay, by cash or otherwise, for any service of alcoholic beverage, but any such service rendered to a guest by the club must be billed by the club in its regular billing cycle, monthly or otherwise, to the member sponsoring such guest.

Provided, however, the manager of a bona fide hotel as defined in this Act who is a member of a private club located within the hotel building may issue guest cards to bona fide patrons of such hotel who are using such hotel accommodations for overnight lodgings or for a longer period of time, and any such guests shall not be allowed to pay, by cash or otherwise, at the time of service in such private club, but all

such charges for service shall be charged to the hotel manager's account in such hotel and shall be collected by such hotel manager at the time of departure of such hotel patron with such other charges as may occur in such hotel, including specifically a bona fide charge for lodging overnight or a longer period of time. These hotel records shall be available for inspection at the request of the Commission. If the club operates under the locker system any such guest shall be served from the locker rented to the manager of the hotel.

The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this subsection.

(b) "Locker System" shall mean that system of alcoholic beverages storage whereby the club rents to its members lockers wherein the member may store alcoholic beverages for consumption by himself or his guests. All such alcoholic beverages so stored under the "locker system" shall be purchased and owned by the member as an individual.

(c) "Pool System" shall mean that system of liquor storage where all members of the pool participate equally in the purchase of all alcoholic beverages and the replacement of all alcoholic beverages is paid for by moneys assessed and collected in advance from each member equally. Such pool system shall be legal only in an area which has been voted "wet" for alcoholic beverages by the majority of voters at an election held under local option.

(c-1) Notwithstanding any other provision of this Act, the pool system shall be legal for any private club operating on the premises of a professional sports stadium which is used wholly or partly for professional sporting events and which has a seating capacity of 40,000 or more, and on the premises of a multiple-unit residential dwelling or dwelling complex having 750 or more units in a county having a population of not less than 1,000,000 nor more than 1,500,000 according to the last preceding federal census.

(c-2) Notwithstanding any other provision of this Section 15(e), the pool system shall be legal for any private club operating in any county where the sale of any alcoholic beverage has been legalized, either throughout the entire county or any portion of such county.

(d) All other words and terms used in this Act shall have the same meaning as that contained in the Texas Liquor Control Act.

2. No permittee, licensee, nor any other person shall deliver, transport or carry any alcoholic beverages to, into, or upon the premises of any establishment, location, room or place purporting to be a club, or holding itself out to the public or any person as a club or private club, unless such club shall hold a Private Club Registration Permit issued by the Board.

3. No person may store, possess, mix or serve by the drink or in broken or unsealed containers, any alcoholic beverages on the premises of any establishment, location, room or place purporting to be a club, or holding itself out to the public or any person as a club or private club, unless such club shall hold a Private Club Registration Permit from the Board.

4. All alcoholic beverages stored or possessed on the premises of any establishment, location, room or place purporting to be a club, or holding itself out to the public or any person as a club or private club, are declared to be an illicit beverage and subject to seizure without a warrant unless a Private Club Registration Permit has been issued by the Board for such premises, location, room or place.

5. A Private Club Registration Permit shall be displayed in a conspicuous place at all times on the licensed premises and shall permit alcoholic beverages owned by members of the club to be stored, possessed, mixed, or consumed and served by the drink or in broken or unsealed containers on the club premises, but only by or to members owning such alcoholic beverages or such members' families or their guests; provided, only a club which conforms to the definition of a "private club" as set forth in Section 1(a) of this Act may obtain a Private Club Registration Permit; and provided further, that acceptance of a Private Club Registration Permit shall constitute an express agreement and consent on the part of the private club that any authorized representative of the Board or any peace officer shall have at all times the right to and privilege of freely entering upon the club premises for the purpose of conducting any investigation or inspecting said premises for the purpose of performing any duty imposed by the Texas Liquor Control Act or by this Act.

5a. No Private Club Registration Permit may be issued to a club which does not have at least fifty members who reside in the county in which the premises of the club are located, or at least one hundred members who reside in that area comprised of the county in which the premises of the club is located and an adjacent county or counties.

6. Any club which conforms to the definition of a "private club" as set forth in Section 1(a) of this Act shall make application for a Private Club Registration Permit on forms furnished by the Board furnishing to the Board all information necessary to insure compliance with this Act and the Texas Liquor Control Act. Each applicant shall furnish a true copy of his application to the Texas Liquor Control Board District Office in the district in which the premises sought to be covered by the permit is located prior to the filing of the original thereof with the Texas Liquor Control Board at Austin, Texas. Each private club in the State of Texas shall pay a yearly fee to the State for each separate place of business. The license fee shall be based on the highest number of members in good standing during

the year for which the license fee is to be paid and shall be at the following rates:

0 to 250 = \$ 500.00	651 to 750 = \$1,500.00
251 to 350 = \$ 700.00	751 to 850 = \$1,700.00
351 to 450 = \$ 900.00	851 to 950 = \$1,900.00
451 to 550 = \$1,100.00	951 to 1000 = \$2,000.00
551 to 650 = \$1,300.00	Over 1000 = \$2.00 per member

All Private Club Registration Permits shall expire on August 31st of each year and applications for renewal of Private Club Registration Permits for the following year shall be filed with the Board within thirty (30) days prior thereto. All fees hereunder shall be prorated and collected as provided in Section 15b of the Texas Liquor Control Act. However, Section 15a1 shall not be applicable. Not less than ninety (90) days prior to the expiration of the year for which the license fee is paid, a permittee may submit an amended application with such additional license fee as shall be required under the amended return.

If after notice and hearing it is found that the average membership of such private permittee club is above that authorized by said permit or licensee issued the same shall be considered a violation of this Act. All books and records pertaining to the operation of any club, including a current listing (correct to the last day of the preceding month) of all members of said club who have liquor stored on the club premises under either the locker or pool system, shall be made available to the Board upon request by the Board or any of its authorized representatives.

6a. It shall be unlawful for any private club, irrespective of location and irrespective of system of storage of alcoholic beverages, to allow or permit any person to remove any alcoholic beverages from the club premises; and any such removal shall constitute a ground for suspension or cancellation of the private club registration permit pursuant to Section 7 hereof.

6b. Repealed by Acts 1971, 62nd Leg., 1st C.S., p. 23, ch. 3, § 10, eff. June 8, 1971.

7. The Commission or Administrator may cancel or suspend for a period of time not exceeding sixty (60) days, after notice and hearing, any Private Club Registration Permit or any renewal of such Private Club Registration Permit, upon finding that the permittee club has:

(a) Sold, offered for sale, purchased or held title to any liquor whatsoever so as to constitute an open saloon. The term "open saloon" as used in this subsection means any place where any alcoholic beverage whatever, manufactured in whole or in part by means of the process of distillation, or any liquor composed or compounded in part of distilled spirits, is sold or offered for sale for beverage purposes by the drink or in broken or unsealed containers, or any place where any such liquors are sold or offered for sale for human consumption on the premises where sold.

(b) Refused to allow any authorized agent or representative of the Texas Alcoholic Beverage Commission or any peace officer to come upon the club premises for the purposes of inspecting alcoholic beverages stored on said premises or investigating compliance with this Act or any provision of the Texas Liquor Control Act.

(c) Refused to furnish the Commission or its agent or representatives when requested any information pertaining to the storage, possession, serving or consumption of alcoholic beverages upon club premises.

(d) Permitted or allowed any alcoholic beverages stored on club premises to be served or consumed at any place other than on the club premises.

(e) Failed to maintain an adequate building at the address for which said Private Club Registration Permit was issued.

(f) Caused, permitted or allowed any member of a club in a dry area to store any liquor on club premises except under the locker system.

(g) Caused, permitted or allowed any person to consume or be served any alcoholic beverages on the club premises at any time on Sunday between the hours of 1:15 a. m. and 12:00 noon, or on any other day at any time between the hours of 12:15 a. m. and 7:00 a. m.; provided, however, that a permittee club holding a Private Club Late Hours Permit shall be entitled to cause, permit and allow service and consumption of alcoholic beverages on the club premises during the additional hours authorized by such permit.

(h) Violated any provision of the Texas Liquor Control Act or this Act.

7a. An appeal from any order of the Board or Administrator under this section refusing, cancelling or suspending a permit or license must be taken to the District Court of the county in which the private club permit is sought. The proceeding on appeal shall be de novo under the same rules as ordinary civil suits, with the following exceptions, which shall be considered literally, viz.:

(a) All appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision or ruling of the Board or Administrator.

(b) Such proceedings shall have precedence over all other causes of a different nature.

(c) All such causes shall be tried before the judge within ten (10) days from the filing thereof, and neither party shall be entitled to a jury.

(d) The order, decision or ruling of the Board or Administrator may be suspended or modified by the District Court pending a trial on the merits, but the final judgment of the District Court shall not be modified or suspended pending appeal.

(e) The District Court may consider any evidence and only such evidence as would be proper if the case were one appearing in the first instance in the District Court and it shall arrive at its decision independently of the proceedings below. The Substantial Evidence Rule shall have no application in the proceedings of the District Court.

8. (a) The license fee as levied in this Act shall be paid in advance by the private clubs to the Texas Liquor Control Board on or before the last day of August each year.

(b) Any fees collected according to Subsection (a) of this Act shall be deposited to the General Revenue Fund.

9. Any person who violates or assists, aids or abets any violation of this Act or any provision thereof shall be subject to the penalty provided in Article 666-41, Texas Penal Code.

10. Any permittee who violates or assists, aids or abets any violation of this Act or any provision thereof shall subject such permit to suspension or cancellation in accordance with the provisions of the Texas Liquor Control Act.

11. Any alcoholic beverages stored, possessed, delivered, transported or carried in violation of this Act are hereby declared to be illicit beverage and may be seized without warrant.

12. (a) In this subsection:

(1) "Fraternal organization" means:

(A) Any chapter, aerie, parlor, lodge, or other local unit of an American national fraternal organization (or Texas state fraternal organization) which, as the owner, lessee, or occupant, has operated an establishment for fraternal purposes for at least one year. If an American national fraternal organization, it must actively operate in not less than thirty-one (31) states of the United States and have not less than three hundred (300) local units in those thirty-one (31) states, and shall have been in active continuous existence for not less than twenty (20) years. If a Texas state fraternal organization, it must actively operate in not less than two (2) counties of this state and have not less than ten (10) local units in those two (2) counties, and shall have been in active continuous existence for not less than five (5) years; or

(B) Any hall association or building association of a local unit described in Paragraph (A), all of the capital stock of which is owned by the local unit or the members thereof, and which operates the clubroom facilities of the local unit.

(2) "Veterans' organization" means an organization composed of members or former members of the armed forces of the United States which is organized for patriotic and public service purposes, including the American Legion,

Veterans of Foreign Wars, Disabled American Veterans, Jewish War Veterans, American GI Forum, Catholic War Veterans, or any veterans' organization chartered by the United States Congress.

(b) The permit fee imposed by Subsection 6, Section 15(e), Article I, Texas Liquor Control Act, as amended, and the requirement that regular food service must be provided and the prohibition on payment by cash, contained in Subsection 1, Section 15(e), Article I, Texas Liquor Control Act, as amended, shall not apply to any fraternal or veterans' organization.

(c) Fraternal and veterans' organizations are exempt from Subdivisions (b) and (c) of Subsection 1 of Section 15(e), Article I, Texas Liquor Control Act. The members of a fraternal or veterans' organization may use any club funds owned by them jointly, including revenue from the service of alcoholic beverages, to replenish their joint stock of alcoholic beverages.

(d) All other provisions of Section 15(e) of Article I, Texas Liquor Control Act, as amended, and of Section 20d of Article I, Texas Liquor Control Act<sup>1</sup> and all other provisions of the Texas Liquor Control Act, shall apply to any such organization, except that the requirement that such club shall hold a Private Club Registration Permit shall be satisfied by a certificate issued by the Commission to the effect that such club is an exempt organization under the provisions of this subsection.

13. Section 15a1 of this article shall not be applicable to any fees imposed or collected under this Section 15e.

[Acts 1961, 57th Leg., p. 559, ch. 262, § 1, eff. Sept. 1, 1961; Acts 1961, 61st Leg., p. 559, ch. 262, § 1A, eff. Sept. 1, 1961; Acts 1969, 61st Leg., p. 1535, ch. 466, § 3, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1659, ch. 524, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1959, ch. 659, § 1, eff. June 12, 1969; Acts 1969, 61st Leg., 2nd C.S., p. 5, ch. 1, art. 6, §§ 1, 2, 6, eff. Oct. 1, 1969; Acts 1969, 61st Leg., 2nd C.S., p. 5, ch. 1, art. 6, § 2, eff. Oct. 1, 1969; Acts 1971, 62nd Leg., p. 699, ch. 65, § 25, eff. April 21, 1971; Acts 1971, 62nd Leg., p. 699, ch. 65, § 25a, eff. April 21, 1971; Acts 1971, 62nd Leg., p. 2580, ch. 845, § 1, eff. June 9, 1971; Acts 1971, 62nd Leg., 1st C.S., p. 21, § 5, eff. June 8, 1971; Acts 1971, 62nd Leg., 1st C.S., p. 22, ch. 3, §§ 6, 8a, eff. June 8, 1971; Acts 1971, 62nd Leg., 1st C.S., p. 22, ch. 3, § 8, eff. June 8, 1971; Acts 1973, 63rd Leg., p. 1721, ch. 625, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Article 666-20d.

Sections 2 and 3 of Acts 1971, 62nd Leg., p. 2580, ch. 845, provided: "Sec. 2. As used in this Act, 'the last preceding federal census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general State and local governmental purposes.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

For severability clause of Acts 1969, 61st Leg., p. 1535, ch. 466, see note under art. 666-4.

#### Art. 666-15f. Private Club Late Hours Permit

A Private Club Late Hours Permit shall authorize the holder thereof to permit persons to consume or

be served alcoholic beverages on club premises on Sunday between the hours of 1:00 a. m. and 2:00 a. m. and on any day except Sunday between the hours of 12:00 p. m. and 2:00 a. m. if the premises covered by such permit are in an area where consumption or service of alcoholic beverages in a public place during such hours is authorized by this Act. All sections of this Act which apply to the Private Club Registration Permit shall also apply to the Private Club Late Hours Permit. The annual State fee for a Private Club Late Hours Permit shall be Five Hundred Dollars (\$500).

[Acts 1969, 61st Leg., p. 1537, ch. 466, § 5, eff. Sept. 1, 1969.]

For severability clause of Acts 1969, 61st Leg., p. 1535, ch. 466, see note under art. 666-4.

#### Art. 666-15½. Non-Resident Seller's and Manufacturer's Agent's Permit

A. (1) Non-resident Seller's Permit: A Non-resident Seller's Permit shall be required of all distilleries, wineries, importers, brokers, and others who sell liquor to the holders of permits authorizing the importation of liquor into Texas, regardless of whether such sales are consummated within or without the State. Such permit shall authorize the holder thereof to:

(a). Solicit or take orders for liquor from only the holders of permits authorized to import liquor into this state;

(b). Ship, or cause to be shipped, liquor into Texas only in consummation of sales made to the holders of permits authorized to import liquor into Texas.

(2) No permit shall be granted to an applicant for a Non-resident Seller's Permit until it shall have been shown by the applicant that he has first filed with the Secretary of State a certificate certifying that he has appointed an agent, resident within this state, together with the street address and business of such agent. All notices of hearing for refusal, cancellation, or suspension may be served upon the designated agent as required herein, or upon the permittee, or if a corporation, upon any officer thereof, or upon any other agent of the non-resident seller authorized as such to sell liquor in this state, and all proceedings as to such hearings shall be as otherwise provided by this Act.<sup>1</sup> Service of notice in such manner shall constitute due process; provided further, that if any permittee shall have failed to maintain within this state a designated agent for service as herein required, service may be had on the Secretary of State, and it shall be the duty of the Secretary of State to send any citation served on him to the holder of the permit by registered mail, return receipt requested, and such receipt shall be prima facie evidence of service upon the permittee.

(3) The Board shall promulgate and enforce rules and regulations requiring the filing of monthly reports supported by copies of invoices relating to liquor sold or purported to be sold to all persons within this state by the holders of Non-resident

Seller's Permits. Such report form shall be prescribed and furnished by the Board.

(4) It shall be unlawful for any person holding a Non-resident Seller's Permit, or for any officer, director, agent or employee thereof, or for any affiliate, whether corporate or by management, direction or control to:

(a). Hold or have an interest in the permit, business, assets or corporate stock of any person authorized to import liquor into this State for the purpose of resale; provided that such restrictions shall not apply when the holder is a Texas corporation holding a Manufacturer's License and a Brewer's Permit acquired prior to April 1, 1971; and provided that such restrictions shall not be applicable to any such interest acquired on or before January 1, 1941.

(b). Fail to make and file a report with the Texas Liquor Control Board in Austin, Texas, as and when required by any authorized rule and regulation of the Board.

(c). Sell liquor for resale within this state which does not meet the standards of quality, purity, and identity of regulations adopted by the Board.

(d). Advertise any liquor contrary to the laws of this state, or of the regulations of the Board, or to sell liquor for resale in Texas contrary to the labeling and advertising regulations of the Board.

(e). Sell liquor for resale in Texas or to cause liquor to be brought into this state in any size container prohibited by law or regulations of the Board.

(f). Solicit or take orders for liquor from any person not authorized to import liquor into Texas for the purpose of resale.

(g). Induce, persuade or influence any person, or to conspire with any person, or to attempt to induce, persuade or influence any person, to violate this Act or any regulation of the Board.

(h). Violate any provision of Section 17, Article I, of this Act.<sup>2</sup>

(i). Exercise any privilege conveyed under a Non-resident Seller's Permit during the pendency of an order of suspension imposed by the Board or Administrator.

(5) All liquor and the containers thereof sold, imported or shipped into this state, or possessed, stored or transported in violation of the restrictions contained in this Section are hereby declared illicit and subject to seizure and forfeiture as otherwise provided for "illicit beverages".

(6) In event of cancellation or suspension of any Non-resident Seller's Permit, the Board shall give immediate notice thereof in writing to all holders of permits authorized to import liquor into this state.

(7) Every holder of a Non-resident Seller's Permit shall permit any state officer to make examination

of all books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws, and other records of said permittee as often as may be deemed necessary by such officer. A written request shall be made to the permittee or his duly authorized manager or representative, or, if a corporation, to any officer thereof, at the time such officer desires to examine the business of said permittee. It shall be the duty of the person to whom said request is presented to immediately permit the said officer to inspect and examine all the said books, records, and other documents of such permittee, and to answer under oath any questions propounded by such officer with reference thereto. The said officer shall have the power and authority to make investigation into the organization, conduct, and management of any person holding a Non-resident Seller's Permit and he shall have authority to inspect and examine any of its books, records, and other documents and to take such copies thereof as in his judgment may show or tend to show that said permittee has been or is engaged in violation of its rights and privileges or in violation of any law of this state. No such state officer as herein provided shall make public or use documents or information derived in the course of examination of records or documents, except in the course of some proceeding in which the Board or the state is a party, either judicial in nature or in an action instituted to suspend or cancel the permit or to collect taxes due or penalties for violation of the laws of this state, or for the information of any officer of this state charged with the enforcement of its laws. If any permittee or his duly authorized representative shall fail or refuse to permit examination of records as herein provided or shall refuse to answer any questions propounded by such officer incident to the examination or investigation in progress, or shall refuse to permit a state officer to take copies of any of said books, records, or other documents, whether same be situated within or without this state, his permit shall be subjected to suspension or cancellation as provided in this Act.<sup>1</sup>

"State Officer" as used in this Section shall mean and include any representative of the Texas Liquor Control Board, the Attorney General of Texas, or any assistant or representative of such Attorney General.

(8) All holders of Non-resident Seller's Permits shall be required to designate in such manner and on such forms as may be required by the Board those persons authorized as agents to represent such permit holder in this state, and any failure to do so shall constitute a violation of this Act.

(9) (a) The annual fee for a Non-resident Seller's Permit is One Hundred Dollars (\$100).

(b) It shall be unlawful for any holder of a Non-resident Seller's Permit to solicit, accept, or fill any order for any distilled spirits or wine from any holder of any wholesaler's permit issued under this Act unless the holder of the Non-resident Seller's Permit is the primary American source of supply for

the brand of distilled spirits or wine sold or sought to be sold. The term "primary American source of supply" as used herein shall mean the distiller, the producer, the owner of the commodity at the time it becomes a marketable product, the bottler, or the exclusive agent of any such distiller, producer, bottler, or owner, the basic requirement being that the Non-resident Seller be the first source, that is the manufacturer or the source closest to the manufacturer, in the channel of commerce from whom the product can be secured by American wholesalers.

**B. Manufacturer's Agent's Permit.** A Manufacturer's Agent's Permit shall authorize the holder thereof to:

(a) Represent only the holders of Non-resident Seller's Permits;

(b) Solicit and take orders for the sale of liquor from only the holders of permits authorized to import liquors for the purpose of resale.

No such permit shall be granted to any person until he shall show to the satisfaction of the Board that he has been duly authorized to act as agent of the principal he proposes to represent.

No person holding a Manufacturer's Agent's Permit shall be entitled to an Agent's Permit.

It shall be unlawful for the holder of a Manufacturer's Agent Permit to transport or carry liquor as samples; provided that nothing herein shall restrict such person from carrying or displaying empty sample containers.

The annual fee for such permit shall be Five (\$5.00) Dollars.

[Acts 1943, 48th Leg., p. 509, ch. 325, § 14; Acts 1971, 62nd Leg., p. 700, ch. 65, § 28, eff. April 21, 1971; Acts 1971, 62nd Leg., 1st C.S., p. 23, ch. 3, § 11, eff. June 8, 1971; Acts 1973, 63rd Leg., p. 70, ch. 46, § 1, eff. April 18, 1973.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

<sup>2</sup> Article 666-17.

Sections 2 and 3 of the 1973 Act provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws or parts of laws in conflict herewith are expressly repealed to the extent of such conflict."

#### Art. 666-16. Surety Company Bond Required; Amount

All bonds required by this Act shall be executed by a surety company duly authorized and qualified to do business in this state. The Commission shall not cancel any surety bond until said surety company shall have paid and discharged in full all of its liabilities upon said bond to the state to the date of said cancellations. The holders of all permits, except Carriers, Local Cartage, Wine and Beer Retailers and Agents as defined in Section 15(10) of Article I of this Act,<sup>1</sup> shall be required to make bonds in sums of not less than One Thousand Dollars (\$1,000) and not exceeding Twenty-Five Thousand Dollars (\$25,000).

The Commission in its discretion may fix the amount of bond which shall be required for each

class of permittees. All bonds required of permittees shall be payable to the State of Texas conditioned that so long as the applicant holds such permit unrevoked he will not violate any of the laws of this state relative to the traffic in, transportation, sale, or delivery of liquor or any of the valid rules or regulations of the Commission, and in the case of such permittees as are required to account for taxes and fees that such permittees will account for and pay all permit fees and taxes levied by this Act. All bonds required of permittees shall be payable in Travis County, Texas. In all instances where other permits are required, incidental to the operation of a business for which a basic permit is procured, the Commission may in its discretion accept one bond to support all such permits and in such amounts as it may require. No bond shall be required of any retail licensee or retail permittee who is not responsible for the primary payment of any alcoholic beverage excise tax to the State of Texas.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 16; Acts 1937, 45th Leg., p. 1053, ch. 448, § 21; Acts 1969, 61st Leg., p. 80, ch. 38, § 3, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 512, ch. 219, § 4, eff. Aug. 27, 1973.]

<sup>1</sup> Article 666-15, subsec. (10).

#### Art. 666-17. Unlawful Acts of Permittees and Others Enumerated

(1) It shall be unlawful for any person holding a Package Store Permit or owning an interest in a package store to have an interest either directly or indirectly in a Manufacturer's License or a General Distributor's License or a Branch Distributor's License or a Local Distributor's License or a Wine and Beer Retailer's Permit or a Retail Dealer's On-Premise License or a Retail Dealer's Off-Premise License or the business thereof. It shall also be unlawful for any person holding a Wine Only Package Store Permit or owning an interest in a Wine Only Package Store Permit to have an interest either directly or indirectly in a Manufacturer's License or a General Distributor's License or a Branch Distributor's License or a Local Distributor's License or a Wine and Beer Retailer's Permit or a Retail Dealer's On-Premise License or the business thereof. The restrictions against any person who is the holder of a Package Store Permit or the owner of an interest in a package store having an interest either directly or indirectly in a Retail Dealer's Off-Premise License, shall not be applicable provided the Package Store Permit and the Retail Dealer's Off-Premise License are issued to the same person and for the same address and for the same trade name. The holder of Retail Dealer's Off-Premise License, who is also the holder of a Package Store Permit may sell beer direct to the consumer, but not for resale and not to be opened or consumed on or near the premises where sold, and such sales may be made only in lots of not less than six (6) containers (as defined in Article II<sup>1</sup>) holding twelve (12) ounces each or in full multiples of such lots; or in lots of not less than three (3) containers (as defined in Article II) holding twenty-four (24) ounces each or

in full multiples of such lots; or in lots of not less than three (3) containers (as defined in Article II) holding thirty-two (32) ounces each, or in full multiples of such lots, except that the holder of a Retail Dealer's Off-Premise License who is also the holder of a Wine Only Package Store Permit may sell beer to the consumer by the container, but not for resale and not to be opened or consumed on or near the premises where sold.

Such holders of Retail Dealer's Off-Premise Licenses who also hold Package Store Permits are authorized to sell beer under the same restrictions and shall be liable for penalties provided in Article I of the Texas Liquor Control Act, governing the sale of liquor by package stores, as to the hours of sale and delivery, blinds and barriers, employment of a person under the age of twenty-one (21) years, sales and delivery on Sunday, advertising, sale and delivery during any primary election day or general election day, sale and delivery to a person under the age of twenty-one (21) years. For the violation of any other provisions of this Act the holders of such Off-Premise Licenses in doing business thereunder shall be subjected to the penalties provided in Article II of this Act.<sup>1</sup> For the violation of any other provision of this Act such holders of Package Store Permits in doing business thereunder shall be subjected to the penalties provided in Article I of this Act.<sup>2</sup>

Such holders of Retail Dealer's Off-Premise Licenses who also hold Wine Only Package Store Permits are authorized to sell beer under the same restrictions and shall be liable for penalties provided in Article I of the Texas Liquor Control Act, governing the sale of liquor by package stores, as to blinds and barriers, employment of a person under the age of twenty-one (21) years, delivery to permittee and licensee on Sunday, advertising, sale and delivery during any primary election day or general election day, sale and delivery to a person under the age of twenty-one (21) years; notwithstanding any other provisions of the Texas Liquor Control Act, holders of Wine Only Package Store Permits who also hold Retail Dealer's Off-Premise Licenses shall have the right to remain open and sell ale, wine, vinous liquors, and beer, for off-premise consumption only, during the same days and hours that the holder of a Wine and Beer Retailer's Permit may sell ale, beer and wine for on-premise or off-premise consumption, except that a holder of such Wine Only Package Store Permit and Retail Dealer's Off-Premise License shall not sell wine or vinous liquor containing more than fourteen (14%) per centum alcohol by volume on Sundays and after 10:00 P.M. on any day. For the violation of any other provisions of this Act the holders of such Off-Premise Licenses in doing business thereunder shall be subjected to the penalties provided in Article II of this Act. For the violation of any other provision of this Act such holders of Wine Only Package Store Permits in doing business thereunder shall be subjected to the penalties provided in Article I of this Act.

Should any person holding a Package Store Permit or a Wine Only Package Store Permit who is also the holder of a Beer Retail Dealer's Off-Premise License violate any provision of the Texas Liquor Control Act, as amended, or any Rule and Regulation of the Board made pursuant thereto, such violation shall constitute grounds for the suspension or cancellation of any or all permits and licenses held by such person.

(2) It shall be unlawful for any person after the effective date of this Act,<sup>3</sup> directly or indirectly, to hold or have an interest in more than five (5) Package Store Permits, the business thereof, or any interest in such Package Stores. For the purpose of this Section a husband shall be deemed to have an interest in all permits in which his wife has any interest, and a wife shall be deemed to have an interest in all permits in which her husband has any interest. For the purpose of construing this Section 17(2),<sup>4</sup> the stockholders of a corporation holding a Package Store Permit, the managers, officers, agents, servants, and employees thereof, shall be deemed to have an interest in such permit, in the business of such corporation, and in such Package Store; provided that this Section 17(2) shall not in any manner affect or apply to any Package Store Permit or the renewal thereof issued before and in effect on May 1, 1949, and the Board or Administrator shall grant and issue upon proper application a renewal of each Package Store Permit which is in effect on May 1, 1949, if the applicant shall be otherwise qualified therefor under the provisions of this Article regardless of the provisions of this Section 17(2).

Should any person hereafter holding more than five (5) Package Store Permits, or any interest therein, have any of such permits in excess of five (5) cancelled by the Board, either voluntarily or for cause, then such person shall not have the privilege of obtaining any additional permit in lieu thereof, neither shall he be permitted to place any permit in suspense with the Board so long as he has an interest in more than five (5) permits.

This provision shall not apply to the stockholders, managers, officers, agents, servants and employees of corporations operating hotels in cases where the Package Stores operated by such corporations are in hotels.

(a) Where a majority of the ownership in each of more than one (1) legal entity, holding Package Store Permits under this Act, is owned by one (1) person, or by persons related within the first degree of consanguinity, the businesses thereof may be consolidated under one (1) legal entity and the permits shall be issued to such entity notwithstanding any other provision of this Act and further provided that after such consolidation it shall be illegal to transfer any of such permits to any other county.

(3) It shall be unlawful for any person who owns or has an interest in the business of a Distiller,

Brewer, Rectifier, Wholesaler, Class B Wholesaler, Class A Winery, Class B Winery, or Wine Bottler, or any agent, servant, or employee:

(a) To own or have an interest, directly or indirectly, in the business, premises, equipment or fixtures of any retailer;

(b) To furnish, give, or lend any money, service, or other thing of value, or to guarantee the fulfillment of any financial obligation of any retailer;

(c) To make or offer to enter into an agreement, condition, or system, the effect of which will amount to the shipment and delivery of alcoholic beverages on consignment;

(d) To furnish, give, rent, lend, or sell to any retail dealer any equipment, fixtures, or supplies to be used in the selling or dispensing of alcoholic beverages;

(e) To pay or make any allowances to any retailer for a special advertising or distribution service, or to allow any excessive discounts;

(f) To offer any prize, premium, gift, or other similar inducement to any retailer or consumer, or the agent, servant, or employee of either.

(g) Notwithstanding the provisions of the above paragraphs (a) to (f), inclusive, it shall not be unlawful for a Distiller, Winery, Brewer, Rectifier, Wholesaler, Class B Wholesaler, Class A Winery, Class B Winery or Wine Bottler, to furnish without cost to a Retailer recipes, recipe books, book matches, cocktail napkins or other advertising items showing the name of the permittee furnishing such items or the brand name of the product advertised, the individual cost of which does not exceed Twenty-five Cents (25¢); provided, however, it shall be unlawful for any person who owns or has an interest in the business of a Distiller, Brewer, Rectifier, Wholesaler, Class B Wholesaler, Class A Winery, Class B Winery, Wine Bottler, Package Store, or Wine Only Package Store, or any agent, servant, or employee to allow any excessive discounts on liquor.

(4) It shall be unlawful for any person operating under a permit under Article I of this Act to refuse to allow the Board, or any authorized representative of the Board, or any peace officer, upon request, to make a full inspection, investigation or search of any licensed premise or vehicle.

(5) (a) It shall be unlawful for any person to employ anyone under twenty-one (21) years of age to sell, handle, transport, or dispense or to assist in selling, handling, transporting or dispensing any liquor, except malt liquor and ale, which employees shall be at least eighteen (18) years of age; provided further, that any person eighteen (18) years of age or over may be employed by the holder of any type of Wholesaler's Permit to work in any capacity, except as the holder of an agent's permit, either on or off the licensed premises; and provided further, that any person sixteen (16) years of age or over

may be employed by the holder of a Wine Only Package Store Permit to work in any capacity on the licensed premises. Except as to the age of employees, the holder of a Wine Only Package Store Permit shall be subject to all other restrictions and penalties set out in Section 17(b)<sup>5</sup> of Article I of the Texas Liquor Control Act which are applicable to the holder of a package store permit.

(b) The provisions of Subdivision (a) of this subsection do not apply to the holder of a Mixed Beverage Permit. The holder of a Mixed Beverage Permit may not employ any person under the age of twenty-one (21) in the actual mixing, preparing, selling, dispensing, or serving of mixed beverages. Employees not involved in the actual mixing, selling, preparing, dispensing, or serving of mixed beverages may be under the age of twenty-one (21).

(6) Repealed by Acts 1969, 61st Leg., p. 80, ch. 38, § 14, eff. Sept. 1, 1969.

(7) It shall be unlawful for any person to possess, buy, sell, or offer to buy or sell any empty carton, case, package, keg, barrel, bottle, or any other kind of container whereon the State tax stamps have not been mutilated or defaced.

(8) It shall be unlawful for any person to break or open any container containing liquor or beer, or to possess such opened container of liquor or beer on the premises of a Package Store or Wine Only Package Store.

(9) It shall be a violation of the law for any person whose permit has been suspended by the Board or Administrator to sell, offer for sale, distribute, or deliver any liquor during the period of such suspension.

(10) It shall be unlawful for any person to sell, barter, exchange, deliver, or give away any drink or drinks of alcoholic beverages to any person from a container that has for any reason been opened or broken on the premises of a Package Store or Wine Only Package Store.

(11) It shall be unlawful for any person to fail or refuse to comply with any requirement of this Act or with any valid rule and regulation of the Board.

(12) It shall be unlawful for any person, directly or indirectly, to be interested in, connected with, or to be a party to a consignment sale as herein defined.

(13) It shall be unlawful for any person to have in his possession, transport, manufacture, or sell any illicit beverage.

(14) (a) It shall be unlawful for any person under the age of twenty-one (21) years to purchase any alcoholic beverage, and upon conviction thereof shall be fined in a sum of not less than Twenty-Five Dollars (\$25) or more than Two Hundred Dollars (\$200); and for the second and all subsequent offenses, not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500). It shall further be unlawful for any person under the age of twenty-one (21) years to possess, unless such person under the age of twenty-one (21) years be a bona

fide employee, as permitted elsewhere in this Act, on the licensed premises where such alcoholic beverage is possessed, or to consume any alcoholic beverage unless at the time of such possession or consumption such person under the age of twenty-one (21) years is accompanied by his or her parent, guardian, adult husband or adult wife, or other adult person into whose custody he or she has been committed for the time by some court, who is actually, visibly and personally present at the time such alcoholic beverage is possessed or consumed by such person under the age of twenty-one (21) years, and upon conviction thereof shall be fined in a sum of not less than Twenty-Five Dollars (\$25) nor more than Two Hundred Dollars (\$200); provided that for a second and all subsequent offenses such persons upon conviction thereof, shall be fined in a sum of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500).

(b) It shall be unlawful to purchase an alcoholic beverage for or give, or knowingly make available, an alcoholic beverage to a person under the age of twenty-one (21) years unless the purchaser, person making available, or giver is the parent, legal guardian, adult husband or adult wife of the person for whom the alcoholic beverage is purchased, made available, or to whom it is given. A person who violates a provision of this paragraph is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500).

(c) It shall be further unlawful for any parent, legal guardian, adult husband, or adult wife of a person under twenty-one (21) years of age to purchase for, or knowingly make available to, or give to, any person under twenty-one (21) years of age any alcoholic beverage except for consumption in the actual, visible and personal presence of said parent, legal guardian, or adult husband, or adult wife. A person who violates a provision of this paragraph is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500).

(d) It shall be further unlawful for any person under the age of twenty-one (21) years to make a false statement to the effect that he or she is twenty-one (21) years old or older, or to present any identification or document indicating that he or she is twenty-one (21) or older, to any person engaged in the selling or serving of alcoholic beverages. A person who violates a provision of this paragraph is guilty of misdemeanor and upon conviction is punishable by a fine of not less than Twenty-Five Dollars (\$25) nor more than Two Hundred Dollars (\$200); provided that for second and all subsequent offenses such persons upon conviction thereof, shall be fined in a sum of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500).

(e) No person under twenty-one (21) years of age may plead guilty to any offense described in Subdi-

vision (a) of this Subsection except in open court before the judge. No such minor shall be convicted of such an offense or fined as provided in Subdivision (a) except in the presence of his parent or guardian having legal custody of the minor. The court shall cause the parent or guardian residing within its jurisdictional limits to be summoned to appear in court and shall require the parent or guardian to be present during all proceedings in the case. However, the court may waive the requirement of the presence of the parent or guardian in any case in which, after diligent effort, the court is unable to locate them or compel their presence. The court shall give written notice of such offense to the parent or guardian having legal custody of such minor who resides outside the jurisdictional limits of the court.

(f) Upon attaining the age of twenty-one (21) years, any person who during his minority was convicted of not more than one violation of the Texas Liquor Control Act is eligible to have the conviction expunged from his record upon making application to the judge of the court in which he was convicted. The application shall contain the applicant's sworn statement that during his minority he was not convicted of any violation of the Texas Liquor Control Act other than that sought to be expunged from his record. If it appears to the court that applicant's statement is true and correct, the court shall order the conviction expunged from his record along with all complaints, verdicts, sentences and other documents relating thereto. After the court has entered the order, the applicant is released from all disabilities resulting from the conviction, and the fact of the conviction shall not be shown or inquired into for any purpose.

(15) Except as required to supply the needs of Airline Beverage Permittees or Mixed Beverage Permittees as authorized under this Act, it shall be unlawful for any person to import, sell, offer for sale, barter, exchange, or possess for the purpose of sale any liquor the container of which contains less than one-half ( $\frac{1}{2}$ ) pint; provided, however, that in the case of malt or vinous liquor a six (6) ounce container shall be the minimum; provided further that any bona fide common carrier of persons, engaged in interstate commerce, may be authorized by the Commission to transport liquor in containers of less than one-half ( $\frac{1}{2}$ ) pint but not for sale, use or consumption in Texas. The prohibitions contained herein shall not apply to any licensee or permittee under this Act when engaged in supplying the needs of Airline Beverage Permittees or Mixed Beverage Permittees and shall not apply to the possession or sale by Airline Beverage Permittees or Mixed Beverage Permittees as authorized elsewhere in this Act; provided, however, in no event shall any container of liquor contain any less than one fluid ounce.

The Commission may adopt such reasonable regulations as may be necessary to give effect to the above provision.

(16) It shall be unlawful for any person to have curtains, hangings, signs, or any other obstruction which prevents a clear view of the interior of any Package Store or Wine Only Package Store; provided, however, that this shall not apply to a drug store which holds a Package Store Permit or Wine Only Package Store Permit so as to prevent the display of drug merchandise.

(17) It shall be unlawful for any person to sell or offer to sell any alcoholic beverage that shall have been authorized by any permit or license held by him after notice of cancellation or suspension of such permit or license by the Board or Administrator shall have been given.

(18) It shall be unlawful for any carrier to import into this State and deliver any liquor to any person not authorized to import the same, or to transport and deliver liquor to any person in a dry area in this State, unless the same be for a lawful purpose as provided in this Act.

(19) It shall be unlawful for any person to manufacture, import, sell, or possess for the purpose of sale any alcoholic beverages made from dried grapes, dried fruits, or dried berries, or any compounds made from synthetic materials, substandard wines, imitation wines, or from must concentrated at any time to more than eighty (80°) degrees Balling.

(20) It shall be unlawful for any person to import or to transport into this State from any place outside the State any liquor, in containers to which have not been affixed proper State tax stamps consigned to, intended for delivery to, or being transported to any person or place located within the State boundaries, unless the same shall be consigned to the holder of a Wholesaler's Permit authorizing the sale of such liquor at his place of business.

(21) It shall be unlawful for any person under the age of twenty-one (21) years to import or possess for the purpose of importing any alcoholic beverage into the State of Texas. Any alcoholic beverage imported into or possessed for the purpose of importation into the State of Texas by any person under the age of twenty-one (21) years or possessed in violation of Section 17(20) is declared to be an illicit beverage and may be seized without warrant unless otherwise provided in this Act.

(22) It shall be unlawful for any person to use or to exercise any privilege granted by a permit except at the place, address, premise, or location for which the permit is granted; provided, however, that the holder of a Package Store Permit or Wine Only Package Store Permit issued to a location within a city or town or within two (2) miles of the corporate limits of such city or town, who is also the holder of a Local Cartage Permit as provided in this Article, may make by the most direct route deliveries of and collections for alcoholic beverages off the premises covered by the Permit in areas where the sale thereof is not prohibited under the local option provision of this Act, but only in the city or the two (2) mile limit thereof, and only on bona fide orders placed by the customer in person at the premises covered by

the permit or upon orders placed by mail, written orders, telegraph, or telephone to such premises, provided further, however, nothing in this Act shall prevent the holder of a Package Store Permit or a Wine Only Package Store Permit from delivering alcoholic beverages to the holder of a Carrier's Permit for transportation to persons legally authorized to purchase alcoholic beverages from such permittees. Should any holder of a Local Cartage Permit who is also the holder of a Package Store Permit or Wine Only Package Store Permit violate any provisions of the Texas Liquor Control Act,<sup>6</sup> as amended, or any rule or regulation of the Board made pursuant thereto such violation shall constitute grounds for the suspension or cancellation of any or all permits and licenses held by such person.

(23) It shall be unlawful for any person to consent to the use of or to allow his permit to be displayed by or used by any person other than the one to whom the permit was issued.

(24) It shall be unlawful for any holder of either an Agent's Permit or a Manufacturer's Agent's Permit in soliciting or taking orders for the sale of liquor to represent himself as an agent of any person other than the person designated in his application for permit.

(25) It shall be unlawful for the holder of a Brewer's, Distiller's, Rectifier's, Wholesaler's, Class B Wholesaler's, or Wine Bottler's Permit, or any agent, servant, or employee thereof, to sell or deliver liquor to any person who is not the holder of a permit authorizing the resale of liquor in this State.

(26) It shall be unlawful for any retail dealer, or any agent, servant, or employee thereof, to conspire with any person to violate any of the provisions of this Section or to accept the benefits of any act prohibited by this Section.

(27) It shall be unlawful for the holder of any permit provided for in this Act authorizing the importation of liquor, or the agent or employee of such person, to purchase from, order from or give an order to, any person who is not the holder of a Non-resident Seller's Permit, or any holder of a Non-resident Seller's Permit during the period of any suspension ordered by the Board or Administrator against any such Non-resident Seller's Permit after such authorized importer has received notice of such suspension.

(28) It shall be unlawful for any holder of a Distiller's Permit or Rectifier's Permit, or any person, firm or corporation engaged in distilling or rectifying liquor, either within or without the State of Texas, or for any officer, director, agent, or employee thereof, or for any affiliate, whether corporate or by management, direction or control, to own, have or hold any interest in the permit, business, assets or corporate stock of the holder of any Wholesaler's Permit.

It shall be unlawful for the holder of any Wholesaler's Permit to be affiliated with the holder of any Distiller's Permit or Rectifier's Permit, or any per-

son, firm or corporation engaged in distilling or rectifying liquor, either within or without the State of Texas, either directly or indirectly, or by or through any officer, director, agent or employee or by management, direction or control.

(29) It shall be unlawful for the holder of any Wholesaler's Permit to own, have, possess, or sell any liquor manufactured, distilled or rectified by any person, firm or corporation who or which is directly or indirectly affiliated with such holder of a Wholesaler's Permit, whether such affiliation be corporate or by management, direction or control, or by or through any officer, director, agent, or employee; provided, that this shall not apply to the holder of a Wholesaler's Permit who held a Wholesaler's Permit on January 1, 1941, and continuously since that date, and who was so affiliated on that date, and also was on January 1, 1941, selling liquors manufactured, distilled, or rectified by such affiliate.

(30) If any person, while holding a permit, shall be finally convicted of a felony, the Board or Administrator may cancel any permits held by such person upon satisfactory proof of such conviction.

(31) It shall be unlawful for any person whose permit has been suspended by the Board or Administrator to sell, offer to sell, distribute or deliver any liquor during the period of such suspension.

(32) For tax purposes only, distilled spirits contained in a container having attached thereto the Federal Liquor Strip Stamp or imported from any foreign country are hereby subject to taxation, and must have affixed thereto the appropriate Texas Tax Stamp for distilled spirits.

(33) It shall be unlawful for any person to transport or ship or cause to be transported or shipped any alcoholic beverage into any area in this State in which the State has ceded police jurisdiction to the Federal Government or to any of its agencies unless the containers or packages holding such alcoholic beverages shall have affixed thereto Texas Tax Stamps as required by this Act, and it shall be unlawful for any person to transport distilled spirits into this State unless the same shall be consigned and delivered to the holder of a Wholesaler's Permit. Nothing in this Section shall be interpreted to impose upon common carriers the duty to see that such tax stamps are affixed.

(34) It shall be unlawful for the holder of an Agent's Permit or Manufacturer's Agent's Permit to have any interest, directly or indirectly, in a Package Store Permit or a Wine Only Package Store Permit or to be residentially domiciled with any person who has any financial interest in a Package Store Permit or Wine Only Package Store Permit.

(35) It shall be unlawful for the holder of a Brewer's, Distiller's, Class A Winery, Class B Winery, Rectifier's, Wholesaler's, Class B Wholesaler's, or Wine Bottler's Permit, directly or indirectly, or through a subsidiary or affiliate, any agent or any employee, or by any officer, director or firm member, to own any interest of any kind in the premises

of a Package Store, Wine Only Package Store, or Mixed Beverage Permittee, or any interest of any kind in the premises in which any such Package Store, Wine Only Package Store, or Mixed Beverage Permittee conducts its business.

It shall be unlawful for any person who owns or has an interest in the business of a Distiller, Brewer, Rectifier, Wholesaler, Class B Wholesaler, Class A Winery, Class B Winery, Wine Bottler, Local Distributor's Permit or any agent, servant or employee: (a) to own or have an interest directly or indirectly in the business, premises, equipment or fixtures of any Mixed Beverage Permit; (b) to furnish, give or lend any money or service or other thing of value, or to guarantee the fulfillment of any financial obligation of any Mixed Beverage Permittee; (c) to make or offer to enter into an agreement, condition, or system, the effect of which will amount to the shipment and delivery of alcoholic beverages on consignment; (d) to furnish, give, rent, lend, or sell to any Mixed Beverage Permittee any equipment, fixtures, or supplies to be used in the selling or dispensing of alcoholic beverages; (e) to pay or make any allowances to any Mixed Beverage Permittee for a special advertising or distributing service, or to allow any excessive discounts; (f) to offer any prize, premium, gift or other similar inducement, other than to the extent authorized by Section 17(3)(g) of this Article I,<sup>7</sup> to any Mixed Beverage Permittee or the agent, servant, or employee thereof or to advertise in the convention program or sponsor a function at a meeting or convention of any corporate trade association of holders of Mixed Beverage Permits. Provided, however, nothing in this Subsection (f) shall apply to any trade association incorporated prior to 1950.

(36) It shall be unlawful for any person who is the holder of a license or permit to possess or display on the licensed premises any card, calendar, placard, picture, or handbill that is immoral, indecent, lewd or profane.

(37) It shall be unlawful for any wholesaler, Class B wholesaler, Class A winery, wine bottler or local distributor to sell any liquor, nor shall any package store permittee, wine only package store permittee, private club permittee, mixed beverage permittee, or other retailer purchase any liquor, except for cash or on terms requiring payment by the purchaser as follows: on purchases made from the first to the fifteenth day inclusive of each calendar month, payment must be made on or before the twenty-fifth day of the same calendar month; and, on purchases made from the sixteenth to the last day inclusive of each calendar month, payment must be made on or before the tenth day of the succeeding calendar month. Every delivery of liquor must be accompanied by an invoice of sale giving the date of purchase of such liquor. In the event any package store permittee, wine only package store permittee, private club permittee, mixed beverage permittee or other retail dealer becomes delinquent in the payment of any account due for liquor purchased (that

is, if he fails to make full payment on or before the date hereinbefore provided) then it shall be the duty of the wholesaler, Class B wholesaler, Class A winery, wine bottler or local distributor to report that fact immediately to the Commission or the Administrator in writing. Any package store permittee, wine only package store permittee, private club permittee, mixed beverage permittee or other retail dealer who becomes delinquent shall not be permitted to purchase liquor from any wholesaler, Class B wholesaler, Class A winery, wine bottler or local distributor until said delinquent account is paid in full, and the delinquent account shall be cleared from the records of the Commission before any wholesaler, Class B wholesaler, Class A winery, wine bottler or local distributor will be permitted to sell liquor to him. Any wholesaler, Class B wholesaler, Class A winery, wine bottler or local distributor who accepts post-dated checks, notes, or memoranda or who participates in any scheme, trick, or device to assist any package store permittee, wine only package store permittee, private club permittee, mixed beverage permittee or other retail dealer in the violation of this Section shall likewise be guilty of a violation of this Section. The Commission shall have the power and it shall be its duty to adopt rules and regulations giving full force and effect to this Section. Any sales of malt beverages to the holder of a Mixed Beverage Permit or a Daily Temporary Mixed Beverage Permit by any holder of a license under Article II of the Texas Liquor Control Act<sup>8</sup> or the holder of a Local Distributor's Permit which authorizes sales to any licensee or permittee for resale shall be subject to the provisions of Section 24 $\frac{1}{4}$  and Section 19-C of Article II of the Texas Liquor Control Act.<sup>9</sup>

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 22; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, §§ 5, 6; Acts 1943, 48th Leg., p. 509, ch. 325, § 15; Acts 1949, 51st Leg., p. 1011, ch. 543, § 7; Acts 1951, 52nd Leg., p. 110, ch. 66, §§ 1 to 3; Acts 1953, 53rd Leg., p. 401, ch. 114, § 1; Acts 1953, 53rd Leg., p. 643, ch. 249, § 1, eff. Aug. 26, 1953; Acts 1955, 54th Leg., p. 1149, ch. 433, §§ 1, 12; Acts 1965, 59th Leg., p. 1570, ch. 681, § 1, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 80, ch. 38, §§ 4, 5, 14, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 689, ch. 65, §§ 11 to 14, eff. April 21, 1971.]

<sup>1</sup> Article 667-1 et seq.

<sup>2</sup> Article 666-1 et seq.

<sup>3</sup> Articles 666-1 et seq., 667-1 et seq.

<sup>4</sup> This subsection.

<sup>5</sup> See subsec. (14)(b) of this article.

<sup>6</sup> Articles 666-1 et seq., 667-1 et seq.

<sup>7</sup> Subsection (3)(g) of this article.

<sup>8</sup> Article 667-1 et seq.

<sup>9</sup> Articles 667-24 $\frac{1}{4}$  and 667-19C.

**Art. 666-17a. Possession of Equipment or Material for Manufacturing Illicit Beverages; False Statement in Application for Permit or License; Perjury**

(1) It shall be unlawful for any person to have in his possession any equipment or material designed for, capable of use for, or used in the manufacturing of any illicit beverage.

(2) Any person who makes any false statement or representation in his application for a permit or

license, or in any statement, report, or other instrument to be filed with the Board, which is required to be sworn to, shall be deemed guilty of perjury and his punishment fixed as prescribed for such offense in Article 308 of the Penal Code, 1925.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 23.]

**Art. 666-17b. Anti-Tied House Restrictions; Applications for Permits; Investigation; Enforcement; Exceptions**

(1) In considering any original application or renewal application for any permit authorized to be issued under the terms of Article I of the Texas Liquor Control Act, except such permits as are specifically excluded by subparagraph (4) of this Section, the Board or Administrator may make such investigation or request such additional information as may be deemed necessary to enforce the provisions of this Section and to provide strict adherence to a general policy prohibiting the "tied house" and related practices hereinafter declared to constitute unfair competition and unlawful trade practices. The term "tied house" as used herein shall mean any overlapping ownership or other prohibited relationship between those engaged in the alcoholic beverage industry at different levels, that is, between a manufacturer and a wholesaler or retailer, or between a wholesaler and a retailer, as the words wholesaler, retailer, and manufacturer are generally used and understood, regardless of the specific designations used in Article I of the Texas Liquor Control Act for the various types of permits herein authorized to be issued.

(2) In furtherance of the general anti-tied house and anti-subterfuge policy, it is specifically declared that:

(a) It shall be unlawful for any person owning or having any interest in any permit issued under the terms of Article I of the Texas Liquor Control Act to secure or to hold, either directly or indirectly, any ownership or ownership interest in the business or stocks (including stock options, convertible debentures, or other similar interests) in a permit or the business of a permittee of a different level which maintains licensed premises in Texas.

(b) It shall be unlawful for any person to act or serve as officer, director, or employee of the businesses of permittees of a different level.

(c) It shall be unlawful for any permittee to own the premises, fixtures, or equipment of a permittee of a different level.

(d) It shall be unlawful for any permittee to secure or in any manner to obtain the use of any premises, fixtures, or equipment on the credit of a permittee of a different level.

(e) It shall be unlawful for any permittee to loan to, or by means of his credit to secure a loan for, any permittee of a different level. In the event that any permittee secures a loan from any out-of-state source, there shall be a

presumption of tied house or subterfuge, and the permittee securing such loan shall have the burden of showing that he has been guilty of no violation of this Section of the Texas Liquor Control Act.

(f) It shall be unlawful for any permittee to enter, with any other permittee of a different level or with any other person or legal entity, into any conspiracy or agreement to control or manage, financially or administratively, directly or indirectly, in any form or degree, the business or interests of any other permittee of a different level.

(g) It shall be unlawful for any permittee to enter, with any other permittee, into any profit-sharing agreement of any kind or any agreement relating to the repurchase of any assets or any agreement attempting to effectuate the shipment or delivery of any alcoholic beverage or beverages on consignment.

(3) The Board or Administrator, upon the finding of any violation of law specified in any subparagraph of Subsection (2) above, shall cancel or suspend for a period of time not less than six (6) months the permit of the permittee or permittees involved. Any person who has held or who has had any interest of any kind in any permit which has been cancelled under the terms of this provision shall thereafter for a period of one (1) year be ineligible to hold or to have any interest of any kind in any permit which is authorized to be issued under the terms of this Act.

(4) The provisions of this Section shall not be applied to any application for the renewal of any permit held by an applicant who was engaged in the legal alcoholic beverage business in this state under charter or permit prior to August 24, 1935, or to any application for renewal of either a Non-resident Seller's Permit or a Wholesaler's Permit held by an applicant who was the holder of the same type of permit on January 1, 1941, and who has continuously since that date been the holder of such a permit. [Acts 1969, 61st Leg., p. 80, ch. 38, § 16, eff. Sept. 1, 1969.]

**Art. 666-18. Qualifications of Permittees; Scope of Permits; Subterfuge Ownership; Premises and Control of Permittees; Package Store Permits; Civil Remedies**

*[Text of article amended by Acts 1969, 61st Leg., p. 80, ch. 38, § 16A]*

No person who has not been a citizen of Texas for a period of three (3) years immediately preceding the filing of his application therefor shall be eligible to receive a permit under this Act. No permit except a Brewer's Permit, and such other licenses and permits as are necessary to the operation of a Brewer's Permit, shall be issued to a corporation unless the same be incorporated under the laws of the state and unless at least fifty-one percent (51%) of the stock of the corporation is owned at all times

by citizens who have resided within the state for a period of three (3) years and who possess the qualifications required of other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to domestic or foreign corporations that were engaged in the legal alcoholic beverage business in this state under charter or permit prior to August 24, 1935. Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation (except carrier) holding a permit under this Act which shall violate any provisions hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the Attorney General, when any such violation is called to his attention, to file a suit for such cancellation in a District Court of Travis County. Such provisions of this section as require Texas citizenship or require incorporation in Texas shall not apply to the holders of agent's, industrial, medicinal and carrier's permits. No person shall sell, warehouse, store or solicit orders for any liquor in any wet area without first having procured a permit of the class required for such privilege, or consent to the use of or allow his permit to be displayed by or used by any person other than the one to whom the permit was issued. It is the intent of the Legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of the Texas Liquor Control Act shall be liberally construed to carry out this intent, and it shall be the duty of the Board or the Administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices. No applicant for a Package Store Permit or a renewal thereof shall have authority to designate as "premise" and the Board or Administrator shall not approve a lesser area than that specifically defined as "premise" in Section 3-a(7)<sup>1</sup> of Article I of the Texas Liquor Control Act as enacted by the 44th Legislature, 2nd Called Session, 1935. Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful. No person under the age of twenty-one (21) years, unless accompanied by his or her parent, guardian, adult husband or adult wife, or other adult person into whose custody he or she has been committed for the time by some court, shall knowingly be allowed on the premises of the holder of a Package Store Permit. Any permittee who shall be injured in his business or property by reason of anything prohibited in this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunc-

tive procedures and/or to recover threefold the damages by him sustained; plus costs of suit including a reasonable attorney's fee.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 18; Acts 1967, 60th Leg., p. 161, ch. 85, § 2, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 80, ch. 38, § 16A, eff. Sept. 1, 1969.]

<sup>1</sup> Article 666-3a(7).

*Amendment by Acts 1969, 61st Leg., p. 2451, ch. 819, § 1, see art. 666-18, post.*

**Art. 666-18. Qualifications of Permittees; Scope of Permits; Subterfuge Ownership; Premises and Control of Permittees; Package Store Permits; Application to Hotels; Civil Remedies**

*[Text of article amended by Acts 1969, 61st Leg., p. 2451, ch. 819, § 1]*

No person who has not been a citizen of Texas for a period of three (3) years immediately preceding the filing of his application therefor shall be eligible to receive a permit under this Act. No permit except a Brewer's Permit, and such other licenses and permits as are necessary to the operation of a Brewer's Permit, shall be issued to a corporation unless the same be incorporated under the laws of the state and unless at least fifty-one percent (51%) of the stock of the corporation is owned at all times by citizens who have resided within the state for a period of three (3) years and who possess the qualifications required of other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to domestic or foreign corporations that were engaged in the legal alcoholic beverage business in this state under charter or permit prior to August 24, 1935. Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation (except carrier) holding a permit under this Act which shall violate any provisions hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the Attorney General, when any such violation is called to his attention, to file a suit for such cancellation in a District Court of Travis County. Such provisions of this section as require Texas citizenship or require incorporation in Texas shall not apply to the holders of agent's, industrial, medicinal and carrier's permits. No person shall sell, warehouse, store or solicit orders for any liquor in any wet area without first having procured a permit of the class required for such privilege, or consent to the use of or allow his permit to be displayed by or used by any person other than the one to whom the permit was issued. It is the intent of the Legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of the Texas Liquor Control Act shall be liberally construed to carry out this intent, and it shall be the duty of the Board or the Administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to consti-

tute unlawful trade practices. No applicant for a Package Store Permit or a renewal thereof shall have authority to designate as "premise" and the Board or Administrator shall not approve a lesser area than that specifically defined as "premise" in Section 3-a(7)<sup>1</sup> of Article I of the Texas Liquor Control Act as enacted by the 44th Legislature, 2nd Called Session, 1935, as amended. Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful. No person under the age of twenty-one (21) years, unless accompanied by his or her parent, guardian, adult husband or adult wife, or other adult person into whose custody he or she has been committed for the time by some court, shall knowingly be allowed on the premises of the holder of a Package Store Permit. Any Package Store permittee who shall be injured in his business or property by another Package Store permittee by reason of anything prohibited in this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and/or to recover threefold the damages by him sustained; plus costs of suit including a reasonable attorney's fee. The provision prohibiting the licensing of only a portion of a building as premise for a package store permit shall not apply to hotels as already defined in the Texas Liquor Control Act.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 18; Acts 1967, 60th Leg., p. 161, ch. 85, § 2, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2451, ch. 819, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Article 666-3a(7).

*Amendment by Acts 1969, 61st Leg., p. 80, ch. 38, § 16A, see article 666-18, ante.*

**Art. 666-19. Cancellation or Suspension of Permit on Conviction; Suit on Bond; Liability of Surety**

If a person has been finally convicted in any Court for the violation of any provision of this Act or of any rule and regulation of the Board, the Board or Administrator may cancel or suspend any permit which he may hold or in which he may have an interest and no appeal from such action shall be allowed.

When any person who holds a permit or who has an interest in a permit shall be finally convicted for the violation of any provision of this Act or of any rule and regulation of the Board, or if his permit or a permit in which he has an interest has been cancelled by the Board or Administrator and no appeal is pending, the Board may in its own name institute action upon the bond supporting such permit for the benefit of the State. Upon proof of such conviction or cancellation of the permit, the Court before whom such suit is brought shall render judg-

ment in favor of the Board for all fines, costs, and fifteen (15) per centum of the face value of the bond.

If any permittee shall fail to remit seasonably any money due the State, the surety on his bond shall be liable for all such taxes or money due the State and in addition thereto a penalty of fifteen (15) per centum of the face value of the bond. Suits for the collection of any of the amounts herein specified shall be brought in any Court of competent jurisdiction of Travis County, Texas.

Nothing in this Act shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries as the case may be.

The surety may terminate its liability under such bond by giving thirty (30) days' written notice thereof, served either personally or by registered mail, to the principal and to the Board; and upon giving such notice the surety shall be discharged from all liability under such bond for any act or omission of the principal occurring after the expiration of thirty (30) days from the date of service of such notice. Unless on or before the expiration of such period, the principal shall duly file a new bond in like amount and conditioned as the original in substitution of the bond so terminated, the permit of the principal shall likewise terminate upon the expiration of such period.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 19; Acts 1937, 45th Leg., p. 1053, ch. 448, § 24.]

#### Art. 666-20. Searches and Seizures

A search warrant may issue under Title 6 of the Code of Criminal Procedure<sup>1</sup> for the purpose of searching for, seizing, and destroying any alcoholic beverage possessed, sold, transported, manufactured, kept, or stored in violation of the provisions of this Act; for the purpose of searching for and seizing any equipment and instrumentality used for, capable of use for, or designed for use in the manufacturing of any illicit beverage or any vehicle or instrumentality used or to be used for the illegal transportation or storage of any illicit beverage, unlawful equipment, or materials used or to be used in the illegal manufacturing of any illicit beverage and for the purpose of searching for and seizing any forged or counterfeit stamp, die, plate, official signature, certificate, evidence of tax payment, license, or other instrument pertaining to this Act, or any instrumentality, or equipment, or parts thereof used or to be used, designed, or capable of use for the manufacturing, printing, etching, inditing, or any other way bringing into existence any forged or counterfeit stamp, die, plate, certificate, official signature, evidence of tax payment, permit, license, or any other instrument pertaining to this Act.

Search warrants may be issued by any magistrate upon the affidavit of a credible person, setting forth the name or description of the owner or person in

charge of the premises to be searched, or stating that his name and description are unknown, the address or description of the premises, and showing that the described premise is a place where some specified phase or phases of this Act are violated or are being violated. If the place to be searched is a private dwelling occupied as such and no part thereof is used as a store, shop, hotel, boarding house, or any purpose other than a private residence such affidavit shall be made by two (2) credible persons.

Except as herein provided the application, issuance, and execution of any such warrant and all proceedings relative thereto shall conform as near as may be to the provisions of Title 6 of the Code of Criminal Procedure.

All such alcoholic beverages and articles shall be seized by the officer executing the warrant and shall not be taken from the custody of any officer by writ of replevin nor any other process but shall be held by such officer to await final judgment in the proceedings. It is not intended by the provisions of this Section that a search warrant shall be required for any peace officer or any agent, representative, or inspector of the Board to search any premise covered by any permit or license under the provisions of this Act.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 25.]

<sup>1</sup> Articles 304 to 332 (see, now, art. 18.01 et seq.)

#### Art. 666-20a. Tax on Liquor Prescriptions

(a) There is hereby levied a tax upon every prescription for liquor, when the same is filled by a pharmacist, in the sum of twenty-two (22) cents.

(b) The tax herein levied shall be paid by the affixation of a tax stamp to each prescription before the liquor prescribed thereon is sold or dispensed by the pharmacist.

(c) The Texas Liquor Control Board shall by rule and regulation require the keeping of such records and the rendering of such reports as it may deem advisable in order to enforce compliance with this Article.

(d) The tax herein levied shall be a liability upon the owner or owners of the pharmacy or drug store selling liquor upon the prescription of a doctor, and unless such tax is paid it may be recovered by suit filed by the Texas Liquor Control Board in Travis County, Texas, against any person liable for the payment of tax. Failure to pay any tax due shall constitute grounds for revocation of any permit authorizing the sale of liquor on prescription.

(e) Tax stamps herein required shall be prescribed by the Texas Liquor Control Board, and upon requisition of the Board shall be printed under the direction of the Board of Control and furnished to the State Treasurer. The State Treasurer shall furnish such stamps only to the holders of medicinal permits in Texas. Such stamps shall have printed thereon such serial number or other means of identification as the Texas Liquor Control Board may require, and each stamp shall be in duplicate counterparts so that

one of each such counterparts may be affixed to the container of liquor and to the prescription upon which such liquor is sold. The Texas Liquor Control Board is hereby authorized to promulgate such regulation as may be deemed necessary as to the affixation of stamps, the cancellation thereof, and the accounting therefor.

(f) It shall be unlawful for any person to sell any liquor upon a prescription therefor until and unless there shall first be affixed to such prescription the tax stamp herein required. It shall be unlawful for any person to sell any liquor upon a prescription therefor unless and until there shall first be affixed to such container of liquor the counterpart of a tax stamp as herein required.

[Acts 1941, 47th Leg., p. 269, ch. 184, art. IX, § 1.]

**Art. 666-20b. Mixed Beverage Permittee; Refill of Containers Prohibited and Destruction Required; Facilities for Destruction; Use of Automatic Measuring Devices; Consumption on Premises Required**

(a) No Mixed Beverage Permittee may refill with any substance a container which contained distilled spirits on which the tax prescribed in Section 21, Article I, of this Act<sup>1</sup> has been paid.

(b) A Mixed Beverage Permittee or any person employed by the permittee who empties a bottle containing distilled spirits on which the tax prescribed in Section 21, Article I, of this Act has been paid, shall immediately after emptying the bottle destroy it. A bottle is considered destroyed if it is no longer capable of containing any liquid.

(c) Every Mixed Beverage Permittee shall provide at all service counters where distilled spirits are poured from bottles the necessary facilities for the destruction of bottles so that persons emptying distilled spirits bottles may immediately destroy them.

(d) Any Mixed Beverage Permittee, his officer, agent, or employee, who is found in possession of an emptied distilled spirits bottle which contained distilled spirits on which the tax prescribed in Section 21, Article I, of this Act has been paid, which has not been destroyed is guilty of a separate violation of this Section for each bottle.

(e) An empty distilled spirits bottle which has locked on it an automatic measuring and dispensing device of a type approved by the Administrator or Commission, so as to prevent the refilling of the bottle without unlocking and removing the device from the bottle, is not required to be destroyed as required in Subsections (a) through (d) of this Section, but shall be destroyed immediately upon the unlocking and removal of the device. Subsection (d) of this Section does not apply to the possession of an empty distilled spirits bottle until the device has been unlocked and removed from the bottle.

(f) No holder of a Mixed Beverage Permit shall sell any alcoholic beverage to any other holder of a Mixed Beverage Permit or to any other person,

except for consumption on the licensed premises of the selling permit holder, or as provided in Subsection (g) of this section.

(g) No holder of a Mixed Beverage Permit shall permit any person to take any alcoholic beverages purchased on the licensed premises from the premises where sold; provided, however, where a person orders wine with his food and has a portion of the open container remaining, he shall have the right to remove same from the premises.

[Acts 1971, 62nd Leg., p. 693, ch. 65, § 16, eff. April 21, 1971; Acts 1973, 63rd Leg., p. 1527, ch. 551, § 1, eff. June 15, 1973.]

<sup>1</sup> Article 666-21.

**Art. 666-20c. Mixed Beverage Permittee; Possession of Alcoholic Beverages without Invoice Prohibited; Penalties**

(a) No holder of a Mixed Beverage Permit, nor any officer, agent, or employee of a holder, may possess or permit to be possessed on the premises for which the permit is issued any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased. A person who violates this Section is punishable, upon conviction, by a fine of not more than One Thousand Dollars (\$1,000) or by confinement in the county jail for no more than thirty (30) days or by both. The Commission or Administrator may, after notice and hearing, suspend for a period of up to sixty (60) days, or cancel, the permit of any permittee it finds to have violated this subsection.

(b) No holder of a Mixed Beverage Permit, nor any officer, agent, or employee of a holder, may knowingly possess or permit to be possessed on the premises for which the permit is issued any alcoholic beverage which is not covered by an invoice conforming with the requirements specified in Subsection (a) of this Section 20c. A person who violates this subsection is punishable by a fine of not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000) and by confinement in the county jail for not less than thirty (30) days nor more than two (2) years. The Commission or Administrator shall cancel the permit of any permittee convicted of violating this subsection or found by the Commission or Administrator, after notice of hearing, to have violated this subsection.

[Acts 1971, 62nd Leg., p. 694, ch. 65, § 17, eff. April 21, 1971.]

**Art. 666-20d. Gross Receipts Tax on Mixed Beverage and Private Club Permittees; Collection and Disposition; Procedures; Violations; Penalties; Permits Restricted**

(a) The word "permittee," as used in this section, means a Mixed Beverage Permittee, Late Hour Mixed Beverage Permittee, Daily Temporary Mixed Beverage Permittee, Private Club Registration Permittee, or a Late Hour Private Club Registration Permittee.

(b) A tax at the rate of ten percent (10%) is imposed on the gross receipts of a permittee from the sale, preparation, or service of mixed beverages, or from the sale, preparation, or service of ice or nonalcoholic beverages which are sold, prepared, or served for the purpose of being mixed with alcoholic beverages and consumed on the premises of the permittee.

(c) Every permittee shall make and keep a record, in a form prescribed by the Commission or Administrator, of all taxable receipts and accumulate the total for each business day. A "business day" for the purpose of this section is the period of time between 3 a. m. one day and 3 a. m. the next day. Permittees, except Daily Temporary Mixed Beverage Permittees, shall keep a copy of this record, as well as all other records of receipts and disbursements by the permittee, on file on the premises for a period of two years, and the record is open to inspection by any agent of the Commission or by any peace officer at any time. Daily Temporary Mixed Beverage Permittees shall file a copy of the records for each month with the tax return for that month as prescribed by the Commission.

(d) On or before the fifteenth day of every month every permittee shall file with the Commission a sworn tax return. The return shall be in the form prescribed by the Commission or Administrator and shall include a statement of the total gross taxable receipts during the preceding month and such other information as the Commission or Administrator may require. Tax due for a business day which falls in two different months is allocated to the month during which the business day begins. If any permittee shall fail to file a return as required herein or shall fail to pay to the Commission the tax as imposed herein when said report or payment is due, the permittee shall forfeit five percent (5%) of the amount due as a penalty and after thirty (30) days the penalty shall be increased to ten percent (10%).

(e) (1) The tax due for the preceding month shall accompany the return and shall be in the form of a cashier's check, certified check, or postal money order payable to the State of Texas. The Commission shall deposit these receipts in the State Treasury to the credit of a special clearance fund to be known as the Mixed Beverage Tax Clearance Fund.

(2) The Commission shall keep a record indicating the name of the permittee from which each return is received, the county and the incorporated city or town, if any, in which it is located, and the amount of the tax received. Before the end of the month following each calendar quarter, the Commission shall submit to the Comptroller of Public Accounts a report showing the total amount of taxes received during the quarter from permittees outside an incorporated city or town within each county and the total amount received from permittees within each incorporated city or town in each county.

(3) As soon as possible after receipt of each quarterly report of the Commission, the Comptroller shall issue to each county a warrant drawn on the Mixed

Beverage Tax Clearance Fund in the amount of fifteen percent (15%) of receipts from permittees within the county during the quarter, and shall issue to each incorporated city or town a warrant drawn on that fund in the amount of fifteen percent (15%) of receipts from permittees within the incorporated city or town during the quarter, as shown by the Commission's report. The remainder of the receipts for the quarter shall be transferred to the General Revenue Fund.

(f) The Commission shall require of every permittee a bond or bonds executed by the permittee as principal and a surety company duly qualified and doing business in this state as surety, and the bond or bonds shall be payable to the State of Texas and conditioned as the Commission may require and approved by the Attorney General as to form. The bond or bonds shall be in an amount which in the judgment of the Commission or Administrator will adequately protect the state, but in no case may the amount of the bond be less than \$1,000 or more than \$25,000.

(g) It shall be unlawful for any Mixed Beverage Permittee, Daily Temporary Mixed Beverage Permittee or Private Club or Registration Permittee to possess, or permit any person to possess on the premises, and it shall be unlawful for any Local Distributor's Permittee to knowingly sell, ship, or deliver to such premises any distilled spirits in any container not bearing a serially numbered identification stamp issued by the Commission or such other identification method approved by the Commission. Such identification stamp shall be issued only to holders of Local Distributor's Permits who shall affix such stamps in a manner prescribed by the Commission or Administrator. The Commission or Administrator may, after notice and hearing, suspend for a period of up to 60 days or cancel the permit of any person who violates this subsection.

(h) The Commission shall examine the tax account of each permittee and shall collect any additional taxes due as established through any records or information that is in the Commission's possession or any records or information that is available or may come into the Commission's possession. For the convenience of the Commission in examining tax accounts of Mixed Beverage Permittees and Private Club Permittees, it is hereby required that each such permittee purchase separately and individually for each licensed premises any and all alcoholic beverages to be sold or served on the licensed premises. When additional taxes are established as due based on an examination by the Commission, a penalty equal to ten percent (10%) thereof shall be collected with the additional taxes due. The Commission or Administrator may prescribe reasonable rules and regulations for the collection and administration of the tax imposed by this section.

(i) No person may fail to keep any record in the manner required by this section, fail to file any return in the manner required by this section, keep a false record, or file a false return. A person who

violates this subsection is punishable, upon conviction, by a fine of not more than \$1,000 or by confinement in the county jail for not more than 30 days or by both. The Commission or Administrator may, after notice and hearing, suspend for a period of up to 60 days, or cancel, the permit of any person it finds to have violated this subsection.

(j) No person may knowingly fail to keep any record in the manner required by this section, fail to file any return in the manner required by this section, keep a false record, or file a false return. A person who violates this subsection is punishable by a fine of not less than \$500 nor more than \$1,000 and by confinement in the county jail for not less than 30 days nor more than two years. The Commission or Administrator shall cancel the permit of any permittee convicted of violating this subsection or found by the Commission or Administrator, after notice and hearing, to have violated this subsection.

(k) No Mixed Beverage Permit, Daily Temporary Mixed Beverage Permit, or Private Club Registration Permit, may ever be issued to any of the following:

(1) A person whose permit was cancelled because of a violation of Subsection (j) of this section or of Subsection (b), Section 20c, of this Article;<sup>1</sup>

(2) A person who held an interest of any kind in a permit that was cancelled because of a violation of Subsection (j) of this section or of Subsection (b), Section 20c, of this Article;

(3) A person who held 50 percent or more of the stock, either in his own name or by any other means, of a corporation whose permit was cancelled because of a violation of Subsection (b), Section 20c, of this Article or Subsection (j) of this section, if the acts on which the cancellation was based occurred while the stock was held;

(4) A corporation if any person holding 50 percent or more of the stock, either in his own name or by any other means, is disqualified from obtaining a permit in his individual capacity because of a violation of Subsection (b), Section 20c, of this Article or Subsection (j) of this section; or

(5) A person residentially domiciled with a person who is barred from obtaining a permit because of a violation of Subsection (j) of this section or of Subsection (b), Section 20c, of this Article.

(1) For the purposes of Subdivisions (3) and (4) of Subsection (k) of this section, a person is treated as holding 50 percent or more of the stock in a corporation if the total amount of stock owned by himself and all persons who are his parents, children, or siblings, or with whom he is residentially domiciled, equals or exceeds 50 percent of the stock in the corporation.

[Acts 1971, 62nd Leg., 1st C.S., p. 15, ch. 3, § 1, eff. June 1, 1971.]

<sup>1</sup> Article 666-20c(b).

**Art. 666-20e. Mixed Beverage or Private Club Permittees; Purchase of Alcoholic Beverages from Local Distributors, Restrictions; Local Distributor's Permit, Fee; Wholesaler's Permit, Promotion of Brands, Direct Orders; Non-Resident Seller or Manufacturer's Agent, Solicitation of Business; Transportation of Alcoholic Beverages, Restrictions; Containers**

All distilled spirits sold by a Mixed Beverage Permittee or a Private Club Permittee must be purchased in this State from a holder of a Local Distributor's Permit. No local distributor may sell distilled spirits to a Mixed Beverage Permittee or a Private Club Permittee in individual containers containing less than one fluid ounce. No local distributor may deliver less than two and four-tenths gallons of distilled spirits in a single shipment.

The Commission or Administrator is authorized to issue Local Distributor's Permits only to holders of Package Store Permits issued under the terms of Section 15(8) of Article I of the Texas Liquor Control Act.<sup>1</sup> A Local Distributor's Permit shall authorize the holder thereof to purchase distilled spirits or liquor from holders of Wholesaler's Permits issued under the terms of Section 15(6) of Article I of the Texas Liquor Control Act<sup>2</sup> only, and to sell and distribute to Mixed Beverage Permittees or Private Club Permittees such brands of distilled spirits, liquor, and other alcoholic beverages as are for general distribution and are available from the wholesaler to all local distributors. The fee for a Local Distributor's Permit shall be in the amount of Fifty Dollars (\$50) and shall be paid in addition to, and under the same conditions as, the fee paid for the holder's Package Store Permit. Any holder or any agent of a holder of a Wholesaler's Permit issued under the terms of Section 15(6) of this Article I may enter the licensed premises of a Mixed Beverage Permittee or a Private Club Permittee for the purpose of determining the brands offered for sale and suggesting or promoting to the extent authorized by Section 17(3)(g) of this Article I,<sup>3</sup> the sale of other brands; provided, however, that no holder and no agent of a holder of a Section 15(6) Wholesaler's Permit shall be authorized to accept a direct order from a Mixed Beverage Permittee other than a direct order for wine or malt liquor.

No holder of a Non-resident Seller's Permit or a Manufacturer's Agent's Permit issued under Section 15½ of this Article I,<sup>4</sup> shall, unless accompanied by the holder or the agent of a holder of a Wholesaler's Permit, solicit any business, directly or indirectly, from a Mixed Beverage Permittee or a Private Club Permittee.

Where a Mixed Beverage Permittee or a Private Club Permittee is in an area where there are no local distributors, the holder of a Mixed Beverage Permit or a Private Club Permit shall be empowered to

purchase alcoholic beverages in the nearest area where local distributors are located and transport same to the premises of the Mixed Beverage Permittee or Club; provided the permittee transporting such alcoholic beverages is also a holder of a Beverage Cartage Permit, and provided that such transporter shall acquire such alcoholic beverages only on the written order from the holder of a Mixed Beverage Permit or officer or manager of the Club and any such alcoholic beverages must be accompanied by a written statement furnished and signed by a local distributor, showing the name and address of the consignee and consignor, the origin and destination of such shipment, and such other information as may be required by the Commission or Administrator; and it shall be the duty of the person in charge of such alcoholic beverages while they are being so transported to exhibit such written statement to any representative of the Commission or any peace officer making demand therefor, and such statement shall be accepted by such representative or officer as prima facie evidence of the lawful right to transport such alcoholic beverages.

The Commission is hereby authorized to issue a Beverage Cartage Permit to the holder of a Mixed Beverage Permit or a Private Club Permit to transport alcoholic beverages to the licensed premise from the place of purchase. The holder of a Beverage Cartage Permit shall be privileged to transfer alcoholic beverages as herein provided. The annual State fee for a Beverage Cartage Permit shall be Ten Dollars (\$10).

Notwithstanding any other provision of this Act, the holder of a Local Distributor's Permit may sell to holders of Mixed Beverage Permits distilled spirits, wine and vinous liquor in containers containing not less than one ounce but not more than two ounces, as well as any other container authorized by the Texas Liquor Control Act. Holders of Wholesaler's Permits may import, sell, offer for sale, or possess for purpose of resale to holders of Local Distributor's Permits, or as permitted in Section 15(21) of this Article I,<sup>5</sup> distilled spirits, wine and vinous liquor in containers containing not less than one ounce but not more than two ounces, as well as any other container authorized by the Texas Liquor Control Act.

Notwithstanding any other provision of this Act, the holder of a Mixed Beverage Permit, the holder of a Daily Temporary Mixed Beverage Permit, the holder of a Caterer's Permit, or the holder of a Mixed Beverage Late Hours Permit, may sell, offer for sale, and possess for purpose of resale, for consumption on the premises where served or sold, any alcoholic beverage in an unsealed container, or in a sealed container of any legal size.

Notwithstanding any other provision of this Act, the holder of a private club registration permit may serve, for consumption on the premises, any alcoholic beverage in an unsealed container or in a sealed container of any legal size.

[Acts 1971, 62nd Leg., p. 692, ch. 65, § 15, eff. April 21, 1971.]

<sup>1</sup> Article 666-15(8).

<sup>2</sup> Article 666-15(6).

<sup>3</sup> Article 666-17(3)(g).

<sup>4</sup> Article 666-15½.

<sup>5</sup> Article 666-15(21).

#### Art. 666-20e-1. Sale and Delivery of Alcoholic Beverages to Distributor and Mixed Beverage Permittees, and of Beer to Private Clubs in Wet Areas without Prior Order

In addition to the authority granted in any other provision of this Act, the holder of any permit issued under Section 15(7) and 15(7a), Article I, Texas Liquor Control Act,<sup>1</sup> shall be authorized to sell and deliver alcoholic beverages as authorized under such permits to holders of Local Distributor's Permits, Mixed Beverage Permits and Daily Temporary Mixed Beverage Permits.

In addition to the authority granted in any other provision of this Act, the holder of any license issued under Section 3(a), (b), (c) and (d), Article II, Texas Liquor Control Act,<sup>2</sup> shall be authorized to sell and deliver beer to private clubs located in wet areas without the necessity of securing a prior order. All sales made under the authority of this section shall be made in accordance with the provisions of Section 24¼<sup>3</sup> and Section 19-C,<sup>4</sup> Article II, Texas Liquor Control Act.

[Acts 1971, 62nd Leg., 1st C.S., p. 23, ch. 3, § 9, eff. June 8, 1971.]

<sup>1</sup> Article 666-15(7), (7a).

<sup>2</sup> Article 667-3(a) to (d).

<sup>3</sup> Article 667-24¼.

<sup>4</sup> Article 667-19C.

#### Art. 666-21. Fees and Taxes

(1) There is hereby levied and imposed on the first sale in addition to the other fees and taxes levied by this Act the following:

(a) A tax of \$2.00 per gallon on each gallon of distilled spirits, providing the minimum tax on any package of distilled spirits shall be \$0.122 if the package contains one-half pint, and providing further that the minimum tax on any package of distilled spirits shall be \$0.05 if the package contains 2 ounces or less. Should packages containing less than ½ pint but more than 2 ounces ever be legalized in Texas, the minimum tax on any such package of distilled spirits shall be \$0.122.

(b) A tax of \$0.17 on each gallon of vinous liquor that does not contain over 14 percent of alcohol by volume.

(c) A tax of \$0.34 on each gallon of vinous liquor containing more than 14 percent of alcohol by volume.

(d) A tax of \$0.43 on each gallon of artificially carbonated and natural sparkling vinous liquor.

(e) A tax of \$0.165 on each gallon of malt liquor containing alcohol in excess of four percent by weight.

(2) The term "first sale" as used in Article I of this Act shall be construed in compliance with whichever of the following rules is applicable:

(a) As to liquor, other than ale or malt liquor, imported into this state by the holder of a wholesaler's permit authorizing such importation, the term "first sale" shall mean the first actual sale by the holder of any wholesaler's permit to the holder of any other permit authorizing the retail sale of the beverage to be taxed, or to the holder of a Local Distributor's Permit.

(b) As to any liquor, other than ale or malt liquor, distilled or produced in or brought into this state by any person, groups of persons, or legal entity other than a holder of a permit authorizing importation, the term "first sale" shall mean and include the first sale, possession, distribution, or use in this state of any and all liquor refined, blended, manufactured, imported into, or in any other manner produced or acquired, possessed, or brought into this state.

(c) As to ale and malt liquor, the term "first sale" shall be given the meaning attributed to "first sale" or importation in Section 33, Article II, Texas Liquor Control Act.<sup>1</sup>

(3) Any holder of a permit authorizing the importation into this state of any liquor, other than ale and malt liquor, shall pay the tax or taxes levied thereon by the laws of this state by the reporting system under bond in compliance with the following provisions:

(a) The Commission shall require of each holder of a permit authorizing the importation into this state of liquor, other than ale and malt liquor, a bond or bonds executed by the permit holder as principal and a surety company duly qualified and doing business in this state as surety, and said bond or bonds shall be made payable to the State of Texas and conditioned as the Commission may require and approved by the Attorney General of Texas as to form. Said bond or bonds shall be in such amount as will adequately protect the State of Texas against the anticipated tax liability on the principal during any six (6) weeks' period.

(b) The tax on liquor, other than ale or malt liquor, imported into this state, shall become due and payable and shall be paid by the permit holder on or before the 15th day of the month following the first sale. As to ale and malt liquor, the tax shall become due and payable as provided in Section 33, Article II, Texas Liquor Control Act.

(c) The tax shall be computed in accordance with the applicable provision or provisions in Subsection (1) of this Section 21, Article I, Texas Liquor Control Act, and remittance therefor made payable to the State Treasurer shall be due at the office of the Alcoholic Beverage Commission in Austin, Travis County, Texas, on

or before the 15th day of the month due less two percent (2%) of the amount due which shall be withheld by the permit holder for the keeping of records, furnishing of bonds, and properly accounting for the remittance of the tax due; provided, however, that no allowance shall be granted or permitted when the tax is delinquent at the time of payment.

(d) Such sworn statements of taxes due as may be required by the Commission, and remittances therefor made payable to the State Treasurer, shall be forwarded to the Commission each month not later than the due date set out herein. All such remittances shall be turned over by the Commission to the State Treasurer for the allocation in conformity with the terms of Section 46, Article I, Texas Liquor Control Act.<sup>2</sup>

(e) If any permit holder, in computing and paying the tax due, through oversight, mistake, error or miscalculation, has paid more tax than is legally due, the permit holder who paid such excess tax shall be entitled to a refund thereof, and a claim for such refund may be made at the time and in the manner prescribed by the Commission or Administrator, and such excess tax shall be refunded to the permit holder who has paid the same, or credit may be allowed on future tax payment. Refunds for overpayment of tax may be made by the Commission from the revenues derived from the collection of the tax before the same has been allocated, and so much of such funds as may be necessary is hereby appropriated for that purpose.

(f) The permit holder shall report to the Commission each receipt of shipment of liquor, other than ale and malt liquor, for sale within this state, under the provisions of this Act, and shall prepare and furnish any such further information and such reports as may be required by rules and regulations of the Commission.

(g) In any suit brought to enforce the collection of any tax owed by a permit holder, a certificate by the Commission or Administrator showing the deficiency shall be prima facie evidence of the levy of the tax or the delinquency of the amount of tax and penalty set forth therein and compliance by the Commission with all provisions of this Act in relation to the computation and levy of the tax.

(4) It is not intended that the tax levied in Subsection (1) of this Section 21 of Article I of the Texas Liquor Control Act shall be collected on liquor shipped out of this state for consumption outside this state or sold aboard ship for ship's supplies, and the Commission shall provide forms for obtaining exemption from or credit for such taxes and shall provide by rule and regulation for equitable and final disposition of any tax credit brought about by such payment of any such unintended or excess tax.

(5) Unless the liquor is exempted from tax under the terms of Subsection (4) of this Section 21 or unless payment has been or is to be made by a permit holder in conformity with the provisions of Subsection (3) of this Section 21, or unless payment has been or is to be made by the permit holder in conformity with Section 21½C, Article I, Texas Liquor Control Act<sup>3</sup>, the tax levied under Subsection (1) of this Section 21, Article I, Texas Liquor Control Act, shall be paid by affixing a stamp or stamps on each bottle or container of liquor. Said stamps shall be affixed in strict accordance with any rule and regulation promulgated pursuant to this Act. The Commission, however, may, in any situation deemed by it to create an emergency or other circumstance which in its judgment would make it impractical to require the affixing of stamps, by order prescribe special rules for the payment of the tax in the specific situation under consideration.

(6) Every holder of a permit authorizing the wholesaling of liquor, upon receipt of a shipment of liquor for sale within this state, under the provisions of this Act, shall prepare and furnish such information and reports as may be required by rules and regulations of the Commission. All such permittees authorized to transport liquor beyond the boundaries of this state shall furnish to the Commission duplicate copies of all invoices for the sale of such liquors, within twenty-four (24) hours after such liquors have been removed from their place of business.

(7) Any person, persons, or association who violates any portion of this Section 21 shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) or by imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 21; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, art. 3, § 3; Acts 1937, 45th Leg., p. 1053, ch. 448, § 26; Acts 1941, 47th Leg., p. 269, ch. 184, art. VII, § 1; Acts 1951, 52nd Leg., p. 695, ch. 402, § VIII; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 2(1), eff. Sept. 1, 1959; Acts 1971, 62nd Leg., 1st C.S., p. 18, ch. 3, § 2, eff. July 1, 1971.]

<sup>1</sup> Article 667-33.

<sup>2</sup> Article 666-46.

<sup>3</sup> Article 666-21½, subsec. C.

#### Art. 666-21a. Stamps; Issuance

Stamps for spirituous liquor shall be issued only in multiples of the rate assessed for each half-pint; stamps for wine shall be issued in multiples of the rate assessed for each pint and for each one-tenth ( $\frac{1}{10}$ ) of a gallon; stamps for malt liquors containing alcohol in excess of four per cent (4%) by weight shall be issued in multiples of the rate assessed for each seven (7) fluid ounces, each eight (8) fluid ounces, or each twelve (12) fluid ounces; provided that where any such liquors are contained in containers of one-fifth ( $\frac{1}{5}$ ) of a gallon, stamps shall be issued therefor at the assessed rate for each such type of liquor; and provided further, that where any

such distilled spirits are contained in containers of one-tenth ( $\frac{1}{10}$ ) of a gallon, stamps shall be issued therefor at the assessed rate for each such type of distilled spirits. It is further provided that the taxes herein levied and assessed shall be paid and collected by stamps as provided in this Section. Provided further that the Board may authorize the affixing of stamps of various denominations to cases of ale if the total of such stamps affixed evidences the payment of all taxes due thereon. But nothing herein shall affect the powers and rights conferred upon the Texas Liquor Control Board in Article VII of House Bill No. 3 of the First Called Session of the Fifty-first Legislature.<sup>1</sup>

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 21a; Acts 1937, 45th Leg., p. 1053, ch. 448, § 27; Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, art. IX, § 1; Acts 1951, 52nd Leg., p. 695, ch. 402, § VIII-A.]

<sup>1</sup> Article 666-21½.

#### Art. 666-21b. Rules and Regulations Designating Persons Permitted to Purchase Stamps

The Board shall by rule and regulation designate such permit holders or persons who shall be lawfully entitled to purchase State tax stamps.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 28.]

#### Art. 666-21c. Records of Production, Receipt of Liquor, Sales, and Stamps used by Permittee; False Entries

Each holder of a permit under Article I<sup>1</sup> of this Act who distills, rectifies, manufactures or receives any liquor shall make and keep a record of each day's production or receipt of liquor, the amount of tax stamps purchased by him, and each such permit holder other than a retailer shall make and keep a record of each and every sale of liquor and to whom such sale is made. Entry of each such transaction shall be made on the day it occurs. All such permittees shall make and keep such other records as may be required by rule and regulation of the Board. All records which permittees are required to make shall be kept available for the inspection of the Board or its authorized representatives for a period of at least two years.

It shall be unlawful for any person to fail or refuse to make and keep for a period of at least two years any record required in this section, or to fail or refuse to keep such records open for inspection to the Board or its duly authorized representatives during reasonable office hours.

It shall further be unlawful for any person knowingly with intent to defraud to make or cause to be made any false entry in any records required in this section or with like intent to alter or cause to be altered any item in said records.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 29; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 7.]

<sup>1</sup> Article 666-1 et seq.

**Art. 666-21d. Stamps; Allocation of Tax; Application of Tax; Inventory; Rules and Regulations; Appropriation for Printing**

Sec. 1. [Amends art. 666-21.]

Discount

Sec. 2. Stamps for distilled spirits evidencing the tax levied in subdivision (a) of Section 1 of this Article shall be supplied by the Treasurer to all authorized to purchase them at a discount of two (2) per cent of the face value thereof when purchased in lots of Five Hundred Dollars (\$500) or more.

Cost of Administration

Sec. 3. The tax levied in subdivision (a), Section 1 of this Article of this Act shall be allocated as hereafter provided in this Act; providing that such tax shall, before allocation, bear a proportionate amount of the costs of administration and enforcement of the Texas Liquor Control Act as now provided in the General Appropriation Act. The other taxes levied in this Article shall be allocated as heretofore provided by law. Any laws in conflict herewith are repealed to the extent of such conflict only.

Application of Tax; Inventory

Sec. 4. It is further provided that the tax herein levied shall apply and attach to all liquor which shall be in storage or in the possession of any person for the purpose of sale, and that all persons having possession of any liquor for the purpose of sale shall on the effective date hereof render and submit to the Texas Liquor Control Board at Austin, Texas, a true and correct sworn inventory of all such liquors, setting forth in detail the size of containers and the quantity thereof. Such inventory shall be rendered upon a form to be prescribed and furnished by the Board. Such inventory must be placed in the United States mail, addressed to the Texas Liquor Control Board at Austin, Texas, within twenty-four hours of the effective date hereof, and a true, correct, and exact copy thereof must be retained by the person making such report. Failure or refusal to render such inventory shall be deemed sufficient grounds for the cancellation of any permit or license by the Board, and, in addition thereto, any such person shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by imprisonment in the County Jail for any term not more than one (1) year, or by both such fine and imprisonment.

Supplies of Stamps; Liquors Declared Illicit

Sec. 5. It is further provided that the Texas Liquor Control Board shall have printed and supplied to the State Treasurer, and the State Treasurer shall have on demand, tax stamps of such values as will enable any person having possession of liquors with legal and valid Texas tax stamps affixed of a lower rate of assessment than is herein provided to affix an additional stamp on each container so that the added amount of tax paid, as represented by such

additional stamp together with the one originally affixed, will equal the amount of tax herein levied. All liquors in containers to which have not been affixed proper tax stamps, or stamps in the aggregate to show payment of tax as herein levied, are hereby declared to be illicit beverages and subject to seizure and forfeiture as otherwise provided by law, and any person in possession thereof shall be prosecuted for the possession of illicit beverages as provided by law.

Rules and Regulations

Sec. 6. The Texas Liquor Control Board is hereby authorized to promulgate and enforce rules and regulations requiring the filing of inventories and the issuance and distribution of stamps through its representatives, and for the inspection of liquor stocks wherever they may be in this State, such as may be deemed necessary to enforce compliance with this Article.

[Acts 1941, 47th Leg., p. 269, ch. 184, art. VII.]

**Art. 666-21 $\frac{1}{4}$ . Tax Payment by Reporting System under Bond or Special Order**

A, B. Repealed by Acts 1971, 62nd Leg., 1st C.S., p. 23, ch. 3, § 10, eff. June 8, 1971.

C. The tax levied and assessed on ale and malt liquor in accordance with the applicable provisions of Section 21, Article I, Texas Liquor Control Act, and as computed under the provisions of Section 33,<sup>1</sup> Article II, Texas Liquor Control Act, and the tax levied and assessed in accordance with the applicable provisions of Section 23,<sup>2</sup> Article II, Texas Liquor Control Act, and as computed under the provisions of Section 23 $\frac{1}{4}$ ,<sup>3</sup> Article II, Texas Liquor Control Act, shall be paid by a remittance therefor made payable to the State Treasurer and forwarded to the office of the Texas Liquor Control Board in Austin, Travis County, Texas, on or before the due date, as provided in the Texas Liquor Control Act, less two (2%) per cent of the amount due which shall be withheld by the permit or license holder for the keeping of records, furnishing of bonds, and properly accounting for the remittance of the tax due; provided, however, that no allowance shall be granted or permitted when the tax is delinquent at the time of payment.

[Acts 1969, 61st Leg., p. 80, ch. 38, § 17, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., 1st C.S., p. 23, ch. 3, § 10, eff. June 8, 1971.]

<sup>1</sup> Article 667-33.

<sup>2</sup> Article 667-23.

<sup>3</sup> Article 667-23 $\frac{1}{4}$ .

**Saved from Repeal**

*Acts 1971, 62nd Leg., 1st C.S., p. 23, ch. 3, § 10, provides that subsection C of this article "is expressly intended to remain in force".*

**Art. 666-21 $\frac{1}{4}$ . Maximum Inspection Fee on Exported Liquors**

The inspection fee or charge provided in Section 21 of Article I of the Texas Liquor Control Act, on liquor (vinous, malt or spirituous) exported from this State, shall not exceed the sum of Five (\$5.00)

Dollars on any one shipment of liquor so exported. [Acts 1955, 54th Leg., p. 10, ch. 9, § 1.]

**Art. 666-21½. Regulation of Manner of Collecting Taxes on Wine; Dispensing with Use of Stamps**

The Board shall have the power to make rules and regulations relative to the manner and method of collecting State taxes levied on wine. Such power shall include the right to determine whether or not stamps evidencing the payment of such tax shall be affixed to the containers. Should the Board adopt a manner or method of collection, or rules and regulations which do not require the affixing of tax stamps to the containers, then it shall not be necessary for such stamps to be affixed to such containers. And likewise, it shall not be unlawful, if the tax has been paid on such wine in accordance with the rules of the Board, and the Texas Liquor Control Act is otherwise complied with, for any holder of a permit authorizing the holder to sell wine either on or off-premises, to have in his possession or sell wine which does not have tax stamps affixed to the containers. Nor shall it be unlawful, in such case, for any person to possess wine without the tax stamp being affixed to the container, if the tax on such wine has been paid and if such person is otherwise complying with the laws of this State.

[Acts 1951, 52nd Leg., p. 370, ch. 234, § 1.]

**Art. 666-21½. Additional Taxes**

Sub-sec. 1. In addition to all other fees and taxes, there is hereby levied and imposed on the first sale the following:

(a) A tax of ten per cent (10%) of One Dollar and twenty-eight cents (\$1.28) per gallon on each gallon of distilled spirits, provided the minimum tax levied in this Section on any package of distilled spirits shall be ten per cent (10%) of eight cents (8¢).

(b) A tax of ten per cent (10%) of ten cents (10¢) on each gallon of vinous liquor that does not contain over fourteen per cent (14%) of alcohol by volume.

(c) A tax of ten per cent (10%) of twenty cents (20¢) on each gallon of vinous liquor containing more than fourteen per cent (14%) and not more than twenty-four per cent (24%) of alcohol by volume.

(d) A tax of ten per cent (10%) of twenty-five cents (25¢) on each gallon of artificially carbonated and natural sparkling vinous liquor.

(e) A tax of ten per cent (10%) of fifty cents (50¢) on each gallon of vinous liquor containing alcohol in excess of twenty-four per cent (24%) by volume.

(f) A tax of ten per cent (10%) of fifteen cents (15¢) on each gallon of malt liquor containing alcohol in excess of four per cent (4%) by weight.

The term "first sale" as used in this section shall mean and include the first sale, possession, distribution, or use in this State of any and all liquor

refined, blended, manufactured, imported into, or in any other manner produced or acquired, possessed, or brought into this State; but shall not include sales of liquor by permittees authorized to sell at retail only where such sales are made from stocks on hand and in possession of such permittee on the effective date of this section.

The tax herein levied shall be paid by affixing a stamp or stamps on each bottle or container of liquor. Said stamps shall be affixed in strict accordance with any rule or regulation promulgated in pursuance of this Act.

It shall be the duty of each person who makes a first sale of any liquor in this State to affix said stamps on each bottle or container of liquor and to cancel the same in accordance with any rule and regulation of the Board. The Board shall have power to relax the foregoing provision when in its judgment it would be impracticable to require the affixing of such stamp on the bottle or container, irrespective of any other provision of this Act. And any person, persons, or association who violates any portion of this Section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year. Every holder of a permit authorizing the wholesaling of liquor, upon receipt of a shipment of liquor for sale within this State, under the provisions of this Act, shall prepare and furnish such information and such reports as may be required by rules and regulations of the Board.

Sub-sec. 2. Stamps for distilled spirits evidencing the tax levied in sub-division (a) of this Section 21½ of this Article shall be supplied by the Treasurer to all authorized to purchase them at a discount of two per cent (2%) of the face value thereof when purchased in lots of Five Hundred Dollars (\$500) or more.

Sub-sec. 3. It is further provided that the tax herein levied shall apply and attach to all liquor which shall be in storage or in the possession of any permittee, other than one authorized to sell at retail only, for the purpose of sale, and that all such permittees having possession of any liquor for the purpose of sale shall on the effective date hereon render and submit to the Texas Liquor Control Board at Austin, Texas, a true and correct sworn inventory of all such liquors, setting forth in detail the size of containers and the quantity thereof. Such inventory shall be rendered upon a form to be prescribed and furnished by the Board. Such inventory must be placed in the United States mail, addressed to the Texas Liquor Control Board at Austin, Texas, within twenty-four (24) hours of the effective date hereof, and a true, correct, and exact copy thereof must be retained by the person making such report. Failure or refusal to render such inventory shall be deemed sufficient grounds for the

cancellation of any permit or license by the Board, and, in addition thereto, any such person shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by imprisonment in the County Jail for any term not more than one (1) year, or by both such fine and imprisonment.

Sub-sec. 4. It is further provided that the Texas Liquor Control Board shall have printed and supplied to the State Treasurer, and the State Treasurer shall have on demand, tax stamps of such values as will enable any permittee, other than one authorized to sell at retail only, having possession of liquors with legal and valid Texas tax stamps affixed of a different rate of assessment than is herein provided to affix an additional stamp on each container so that the added amount of tax paid, as represented by such additional stamp together with the one originally affixed, will equal the total amount of tax levied by law. All liquors in containers to which have not been affixed proper tax stamps, or stamps in the aggregate to show payment of all tax as levied by law, are hereby declared to be illicit beverages and subject to seizure and forfeiture as otherwise provided by law, and any person in possession thereof shall be prosecuted for the possession of illicit beverages as provided by law; but this shall not apply to stocks on hand in the possession of permittees authorized to sell at retail only or their vendees.

Sub-sec. 5. The Texas Liquor Control Board is hereby authorized to promulgate and enforce rules and regulations requiring the filing of inventories and the issuance and distribution of stamps through its representatives, and for the inspection of liquor stocks wherever they may be in this State, such as may be deemed necessary to enforce compliance with this Article.

Sub-sec. 6. The tax levied in this Section 21½ is on sales made prior to midnight of August 31, 1951.

Sub-sec. 6½. The above described method of payment of the liquor tax herein levied shall not be in force and effect if, as and when and during the period of time for which the Texas Liquor Control Board, by rule and regulation, has prescribed another or different method of the payment of such tax, either with or without the additional stamps provided above. The Texas Liquor Control Board is fully authorized and empowered to adopt and promulgate, from time to time, rules and regulations relative to the collection of such tax levied in this Section; and such rule or regulation may be adopted and become effective with or without the statutory notice provided for the adoption of other rules and regulations of the Board. Such rules and regulations may include provisions for the present stamps, or stamps of the present denominations, to evidence the payment of both the tax herein levied and the tax heretofore levied in the Texas Liquor Control Act as amended, both as to collection of such tax and any refunds

authorized under this Section 21½. It shall be the duty of the State Treasurer in connection with the sale of any stamps used to evidence the payment of such tax, to follow and comply with any rule or regulation of the Board pursuant to the power granted herein.

[Acts 1950, 51st Leg., p. 10, ch. 2, art. VII, § 1.]

**Art. 666-22. Repealed by Acts 1937, 45th Leg., p. 1053, ch. 448, § 47**

**Art. 666-23. Dry and Wet Areas; Definitions**

Whenever the term "dry area" is used in this Act, it shall mean and refer to all counties, justice precincts, incorporated cities or towns wherein the sale of alcoholic beverages had been prohibited by valid local option elections held under the laws of the State in force at the time of taking effect of Section 20, Article XVI, Constitution of Texas in the year 1919. It likewise shall mean and refer to any such areas where sale of such alcoholic beverages shall be prohibited under the terms of this Act.

The term "wet area" shall mean and refer to all other areas of the State.

As to any particular type of alcoholic beverage, each county, justice precinct, incorporated city or town within this State shall be deemed to be a "dry area" unless such political subdivision was a "wet area" at the time Section 20 of Article XVI of the Constitution became effective and has not since said time changed its status, or unless the sale of that particular type of alcoholic beverage has been legalized by local option election in such political subdivision since said time; provided, however, the Commissioners Court of any county of over 500,000 population according to the last federal census, may designate that the area actually encompassed by the building structure of a professional sports stadium, which is used wholly or partly for professional sporting events, having a seating capacity of 40,000 or more, and the land, not to exceed 125 acres, adjacent to such stadium used for the benefit of such stadium (regardless of ownership of such land) and where no registered voters reside, and/or the area actually encompassed by the building structure of a regional airport, shall be wet for purposes of the sale of mixed beverages, only, under this Act; provided further, that such Commissioners Court shall have authority to so declare only in counties where the sale of all alcoholic beverages has been legalized, either throughout the entire county or any portion of such county, and where a majority of the voters in the county in which such sports stadium or regional airport is located, at the general election on November 3, 1970, approved the constitutional amendment authorizing mixed beverage local option elections; and such order of the Commissioners Court designating such area wet for the purposes of the sale of mixed beverages will authorize the issuance of a Mixed Beverage Permit.

The term "wet area" shall be construed as including in each particular instance only alcoholic beverages of a type or alcoholic beverage not exceeding in alcoholic content that which have been legalized by a

valid local option election in the prescribed area, except as otherwise provided above.

The trial courts of this State shall take judicial knowledge of the status of wet and dry areas as herein defined in any criminal prosecution.

An allegation that any county or political subdivision as herein provided is a dry area as to any particular type of alcoholic beverage shall in law be deemed sufficient in any information, complaint, or indictment; provided, however, that a different status of such area may be urged and proved as a defense.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 23; Acts 1937, 45th Leg., p. 1053, ch. 448, § 30; Acts 1971, 62nd Leg., p. 2582, ch. 847, § 1, eff. Aug. 30, 1971.]

**Art. 666-23a. Transportation from Wet Area to Wet Area; Importation of Liquor for Personal Use; Stamps; Hotels Authorized to Hold Certain Permits; Evidence**

(1) It is provided that any person who purchases alcoholic beverages for his own consumption may transport same from a place where the sale thereof is legal to a place where the possession thereof is legal.

(2) Possession of more than one quart of liquor in a dry area shall be prima facie evidence that it is possessed for the purpose of sale.

(3) It is provided that it shall be lawful for the holders of Carrier's and Private Carrier's Permits to transport liquor from one wet area to another wet area where in the course of such transportation it is necessary or convenient to cross a dry area.

(4) It is provided that any military personnel stationed in Texas or any resident of the State of Texas may bring into this state not more than one (1) quart of liquor for his own personal use; and it is further provided that any non-resident of the State of Texas may bring into this state for his own personal use not more than one (1) gallon of liquor. In addition to the penalties set out in Section 41 of this Act,<sup>1</sup> any person violating any provision of this section shall forfeit the liquor so illegally imported to the Board. It is further provided that any person importing any liquor into this state under the provisions of this section shall pay the state tax thereon as levied in Section 21, Article I, Texas Liquor Control Act,<sup>2</sup> and affix thereto the required State Tax Stamps. It is further provided that no person under twenty-one (21) years of age or who is intoxicated or under the influence of an intoxicating beverage shall be allowed or permitted at any time to import or bring into the State of Texas any liquor in any amount whatsoever.

(5) It is further provided that any bona fide hotel shall be authorized to hold a Package Store Permit and a Mixed Beverage Permit as well as a Wine and Beer Retailer's Permit and a Beer Retailer's License provided such businesses are completely and wholly segregated from each other. The Commission is authorized to adopt rules and regulations to enforce

this provision. It is further provided that a hotel holding a Package Store Permit may deliver liquor at retail in unbroken packages to the rooms of bona fide guests of such hotel for consumption in such rooms.

(6) Proof of the sale or delivery by any person holding a retailer's permit of more than three (3) gallons of distilled spirits to any person in a single or continuous transaction shall be prima facie evidence that the same is a sale at wholesale.

(7) Proof of the sale or delivery by any person holding a permit authorizing the sale of distilled spirits at wholesale of less than three (3) gallons of such distilled spirits in any single transaction shall be prima facie evidence that the same is a sale at retail.

(8) Upon a trial for a violation of any provision of either Article I<sup>3</sup> or Article II of this Act,<sup>4</sup> a conviction may be had upon the uncorroborated testimony of an accomplice.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 31; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 9; Acts 1957, 55th Leg., p. 51, ch. 29, § 2, eff. March 20, 1957; Acts 1971, 62nd Leg., p. 694, ch. 65, § 18, eff. April 21, 1971.]

<sup>1</sup> Article 666-41.

<sup>2</sup> Article 666-21.

<sup>3</sup> Article 666-1 et seq.

<sup>4</sup> Article 667-1 et seq.

**Art. 666-24. City Charter Restrictions**

In any city where the sale of liquor as herein defined is prohibited by its charter from being sold in its residence section, or any part thereof, such charter amendment shall remain valid and continue effective until such time as said charter provision may be repealed or amended as provided by law. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 24.]

**Art. 666-25. Sale Regulations**

(a) No person, except a person selling alcoholic beverages under the authority of a Mixed Beverages Permit, may sell or deliver any liquor:

(1) Between 9:00 o'clock p. m. of any day and 10:00 o'clock a. m. of the following day of any day except Sunday, provided, however, that nothing in this Section shall prevent a wholesaler from making sales and deliveries to retailers between the hours of 7:00 o'clock a. m. and 9:00 o'clock p. m. Provided further, that any person holding more than one Package Store Permit shall be privileged to transfer alcoholic beverages between any of his licensed premises in the same county under such rules and regulations as may be prescribed by the Commission, at any time between the hours of 7:00 o'clock a. m. and 9:00 o'clock p. m. on any day when the sale of such alcoholic beverage is legal, provided that he be the holder of a Local Cartage Permit.

(2) On Christmas Day.

(3) On Sundays.

(b) No person in a county of 300,000 or more population, according to the last preceding federal

census, may sell or offer for sale any mixed beverage on Sunday at any time between the hours of 2 a. m. and 12 noon or on any day other than Sunday at any time between the hours of 2 a. m. and 7 a. m.

(c) No person in a county not having a population of 300,000 or more, according to the last preceding federal census, may sell or offer for sale any mixed beverage on Sunday at any time between the hours of 1 a. m. and 12 noon or on any day other than Sunday at any time between the hours of 12 midnight and 7 a. m.

(d) Regardless of the provisions of Subsections (a) and (b) of this Section, the Commissioners Court of any county under 300,000 population, according to the last preceding federal census, may by order adopt for the unincorporated areas of that county the hours prescribed above for counties having a population of 300,000 or more, according to the last preceding federal census, during which the sale or offering for sale of mixed beverages is made unlawful; and the governing body of any incorporated city or town in any county under 300,000 population, according to the last preceding federal census, may by ordinance adopt the hours prescribed above for counties having a population of 300,000 or more, according to the last preceding federal census, during which the sale or offering for sale of mixed beverages is made unlawful; violation of a Commissioners Court order or a city ordinance made under this subsection is punishable as a violation of this Act.

(e) No person may sell or offer for sale any mixed beverage on Sunday between the hours of 1 a. m. and 2 a. m., or on any other day between the hours of 12 midnight and 2 a. m. unless he holds a Mixed Beverage Late Hours Permit.

(f) Notwithstanding any other provision of the Texas Liquor Control Act, except as to the holder of a storage permit, airline beverage permit, or in accordance with Sections 21 and 21½ of Article I,<sup>1</sup> no person shall sell, offer for sale or store for the purpose of sale in Texas, any liquor on which the State and federal tax has not been paid, provided, however, that the holder of any permit authorized to transport liquor out of the State may apply to the Commission for a refund of the excise tax on any liquor on which the State tax has been paid upon proper proof that the liquor was sold or disposed of outside the boundaries of the State of Texas.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 25; Acts 1937, 45th Leg., p. 1053, ch. 448, § 32; Acts 1943, 48th Leg., p. 339, ch. 221, § 2; Acts 1967, 60th Leg., p. 162, ch. 85, § 3, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 80, ch. 38, § 6, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 695, ch. 65, § 19, eff. April 21, 1971.]

<sup>1</sup> Articles 666-21 and 666-21½.

#### Art. 666-25a. Regulations by Commissioners' Courts and by Cities and Towns

The Commissioners' Court of any county in the territory thereof outside incorporated cities and towns and the governing authorities of any city or

town within the corporate limits of any such city or town may prohibit the sale of alcoholic beverages by any dealer where the place of business of any such dealer is within three hundred (300) feet of any church, public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in direct line across intersections where they occur. [Acts 1937, 45th Leg., p. 1058, ch. 448, § 33; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 10.]

#### Art. 666-25b. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, eff. Sept. 1, 1969

Acts 1969, 61st Leg., p. 2735, ch. 889 repealing this Article, enacts Titles 1 and 2 of the Texas Education Code.

Repealed article 666-25b was enacted by Acts 1955, 54th Leg., p. 592, ch. 200, eff. May 12, 1955.

The Article made it unlawful to bring intoxicating beverages into any area where public school athletic events were being held.

#### Art. 666-26. Sale By and To Minors; Exception; Penalties

(a) It shall be unlawful for the holder of any permit under this Act to employ anyone to sell liquor except malt liquor and ale who is under the age of twenty-one (21) years.

(b) It shall further be unlawful for any person knowingly to sell any liquor or beer to any person under twenty-one (21) years of age, or to any person who is intoxicated, or to any habitual drunkard, or to any insane person. If any person under the age of twenty-one (21) years falsely represents his or her age to be twenty-one (21) years or older at the time of such purchase by displaying an apparently valid Texas Operator's License containing a physical description consistent with the appearance of said person under the age of twenty-one (21) years for the purpose of inducing the sale of such alcoholic beverage, the person making such sale shall not be guilty of a violation under any provision of the Texas Liquor Control Act. Any person who violates any provision of this paragraph shall be deemed guilty of a misdemeanor and upon conviction for a first offense shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, and for a second or subsequent offense shall be punished by a fine of not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 26; Acts 1937, 45th Leg., p. 1053, ch. 448, § 34; Acts 1969, 61st Leg., p. 80, ch. 38, § 7, eff. Sept. 1, 1969.]

#### Art. 666-27. Regulation of Transportation

(a) It shall be unlawful for any person to transport into this State or upon any public highway, street, or alley in this State any liquor unless the person accompanying or in charge of such shipment shall have present and available for exhibition and inspection, a written statement furnished and signed by the shipper, showing the name and address of the consignor and the consignee, the origin and destina-

tion of such shipment, and such other information as may be required by rule and regulation of the Board. It shall be the duty of the person in charge of such shipment while the same is being transported, to exhibit such written statement to the Board or any of its authorized representatives or to any peace officer making demand therefor, and it shall be unlawful for any person to fail or refuse to exhibit the same upon such demand. Such written statement shall be accepted by such representative or officer as prima facie evidence of the lawful right to transport such liquor.

(b) It shall be unlawful for any brewer, distiller, winery, or manufacturer of any alcoholic beverage or manufacturer's agent, or any of the agents, servants, or employees thereof, to enter or offer to enter into any agreement, contract, arrangement, condition, or system, either orally or written, with any wholesaler or any other person in this State wherein or whereby any person is required, obligated, persuaded, influenced, or induced, or by the terms of which it is intended or calculated to require, obligate, persuade, influence, or induce any person to purchase, produce, obtain, require, or secure any certain volume or quota of business, more or less, of any one or more types, kinds, brands, or varieties of alcoholic beverages, whether the same be within any period of time, or within any area, or upon the fulfillment of any condition, attainment, provision, demand, or promise or to require, obligate, persuade, influence, or induce any person or attempt to require, obligate, persuade, influence, or induce any such person to sell any alcoholic beverage in any manner contrary to law or in any manner calculated to induce a violation of the law. The Board or Administrator shall have the power and it shall be their duty to investigate such and if they find or have good reason to believe that the provisions set out in this Subsection have been or are being violated it shall be their duty to give notice of hearing to the affected parties in the manner as provided for other hearings. Upon the finding of facts by the Board or Administrator that any such person has violated or is violating any provisions hereof, an order shall be entered by the Board or Administrator prohibiting any such person or his agents to directly or indirectly ship into this State any of his goods or merchandise for a period not to exceed one year. It shall further be unlawful for any person to import into this State any alcoholic beverage of such person during the period of suspension as ordered by the Board or Administrator. Any alcoholic beverage so unlawfully transported or imported into this State is hereby declared to be an illicit beverage. The Board shall adopt all necessary rules to effectuate the purposes of this Section.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 27; Acts 1937, 45th Leg., p. 1053, ch. 448, § 35.]

**Art. 666-27½. Continuing Contracts with Holders of Wholesalers' Permits**

The entering into of a contract for the sale and purchase of a specified quantity of liquor to be

delivered over an agreed period of time, between any brewer, distiller, winery, manufacturer or non-resident seller of any liquor and the holder of a wholesaler's permit under this Act shall not be unlawful, if such contract has been submitted to and approved by the Texas Liquor Control Board or the Administrator thereof and has been found by such Board or Administrator not to be calculated to induce or bring about violation of the Texas Liquor Control Act.

[Acts 1951, 52nd Leg., p. 366, ch. 231, § 1.]

**Art. 666-28. Forgery or Counterfeiting Stamps, Other Instruments, Etc.**

(1) Any person who shall forge or counterfeit any stamp as provided by this Act, or who shall print, engrave, make, issue, sell, circulate, or possess with intent to use, sell, circulate, or pass any forged or counterfeit stamp or who shall place or cause to be placed any such forged or counterfeit stamp on any container of alcoholic beverage shall be guilty of a felony.

(2) Any person who shall print, engrave, make, issue, sell, or circulate with intent to defraud or who shall knowingly possess any such forged or counterfeit permit, license, official signature, certificate, evidence of tax payment or other instrument shall be guilty of a felony.

(3) Any person who has in his possession any stamp, die, plate, device, machine, or any other instrument or parts thereof used, or designed for use for forging or counterfeiting any instrument set out in subdivisions (1) and (2) of this Section shall be guilty of a felony.

(4) The term "counterfeit" or "forged" as used in this Section shall apply to any stamp, permit, license, official signature, certificate, evidence of tax payment or any other instrument which has not been printed, manufactured, or made by, or under the direction of, or issued, sold or circulated by, the person or Board authorized to do so by the provisions of this Act.

(5) Upon conviction of any person under any provisions of this Section, his punishment shall be by confinement in the State penitentiary for any term of not less than two (2) years nor more than twenty (20) years.

(6) Conviction for any offense defined in this Section may be had upon the uncorroborated evidence of an accomplice. Any Court, officer, or tribunal having jurisdiction of any offense defined in this Section or any District or County Attorney may subpoena any person and compel his attendance as a witness to testify as to the violation of any provision of this Section. Any person so summoned and examined shall not be liable to prosecution for the violation of any provision of this Section about which he may testify.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 28; Acts 1937, 45th Leg., p. 1053, ch. 448, § 36.]

**Art. 666-29. Common Nuisances, Places of Illegal Manufacture, Sale, Possession or Consumption As**

(a) Any room, building, boat, structure, or place of any kind where alcoholic beverages are sold, bartered, manufactured, stored, possessed or consumed in violation of this Act, or under conditions and circumstances contrary to the purposes of this Act and all such beverages and all property kept and used in any such place, hereby are declared to be a common nuisance; and any person who maintains or assists in maintaining such common nuisance shall be guilty of a violation of this Act. The County Attorney or the District Attorney in the county wherein such nuisance exists or is kept or maintained, or the Attorney General, may maintain an action by injunction in the name of the State of Texas to abate and temporarily and permanently enjoin such nuisance. Such proceedings shall, except as otherwise herein provided, be guided by the rules of other injunction proceedings. The plaintiff shall not be required to give bond in such action and the final judgment shall constitute a judgment in rem against the property as well as a judgment against the defendant. Upon such final judgment the court shall order that said room, house, building, structure, boat, or place of any kind shall be closed for a period of one year, or closed for a part of said time and until the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety to be approved by the court making the order in the penal sum of not less than One Thousand Dollars (\$1,000), payable to the State and conditioned that alcoholic beverages will not thereafter be manufactured, bartered, possessed, stored, or sold, or otherwise disposed of therein, or kept thereon or therein, with the intent to sell or otherwise dispose of contrary to law, that the provisions of this Act will not be violated, that no person shall be permitted to resort thereon or therein for the purpose of drinking alcoholic beverages in violation of the provisions of this Act, and that the owner, lessee, tenant, or occupant thereof will pay all fines, costs, and damages assessed against him for any violation of this Act. If any condition of such bond is violated by either the owner, lessee, tenant, or occupant thereof, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated.

(b) Upon any appeal from the judgment of the District Court such judgment shall not be superseded except upon the posting of an appeal-pending bond in the penal sum of not more than Five Hundred Dollars (\$500), in addition to bond for costs of such appeal.

(c) "Appeal-pending bond" as used in this Section shall mean a bond to be approved by the District Court, required to be posted before the judgment of the trial court may be superseded on appeal, and conditioned that in the event the judgment of the trial court is finally affirmed it may be forfeited in the same manner for any of the causes for which a bond required upon final judgment may be forfeited

as to any acts committed during the pendency of appeal.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 29; Acts 1943, 48th Leg., p. 339, ch. 221, § 4.]

**Art. 666-30. Sale or Destruction of Beverages and Property Seized; Ceiling Prices during Emergency; Disposition of Proceeds; Forfeiture; Reports; Penalties; Illegal Seizures; Reimbursement**

(a) All alcoholic beverages and the containers thereof, and any device in which the alcoholic beverage is packaged, which have been seized by an agent or employee of the Texas Liquor Control Board, or by any peace officer as provided in Section 42,<sup>1</sup> shall be turned over to the Board for immediate public or private sale in such place or manner as it may deem best; provided further, that any bill of sale executed by the Board or Administrator shall convey a good and valid title to the purchaser as to any such property sold. No alcoholic beverages unfit to be sold for public consumption, or of illicit manufacture, may be sold by the Board, but may be destroyed by the Board.

Any property or equipment forfeited to the state as provided in Section 42<sup>1</sup> may also be sold by the Board at public or private sale in such place or manner as it may deem best.

Provided, however, any beer, its containers or original packages which may be seized under the terms of the Texas Liquor Control Act shall be disposed of as follows:

Upon being notified that any beer has been seized, the Board shall immediately notify a holder of a General or Local Distributor's or Branch Distributor's License who handles the brand of beer seized and who operates in the county where said beer was seized. If the beer was seized in a dry area, either the Distributor or Branch Distributor operating nearest said area handling the brand or the Manufacturer brewing said beer shall be notified. The Board and the Distributor or Branch Distributor or Manufacturer so notified shall jointly determine and agree as to whether or not said seized beer is in a salable condition. If said beer is determined not to be in a salable condition it shall be immediately destroyed by the Board. If said beer is determined to be in a salable condition it shall be offered for sale to the Distributor or Branch Distributor or Manufacturer so notified. If offered to a Distributor or Branch Distributor, it shall be at the Distributor's or Branch Distributor's cost price less any state taxes if theretofore paid on such beer, F.O.B. its place of business, or if offered to a Manufacturer the price shall be the cost price to its nearest Distributor or Branch Distributor, less any state taxes if theretofore paid on such beer, F.O.B. said nearest Distributor's or Branch Distributor's place of business, but the storage or warehousing charges necessarily incurred as a result of the seizure shall in all cases be added to such cost price.

Should said Distributor or Branch Distributor or Manufacturer not exercise the right to purchase any salable beer or any returnable bottles, containers or packages at their deposit price within ten (10) days, then the Board shall proceed to sell same at public or private sale as hereinabove provided.

Any liquor, its containers or original packages which may be seized under the terms of the Texas Liquor Control Act shall be disposed of as follows:

Upon being notified that any liquor has been seized, the Board shall immediately notify a holder of a Wholesaler's Permit or a General Class B or Local Class B Wholesaler's Permit who handles the brand of liquor seized and who operates in the county where said liquor was seized. If the liquor was seized in a dry area, the Wholesaler operating nearest said area handling the brand shall be notified. The Board and the Wholesaler so notified shall jointly determine and agree as to whether or not said seized liquor is in a salable condition. If said liquor is determined not to be in a salable condition, it shall be immediately destroyed by the Board. If said liquor is determined to be in a salable condition, it shall first be offered for sale to the Wholesaler so notified. If offered to a Wholesaler, it shall be at the Wholesaler's cost price, F.O.B. its place of business, plus any storage or warehousing charges necessarily incurred as a result of the seizure.

Should said Wholesaler not exercise the right to purchase any salable liquor, containers or packages at the price specified above within ten (10) days, then the Board shall proceed to sell same at public or private sale as hereinabove provided.

The provisions hereinabove contained shall not prevent the Board from exercising its discretion in the event that illicit alcoholic beverages have been seized as the result of an accidental shipment or other reasonable mistake; under such circumstances the Board may issue such orders and make such disposition of the alcoholic beverages as to it seems just and reasonable.

In the event the United States Government shall provide any plan or method whereby illicit alcoholic beverages and other property seized or belonging to or forfeited to the state shall be sold at ceiling prices during a national emergency, the Board shall have the right to comply with Federal law or regulations in the sale or disposal of such illicit alcoholic beverages or other property, even to the extent of partially or wholly abrogating any provisions hereof which may be in conflict with the Federal law or regulations.

(b) The proceeds of the sale of seized alcoholic beverages, containers thereof, and devices in which the alcoholic beverages are packaged shall be placed in escrow in a suspense account set up by the Board for such purpose pending the outcome of the forfeiture suit as provided in Section 42, Article I. Proceeds in escrow which are not forfeited to the state as the result of suit shall be refunded to the alleged violator.

The proceeds from any forfeiture sale and any proceeds held in escrow by the Board upon entry of a judgment forfeiting same to the state shall be disposed of as follows:

Thirty-five percent (35%) of all moneys derived from the sale of alcoholic beverages, containers, any device in which said alcoholic beverages are packaged, or property, as authorized in this Act shall be placed in a separate fund in the State Treasury to be designated as the Confiscated Liquor Fund, and thereafter all moneys in said fund shall be available to the Board to defray the expenses, and it is hereby appropriated for said purpose of purchasing and accumulating evidence as to violations of the provisions of this Act, and to defray the expenses incurred in assembling, storing, transporting, selling and accounting for said confiscated alcoholic beverages, containers, devices and property and for any other purpose deemed necessary by the Board in administering and enforcing the provisions of the Texas Liquor Control Act. Any unexpended portion of said fund at the end of each biennium shall remain in said fund subject to further appropriation for such purposes. Sixty-five percent (65%) of all moneys derived from the sale herein referred to shall be deposited in the General Fund of the State of Texas.

As to liquors confiscated by representatives of the Board, or any peace officer, it shall be incumbent upon the officer making the seizure to list each and every item or items so confiscated and the place and name of owner, operator, or person from whom such seizure is made. Such report shall be made in quadruplicate, two (2) copies of which shall be verified by oath; one (1) verified copy shall be retained in the permanent files of the Texas Liquor Control Board or other agency making the seizure, and one (1) verified copy shall be filed with the Comptroller of the State of Texas, which shall constitute a permanent file, and both of which shall be subject to inspection by any member of the Legislature or any duly authorized law enforcement agency of the State of Texas, and one (1) copy shall be delivered to the owner, operator, or person from whom such seizure is made. A false statement of said confiscated alcoholic beverage, or other personal property shall be punishable as now provided for false swearing. Any failure on the part of the peace officer making such seizures to file said reports shall constitute a misdemeanor and upon conviction thereof he shall be fined not more than One Hundred Dollars (\$100) nor less than Fifty Dollars (\$50) or shall be confined in jail not less than ten (10) days nor more than ninety (90) days or by both such fine and imprisonment. It shall be the duty of the Texas Liquor Control Board and its agents to see that said reports are made by said peace officers. Should the state illegally seize and sell any alcoholic beverages, the person legally entitled to possession of the alcoholic beverages at the time of the illegal seizure shall be entitled to recover from the state the fair market value of the alcoholic beverages illegally

seized and sold; such reimbursement shall be paid out of the proceeds held in escrow from the sale of such illegally seized alcoholic beverages, and to the extent further necessary from the Confiscated Liquor Fund.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 30; Acts 1937, 45th Leg., p. 1053, ch. 448, § 37; Acts 1943, 48th Leg., p. 509, ch. 325, § 6; Acts 1945, 49th Leg., p. 144, ch. 95, § 1; Acts 1949, 51st Leg., p. 1011, ch. 543, § 8; Acts 1969, 61st Leg., p. 80, ch. 38, § 8.]

<sup>1</sup> Article 666-42.

#### Art. 666-31. Enforcement by Peace Officers

It shall be the duty of all peace officers of this state, including city, county and state, to enforce all provisions of the Texas Liquor Control Act and to cooperate with and assist the Board in detecting violations of the Texas Liquor Control Act and apprehending offenders, and of county courts, in cases of violation to make recommendations to the Board for revocation or suspension of permits and licenses. Any person who violates any provision of the Texas Liquor Control Act may be arrested without a warrant by any representative of the Board or any peace officer of this state who has observed the violation. Whenever any officer or representative of the Board shall arrest any person for violation of any provision of the Texas Liquor Control Act or of any rule or regulation of the Board, such officer shall take into his possession all illicit beverages which the person so arrested has in his possession or on his premises.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 31; Acts 1937, 45th Leg., p. 1053, ch. 448, § 38; Acts 1969, 61st Leg., p. 80, ch. 38, § 9, eff. Sept. 1, 1969.]

#### Art. 666-32. Local Option Election

The commissioners court of each county in the state, upon proper petition, shall order an election wherein the qualified voters of such county, or of any justice precinct, or incorporated city or town therein, may by the exercise of local option determine whether or not the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized within the prescribed limits of such county, justice precinct, or incorporated city or town.

Subject to the provisions of this section and Section 32½ of the Texas Liquor Control Act,<sup>1</sup> upon the written application of any ten or more qualified voters of any county, justice precinct, or incorporated city or town, the county clerk of such county shall issue to the applicants a petition to be circulated among the qualified voters thereof for the signatures of those qualified voters in such area who desire that a local option election be called therein for the purpose of determining whether the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized within the prescribed limits of such county, justice precinct, or incorporated city or town.

An application for a petition seeking an election to legalize the sale of alcoholic beverages of one or

more of the various types and alcoholic contents shall be headed "Application for Local Option Election Petition to Legalize," and shall contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above." The petition so issued shall clearly state the issue to be voted upon in such election, which shall be the same issue as that set out in the application, and the issue shall be one of those set out in Section 40 of Article I of the Texas Liquor Control Act.<sup>2</sup>

An application for a petition seeking an election to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed "Application for Local Option Election Petition to Prohibit," and shall contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above." The petition so issued shall clearly state the issue to be voted upon in such election, which shall be the same issue as that set out in the application, and the issue shall be one of those set out in Section 40 of Article I of the Texas Liquor Control Act.<sup>2</sup>

The petition for a local option election seeking to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed "Petition for Local Option Election to Legalize," and shall contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above."

The petition for a local option election seeking to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed, "Petition for Local Option Election to Prohibit," and shall contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above."

Each such petition shall show the date of its issue by the county clerk and shall be serially numbered, and each page of such petition shall bear the same date and serial number, and shall bear the actual seal of the county clerk, and not a facsimile of such seal. The county clerk shall supply as many copies of the petition as may be required by the applicants but not to exceed more than one page of such petition for every ten registered voters in such county, justice precinct or incorporated city or town, and each copy shall bear the date, number and seal on each page as required in the original. The county clerk shall keep a copy of each such petition and a

record of the applicants therefor. When any such petition so issued shall within thirty days after the date of issue be filed with the county clerk bearing the actual signatures of as many as thirty-five percent of the qualified voters of any such county, justice precinct, or incorporated city or town, together with a notation showing the residence address of each of the said signers, together with the number that appears on his voter registration certificate, all of which information shall be in the actual handwriting of the signers of the petition, taking the vote for Governor at the last preceding general election as the basis for determining the number of qualified voters in any such county, justice precinct, or incorporated city or town, it is hereby required that the commissioners court at its next regular session shall order a local option election to be held upon the issue set out in such petition. Such order shall state in its heading and in its text whether the local option election to be held is for the purpose of prohibiting or for the purpose of legalizing the sale of the alcoholic beverages set out in the issue recited in the application and the petition. It shall be the duty of the county clerk to check the names of the signers of any such petition, and the voting precincts in which they reside to determine whether or not the signers of such petition were in fact qualified voters in such county, justice precinct, or incorporated city or town at the time such petition was issued, and to certify to the commissioners court the number of qualified voters signing such petition. No signature shall be counted, either by the county clerk or the commissioners court, where there is reason to believe it is not the actual signature of the purported signer, or that the voter registration certificate number is not correct or in the actual handwriting of the signer, or that it is a duplication either of name or of handwriting used in any other signature on the petition, and no signature shall be counted unless the correct residence address of the signer is shown in the actual handwriting of the signer and unless it is signed exactly as the name of the voter appears on the official copy of the current list of registered voters for the voting year which the petition is issued.

The minutes of the commissioners court shall record the date any such petition is presented, the names of the signers thereof, and the action taken with relation to the same. In any election ordered by the commissioners court, the issue ordered to appear on the ballot shall be the same as that applied for and set out in the petition. No subsequent election upon the same issue shall be held within one year from the date of the last preceding local option election in any county, justice precinct, or incorporated city or town.

Any authorized voting unit, that is, any county, justice precinct, or incorporated city or town which has at any time heretofore exercised or may at any time hereafter exercise the right of local option, shall retain the status adopted, whether absolute prohibition or legalization of the sale of alcoholic

beverages of one or more of the various types and alcoholic contents on which an issue may be submitted under the terms of Section 40 of Article I,<sup>2</sup> until that status is changed by a subsequent local option election in the same authorized voting unit; provided, however, that consistent with the purpose of the local option provisions of the Texas Liquor Control Act and in order to insure that each voter shall have the maximum possible control over the status of the sale of alcoholic beverages in the area of his residence, it is specifically provided that the status which resulted from or is the result of a duly called election for an incorporated city or town shall prevail as against the status which resulted from or is the result of a duly called election in a justice precinct or county in which such incorporated city or town, or any part thereof, is contained; and provided, further, that the status which resulted from or is the result of a duly called election for a justice precinct shall prevail as against the status which resulted from or is the result of a duly called election in an incorporated city or town in which such justice precinct is wholly contained or in a county in which such justice precinct is located. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 32; Acts 1943, 48th Leg., p. 509, ch. 325, § 7; Acts 1953, 53rd Leg., p. 643, ch. 249, § 2; Acts 1955, 54th Leg., p. 484, ch. 138, § 1; Acts 1963, 58th Leg., p. 1196, ch. 478, § 1, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 1927, ch. 723, § 71, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 508, ch. 219, § 2, eff. Aug. 27, 1973.]

<sup>1</sup> Article 666-32½.

<sup>2</sup> Article 666-40.

#### Art. 666-32½. Expense of Holding Elections

(a) The expense of holding any local option election authorized by the Texas Liquor Control Act in any county, justice precinct or incorporated city or town shall be paid by the county, but the expense to the county shall be limited to the holding of one election in each of the above political subdivisions within a one-year period where the intent of the election is to legalize the sale of alcoholic beverages, and the expense to the county shall be limited to the holding of one election in each of the aforesaid political subdivisions within a one-year period where the intent of the election is to prohibit the sale of alcoholic beverages. All other local option elections, excepting the aforementioned one election in a one-year period with intent to legalize the sale of alcoholic beverages, and excepting the aforementioned one election in a one-year period with intent to prohibit the sale of alcoholic beverages, shall be paid by the county from funds derived by the county as prescribed in Subsection (b) of this section as follows:

(b) When the application for an election in a county, justice precinct or incorporated city or town is presented, the county clerk at the time and before the issuance of any petition for a local option election shall require a deposit in the form of a cashier's check in the aggregate amount of twenty-five cents per voter listed on the current list of registered voters as residing in the county, justice

precinct or incorporated city or town for which the election is sought. The money so received shall be deposited in the county's general fund, and no refund shall be made to the applicants regardless of whether the petition is returned to the county clerk or the election is ordered. When there is presented to the county clerk an application which must be accompanied by a deposit, the county clerk shall not issue a petition to the applicants unless and until the deposit is made, and a county clerk who issues a petition upon such an application without first receiving the deposit is guilty of a misdemeanor and shall be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for not more than 30 days, or both fined and imprisoned.

[Acts 1967, 60th Leg., p. 1930, ch. 723, § 72, eff. Aug. 28, 1967.]

#### Art. 666-33. Order for Election

When the commissioners court orders an election as herein provided for, it shall be the duty of the court to order such election to be held upon a day not less than twenty nor more than thirty days from the date of the order, and the order thus made shall state the issue to be voted upon in such election, and the order shall be held to be prima facie evidence that all provisions necessary to give it validity or to clothe the court with jurisdiction to make it valid, have been duly complied with.

The election shall be held at a voting place within each regular county election precinct as established by the commissioners court within the affected territory if the election is for the entire county or for a justice precinct, and at a voting place within each election precinct established by the governing body of the city or town for its municipal elections if the election is for an incorporated city or town. If the governing body of a city or town has not established precincts for its municipal elections, the commissioners court shall prescribe the election precincts for the local option election, under the rules governing establishment of precincts for municipal elections. The election shall be held at the customary polling place within each election precinct, if available; and if it is not available for that election, the commissioners court shall designate some other polling place. The order for the election shall state the polling place for each election precinct. The order shall also state the precinct numbers of county precincts included in each municipal election precinct if the election is for an incorporated city or town. The general election laws shall govern the appointment of the election judges and clerks, who shall be qualified voters of the election precinct in which they are named to serve. Watchers for the election may be appointed in accordance with the general laws of the state, but they shall be qualified voters of the election precinct in which they are named to serve.

Not less than three days before any local option election, the county judge shall cause to be held a public school of instruction for those who will actual-

ly conduct the election at the polling places, such school to be open to any interested person. The county clerk shall post in his office a notice of the time and place of the meeting at least forty-eight hours before it is held. The county clerk shall also notify each presiding judge of the time and place at which such school will be held, and it shall be the duty of each presiding judge to give like notice to those persons who will serve as clerks and watchers, if appointed, at the election in his precinct.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 33; Acts 1943, 48th Leg., p. 509, ch. 325, § 7; Acts 1953, 53rd Leg., p. 643, ch. 249, § 3, eff. Aug. 26, 1953; Acts 1967, 60th Leg., p. 1927, ch. 723, § 71, eff. Aug. 28, 1967.]

#### Art. 666-34. Posting Notice of Election

The Clerk of said Court shall post or cause to be posted at least one copy of said order in each election precinct in such political subdivision or county affected, for at least six (6) days prior to the day of election, which election shall be held and the return thereof made in conformity with the provisions of the General Laws of the State, and by the election officers appointed and qualified under such laws.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 34.]

#### Art. 666-35. Official Ballot; Requisites

(a) At the election the vote shall be by official ballot which shall have printed thereon at the top thereof the words "Official Ballot", (beneath which there shall be printed the following instruction note: "Scratch or mark out one statement so that the one remaining indicates the way you wish to vote.") The ballot also shall have printed thereon the issue appropriate to the election order as provided in Section 40 of this Act.<sup>1</sup> The county clerk shall furnish the presiding judge of each election precinct within such subdivision or county with a number of such ballots, to be at least as many as the number of qualified voters in the precinct, plus ten percent of such number of voters.

(b) Notwithstanding any provision of the general election laws, the issue to be voted on shall be printed on the ballot in the exact language stated in Section 40 of this Act,<sup>1</sup> and the ballot shall be marked as provided herein. However, the failure of a voter to mark his ballot in strict conformity with these directions shall not invalidate the ballot, and a ballot shall be counted if the intention of the voter is clearly ascertainable, except where the law expressly prohibits the counting of the ballot. In elections to legalize the sale of alcoholic beverages, those in favor of such legalization shall erase the words "Against the legal sale of, etc." by marking a pencil mark through same; and those who oppose such legalization shall erase the words "For the legal sale of, etc." by marking a pencil mark through same. In elections to prohibit the sale of alcoholic beverages, those who favor such prohibition shall erase the words "For the legal sale of, etc." by marking a pencil mark through same; and those who oppose such prohibition shall erase the words "Against the

legal sale of, etc." by marking a pencil mark through same.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 35; Acts 1943, 48th Leg., p. 509, ch. 325, § 7; Acts 1953, 53rd Leg., p. 643, ch. 249, § 4, eff. Aug. 26, 1953; Acts 1967, 60th Leg., p. 1929, ch. 723, § 71, eff. Aug. 28, 1967.]

<sup>1</sup> Article 666-40.

#### Art. 666-36. Conformity to General Election Laws

The officers holding such election shall, in all respects not herein specified, conform to the General Election Laws in force regulating elections and after the polls are closed proceed to count the votes and within twenty-four (24) hours thereafter make due report of said election to the aforesaid Court. The provisions of the General Election Laws shall be followed in calling and conducting said election where not inconsistent herewith.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 36; Acts 1953, 53rd Leg., p. 643, ch. 249, § 5.]

#### Art. 666-36½. Repealed by Acts 1967, 60th Leg., p. 1932, ch. 723, § 77, eff. Aug. 28, 1967

Repealed article was derived from Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 36½, added by Acts 1949, 51st Leg., p. 1011, ch. 543, § 12, and related to election supervisors.

#### Art. 666-37. Canvass of Votes; Continuance of Operations as Distributor and Wholesaler

(a) Said court shall hold a special session on the fifth day after holding of said election, or as soon thereafter as practicable, for the purpose of canvassing the votes and certifying the results, and if a majority of the voters favor the issue "Against the legal sale, etc." as to any alcoholic beverages of the various types and alcoholic content, said court shall immediately make an order declaring the results of said vote and absolutely prohibiting the sale of such prohibited type or types of alcoholic beverages within the political subdivision after thirty (30) days from the date of declaring the results thereof, and thereafter until such time as the qualified voters therein may thereafter at the legal election held for such purpose by a majority vote decide otherwise; and the order thus made shall be held as prima facie evidence that all provisions of law have been complied with in giving notice of and holding said election and counting and returning the votes and declaring the results thereof.

In any local option election in which it is sought to prohibit the sale of alcoholic beverages in which a majority of the votes cast favor the issue "Against the legal sale of" etc., or in any local option election in which it is sought to legalize the sale of alcoholic beverages on one or more of the various types and alcoholic contents or manner of sale not already legal in the political subdivision involved in which a majority of the votes cast favor the issue "For the legal sale of" etc., then the sale of all alcoholic beverages which were legal in said county, justice precinct, or incorporated city or town before the holding of such local option election shall continue to be legal.

(b) Notwithstanding the foregoing, or any other provision of the Texas Liquor Control Act, a licensed distributor of beer whose warehouse or other facilities used in connection with such distributorship are located in any county, justice precinct, or incorporated city or town, at the time the sale of beer is prohibited in any such political subdivision by a valid local option election such distributor nevertheless shall have the right to continue to operate as a distributor in such political subdivision, and to maintain the necessary premises and facilities in such political subdivision for such distribution, and to enjoy all the rights and privileges incident to such distributorship previously enjoyed as such distributor in such political subdivision, including but not limited to, the right to possess, store, warehouse and sell beer in such political subdivision, and also to deliver beer into and out of such political subdivision; provided, however, that during the period the sale of beer is prohibited in such political subdivision as a result of such election, sale of beer and delivery of beer by such distributor shall be made only to licensed outlets located outside of such political subdivision where the possession and sale of beer is legal.

(c) Notwithstanding the foregoing Subsection (a) of this Section, or any other provision of the Texas Liquor Control Act, any holder of a Wholesaler's Permit whose warehouse or other facilities used in connection with such wholesale operation are located in any county, justice precinct, or incorporated city or town, at the time when the sale of the type or types of liquor authorized to be sold by such permit holder may be prohibited in any such political subdivision by a valid local option election, such Wholesaler's Permit holder nevertheless shall have the right to continue to operate as a wholesaler in such political subdivision and to maintain the necessary premises and facilities in such political subdivision for such wholesale operation and to enjoy all the rights and privileges incident to such Wholesaler's Permit previously enjoyed as such permit holder in such political subdivision, including but not limited to, the right to possess, store, warehouse and sell liquor in such political subdivision, and also to receive and deliver such liquor into and out of such political subdivision; provided, however, that during the period the sale of liquor is prohibited in such political subdivision as a result of such election, sale of liquor and delivery of such liquor by such Wholesaler's Permit holder shall be made only to permit-holding outlets located outside of such political subdivision where the possession and sale of liquor is legal.

(d) The purpose of subsections (b) and (c), above, is to protect the financial investment of distributors and wholesalers in such political subdivision that have voted to prohibit the sale of previously legalized type or types of alcoholic beverages in such political subdivision and not to authorize such distributors or wholesalers to sell any alcoholic beverage or beverages to be possessed or consumed in such political subdivision where the sale of such

alcoholic beverage or beverages has been prohibited by such election.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 37; Acts 1943, 48th Leg., p. 509, ch. 325, § 7; Acts 1953, 53rd Leg., p. 643, ch. 249, § 6; Acts 1963, 58th Leg., p. 1196, ch. 478, § 2, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 31, ch. 13, § 1, eff. Aug. 23, 1967.]

**Art. 666-38. Posting Order Prohibiting Sale of Liquor**

The order of said court declaring the result and prohibiting the sale of any or all types of alcoholic beverages shall be published by the posting of said order at three (3) public places within the county or the political subdivision in which the election was held, which fact shall be entered by the county judge on the minutes of the Commissioners Court. An entry thus made or a copy thereof certified under the hand and seal of the clerk of the court shall be prima facie evidence of such posting.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 38; Acts 1943, 48th Leg., p. 509, ch. 325, § 7.]

**Art. 666-39. Sale or Distribution Lawful on Vote for Sale**

If a majority voting at such election favor the issue "For the legal sale, etc." as to any alcoholic beverages of the various types and alcoholic content, the court shall make an order declaring the results and have the same entered of record in the office of the clerk of said court, whereupon it shall be lawful in such political subdivision to manufacture, sell or distribute such type or types of alcoholic beverages as may be favored in the election in accordance with the terms of this Act, until such time as the qualified voters therein may thereafter, at a legal election held for that purpose, by a majority vote decide otherwise, and the order thus made shall be held prima facie evidence that all the provisions of law have been complied with in giving notice of and holding said election and counting and returning the votes and declaring the results thereof. It shall be the duty of the county clerk within three (3) days after the results of any such election have been declared to certify such results to the Secretary of State at Austin.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 39; Acts 1943, 48th Leg., p. 509, ch. 325, § 7; Acts 1953, 53rd Leg., p. 643, ch. 249, § 7.]

**Art. 666-40. Local Option Elections; Submission of Issues**

(a) The Commissioners Court upon petition as herein provided shall, as provided in Section 32, Article I,<sup>1</sup> order local option elections for the purpose of determining whether alcoholic beverages of the various types and alcoholic contents herein provided, shall be legalized or prohibited.

(b) In areas where any type or classification of alcoholic beverages is prohibited and the issue submitted pertains to legalization of the sale of one or

more such prohibited types or classifications, one of the following issues shall be submitted:

(1) "For the legal sale of beer for off-premise consumption only" and "Against the legal sale of beer for off-premise consumption only."

(2) "For the legal sale of beer" and "Against the legal sale of beer."

(3) "For the legal sale of beer and wine for off-premise consumption only" and "Against the legal sale of beer and wine for off-premise consumption only."

(4) "For the legal sale of beer and wine" and "Against the legal sale of beer and wine."

(5) "For the legal sale of all alcoholic beverages for off-premise consumption only" and "Against the legal sale of all alcoholic beverages for off-premise consumption only."

(6) "For the legal sale of all alcoholic beverages except mixed beverages" and "Against the legal sale of all alcoholic beverages except mixed beverages."

(7) "For the legal sale of all alcoholic beverages including mixed beverages" and "Against the legal sale of all alcoholic beverages including mixed beverages."

(8) "For the legal sale of mixed beverages" and "Against the legal sale of mixed beverages."

(c) In areas where the sale of all alcoholic beverages including mixed beverages has been legalized, one of the following issues shall be submitted in any prohibitory election:

(1) "For the legal sale of beer for off-premise consumption only" and "Against the legal sale of beer for off-premise consumption only."

(2) "For the legal sale of beer" and "Against the legal sale of beer."

(3) "For the legal sale of beer and wine for off-premise consumption only" and "Against the legal sale of beer and wine for off-premise consumption only."

(4) "For the legal sale of beer and wine" and "Against the legal sale of beer and wine."

(5) "For the legal sale of all alcoholic beverages for off-premise consumption only" and "Against the legal sale of all alcoholic beverages for off-premise consumption only."

(6) "For the legal sale of all alcoholic beverages except mixed beverages" and "Against the legal sale of all alcoholic beverages except mixed beverages."

(7) "For the legal sale of all alcoholic beverages including mixed beverages" and "Against the legal sale of all alcoholic beverages including mixed beverages."

(8) "For the legal sale of mixed beverages" and "Against the legal sale of mixed beverages."

(d) In areas where the sale of all alcoholic beverages except mixed beverages has been legalized one of the following issues shall be submitted in any prohibitory elections:

(1) "For the legal sale of beer for off-premise consumption only" and "Against the legal sale of beer for off-premise consumption only."

(2) "For the legal sale of beer" and "Against the legal sale of beer."

(3) "For the legal sale of beer and wine for off-premise consumption only" and "Against the legal sale of beer and wine for off-premise consumption only."

(4) "For the legal sale of beer and wine" and "Against the legal sale of beer and wine."

(5) "For the legal sale of all alcoholic beverages for off-premise consumption only" and "Against the legal sale of all alcoholic beverages for off-premise consumption only."

(6) "For the legal sale of all alcoholic beverages except mixed beverages" and "Against the legal sale of all alcoholic beverages except mixed beverages."

(e) In areas where the sale of beverages containing alcohol not in excess of fourteen per centum (14%) by volume has been legalized, and those of higher alcoholic content are prohibited, one of the following issues shall be submitted in any prohibitory election:

(1) "For the legal sale of beer for off-premise consumption only" and "Against the legal sale of beer for off-premise consumption only."

(2) "For the legal sale of beer" and "Against the legal sale of beer."

(3) "For the legal sale of beer and wine for off-premise consumption only" and "Against the legal sale of beer and wine for off-premise consumption only."

(4) "For the legal sale of beer and wine" and "Against the legal sale of beer and wine."

(f) In areas where the sale of beer containing alcohol not exceeding four per centum (4%) by weight has been legalized, and all other alcoholic beverages are prohibited, one of the following issues shall be submitted in any prohibitory election:

(1) "For the legal sale of beer for off-premise consumption only" and "Against the legal sale of beer for off-premise consumption only."

(2) "For the legal sale of beer" and "Against the legal sale of beer."

(g) Wine, as referred to in Paragraphs (3) and (4) of Subsection (b) of this Section, Paragraphs (3) and (4) of Subsection (c) of this Section, Paragraphs (3) and (4) of Subsection (d) of this Section, and in Paragraphs (3) and (4) of Subsection (e) of this Section, means and includes malt and vinous beverages that do not contain alcohol in excess of fourteen per centum (14%) by volume.

(h) Vinous and malt liquor, containing not more than fourteen per centum (14%) alcohol by volume, and beer, which are sold or dispensed to the public in unbroken, sealed and individual containers are hereby declared to be a separate and distinct type and kind of alcoholic beverage and where the sale of alcoholic beverages has been legalized for off-premise consumption only, the sale or consumption of any other type or kind of alcoholic beverages on the licensed premises shall be unlawful.

(i) No local option election may affect the sale of mixed beverages unless the proposition specifically mentions mixed beverages. In any legalization or prohibitory local option election where any shade or aspect of the issue submitted involves the sale of mixed beverages, any other type or classification of alcoholic beverage which was legalized prior to such election shall remain legalized without regard to the outcome of said election on the question of mixed beverages.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 40; Acts 1937, 45th Leg., p. 1053, ch. 448, § 30a; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 8; Acts 1953, 53rd Leg., p. 643, ch. 249, § 8; Acts 1971, 62nd Leg., p. 696, ch. 65, § 20, eff. April 21, 1971.]

<sup>1</sup> Article 666-32.

**Art. 666-40a. Contest of Election**

At any time within thirty (30) days after the result of any local option election held pursuant to the provisions of the Texas Liquor Control Act has been declared, any qualified voter of the county, justice precinct or incorporated town or city of such county in which such election has been held, may contest the said election in the District Court of the county in which such election has been held, which shall have original and exclusive jurisdiction of all suits to contest such election, and the proceedings in such contest shall be conducted in the same manner, as now govern the contest of any general election, and said court shall have jurisdiction to try and determine all matters connected with said election, including the petition of such election and all proceedings and orders relating thereto, embracing final count and declaration and publication of the result putting local option into effect, and it shall have authority to determine questions relating to the legality and validity of said election, and to determine whether by the action or want of action on the part of the officers to whom was entrusted the control of such election, such a number of legal voters were denied the privilege of voting, as had they been allowed to vote, might have materially changed the result, and if it shall appear from the evidence that such irregularities existed in bringing about said election or in holding same, as to render the true result of the election impossible to be arrived at, or very doubtful of ascertaining, the court shall adjudge such election to be void, and shall order the proper officer to order another election to be held, and shall cause a certified copy of such judgment and order of the court to be delivered to such officer upon whom is devolved by law the duty

of ordering such election. It is further provided that all such cases shall have precedence in the District Court and appellate courts, and that the result of such contest shall finally settle all questions relating to the validity of said election, and it shall not be permissible to again call the legality of said election in question in any other suit or proceeding; and provided further, that if no contest of said election is filed and prosecuted in the manner and within the time provided above, it shall be conclusively presumed that said election as held and the result thereof declared, are in all respects valid and binding upon all courts; provided also that pending such contest the enforcement of local option law in such territory shall not be suspended, and that all laws and parts of laws in conflict herewith be and the same are hereby repealed.

Any qualified voter of any county, justice precinct, incorporated city or town within this State which has heretofore voted on local option may contest said election under the provisions of this Act, and if no contest is filed within sixty (60) days from the taking effect of this Act, it shall be conclusively presumed that said election as held was valid in all things and binding upon all courts.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 30a.]

**Art. 666-40b. Qualifications of Political Subdivision for Holding Election; Duration of Existence; Area Encompassed**

In order to qualify under the terms of this Act to hold a local option election to legalize or prohibit the sale of liquor as authorized under Section 40 of Article I of the Texas Liquor Control Act,<sup>1</sup> any qualified political subdivision holding such election must have been in existence for at least eighteen (18) months. Such political subdivision, to qualify hereunder, shall include substantially all of the area encompassed by such subdivision at the time of its creation and may include any and all other areas legally annexed by or added to such subdivision since its creation. These restrictions shall not apply to any city or town that was incorporated prior to December 1, 1971.

[Acts 1971, 62nd Leg., p. 698, ch. 65, § 21, eff. April 21, 1971.]

<sup>1</sup> Article 666-40.

**Art. 666-41. Penalty for Violations of Act**

Any person who violates any provision of this Act<sup>1</sup> for which a specific penalty is not provided shall be deemed guilty of a misdemeanor and upon conviction be punished by fine of not less than One Hundred (\$100.00) Dollars and not more than One Thousand (\$1,000.00) Dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

The term "specific penalty" as used in this Section means and refers only to a penalty which might be imposed as a result of a criminal prosecution.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 41; Acts 1937, 45th Leg., p. 1053, ch. 448, § 39; Acts 1943, 48th Leg., p. 509, ch. 325, § 8.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

**Art. 666-41a. Certified Copies of Judgment and of Information to be Furnished Board; Certifying Results of Local Option Election; Report as to Status of Wet and Dry Areas**

It shall be the duty of the County Clerk of each County to furnish to the Texas Liquor Control Board or representative upon demand a certified copy of the judgment of conviction and a certified copy of the information against any person when such person has been convicted for the violation of any provisions of this Act.<sup>1</sup> Such certified copies shall be furnished the Board or its authorized representative free of charge.

County Clerks are also charged with the duty to certify the results of any local option election to the Texas Liquor Control Board at Austin, Texas, within three (3) days after the Commissioners Court of such county has declared the results thereof, free of charge.

On August 1st of each year it shall be the duty of each County Clerk to report to the Board at Austin, Texas, the exact status as to wet and dry areas of his county, specifying the status of the county as a whole and of each incorporated city or town of each justice precinct of said county. Such information shall be furnished the Board free of charge.

It shall be the duty of the District Clerk of each district to furnish to the Texas Liquor Control Board or representative upon demand a certified copy of the judgment of conviction and a certified copy of the information against any person when such person has been convicted for the violation of any provision of this Act. Such certified copies shall be furnished the Board or its authorized representative free of charge.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 40; Acts 1949, 51st Leg., p. 1011, ch. 543, § 9.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

**Art. 666-41b. Assessment of Suspension or Cancellation Penalty Against Permit or License of Retail Dealer; Discretion of Board or Administrator; Reinstatement; Disposition of Fees**

The penalty of any suspension or cancellation against a Retail Dealer provided for in the Texas Liquor Control Act shall be assessed against the permit or license covering the premises where the offense was committed, except as to a violation of the credit or cash law.

If any holder of a permit or retail off-premise license under the Texas Liquor Control Act establishes to the satisfaction of the Texas Liquor Control Board or the Administrator that any violation of the Texas Liquor Control Act complained of occurred

under such circumstances as could not reasonably have been prevented by such permittee or licensee with the exercise of due diligence, or that such permittee or licensee was entrapped, or that an agent, servant, or employee of such permittee or licensee has violated any provision of the Texas Liquor Control Act without the knowledge of such permittee or licensee, or the violation complained of was a technical violation, or that such permittee or licensee did not knowingly violate the provisions of the Texas Liquor Control Act, then the Board or Administrator shall have the authority to relax any provision concerning suspension or cancellation of the permit or retail off-premise license and to assess such sanction as the Board or Administrator may deem just under the circumstances, and such permit or retail off-premise license may, in the discretion of the Board or Administrator be reinstated at any time during the period of suspension upon payment by such offending permittee or licensee of a fee of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500). Any money received by the Board under this Section shall be deposited in the Confiscated Liquor Fund, authorized in Section 30<sup>1</sup> of Article I.

[Acts 1969, 61st Leg., p. 80, ch. 38, § 10, eff. Sept. 1, 1969.]

<sup>1</sup> Article 666-30.

**Art. 666-42. Seizures; Replevin; Suit for Forfeiture; Intervention by Lienholders; Sale; Liens on Proceeds**

(a) All illicit beverages as defined by this Act<sup>1</sup> together with the containers and any device in which the beverage is packaged, and any wagon, buggy, automobile, water or aircraft, or any other vehicle, used for the transportation of any illicit beverage, or any equipment designed to be used or which is used for illicit manufacturing of beverages, or any material of any kind which is to be used in the manufacturing of illicit beverages, may be seized with or without a warrant by an agent or employee of the Texas Liquor Control Board, or by any peace officer, and any person found in possession or in charge thereof may be arrested without a warrant. No alcoholic beverages, containers, or any device in which such beverage is packaged so seized shall be replevied, but shall be delivered to the Board, to be held for the sale and deposit of proceeds in escrow as provided in Section 30<sup>2</sup> of Article I. Any such wagon, buggy, automobile, water or aircraft or any other vehicle so seized may be replevied by the owner thereof or lawful lienholder thereon upon execution by him of a good and valid bond with sufficient surety in a sum double the appraised value of the property replevied, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial of any suit for the forfeiture of such property to abide the judgment of the court. In any such suit where the owner of the vehicle or the lienholder appears and contests the suit, the burden shall be on the state to prove that such owner or lienholder knowingly violated some provision of this

Act; otherwise the court shall enter judgment for such owner or lienholder.

(b) It shall be the duty of the Attorney General, the District Attorney, and the County Attorney, or any of them, when notified by the officer making the seizure, or by the Texas Liquor Control Board, that such seizure has been made, to institute a suit for forfeiture of the property seized and of the proceeds of the sale of the alcoholic beverages, containers, and devices in which such alcoholic beverages are packaged (referred to hereinafter as "proceeds in escrow"), such suit to be brought in the name of the State of Texas against such property and proceeds in escrow in any court of competent jurisdiction in the county wherein such seizure was made. Notice of pendency of such suit shall be served on any person found in possession of the beverages or property at the time of seizure in the manner prescribed by law and the case shall proceed to trial as other civil cases. If no person be found in possession of the beverages or property, or if at the time suit is filed the whereabouts of those in possession is unknown, notice shall be posted at the courthouse door in the county wherein the property was seized for a period of twenty (20) days. If upon the trial of such suit it is found that the alcoholic beverages were illicit, or that the vehicle was used for the transportation of illicit beverages, or that the equipment is designed to be used or is used for illicit manufacturing of beverages, or the material is to be used in the manufacturing of illicit beverages, then the court trying said cause shall render judgment forfeiting the property and proceeds in escrow to the State of Texas and ordering the same disposed of as provided for by Section 30 of this Article, or if in the opinion of the Board or Administrator any such property, except the proceeds in escrow, is needed for the use of the Board, then the same may be retained and so used until such time as such property is sold by the Board as provided herein. The costs of such proceedings shall be paid by the Board, out of funds derived under the provisions of said Section 30, or from any other fund available to the Board for such purpose.

(c) As to any property or articles upon which there may be a lien, by a bona fide lienholder, the holder of such may intervene to establish his rights and shall be required to show such lien to have been granted in a bona fide manner and without knowledge of the fact at the time of creation of the lien, that any article or property upon which such lien exists has been used or was to be used in violation of this Act. If the holder of any such lien shall intervene, then the court trying said cause shall render judgment forfeiting the same to the State of Texas, and if such lien is established to the satisfaction of the court, said court shall authorize the issuance of an order of sale directed to the sheriff or any constable of the county wherein the property was seized, commanding such officer to sell said property in the same manner as personal property is sold under execution. The court may order such proper-

ty sold in whole or in part as it may deem proper and the sale shall be conducted at the courthouse door. The money realized from the sale of such property shall be applied first to the payment of the costs of suit and expenses incident to the sale and after such expenses have been approved and allowed by the court trying the case, then the further proceeds of such sale shall be used to pay all such liens according to priorities, and any remaining proceeds shall be paid to the Board to be allocated as provided in Section 30 hereof. All such liens against property sold under this Section shall be transferred from the property to the proceeds of its sale. In case such lien is not established to the satisfaction of the court the judgment shall be entered ordering same disposed of as provided in Subsection (b) of this Section.

A lien on alcoholic beverages, containers thereof, and devices in which the alcoholic beverages are packaged will attach to the proceeds of their sale, which have been placed in escrow as provided in Section 30 of this Article I. The lien must be established as provided by this Subsection. Upon establishment of liens on the proceeds in escrow to the satisfaction of the court, the proceeds in escrow will be used to pay all such liens according to priorities. The remaining proceeds shall be disposed of as provided in Subsection (b) of Section 30 of this Article I.

The sheriff, constable, or Texas Liquor Control Board executing said sale shall issue a bill of sale or certificate to the purchaser of said property, and such bill of sale or certificate shall convey valid and unimpaired title to such property.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 42; Acts 1937, 45th Leg., p. 1053, ch. 448, § 41; Acts 1943, 48th Leg., p. 509, ch. 325, § 9; Acts 1949, 51st Leg., p. 1011, ch. 543, § 10; Acts 1969, 61st Leg., p. 80, ch. 38, § 11, eff. Sept. 1, 1969.]

<sup>1</sup> Article 666-3a(4).

<sup>2</sup> Article 666-30.

**Art. 666-43. Repealed by Acts 1937, 45th Leg., p. 1053, ch. 448, § 47.**

**Art. 666-43A. No Permit or License Issued, When**

No permit or license applied for under the terms of this Act<sup>1</sup> may be issued to any person upon an application, either for an original license or permit, or for any license or permit sought to be transferred from another location, when the premises for which the permit or license is sought is licensed under any permit or license against which an order of suspension by the Board or Administrator is pending or unexpired, or against which existing permit or license the Board has initiated action to cancel or suspend.

[Acts 1943, 48th Leg., p. 509, ch. 325, § 14.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

**Art. 666-43B. Citizen Defined**

When the terms "citizen of Texas" and "citizen of this state" are used in this Act, they shall mean not only citizenship in Texas, as required by this Act,<sup>1</sup>

but shall also require citizenship in the United States.

[Acts 1943, 48th Leg., p. 509, ch. 325, § 14.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

**Art. 666-44. Repealed by Acts 1949, 51st Leg., p. 1011, ch. 543, § 11.**

**Art. 666-45. Printing and Sale of Stamps**

(a) It shall be the duty of the Texas Liquor Control Board and the Board of Control to have engraved or printed all necessary liquor and beer tax stamps as provided in both Articles I<sup>1</sup> and II<sup>2</sup> of this Act. Such stamps shall be of such design and denomination as the Texas Liquor Control Board shall from time to time prescribe and shall show the amount of tax, the payment of which is evidenced thereby, and shall contain the words "Texas State Tax Paid." All contracts for stamps required by this Act shall be let by the Board of Control as provided by law. The Texas Liquor Control Board is authorized to expend all necessary funds from time to time to keep on hand an ample supply of such stamps.

(b) The State Treasurer shall be responsible for the custody and sale of such stamps and for the proceeds of such sales under his official bond. He shall sell same to such qualified persons as may be designated by the Board and to no other person. The Treasurer shall have power to designate any State or National Bank in this state as his agent to deliver and collect for any stamps and to remit the proceeds thereof to him. Invoices for liquor stamps shall be issued by the State Treasurer in triplicate and numbered consecutively. The original of such invoice shall be forwarded to the purchaser or to the person in whose care they may be sent for the benefit of a qualified purchaser, the duplicate to the Texas Liquor Control Board, and the triplicate shall be retained by the State Treasurer. The duplicate copies shall be transmitted daily to the Board in such manner and shall be accompanied by such statements as the Board may require. The State Treasurer shall make and keep a permanent record of all stamps received by him as well as all stamps sold. Such record shall provide a perpetual inventory of all stamps and the disposition thereof and shall at all times be available to the Board or its authorized representatives.

(c) The Board shall by rule and regulation prescribe the manner in which stamps shall be delivered by the State Treasurer to the Board for use and sale by its inspectors in charge of ports of entry.

(d) Refunds for liquor stamps may be made by the Board from the revenue derived from the sale of such stamps before the same has been allocated, and so much of such funds as may be necessary is hereby appropriated for that purpose. A refund may be made by the Board in all cases where stamped liquor is returned to the distillery or manufacturer upon certification by a duly authorized representative of the Board who inspected the shipment. The Board may also make a refund in all cases where stamped liquor has been destroyed upon certification by a

duly authorized representative of the Board that such liquor has been destroyed. The Board may also make a refund to any person who has been authorized to purchase stamps, and who is in possession of unused liquor stamps upon discontinuation of business. The Board may also make a refund where stamps of improper value have been erroneously affixed to a bottle or container of liquor and such stamps have been destroyed in a manner prescribed by the Board. In any of the above instances, it must be shown that stamps for which a refund is asked were purchased from the State Treasurer and that the refund is made to a person authorized to purchase stamps from the State Treasurer. No other refunds for liquor stamps shall be allowed.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 45; Acts 1937, 45th Leg., p. 1053, ch. 448, § 43; Acts 1943, 48th Leg., p. 509, ch. 325, § 16; Acts 1959, 56th Leg., p. 358, ch. 174, § 1, eff. May 18, 1959.]

<sup>1</sup> Article 666-1 et seq.  
<sup>2</sup> Article 667-1 et seq.

#### Art. 666-46. Disposition of Receipts

After allocation of funds to defray administrative expenses as provided in the current Departmental Appropriation Act, receipts from the sale of distilled spirits, wine, and malt liquor tax stamps shall be deposited in the State Treasury as follows: One-fourth ( $\frac{1}{4}$ ) to the credit of the Available School Fund, and three-fourths ( $\frac{3}{4}$ ) to the credit of the Clearance Fund. All revenues derived from the collection of permit fees provided for under Article I<sup>1</sup> shall be deposited to the credit of the Clearance Fund.

The "Clearance Fund" as referred to herein is the fund created by the provisions of Section 2, Article XX, House Bill No. 8, Chapter 184, Acts of the Regular Session of the 47th Legislature,<sup>2</sup> and funds allocated to such Clearance Fund shall be used for the purposes expressed in that Act.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 46; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 3c; Acts 1937, 45th Leg., p. 1053, ch. 448, § 44; Acts 1943, 48th Leg., p. 509, ch. 325, § 25-A.]

<sup>1</sup> Article 666-1 et seq.  
<sup>2</sup> Civil Statutes, art. 7083a.

#### Art. 666-47. Revolving Fund for Salaries and Expenses

For the purpose of enabling the Board to perform all its duties, including the payment of salaries and all other necessary expenses, the Board is hereby authorized to set up a revolving fund in the sum of Fifty Thousand Dollars (\$50,000) to be taken out of revenues derived under the provisions of this Act, which said sum is hereby appropriated and shall be independent of and in addition to any appropriation which may be made.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 47; Acts 1937, 45th Leg., p. 1053, ch. 448, § 45.]

#### Art. 666-48. Distribution of Copies of Act

The Board is hereby authorized to have printed in pamphlet form for distribution such number of cop-

ies of the Texas Liquor Control Act, as amended hereby,<sup>1</sup> as may be deemed necessary.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 48; Acts 1937, 45th Leg., p. 1053, ch. 448, § 46.]

<sup>1</sup> Articles 666-1 et seq. and 667-1 et seq.

#### Art. 666-49. Repeals

Chapter 7 of Title 11,<sup>1</sup> Penal Code of Texas of 1925, and all amendments thereto are hereby expressly repealed. Title 80,<sup>2</sup> Revised Civil Statutes, 1925, and all amendments thereto are hereby expressly repealed.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 49.]

<sup>1</sup> So in enrolled bill. Session Laws read "Title II".  
<sup>2</sup> Civil Statutes, arts. 5075 to 5114.

#### Art. 666-49a. Suspension or Cancellation of Permits for Breach of Peace

The Commission or Administrator shall have the power and authority to suspend for a length of time not exceeding thirty (30) days any retail Package Store Permit, Mixed Beverage Permit, Wine Only Package Store Permit, or Medicinal Permit upon ascertaining that any act constituting a breach of the peace has occurred upon the premises covered by the permit of such retail dealer or under his control, and at the expiration of the period for which such permit has been suspended the Commission or Administrator may further suspend or cancel the permit unless it shall have been shown to the satisfaction of the Commission or Administrator that the act was beyond the control of the person holding the permit and did not result from improper supervision by the permittee of the conduct of persons permitted by him to be on the licensed premise or premises under his control.

[Acts 1949, 51st Leg., p. 1011, ch. 543, § 12; Acts 1971, 62nd Leg., p. 698, ch. 65, § 22, eff. April 21, 1971.]

#### Art. 666-50. Prohibited Forms of Advertising

It shall be a violation of the law for any person to advertise any alcoholic beverage or the sale of any alcoholic beverage by the employment or use of a sound vehicle, sound truck or hand bills on any public street, alley, or highway in this State.

[Acts 1949, 51st Leg., p. 1011, ch. 543, § 12.]

#### Art. 666-51. Saving Clause

The repeal or amendment of any Section or any portion of a Section of the Texas Liquor Control Act by the enactment of this bill shall not affect or impair any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any cause before such repeal or amendment shall take effect; but every such act done, or right vested or accrued, or proceeding, suit, or prosecution had or commenced shall remain in full force and effect to all intents as if such Section, or part thereof, so repealed or amended had remained in force, except that where the course of practice or procedure for the enforcement of such right, or the conducting of such proceeding, suit, or prosecution shall be changed, the same shall be conducted as

near as may be in accordance with this Act. No offense committed and no liability, penalty, or forfeiture, either civil or criminal, incurred prior to the time when any section or part thereof shall be repealed or amended by this Act, shall be discharged or affected by such repeal or amendment; but prosecutions and suits for such offenses, liabilities, penalties, or forfeitures shall be instituted and proceeded with in all respects as if such prior Statute, or part thereof, had not been repealed or amended, except that where the mode of procedure or matters of practice have been changed by this Act, the procedure had after this Act shall have taken effect in such prosecution or suit shall be, as far as practicable, in accordance with this Act.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 48.]

#### Art. 666-51a. Offensive Music, Noise and Other Sounds

It shall be unlawful for any licensee or permittee, his agent, servant or employee, on premises under his control, to maintain or permit a radio, television machine, amplifier, loud-speaker, public address system, piano, phonograph, music machine, orchestra, band, singer, speaker, entertainer, or any other device or person which produces, amplifies or projects music, noise or other sound which is loud, vociferous, vulgar, indecent, lewd or otherwise offensive to the public on or near the licensed premises.

[Acts 1949, 51st Leg., p. 1011, ch. 543, § 12.]

#### Art. 666-52. Transportation of Ale; Transfer of Beverages between Stores and Storage Place

The Board may by rule and regulation prescribe the manner in which ale may be transported within the State of Texas by the holder of a Private Carrier Permit who is also the holder of a Class B Wholesaler's Permit.

The owner of more than one Package Store or more than one Wine Only Package Store who is also the holder of a Local Cartage Permit and who has designated one of his places of business as a place of storage may transfer alcoholic beverages from such place of storage to his other stores in the same county and from such other stores to his storage place.

[Acts 1949, 51st Leg., p. 1011, ch. 543, § 12; Acts 1953, 53rd Leg., p. 643, ch. 249, § 9.]

#### Art. 666-53. Interest in Consignment Sales

It shall be unlawful for any person holding a license or permit under Articles I or II of this Act,<sup>1</sup> his or its officers, agents, servants or employees, directly or indirectly, to be interested in, connected with, or be a party to a consignment sale as defined in the Texas Liquor Control Act<sup>2</sup>.

[Acts 1949, 51st Leg., p. 1011, ch. 543, § 12.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

<sup>2</sup> See art. 666-3a.

#### Art. 666-54. Certification of Facts by County Clerk and City Secretary or Clerk

The county clerk of the county in which an application for a license or permit is made shall certify whether or not the location or address given in the application is in a wet area and whether or not the sale of alcoholic beverages for which the license or permit is sought is prohibited by any valid order of the County Commissioners Court.

The city secretary or clerk of the city in which an application for a license or permit is made shall certify whether or not the location or address is in a wet area and whether or not the sale of alcoholic beverages for which license or permit is sought is prohibited by charter, ordinance or any amendment thereto.

[Acts 1949, 51st Leg., p. 1011, ch. 543, § 12.]

#### Art. 666-55. Repealed by Acts 1973, 63rd Leg., p. 508, ch. 219, § 1, eff. Aug. 27, 1973

Article was derived from Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 55, added by Acts 1949, 51st Leg., p. 1011, ch. 543, § 12, and defined election days.

#### Art. 666-56. Non-Resident Sellers; Samples and Labels

Each holder of a Non-resident Seller's Permit, as provided in Section 15½A. of Article I of the Texas Liquor Control Act,<sup>1</sup> before making any shipments into the State of Texas of any distilled spirits shall furnish to the Board samples and applications for label approval of each brand of such distilled spirits properly labeled, in a container in which such is to be sold. The Board or its authorized agents shall test the contents of the sample for, among other things, fill, quality and purity, and examine the label and container and determine whether or not the container, contents and label comply with and meet the requirements of the laws of the State and the rules and regulations of the Board.

If they do comply, the Board shall issue a certificate to such holder to that effect and thereafter, unless there be a change in the label, contents, style or size of the container, it shall not be necessary for such holder, as to distilled spirits imported direct from the distiller, bottler, or the exclusive agent of the distiller or bottler, or as to distilled spirits distilled or bottled by the holder or by a distiller or bottler for whom he is the exclusive agent, to again submit samples of the approved brands until directed to do so by the Board. As to distilled spirits not imported direct from the distillery or distilled or bottled by such holder or a distiller or bottler for whom holder is exclusive agent, samples as provided above must be furnished to the Board as to each and every brand and size in each and every shipment into the State of Texas, together with a sworn statement of the quantity and sizes to be shipped into the State, the permittee to whom it is to be shipped, the person or firm from whom shipped, and holder must have the certificate of approval from the Texas Liquor Control Board in his possession before such shipment is made.

[Acts 1949, 51st Leg., p. 1011, ch. 543, § 12.]

<sup>1</sup> Article 666-15½.

**Art. 666-57. Brewer's Permit**

Regardless of any other provision of the Texas Liquor Control Act, any person who has theretofore been issued a Manufacturer's License or any renewal thereof under Article II<sup>1</sup> of the Texas Liquor Control Act, and so long as such Manufacturer's License or any renewal thereof remains in force, shall be entitled to the issuance, for the same location, of a Brewer's Permit, as well as renewals thereof, upon written application to the Board and payment of the fee therefor.

Regardless of any other provision of the Texas Liquor Control Act,<sup>2</sup> no person who has theretofore been issued a Manufacturer's License or a Brewer's Permit shall subsequently be denied a Manufacturer's License or any renewal of a Manufacturer's License, or a Brewer's Permit or any renewal of a Brewer's Permit, for the same location on the grounds that the sale of beer or ale has been prohibited by local option in the area in which the licensed premises are located and, except for the right to make sales of beer or ale contrary to such local option prohibition, any Manufacturer's License or Brewer's Permit so previously held, or issued or renewed under this provision shall authorize its holder to do all things which such a holder is authorized to do under any provision of the Texas Liquor Control Act, as herein or hereafter amended, including but not limited to the manufacture, brewing, possession, storage, packaging, and transportation of beer or ale to areas wherein the sale of beer or ale is legal, and including the delivery at such holder's licensed premises of beer or ale to purchasers domiciled outside Texas, common carriers, contract carriers, or other carriers duly authorized to transport beer or ale, Distributors and/or Class B Wholesalers; and all such purchasers, carriers, Distributors and Class B Wholesalers are hereby authorized to receive at such holder's licensed premises such beer or ale for transportation to an area wherein the sale of beer or ale is legal, after the occurrence, in an area wherein the sale of beer or ale is legal, of the following: prior order, acceptance of such order, and either payment for same or legal satisfaction of payment for same.

Regardless of any other provision of the Texas Liquor Control Act, any holder of a Manufacturer's License or a Brewer's Permit is hereby authorized to manufacture or brew malt beverages and package same in containers for shipment outside of the State of Texas, and the holder of a Manufacturer's License is authorized to import beer, and the holder of a Brewer's Permit is authorized to import ale and malt liquor into Texas, even though the alcoholic content of such products, or the containers in which they are packaged, or the packages themselves, or the labels on the containers or the packages would make such products illegal for sale in Texas, and any such holder shall have the right to export such products to points outside Texas, and to make deliveries at such holder's premises for shipment outside Texas,

without being liable for any tax imposed by the State of Texas on beer or ale sold for resale in Texas.

The Board by rule and regulation and the Administrator by directive are hereby empowered to do any and all things necessary to carry out the intent of this Section.

[Acts 1961, 57th Leg., p. 1066, ch. 478, § 2, eff. Aug. 28, 1961; Acts 1967, 60th Leg., p. 40, ch. 20, § 2, eff. Sept. 1, 1967.]

<sup>1</sup> Article 667-1 et seq.

<sup>2</sup> Articles 666-1 et seq., 667-1 et seq.

**Art. 666-58. Renewal of Mixed Beverage Permit Held by Corporation; Change of Ownership; Rules and Regulations; Application for Original Permit**

[Text as added by Acts 1971, 62nd Leg., p. 688, ch. 65, § 9]

(a) A mixed beverage permit held by a corporation may not be renewed if the Commission or Administrator finds that legal or beneficial ownership of over fifty percent (50%) of the stock of the corporation has changed since the original permit was issued.

(b) The Commission or Administrator may adopt reasonable rules and regulations in accordance with the provisions of this Section.

(c) A corporation which is barred from renewing a permit because of this Section may file an application for an original permit and may be issued an original permit if otherwise qualified.

(d) This Section does not apply to a change in corporate control brought about by the death of a shareholder if his surviving spouse or descendants are his successors in interest.

[Acts 1971, 62nd Leg., p. 688, ch. 65, § 9, eff. April 21, 1971; Acts 1973, 63rd Leg., p. 788, ch. 351, § 1, eff. June 12, 1973.]

For text as added by Acts 1971, 62nd Leg., p. 1797, ch. 531, § 1, see article 666-58, post.

**Art. 666-58. Salvaging Insured Losses**

[Text as added by Acts 1971, 62nd Leg., p. 1797, ch. 531, § 1]

Regardless of any other provision of the Texas Liquor Control Act, any person not otherwise permitted or licensed to sell alcoholic beverages but coming into possession of any alcoholic beverages as an insurer or an insurance salvor in the salvage or liquidation of an insured damage or loss sustained in Texas by a qualified permittee or licensee may sell such beverages in one lot or parcel to a duly licensed holder of a qualified permit or license without himself qualifying as a permittee or licensee. Provided, however, no alcoholic beverages unfit to be sold for public consumption may be so sold, and provided further, immediately after taking possession of said alcoholic beverages the said insurer or insurance salvor shall register same with the Texas Alcoholic

Beverage Commission, furnishing the Commission a detailed listing and exact location of the alcoholic beverages and posting with the Commission a surety bond in such amount as the Administrator may deem adequate to protect the State in relation to taxes due on such alcoholic beverages, if any; provided, the Texas Alcoholic Beverage Commission shall find same to be salable and provided further, the person making such registration shall remit therewith a registration fee of Ten Dollars, which fee shall permit the sale of only the alcoholic beverages detailed in the said registration.

It is further provided, however, that as to beer, its containers, or original packages which may come into the possession of any insurer, or any insurance salvor in connection with the salvage or liquidation of an insured damage or loss sustained in Texas, the following procedure shall be followed as to disposition or sale:

Upon being notified and furnished a list of any beer possessed and desired to be sold by any insurer or insurance salvor, the Commission shall immediately notify a holder of a General or Local Distributor's or Branch Distributor's License who handles the brand of beer and who operates in the county where said beer is located. If the beer is located in a dry area or if no Distributor operates in the county, either the Distributor or Branch Distributor operating nearest said area handling the brand or the Manufacturer brewing said beer shall be notified. The insurer or insurance salvor, the Commission, and the Distributor or Branch Distributor or Manufacturer so notified shall jointly determine and agree as to whether or not said beer is in a salable condition. If said beer is determined not to be in a salable condition it shall be immediately destroyed by the Commission. If said beer is determined to be in a salable condition it shall be offered for sale to the Distributor or Branch Distributor or Manufacturer so notified. If offered to a Distributor or Branch Distributor, it shall be at the Distributor's or Branch Distributor's cost price less any State taxes if theretofore paid on such beer, F.O.B. its place of business, or if offered to a Manufacturer the price shall be the cost price to its nearest Distributor or Branch Distributor, less any State taxes if theretofore paid on such beer, F.O.B. said nearest Distributor's or Branch Distributor's place of business.

Should said Distributor or Branch Distributor or Manufacturer not exercise the right to purchase any salable beer or any returnable bottles, containers or packages at their deposit price within ten (10) days, then the insurer or insurance salvor shall proceed to sell same as hereinabove otherwise provided.

Having purchased such beverages in accordance with this article, the purchasing duly licensed permittee or licensee may thereafter handle, possess, transport, sell, or otherwise dispose of beverages so acquired to the same extent and in the same way allowed as to other alcoholic beverages legally acquired by such permittee or licensee.

It is further provided, however, that as to any liquor, its containers or original packages which may come into the possession of any insurer or any insurance salvor in connection with the salvage or liquidation of an insured damage or loss sustained in Texas, the following procedure shall be followed as to disposition or sale.

Upon being notified and furnished a list of liquor that has been possessed and desired to be sold by an insurer or insurance salvor, the Commission shall immediately notify only the holder or holders of the Wholesaler's Permit or General Class B or Local Class B Wholesaler's Permit who handle and regularly sell the brand or brands of liquor possessed and who operate in the county where said liquor is located. If the liquor is located in a dry area, only the Wholesalers operating nearest said area handling and regularly selling the brand or brands shall be notified. The Commission and the Wholesaler or Wholesalers and the Non-resident Sellers or their Agents of the brand or brands possessed so notified, and the insurer or insurance salvor shall jointly determine and agree as to whether or not said liquor is in a salable condition; provided, however, that no Non-resident Seller or Manufacturer's Agent, acting either in this capacity or in any other, shall be authorized to represent any person, persons, or legal entity other than the primary source of supply for the alcoholic beverage involved within the United States. If said liquor is determined not to be in a salable condition, it shall be destroyed immediately by the Commission. If said liquor is determined to be in a salable condition, it shall first be offered for sale to the Wholesaler and the Non-resident Seller of the brand or brands at their cost price, less any State taxes on said liquor if theretofore paid.

Should any Wholesaler of the brand not exercise the right to purchase any salable liquor, containers or packages within ten (10) days, then the Commission shall proceed to sell same at public or private sales as hereinabove otherwise provided.

The term "salable," as used herein, shall mean a finding that the beverage has not been adulterated and is fit for consumption, all tax stamps required by law have been affixed, and the labels are legible as to contents, brand and manufacturer. The salvor may reject any bid made on a part only of the whole salvage.

[Acts 1971, 62nd Leg., p. 1797, ch. 531, § 1, eff. Aug. 30, 1971.]

*For text as added by Acts 1971, 62nd Leg., p. 688, ch. 65, § 9, see article 666-58, ante.*

**Art. 666-59. [Blank]**

**Art. 666-60. Rights of Certain Permit Holders**

(a) Notwithstanding any other provision of the Texas Liquor Control Act, a Wholesaler's Permit, General Class B Wholesaler's Permit, Local Class B Wholesaler's Permit, General, Local or Branch Distributor's license may be issued and licensed premises maintained in any area wherein the sale of any

alcoholic beverage is legal upon compliance by the applicant with all other provisions of this Act regarding application for such license or permit.

(b) The holder of a local Distributor's Permit may hold a Local Cartage Permit. If the holder of a Local Distributor's Permit is also the holder of a Local Cartage Permit, he shall be privileged to transfer alcoholic beverages anywhere within the county where the sale of alcoholic beverages is legal and to any regional airport located all or in part in an adjoining county, where the regional airport is governed by a Board, Commission or Authority composed all or in part of members from the county in which the Local Distributor is located. Notwithstanding any other provision of the Texas Liquor Control Act, the holder of a Package Store Permit who also holds a Local Cartage Permit, shall be privileged to transfer alcoholic beverages to a commercial airline in a regional airport located all or in part in an adjoining county, where the regional airport is governed by a Board, Commission or Authority composed all or in part of members from the county in which the Package Store is located.

(c) Notwithstanding any other provision of the Texas Liquor Control Act, where a Mixed Beverage Permittee or a Private Club Permittee is located in a regional airport, where such airport is governed by a Board, Commission or Authority composed of members from two counties or more, and there are no Local Distributors, the holder of a Mixed Beverage Permit or a Private Club Permit shall be empowered to purchase alcoholic beverages in any trade area served by such regional airport, and transport same to the Mixed Beverage Permittee or Club, provided the permittee transporting such alcoholic beverage is the holder of a Beverage Cartage Permit and such transporting permittee meets all other requirements set out in Section 20e of Article I of the Texas Liquor Control Act.<sup>1</sup>

(d) Notwithstanding any other provision of the Texas Liquor Control Act, the holder of a Local Distributor's Permit is authorized to sell to a Mixed Beverage Permittee or Private Club Permittee any supplies used in selling or dispensing of alcoholic beverages.

[Acts 1973, 63rd Leg., p. 513, ch. 219, § 6, eff. Aug. 27, 1973.]

<sup>1</sup> Article 666-20e.

## II. MALT LIQUORS

### Change of Name

*The name of the Texas Liquor Control Board was changed in 1969 to Texas Alcoholic Beverage Commission. See art. 666-5b.*

### Art. 667-1. Definitions

Where used in this Article, unless expressly stated otherwise:

(a) The term "barrel" means as a standard of measure, a quantity of beer equal to thirty-one (31) standard gallons.

(b) The term "beer" means a malt beverage containing one-half of 1% or more of alcohol by volume and not more than 4% of alcohol by weight, and shall not be inclusive of any beverage designated by label or otherwise by any other name than beer.

(c) The term "Board" means Texas Liquor Control Board.

(d) The term "container" means any container holding beer in quantities of one (1) barrel, one-half (½) barrel, one-quarter (¼) barrel, one-eighth (⅛) barrel, or any bottle or can having a capacity of twelve (12) fluid ounces, twenty-four (24) fluid ounces, and thirty-two (32) fluid ounces, and no container of any other capacity shall be authorized.

(e) The term "licensee" means any holder of a license provided in this Article, or any agent, servant, or employee thereof.

(f) The term "manufacturer" means a person engaged in the manufacture or brewing of beer whether located within or without the State of Texas.

(g) The term "original package" means any container holding one (1) barrel, one-half (½) barrel, one-quarter (¼) barrel, or one-eighth (⅛) barrel of beer in bulk, or any box, crate, carton, or other device used in packing beer that is contained in bottles or other containers.

(h) The term "person" shall mean and refer to any natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 1; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1943, 48th Leg., p. 509, ch. 325, § 17.]

### Art. 667-2. Where Lawful to Manufacture or Sell Beer

The manufacture, sale, distribution, and transportation of beer is hereby authorized within the State of Texas.

Unless otherwise herein specifically provided by the terms of this Act, the manufacture, sale, distribution, transportation, and possession of beer as herein defined shall be governed exclusively by the provisions of this Article. It shall be unlawful to manufacture, sell, barter, or exchange within this State any beverage containing alcohol in excess of one-half of one per cent by volume and not more than four (4) per cent of alcohol by weight except beer.

It shall continue to be unlawful to manufacture, sell, barter, or exchange in any county, justice precinct, or incorporated city or town any beer except in counties, justice precincts, or incorporated cities or towns wherein the voters thereof had not adopted prohibition by local option elections held under the laws of the State of Texas and in force at the time of taking effect of Section 20, Article 16 of the Constitution of Texas in 1919; except that in counties, justice precincts, or incorporated cities or towns wherein a majority of the voters have voted to legalize the sale of beer in accordance with the local

option provisions of Chapter 116, Acts of the Regular Session of the Forty-third Legislature,<sup>1</sup> or in accordance with the local option provisions, sections 32 to 40, inclusive, of Article I, of House Bill No. 77, General Laws of Texas, Second Called Session of the Forty-fourth Legislature, or any amendments thereof,<sup>2</sup> beer as herein defined may be manufactured, distributed, and sold as herein provided.

It is hereby expressly provided that local option elections may be held in any county, justice precinct, or incorporated city or towns within this State in accordance with the provisions of Sections 32 to 40, inclusive, of Article I of the Texas Liquor Control Act,<sup>2</sup> for the purpose of determining from time to time whether the sale of beer shall be prohibited or legalized within the prescribed limits; and it shall be unlawful to sell beer in any county, justice precinct, or incorporated city or town wherein the same shall be prohibited by local option election and lawful to sell beer under the provisions of this Act in any county, justice precinct, or incorporated city or town wherein the sale of beer shall be legalized by local option election.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 2; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

<sup>1</sup> Article 694a, now repealed.  
<sup>2</sup> Articles 666-32 to 666-40.

#### Art. 667-2a. Manufacture of Beer in Areas Where Sale Prohibited by Local Option

Regardless of any other provision of the Texas Liquor Control Act, no person who has theretofore been issued a Manufacturer's License or a Distiller's Permit shall subsequently be denied a Manufacturer's License or a Distiller's Permit or any renewal of a Manufacturer's License or a Distiller's Permit for the same location on the grounds that the sale of beer or distilled spirits has been prohibited by local option election in the area in which said manufacturer is located; and any Manufacturer's License or Distiller's Permit so previously held, or issued under this provision, shall authorize its holder to do all things which a manufacturer or a distiller is authorized to do under any other provision of the Texas Liquor Control Act including but not limited to manufacture, possession, storage, packaging, bottling, and transportation to areas wherein the sale of beer or distilled spirits is legal.

[Acts 1957, 55th Leg., p. 108, ch. 52, § 1, eff. Aug. 22, 1957; Acts 1969, 61st Leg., p. 1494, ch. 445, § 1, eff. Sept. 1, 1969.]

#### Art. 667-3. License required

(a) A Manufacturer's License shall authorize the holder thereof to manufacture or brew beer and to distribute and sell same to others; and to dispense beer for consumption on manufacturer's premises; and shall also authorize the holder to bottle, can or pack into containers, beer for resale to any place in this state to others, regardless of whether such beer is manufactured or brewed in the State of Texas, or in any other state of the United States, and imported into Texas; provided that no beer shall be imported into this state except in accordance with the

provisions of this Act, that is, in barrels, or other containers, and shall at no time be shipped into this state in tank cars; provided that the Texas Liquor Control Board shall have the same functions, powers, and duties to adopt and enforce a standard of quality, purity, and identity of malt beverages, and to promulgate all such rules and regulations as shall be deemed necessary to fully safeguard the public health and to insure sanitary conditions in the manufacturing, purifying, bottling, and rebottling of beer under a Manufacturer's License as apply to manufacturers located within the State of Texas. Every person, agent, receiver, trustee, firm, corporation, association, or co-partnership opening, establishing, operating, or maintaining one (1) or more establishments under a Manufacturer's License within this state under the same general management or ownership shall pay the license fees hereinafter prescribed for the privilege of opening, establishing, operating or maintaining such establishments. Each establishment bottling beer of the same brand or beer brewed by the same Manufacturer shall be held to be under a common management and control, and shall be subject to the license fees prescribed herein regardless of the nature of control or ownership of each separate establishment. The annual state license fees herein prescribed shall be as follows:

1. Upon one (1) establishment the license fee shall be Five Hundred Dollars (\$500.00);
2. Upon each additional establishment in excess of one (1), but not to exceed two (2), the license fee shall be One Thousand Dollars (\$1,000.00);
3. Upon each additional establishment in excess of two (2), but not to exceed five (5), the license fee shall be Two Thousand, Eight Hundred and Fifty Dollars (\$2,850.00);
4. Upon each additional establishment in excess of five (5), the license fee shall be Five Thousand, Six Hundred Dollars (\$5,600.00).

The provisions of this Act shall be construed to apply to every person, agent, receiver, trustee, firm, corporation, co-partnership or association, either domestic or foreign, which is controlled or held with others by majority stock ownership or ultimately controlled or directed by one (1) management or association of ultimate management.

(a-1) Non-resident Manufacturer's License. A Non-resident Manufacturer's License shall authorize the holder thereof to have his beer received in Texas only by holders of Importer's Licenses; such beer may be transported to any holder of an Importer's License by those carriers and vehicles authorized in Section 23 $\frac{1}{4}$ ,<sup>1</sup> Article II, Texas Liquor Control Act, or in motor vehicle equipment owned or leased by Non-resident Manufacturers; and no holder of an Importer's License shall import beer into this state except from the holder of a Non-resident Manufacturer's License; provided that no beer shall be imported into this state except in accordance with the

provisions of this Act, that is, in barrels, or other containers, and shall at no time be shipped into this state in tank cars; provided that the Texas Liquor Control Board shall have the same functions, powers and duties to adopt and enforce a standard of quality, purity and identity of malt beverages, and to promulgate all rules and regulations as shall be deemed necessary to fully safeguard the public health and to insure sanitary conditions in the manufacturing, purifying, bottling and rebottling of beer under a Non-resident Manufacturer's License as apply to Manufacturers located within the State of Texas. The holder of a Non-resident Manufacturer's License is hereby made subject to the provisions of the Texas Liquor Control Act and to all rules and regulations of the Texas Liquor Control Board applicable to holders of Manufacturer's Licenses, and the Texas Liquor Control Board shall have the same power to suspend and cancel such Non-resident Manufacturer's License and otherwise levy and enforce penalties for infractions of the law or of the rules and regulations of the Board as is granted with respect to holders of Manufacturer's Licenses under the Texas Liquor Control Act. Any holder of a Non-resident Manufacturer's License desiring to transport beer into Texas to the holder of an Importer's License in motor vehicle equipment owned or leased by him shall not be primarily responsible for the payment of the tax thereon, which shall continue to remain the responsibility of the holder of the Importer's License, but nevertheless said Non-resident Manufacturer shall furnish to the Liquor Control Board whatever bond is required by the Board, in the manner that is required of the holder of an Importer's License, in whatever amount would, in the judgment of the Board, protect the revenue of the state as to the payment of the tax due thereon over any six week period. Any beer imported into this state for sale in this state in violation of this paragraph is hereby declared to be an illicit beverage.

Annual state fee for a Non-resident Manufacturer's License shall be Five Hundred Dollars (\$500), and no county or city shall be entitled to a fee for the issuance thereof.

(b) General Distributor's License. A General Distributor's License shall authorize the holder thereof to distribute or to sell beer to other general distributors, branch distributors, local distributors, retail dealers, ultimate consumers and others only in the unbroken original packages in which it is received by him from the manufacturer, general distributor, local distributor, or branch distributor and to serve free beer for consumption on the licensed premises. Annual state fee for a General Distributor's License shall be Two Hundred Dollars (\$200.00).

(c) Local Distributor's License. A Local Distributor's License shall authorize the holder thereof to serve free beer for consumption on the licensed premises, and to sell and distribute beer to retail dealers and ultimate consumers in the county of his residence only in the unbroken original packages in

which it is received by him from the manufacturer, general distributor, branch distributor, or another local distributor, and to sell and deliver beer to any other distributors licensed in this state to sell beer. Annual state fee for a Local Distributor's License shall be Fifty Dollars (\$50.00).

(d) Branch Distributor's License. The holder of a Manufacturer's or General Distributor's License, after obtaining the primary license in the county of his domicile or residence, may establish other places of business in any counties wherein the sale of beer is legal for the distribution of beer upon obtaining a Branch Distributor's License for each such place of business as herein provided, and such Branch Distributor may serve free beer for consumption on the licensed premises. Application for a renewal of a Branch Distributor's License may be made concurrently with the filing of the application for the renewal of a Manufacturer's or General Distributor's License, and all Branch Distributor Licenses shall terminate at the same time as the primary license of such licensee. The annual State fee for a Branch Distributor's License shall be Fifty Dollars (\$50); provided, however, that the fee for any license required to terminate in less than twelve (12) months from the date of issue shall be paid in advance at the rate of Four and  $\frac{25}{100}$  Dollars (\$4.25) for each month or fraction thereof for which the license is issued.

To obtain a Branch Distributor's License the applicant therefor shall make application in the same manner as provided in Section 6 of Article II of this Act.<sup>2</sup>

The renewal of a Branch Distributor's License shall be made in the manner as provided in Section 7 of Article II of this Act,<sup>3</sup> and application for renewal may be made concurrently with application for renewal of the primary license. The privileges of a Branch Distributor's License shall be the same as a General Distributor's License as provided in this Section.

If by local option election the holder of a Branch License shall be prevented from selling beer in the county of his residence and for such reason his primary license becomes void, nevertheless he shall not be denied the right of lawfully selling beer under any existing Branch License until the normal expiration thereof; it being further provided that any such Manufacturer or Distributor may, upon the expiration of any such Branch License, immediately thereafter obtain in any county wherein a Branch License has been held a primary Manufacturer's or Distributor's License without the necessity of qualifying as a resident of the county in which such primary license is sought.

(e) Retail Dealer's On-Premise License. A Retail Dealer's On-Premise License shall authorize the holder thereof to sell beer for consumption on or off the premises where sold, in or from any lawful container to the ultimate consumer, but not for resale. Annual State fee for a Retail Dealer's On-Premise License shall be Twenty-five Dollars (\$25).

(e-1) Retail Dealer's On-Premise Late Hours License. A Retail Dealer's On-Premise Late Hours License shall authorize the holder thereof to sell beer on Sunday between the hours of 1:00 a. m. and 2:00 a. m. and on any day except Sunday between the hours of 12:00 p. m. and 2:00 a. m. if the premises covered by such license are in an area where the sale of beer during such hours is authorized by this Act. All sections of this Act which apply to the Retail Dealer's On-Premise License shall also apply to the Retail Dealer's On-Premise Late Hours License. The annual State fee for a Retail Dealer's On-Premise Late Hours License shall be One Hundred Dollars (\$100).

(e-2) Notwithstanding any other provision of the Texas Liquor Control Act, the holder of a Retail Dealer's On-Premise Late Hours License shall be limited to selling authorized alcoholic beverages for on-premise consumption during extended hours.

(f) Retail Dealer's Off-Premise License. A Retail Dealer's Off-Premise License shall authorize the holder thereof to sell beer in a lawful container direct to the consumer, but not for resale and not to be opened or consumed on or near the premises where sold. Annual State fee for a Retail Dealer's Off-Premise License shall be Ten Dollars (\$10).

(g) No General Distributor's License, Local Distributor's License, or Branch Distributor's License shall be issued to any person who is the holder of a Package Store Permit, or a Wine Only Package Store Permit.

(h) The Commissioners Court in each county of this State shall have the power, except as herein otherwise provided as to Temporary Licenses, to levy and collect from every person licensed hereunder in said county a license fee equal to one-half ( $\frac{1}{2}$ ) of the State fee; and any incorporated city or town wherein the license is issued shall have the power, except as to Temporary Licenses, to levy and collect a license fee not to exceed one-half ( $\frac{1}{2}$ ) of the State fee, but no other fee or tax shall be levied by either. Nothing herein contained shall be construed as preventing the levying, assessing, and collecting of general ad valorem taxes on the property of any person licensed to sell beer. The Board or Administrator may cancel the license of any person upon finding that the licensee has not paid any fee levied by the city as provided in this subsection.

(i) The holder of a Manufacturer's License or a Distributor's License shall be authorized to maintain or engage necessary warehouses, for storage purposes only in areas where the sale of beer is lawful, from which deliveries may be made without such warehouses being licensed, except that importations of beer from outside the State shall not be made directly or indirectly to such unlicensed warehouses. Any warehouse or railway car in which sales orders for beer are taken or money therefor collected shall be deemed a separate place of business for which a license is required. The sale and delivery of beer from a truck of a licensed Manufacturer or Distributor to a licensed Retail Dealer at the latter's place of

business shall not constitute such truck to be a separate place of business. The Board shall govern by rule and regulation the transportation of such beer, the sale of which is to be consummated at the licensed Retailer's place of business.

(j) Temporary License. A Temporary License shall authorize the holder thereof to sell beer only for consumption on or off the premises where sold, in or from any lawful container to the ultimate consumer, and no such license shall authorize the sale of beer at any point outside the county where same is issued. Temporary Licenses shall be issued by the Board, Administrator, or any authorized representative of the Board. The Board shall adopt all necessary rules and regulations to effectuate the issuance and use of Temporary Licenses. A Temporary License shall not be issued to any person who does not also hold a Retail Dealer's On-Premise License or a Wine and Beer Retailer's Permit. A Temporary License shall be issued for a period of not more than four (4) days. Fees collected from the issuance of Temporary Licenses shall be retained by the Texas Liquor Control Board, and no fees shall be charged by any City or County for such licenses; and no refund shall be allowed upon the surrender or non-use of any such license. The Board, Administrator, or any authorized representative of the Board may issue such licenses only for the sale of beer at picnics, celebrations, or similar events, and may refuse to issue such licenses if there is reason to believe the issuance of the license would in any manner be detrimental to the public. The basic license or permit, under which the Temporary License was issued, may be suspended or cancelled for any violation of Section 19 or Section 19-B of this Article<sup>4</sup> on the premises of a Temporary License. The fee for a Temporary License shall be Five Dollars (\$5).

(k) (1) Agent's Beer License. Agents, representatives and employees of beer manufacturers located within or without the State, which agents, representatives and employees engage in selling, offering to sell, soliciting, displaying, advertising or otherwise promoting sales of beer by personal contact with licensed retailers of beer, their agents, servants or employees, and/or consumers of beer, and whose compensation for employment is based mainly on such activities by such personal contact as opposed to similar activities by personal contact with licensed distributors of beer; and agents, representatives and employees of licensed distributors of beer who engage in selling, offering to sell, soliciting, displaying, advertising or otherwise promoting sales of beer by personal contact with licensed retailers of beer, their agents, servants or employees, and/or consumers of beer, and whose compensation for such employment is based mainly on such activities by such personal contact, are hereby required to have a license issued by the Board and designated "Agent's Beer License."

(2) It shall be unlawful for any person to engage in the activities set out in paragraph (1) hereof

unless he is the holder of a valid Agent's Beer License, and upon conviction of any person for violation of this Section he shall be punished as is provided in Section 41<sup>5</sup> of Article 1 of this Act. A period of grace of five (5) days, which shall be the first five (5) days of his activities as set out in paragraph (1) hereof, is hereby extended to such person, during which period he shall procure an Agent's Beer License from the Texas Liquor Control Board. No such license shall be granted to any person until it shall be shown to the satisfaction of the Board that he is employed or has good prospects of being employed to act as agent or a representative for the holder of a Manufacturer's or Distributor's License.

(3) It shall be unlawful except during the five-day grace period set out in paragraph (1) hereof for any Manufacturer or Distributor to use or be the beneficiary of the services of any person to carry on the activities set out in paragraph (1) hereof unless such person is the holder of a valid Agent's Beer License.

(4) It shall be unlawful for any Manufacturer located within or without the State or any Distributor to employ in any capacity or to continue in his employ a person who has been issued an Agent's Beer License during a time when such license is under a suspension order of the Board or within one (1) year from the date of cancellation for cause of such license by the Board.

(5) The Board is given authority to promulgate and enforce reasonable rules and regulations defining the qualifications and regulating the conduct of any such licensed agent.

(6) All applications for such licenses shall be filed with the Board, or any designated employee of the Board, on such form and including therein such required information as may be prescribed by the Board. Such application shall be acted upon exclusively by the Board or the Administrator, or a designated employee of the Board, and the County Judge shall not receive such applications nor shall he have jurisdiction over the approval or issuance of such licenses.

(7) All such licenses shall be issued on an annual basis and shall expire one (1) year from the date of issue. Applications for renewal of such licenses shall be filed with the Board not more than thirty (30) days prior to the expiration date thereof on forms requiring such information as may be prescribed by the Board.

(8) Any Agent's Beer License may be suspended or cancelled by the Board for violation of any of the rules or regulations of the Board, or for any of the reasons the license of a Manufacturer or Distributor may be suspended or cancelled, and the same procedure applicable to the suspension or cancellation of the Manufacturer's or Distributor's License shall be followed in the suspension or cancellation of such Agent's Beer License.

(9) The annual fee for an Agent's Beer License shall be Three Dollars (\$3), and cities and counties shall not have the authority to assess a fee for the

issuance of such licenses. It is hereby declared to be a violation of the Texas Liquor Control Act for any Manufacturer or Distributor to pay the license fee for any person licensed hereunder, or to reimburse any person for such payment. The Board shall not refund any part of the fee collected hereunder to any person for any reason.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 3; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 11; Acts 1943, 48th Leg., p. 509, ch. 325, § 18; Acts 1949, 51st Leg., p. 1011, ch. 543, § 13; Acts 1959, 56th Leg., p. 130, ch. 76, §§ 1, 2; Acts 1959, 56th Leg., p. 791, ch. 360, § 1; Acts 1961, 57th Leg., p. 1058, ch. 471, § 1; Acts 1961, 57th Leg., p. 1126, ch. 511, § 2, eff. May 29, 1961; Acts 1969, 61st Leg., p. 80, ch. 38, § 13, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1535, ch. 466, § 4, eff. Sept. 1, 1969; Acts 1969, 61st Leg., 2nd C.S., p. 5, ch. 1, art. 6, § 5, eff. Oct. 1, 1969.]

<sup>1</sup> Article 667-23¼.

<sup>2</sup> Article 667-6.

<sup>3</sup> Article 667-7.

<sup>4</sup> Articles 667-19 or 667-19B.

<sup>5</sup> Article 666-41.

For severability clause of Acts 1969, 61st Leg., p. 1535, ch. 466, see note under Art. 666-4.

#### **Art. 667-3a. Importation of Beer without Distributor's or Manufacturer's License Unlawful**

It shall be unlawful for any person to import into this State any beer unless he holds a Distributor's or Manufacturer's License.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

#### **Art. 667-3b. Quantity of Beer Imported for Personal Use; Importation by Railroad for Passengers**

It is provided that any person may import tax paid beer into this State for his own personal use but in any one day he shall not import more than one case containing twenty-four (24) bottles having a capacity of not exceeding twelve (12) ounces each, or not exceeding the equivalent thereof if contained in any other kind of container.

It is also provided that any railroad company operating in this State may import beer owned by such railroad company into this State in such quantities as are necessary to meet the demands of the traveling public while traveling on trains operated by such railroad company, provided, however, no beer shall be sold or served in a dry area.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 12.]

#### **Art. 667-4. License Fees Payable before Issuance of License; Disposition of Proceeds**

Before any license required by this Article shall be issued, the license fee required therefor shall be paid to the Assessor and Collector of Taxes of the county where such license is applied for; and such fees, except fees for Temporary Licenses herein provided, shall be deposited in the Clearance Fund provided by Section 2, Article XX of House Bill No. 8, Chapter 184, Acts of the Regular Session of the 47th Legislature,<sup>1</sup> to be used as provided in that Act.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 4; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1943, 48th Leg., p. 509, ch. 325, § 25-B.]

<sup>1</sup> Civil Statutes, art. 7083a.

#### Art. 667-5. Application for License

Any person may file an application for a license as a Manufacturer, Distributor or Retail Dealer of beer in vacation or in termtime with the County Judge of the county in which the applicant desires to engage in such business. The County Judge shall refuse to approve the application for such license if he has reasonable grounds to believe and finds any of the following to be true:

1. If a Manufacturer:

The applicant for an original license, if a Texas corporation, a foreign corporation qualified to do business in Texas, a natural person, association of natural persons, partnership, trustee, receiver, administrator or executor, has failed to state under oath, subscribed to by one of its principal officers if a corporation, that it will be actually engaged in the business of brewing and packaging beer in Texas within the three-year period covered by its original license and two (2) successive renewals thereof in such quantities as will make of its operation that of a bona fide brewing manufacturer, except that such sworn statement shall never be required of any holder of a Manufacturer's License in effect on January 1, 1953, or any renewal thereof.

2. If a Distributor or Retailer:

(a). The applicant is under twenty-one (21) years of age; or

(b). The applicant is indebted to the State for any taxes, fees or penalties imposed by this Act<sup>1</sup> or by any rule or regulation of the Board; or

(c). The place or manner in which the applicant for a Retail Dealer's License may conduct his business is of such nature which based on the general welfare, health, peace, morals, and safety of the people, and on the public sense of decency, warrants a refusal of the license; or

(d). The applicant is in the habit of using alcoholic beverages to excess, or is physically or mentally incompetent; or

(e). The applicant is not a citizen of the United States or has not been a citizen of Texas for a period of three (3) years immediately preceding the filing of his application, provided, however, that this paragraph (e) shall not apply to any person who has been issued a license or a renewal thereof on or before September 1, 1948; or

(f). The applicant has been finally convicted of a felony during the two (2) years next preceding the filing of his application; or

(g). The applicant is not of good moral character, that his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad; or

(h). If a corporation, that the applicant is not incorporated under the laws of this State; or that at least fifty-one per cent (51%) of the stock of such corporation is not owned at all times by citizens who have resided within this State for a period of three (3) years and who possess the qualifications required of other applicants for licenses; provided, however, that this paragraph (h) shall not ever apply to any holder of a Distributor's License in force and effect on January 1, 1953, or any renewal thereof; provided further that this paragraph shall not apply to applications for Beer Retailer's On-Premise Licenses for railway dining, buffet or club cars, which licenses may be issued for a fee of Five Dollars (\$5) for each car, payment of which fee and application for which license shall be made direct to the Board.

3. The County Judge may refuse to issue a Distributor's or Retailer's License to any applicant if he has reasonable grounds to believe and finds any of the following to be true:

(a) The applicant has been finally convicted in a court of competent jurisdiction for the violation of any provision of this Act during the two (2) years next preceding the filing of his application; or

(b) Two (2) years has not elapsed since the termination, by pardon or otherwise, of any sentence imposed upon conviction for a felony; or

(c) The applicant has violated or caused to be violated any provision of this Act or any rule or regulation of the Board for which a suspension has not already been imposed, during the twelve-month (12) period next preceding the date of his application; or

(d) The applicant has failed to answer or has falsely answered or has incorrectly answered any of the questions in his original or renewal application; or

(e) The applicant for a Retail Dealer's License does not have available an adequate building at the address for which the license is sought; or

(f) The applicant has had any interest in any license or permit which license or permit has been cancelled or revoked within the twelve (12) months next preceding the date of the application; or

(g) The applicant is residually domiciled with any person in whose name any license or permit has been cancelled or re-

voked within one (1) year next preceding the date of the application for a license; or

(h) The applicant for a Manufacturer's or Distributor's License owns or has an interest in any premises covered by a Retail Beer License; or that any person owning or having any interest in a Retail Beer License owns or has an interest in the premises sought to be licensed under a Manufacturer's or Distributor's License; or

(i) The applicant has failed or refused to furnish a true copy of his application to the Texas Liquor Control Board District Office in the District in which the premise sought to be covered by a license is located; or

(j) The applicant has any financial interest in any establishment authorized to sell distilled spirits, except as provided in Section 23(a)(5) and Section 17(1) of Article I of the Texas Liquor Control Act; or

(k) A person engaged in the business of selling distilled spirits has any financial interest in the business to be conducted under the license sought by the applicant, except as provided in Section 23(a)(5) and Section 17(1) of Article I of the Texas Liquor Control Act; or

(l) The applicant is residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling distilled spirits, except as provided in Section 23(a)(5) and Section 17(1) of Article I of the Texas Liquor Control Act; or

(m) The applicant for a Retail Dealer's License has any real interest in the business of a Manufacturer or Distributor of beer or any real interest in the premises in which such Manufacturer or Distributor conducts his or its business; or

(n) The premises for which the license is sought, where beer is to be sold for consumption on the premises, does not have running water, such being available, or does not have separate free toilets for males and females, properly marked and identified, on the premises sought to be covered by the license; or

(o) The place, building, or premises for which the license is sought has theretofore been used for selling alcoholic beverages in violation of the law at any time during the six (6) months immediately preceding the date of the application, or has during that time been a place operated, used, or frequented for any purpose or in any manner lewd, immoral, or offensive to public decency; or

(p) The premises sought to be licensed under a Retail Dealer's License are owned in part by a Manufacturer or Distributor.

4. If the County Judge approves the application for a license as a Retail Dealer of beer, then the Board or Administrator may refuse to issue a Retailer's License to any applicant for any one (1) or more of the reasons which would have been legal ground for the County Judge to refuse to approve the application for such a license.

5. The Board or Administrator may, upon application for renewal of a Retail Dealer's License, without a hearing, refuse to issue a license to any person under the restrictions of this Section, as well as under any other pertinent provisions of this Act, and require such applicant to make an original application.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 5; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, art. 3, § 2; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1949, 51st Leg., p. 1011, ch. 543, § 14; Acts 1953, 53rd Leg., p. 643, ch. 249, § 10, eff. Aug. 26, 1953; Acts 1961, 57th Leg., p. 1066, ch. 478, § 3; Acts 1969, 61st Leg., p. 1659, ch. 524, § 2, eff. Sept. 1, 1969.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

<sup>2</sup> Articles 666-23(a) and 666-17(1).

#### Art. 667-5A. Application for Renewal of Manufacturer's License; Grounds for Denial

Regardless of any other provision of the Texas Liquor Control Act:<sup>1</sup>

1. During a period of two (2) years from and after the date of the original Manufacturer's License applied for in accordance with Section 5, paragraph 1, hereof, an application for a renewal of such Manufacturer's License shall not be denied on the grounds that the applicant has not brewed and packaged beer in Texas within the period covered by such Manufacturer's License or will not brew and package beer in Texas within the period to be covered by such renewal so long as such applicant is in good faith engaged in the construction of a plant for the brewing of beer on the licensed premises, or engaged in any of the following things which will enable such applicant to commence such construction: (i) preliminary engineering, (ii) preparing drawings and specifications, (iii) conducting engineering, architectural or equipment studies, or (iv) preparing for and taking bids from contractors; and during a period of three (3) years from the date of the original Manufacturer's License, and so long as the holder of such Manufacturer's License is engaged in such construction or one of the other preliminary preparations described in this paragraph, the Board shall be diligent in granting renewal licenses, and shall issue each renewal license in such time as to make it immediately effective on the expiration of the original or renewal license which preceded it, and during a period of three (3) years from the date of the original Manufacturer's License, so long as the holder of such Manufacturer's License is engaged in such construc-

tion or one of the other preliminary preparations described in this paragraph, the Board shall not require him to file an original application for a Manufacturer's License.

2. After the expiration of two (2) years and eleven (11) months from the date of the original Manufacturer's License applied for in accordance with Section 5, paragraph 1, hereof, if such Manufacturer fails to perform under the sworn statement described in said Section 5, paragraph 1, hereof, or is actually not engaged in the construction of such a plant or is not engaged in the other preliminary preparations set out in paragraph 1 of this Section 5A, then his license shall not be subject to renewal unless, for good cause shown, the Board finds that the applicant has been unable, due to causes beyond his reasonable control, fully to perform under said sworn statement, in which event the Board may grant one additional renewal of said license as time in which to comply with the terms of the sworn statement required in said Section 5, paragraph 1, hereof. When any such license is denied renewal under these circumstances, no subsequent original application by such applicant shall be granted during the succeeding two (2) years from the date of such denial.

3. The provisions of paragraphs 1 and 2 of this Section 5A shall not ever apply to the holder of any Manufacturer's License in effect on January 1, 1953, or any renewal thereof.

[Acts 1961, 57th Leg., p. 1066, ch. 478, § 4.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

**Art. 667-5B. Engaging in Business of Brewing and Packaging Beer; Bona Fide Brewing Manufacturer**

The Texas Liquor Control Board is hereby vested with the authority to determine if the applicant has actually engaged in the business of brewing and packaging beer in Texas in such quantities as will make of its or his operation that of a bona fide brewing manufacturer, and if, during a period of two (2) years and eleven (11) months from the date of the original Manufacturer's License, he or it has actually engaged in good faith in the construction of a plant or engaged in other preliminary preparations set out in paragraph 1 of Section 5A<sup>1</sup> hereof.

[Acts 1961, 57th Leg., p. 1066, ch. 478, § 4.]

**Art. 667-5C. On-Premise Licenses and Permits; Name and Photograph of Holder**

Every Retail Dealer's On-Premise License and Wine and Beer Retailer's Permit shall contain the name of the individual natural person holding such license or permit; or, if the holder not be an individual natural person, such license or permit shall designate the name of the individual partner, officer, trustee or receiver who is primarily responsible for the management of the premises. Every such license and permit shall contain a photograph of the individual natural person holding such license or

permit; or, if the holder not be an individual natural person, the designated natural person named therein. Such photograph shall be not more than two years old and shall be furnished by the licensee or permittee. The Board is hereby vested with the power to prescribe the size and nature of such photograph, the manner of furnishing same, and the method of affixing such photograph to the license or permit.

[Acts 1969, 61st Leg., p. 80, ch. 38, § 17A, eff. Sept. 1, 1969.]

**Art. 667-5D. On-Premise License or Permit Applicants; Fingerprints; Criminal Record Check; Certification**

Every applicant for an original Retail Dealer's On-Premise License or Wine and Beer Retailer's Permit shall submit to the County Judge of the county in which the applicant desires to engage in such business a complete set of fingerprints of the individual natural person applying for such license or permit; or, if the applicant is not an individual natural person, a complete set of fingerprints of the individual partner, officer, trustee or receiver who is to be primarily responsible for the management of the premises. Said County Judge shall no later than the next calendar day after receiving said prints forward same by U. S. Mail to the Texas Department of Public Safety who shall cause same to be classified and checked against those in their fingerprint files. The Department of Public Safety shall forthwith certify their findings concerning the criminal record of the applicant or the lack of same, as the case may be, to said County Judge. No such license or permit shall be issued until said certification is made to said County Judge by the Texas Department of Public Safety. The Sheriff of any county in Texas, or any district office of the Texas Liquor Control Board, shall take the fingerprints of any applicant for an original Retail Dealer's On-Premise License or Wine and Beer Retailer's Permit without charge on forms approved by and furnished by the Texas Department of Public Safety and forthwith deliver same to the County Judge of the county where the applicant desires to engage in such business.

[Acts 1969, 61st Leg., p. 80, ch. 38, § 17B, eff. Sept. 1, 1969.]

**Art. 667-5E. On-Premise License or Permit Applications; Notices and Hearings; Attendance by Applicant**

Upon original application being made for a Retail Dealer's On-Premise License or a Wine and Beer Retailer's Permit the County Judge shall notify the Texas Liquor Control Board, the Sheriff, and the Chief of Police of the incorporated city in which, or nearest which, the premises are to be located under such license or permit, of all hearings before the judge concerning such application. The individual natural person applying for such license or permit; or, if the applicant not be an individual natural person, the individual partner, officer, trustee or receiver who is to be primarily responsible for the

management of the premises, shall be required to attend any hearing involving the application.

[Acts 1969, 61st Leg., p. 80, ch. 38, § 17C, eff. Sept. 1, 1969.]

**Art. 667-5F. On-Premise License or Permit Applications; Refusal for Criminal Convictions**

(a) The County Judge shall refuse any original application for a Retail Dealer's On-Premise License or a Wine and Beer Retailer's Permit if he finds that the individual applicant, or the spouse of such applicant, has at any time during the three years next preceding the filing of such application been finally convicted of a felony, or any of the following offenses:

- (1) prostitution;
- (2) vagrancy convictions involving moral turpitude;
- (3) bookmaking;
- (4) gambling (gaming);
- (5) any offense involving controlled substances as defined in the Texas Controlled Substances Act<sup>1</sup> or dangerous drugs;
- (6) violations of the Texas Liquor Control Act resulting in the cancellation of a license or permit, or a fine of not less than Five Hundred Dollars (\$500);
- (7) more than three violations of the Texas Liquor Control Act relating to minors;
- (8) bootlegging;
- (9) violation of penal law involving firearms or other deadly weapons or if he finds that three years has not elapsed since the termination of any sentence, parole or probation served by the applicant, or the spouse of such applicant, as the result of a felony prosecution, or prosecution for any type of offense named herein.

(b) The Texas Liquor Control Board shall refuse to issue any renewal of a Retail Dealer's On-Premise License or a Wine and Beer Retailer's Permit if it finds that the individual applicant, or the spouse of such applicant, has at any time during the three years next preceding the filing of application for such renewal been finally convicted of a felony, or any of the offenses listed in Subsection (a) of this Section, or if it finds that three years has not elapsed since the termination of any sentence, parole or probation served by the applicant, or the spouse of such applicant, as the result of a felony prosecution, or prosecution for any type of offense named in Subsection (a) of this Section.

(c) The word "applicant" as used in this Section shall mean the individual natural person, if any, holding or applying for such license or permit; or, if the holder or applicant not be an individual natural person, the individual partner, officer, trustee or receiver who is primarily responsible for the management of the premises.

[Acts 1969, 61st Leg., p. 80, ch. 38, § 17D, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 1171, ch. 429, § 6.03(g), eff. Aug. 27, 1973.]

<sup>1</sup> Civil Statutes, art. 4476-15.

**Art. 667-6. Hearing upon Application**

(a) The application of any person desiring to be licensed to manufacture, distribute, or sell beer shall be filed in duplicate with the county judge, who shall set same for hearing at a date not less than five (5) nor more than ten (10) days from the filing of same.

(b) (1) Upon the filing of an original application for license to manufacture or distribute beer, the County Clerk shall give notice thereof by posting at the Courthouse door, a written notice of the filing of such application, which notice shall contain the substance of said application and the date of the hearing thereon.

(b) (2) Upon the filing of an original application for a license to sell beer at retail at a location heretofore licensed, the County Clerk shall give notice thereof by posting at the Courthouse door, a written notice of the filing of such application, which notice shall contain the substance of said application and the date of the hearing thereon.

However, upon the filing of an original application for a license to sell beer at retail at a location not theretofore licensed, the County Clerk shall give notice of such application by publication for two (2) consecutive issues in a newspaper of general circulation published in the city or town in which the applicant's place of business is to be located. Provided, however, that where no newspaper is published in the city or town, then the same shall be published in a newspaper of general circulation in the county where applicant's business is to be located, and if no newspaper is published in the county, then notice shall be published in a newspaper which is published in the closest neighboring county and circulated in the county where the license or permit is sought. Such notice shall be published in ten (10) point black face type, and shall set forth the type of retail license or permit to be applied for, the exact location of said business, the name of the owner or owners thereof, and if operating under an assumed name, the trade name, together with all names of owners, and if a corporation, the names and titles of all officers of said corporation. At the time the application is filed with the Clerk, the applicant shall deposit with said Clerk, cost of the publication of two (2) notices, which deposit shall be used in payment of such publication.

(b) (3) Any person shall be permitted to contest the facts stated in any application for a license to distribute, manufacture or sell beer at retail, and the applicant's right to secure such license, upon giving security for all costs which may be incurred in such contest should the case be decided in favor of the applicant; provided, however, no officer of a county

or incorporated city or town shall be required to give bond for such cost.

(c) If upon hearing upon the petition of any applicant for a license the county judge finds the facts stated therein to be true and has not other lawful reason for denying the application, he shall enter an order so certifying, and a copy of said order shall be delivered to the applicant; applicant shall thereupon present the same to the assessor and collector of taxes of the county wherein the application is made and shall pay to the assessor and collector of taxes the fee specified in this Article for the class of license applied for; the assessor and collector of taxes shall thereupon report to the Texas Liquor Control Board upon a form prescribed by said Board certifying that the application for license has been approved and all required fees paid, and such other information as may be required by the Board, and to such certificate shall be attached a copy of the original application for license. Upon receiving such report or certification from the assessor and collector of taxes, it shall be the duty of the Board or Administrator to issue the license accordingly, if it is found that the applicant is entitled to a license, which license shall show the class of business the applicant is authorized to conduct, amount of fees paid, date, correct address of the place of business, and date of expiration, and such other information as the Board shall deem proper; provided, however, that the Board or Administrator may refuse to issue any such license if in possession of information from which it is determined that any statement contained in the application therefor is false, untrue, or misleading, or that there are other legal reasons why a license should not be issued. Upon any refusal by the Board or Administrator, applicant shall be entitled to refund of any license fee paid to the county assessor and collector of taxes at the time of filing his application.

(d) If upon hearing upon the petition of any applicant for a license the county judge finds any facts stated therein to be untrue, the application shall be denied; and it shall be sufficient cause for the county judge to refuse to grant any license when he has reason to believe that the applicant will conduct his business of selling beer at retail in a manner contrary to law or in any place or manner conducive to the violation of the law or likely to result in any jeopardy to the peace, morals, health, or safety of the general public. There shall be sufficient legal reason to deny a license if it is found that the place, building, or premises for which the license is sought has theretofore been used for selling alcoholic beverages in violation of law at any time during the six (6) months immediately preceding the date of application, or has during that time been a place operated, used, or frequented in any manner or for any purpose contrary to the provisions of this Act,<sup>1</sup> or, so operated, used or frequented for any purpose or in any manner that is lewd, immoral or offensive to public decency. In the granting or withholding of any license to sell beer at retail, the county judge in

forming his conclusions shall give due and proper consideration to any recommendations made by the district or county attorney or the sheriff of the county, and the mayor and chief of police of any incorporated city or town wherein the applicant proposes to conduct his business and to any recommendations made by representatives of the Board.

(e) In the event the county judge, Texas Liquor Control Board or Administrator denied the application for a license, he shall enter his judgment accordingly, and the applicant may within thirty (30) days thereafter appeal to the district court of the county where such application is made, and such district court may hear and determine such appeal in term-time or vacation and under the same rules and procedure as provided in Section 14, Article I, of this Act.<sup>2</sup> In the event the judgment of the district court shall be favorable to the applicant and an appeal is taken, a certified copy of the judgment shall be presented to the assessor and collector of taxes who shall thereupon accept the fees required and make report to the Board in the manner required upon like orders issued by the county judge. In the event the license is finally issued upon orders of the district court, and, upon appeal, the order of the district court be reversed, then the mandate of the appellate court shall, without further proceedings, invalidate and make void the license authorized by order of the district court, and the holder thereof shall, upon application therefor, be entitled to a refund of the proportionate amount of unexpired fees. So much of the proceeds collected for license fees under this Article as may be necessary for refunds herein provided for are appropriated for that purpose. Any person appealing from a judgment or order under the provisions of this Section shall give bond for all costs incident to such appeal and shall be required to pay such costs if the judgment on appeal is unfavorable to the applicant, but not otherwise; provided, however, no such bond shall be required upon appeals filed on behalf of the state.

(f) Every person making application for an original license of any class herein provided, except Branch Licenses and Temporary Licenses, shall be subject at the time of the hearing thereon to a fee of Five (\$5.00) Dollars, which fee shall, by the county clerk, be deposited in the county treasury and the applicant shall be liable for no other fees except said application fee and the annual license fee required of him by this Act.<sup>1</sup>

(g) No person shall be authorized to sell beer during the pendency of his original application for a license, and no official shall advise or suggest that such action would be lawful or permitted.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 6; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1943, 48th Leg., p. 509, ch. 325, § 20; Acts 1957, 55th Leg., p. 1178, ch. 393, § 1, eff. June 6, 1957.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

<sup>2</sup> Article 666-14.

**Art. 667-7. Expiration and Renewal of Licenses; Assignability; Refund; Duplicate; Second License for Same Location**

(a). Any license issued under the terms of this Article except Branch Licenses, Importer's Licenses, Importer's Carrier's Licenses, and Temporary Licenses specifically provided for, shall terminate one (1) year from the date issued, and no license shall be issued for a longer term than one (1) year. When it is desired to renew any license obtained under the procedure provided in this Article, the holder of such license shall make written application to the Assessor and Collector of Taxes of the county wherein the license is located not more than thirty (30) days prior to, and not after, the date of expiration of the license held by him. Such application for renewal shall be signed by the applicant and contain full and complete information required of the applicant by the Board showing such applicant is not disqualified from holding a license under this Act, and applicant shall pay to the Assessor and Collector of Taxes the appropriate license fee for the class of license sought to be renewed. The Assessor and Collector of Taxes shall thereupon transmit to the Board the original copy of said application for renewal together with the certification that all required fees have been paid for the ensuing license period; and upon receiving the original copy of said application and certification as to the payment of fees, the Board or Administrator may in its discretion issue the license applied for, or may reject the same and require that the applicant for renewal file application with the County Judge and submit to hearing before such County Judge in the manner required of any applicant for the primary or original license. Any applicant for renewal when such renewal is rejected by the Board or Administrator shall be entitled to refund of any license fee paid to the County Assessor and Collector of Taxes at the time of filing his application for renewal.

(b). Any application for renewal shall be accompanied by a fee of Two Dollars (\$2), which shall be in addition to the amount required by law to be paid for annual license fees, as a renewal fee charge. Any renewal fee charges collected by the County Assessor and Collector of Taxes shall be deposited in the county treasury as fees of office and be so accounted for by him. No applicant for renewal of license shall be required to pay any fees other than the renewal fee charge and license fees herein provided, except when required by action of the Board or Administrator to submit to hearing upon such renewal before the County Judge.

(c). A separate license fee shall be required for every place of business where the business of manufacturing, importing, or selling beer is conducted.

(d). No license issued under the provisions of this Article shall be assigned by the holder thereof to any person; provided that should any holder of a license desire to change the place of business designated in such license, he may do so by applying upon a form prescribed by the Board to the County Judge and

receiving his consent or approval, but further providing that the County Judge may deny such application for change in the place of business for any cause for which an original application may be denied. Any such application may be subject to protest and hearing as though it were an original application. No additional license fees for the remaining unexpired term of the license shall be required of the applicant for change of location.

(e). No licensee shall obtain any refund upon the surrender or nonuse of any license for the manufacture, distribution, importation, or sale of beer except as otherwise provided in this Article.

(f). No person shall conduct as owner or part owner thereof any place of business engaged in the manufacture, distribution, importation or sale of beer except under the name to which the license covering such place of business is issued.

(g). Every license issued prior to the effective date hereof authorizing the manufacture, distribution, or sale of beer shall remain in force until the date of its expiration, but the licensee thereunder shall hold such license as fully subject to all the provisions of this Act, including, but not limited to, the cancellation or suspension thereof for cause as any license that may be issued on or after the effective date hereof.

(h). Should the license of any licensee become mutilated or destroyed the Board or Administrator may issue another license by way of replacement in any manner deemed appropriate by the Board or Administrator.

(i). If any license as provided in this Act shall have been issued to any person for a premises, location, or place of business, and said license is still in effect no other license shall be issued to an applicant therefor unless the holder of the existing license shall have made showing in a manner prescribed by the Board that any privilege conveyed by the existing license will no longer be exercised by the holder thereof at such premises, location or place of business. If the holder of such license desires to transfer the license to another location, such transfer may be applied for as herein provided. In the event the holder of such license makes any declaration required by the Board that the license is no longer to be used, then, and in that event, it shall be unlawful for the holder thereof to manufacture, sell, or possess for the purpose of sale any beer unless and until he shall have made application to reinstate the use of the license in the manner and procedure required in making application for an original license, and re-use of the license may be denied by the County Judge before whom the application for re-use shall be filed, or by the Texas Liquor Control Board or the Administrator for any cause for which a license applied for in an original application may be denied.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 7; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, §§ 13, 14; Acts 1943, 48th Leg., p. 509, ch. 325, § 22; Acts 1953, 53rd Leg., p. 643, ch. 249, § 11.]

**Art. 667-7a. Number of Distributors Unlimited**

Notwithstanding any other provision of this Act, there shall be no limitation on the number of General, Local or Branch Distributors who may be permitted to use the same premises, location or place of business as their licensed premises, so long as the beer owned and stored by each of said distributors is kept segregated from that of any other distributor. [Acts 1973, 63rd Leg., p. 514, ch. 219, § 7, eff. Aug. 27, 1973.]

**Art. 667-8. Containers**

It shall be unlawful for any person to sell, store, possess, or transport in this State, any beer unless it be in a container as defined in Section 1 of this Article,<sup>1</sup> and every such container shall bear a brand, imprint, or label showing the full name and address of the brewer or manufacturer of such beer, or the name and address of any distributor for whom a special brand is manufactured; and in the event such beer is sold or transported in containers packed in any box, crate, carton, or similar device, the same information shall appear upon the outside of such package.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 8; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

<sup>1</sup> Article 667-1.

**Art. 667-9. Records**

Every holder of a Manufacturer's or Distributor's License shall make and keep a record of each day's production or receipt of beer, every sale of beer and to whom such sale is made, and entry of every transaction shall be made on the day it occurs; and all such licensees shall make and keep such other records as may be required to be made by the Board or Administrator. All records which licensees are required to make shall be kept available for the inspection of the Board or its authorized representatives for a period of at least two (2) years. It shall be unlawful for any person to fail to make records as required herein or fail to keep for a period of at least two (2) years such records open for inspection by the Board or its duly authorized representatives during reasonable office hours or to make any false entry or fail to make any entry as herein provided. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 9; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 15; Acts 1953, 53rd Leg., p. 643, ch. 249, § 12.]

**Art. 667-10. Prohibited Hours**

(a) In any county of 300,000 or more population, according to the last preceding federal census, it shall be unlawful for any person to sell beer or offer same for sale:

(1) On Sunday at any time between the hours of 2 a. m. and 12 noon.

(2) On any day except Sunday at any time between the hours of 2 a. m. and 7 a. m.

(b) In any county in this State not having a population of 300,000 or more, according to the last

preceding federal census, it shall be unlawful for any person to sell beer or offer same for sale:

(1) On Sunday at any time between the hours of 1:00 a. m. and 12 noon.

(2) On any day except Sunday at any time between the hours of 12 midnight and 7 a. m.

(3) Regardless of the provisions of paragraphs (1) and (2) of this section, the Commissioner's Court of any county under 300,000 population, according to the last preceding federal census, may by order adopt for the unincorporated areas of that county the hours prescribed above for counties having a population of 300,000 or more, according to the last preceding federal census, during which the sale or offering of beer for sale are made unlawful; and the governing body of any incorporated city or town in any county under 300,000 population, according to the last preceding federal census, may by ordinance adopt the hours prescribed above for counties having a population of 300,000 or more, according to the last preceding federal census, during which the sale or offering of beer for sale are made unlawful; violation of a Commissioner's Court order or a city ordinance made under this subsection is punishable as a violation of this Act.

(c) It shall be unlawful for any person to sell beer on Sunday between the hours of 1:00 a. m. and 2:00 a. m., and on all other days between the hours of 12:00 midnight and 2:00 a. m., unless he shall hold a Retail Dealer's On-Premise Late Hours License.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 10; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1969, 61st Leg., p. 1535, ch. 466, § 2, eff. Sept. 1, 1969.]

**Art. 667-10½. Regulation by Cities and Towns**

In any incorporated city or town where the sale of beer as defined in the Texas Liquor Control Act is prohibited by charter or amendment thereto or by any ordinance from being sold in the residential section, such charter amendments or ordinances shall remain valid and continue effective until such time as such charter provisions, amendments, or ordinances may be repealed or amended.

All incorporated cities and towns are hereby authorized to regulate the sale of beer within the corporate limits of such cities and towns by charter amendment or ordinance, and may thereby prescribe the opening and closing hours for such sales; such cities and towns may also designate certain zones in the residential section or sections of said cities and towns where such regulations for opening and closing hours for the sale of beer shall be observed or where such sales may be prohibited. All incorporated cities and towns and all Commissioners Courts when acting under authority of this section are hereby authorized in adopting charter amendments, ordinances, or orders to distinguish between retailers selling beer for consumption on the premises where sold and those retailers, manufacturers, or distribu-

tors selling not for consumption on the premises where sold, and to provide for separate and distinct regulations. Nothing herein shall authorize any incorporated city or town to extend by ordinance or charter the hours of sale as fixed by the state law.

When, in a county in which only one incorporated city or town is located, and said incorporated city or town has within its limits a majority of the total population of said county according to the last preceding Federal Census, and said incorporated city or town has, prior to January 1, 1957, by valid charter amendment or ordinance, shortened the hours of sale of beer permitted on Sundays by Section 10 of Article II of this Act, then the Commissioners Court of said county is hereby given the power after publication of notice for four (4) consecutive weeks in some newspaper of general circulation published in said county, or if there be no such newspaper published in said county then in some newspaper published in a nearby county and generally circulated in said county, to enter an order prohibiting the sale of beer on Sundays during the same hours when it is prohibited by said charter amendment or ordinance in any part or all of the areas within the prescribed limits of said county lying outside of said incorporated city or town.

[Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 16; Acts 1943, 48th Leg., p. 339, ch. 221, § 5; Acts 1957, 55th Leg., p. 604, ch. 271, § 1, eff. May 31, 1957.]

#### Art. 667-11. Reports of Assessor and Collector of Taxes

The Assessor and Collector of Taxes shall make statements to the Board of the amounts collected by him at the times and in the manner required by the Board or Administrator.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 11; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

#### Art. 667-12. Agent to Accept Service

Any manufacturer, distributor, or person shipping or delivering beer into this State shall file with the Secretary of State a certificate certifying the name of his agent upon whom service may be had, and his or its street address and business; and in the event such person fails to comply with this requirement within fifteen (15) days from the effective date hereof the service may be had on the Secretary of State in any cause of action arising out of the violation of this Act, and it shall be the duty of the Secretary of State to send any such citation served on him to such person, who may be in a foreign State, by registered mail, return receipt requested, and such receipt shall be prima facie evidence of service on such person.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 12; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

#### Art. 667-13. Repealed by Acts 1969, 61st Leg., p. 80, ch. 38, § 14, eff. Sept. 1, 1969

Article was derived from Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 13; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49, and related to prohibited contributions.

#### Art. 667-14. Repealed by Acts 1971, 62nd Leg., p. 698, ch. 65, § 24, eff. April 21, 1971

Article was derived from Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 14; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49, and prohibited the use of the word "saloon".

#### Art. 667-15. Restrictions on Consumption

(a) It shall be unlawful for any licensee to permit any beer to be consumed on the premises where sold unless he is the holder of a license authorizing the sale of beer for consumption on said premises, and it shall be unlawful for any licensee or the agent, servant or employee of any licensee to possess on the premises covered by a license of such licensee any alcoholic beverage that is not authorized by law to be sold for consumption on such premises.

(b) It is hereby provided that hotels authorized by law and holding permit to sell distilled spirits in unbroken packages shall not thereby be disqualified from obtaining a license to sell beer for consumption on the premises where sold.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 15; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

#### Art. 667-16. Sale of Stock after License Cancelled

In the event the license of any licensee hereunder is cancelled or forfeited under the provisions of this Act, the licensee shall nevertheless be authorized to, within thirty (30) days thereafter, sell or dispose of in bulk any stock of beer he may have on hand at the time of such cancellation or forfeiture of license.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 16; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

#### Art. 667-17. Blind and Barriers

It shall be unlawful for any person to install or maintain any barrier or blind in the opening or doors of any retail establishment, nor shall any windows of said establishment be painted in such a way as to obstruct the view from the general public at or above a height of fifty-four (54) inches above the ground or sidewalk outside and beneath such window.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 17; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1949, 51st Leg., p. 1011, ch. 543, § 18.]

#### Art. 667-18. Refunding Fee for Unexpired Term

In all cases where any person pursuing the occupation of selling beer, as herein defined, under licenses issued in accordance with the laws of this State, has been or shall hereafter be prevented from pursuing such occupation for the full time to which he would be otherwise entitled, by reason of the adoption of local option in any county or subdivision thereof, the proportionate amount of license fees paid by him covering the unexpired term shall be refunded to him. So much of the proceeds so derived under the provisions of this Article as may be necessary, not to exceed two (2) per cent thereof, are hereby appropriated for that purpose.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 18; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

**Art. 667-19. Cancellation or Suspension of License**

The Board or Administrator may cancel or suspend for a period of time not exceeding sixty (60) days, after notice and hearing, any license or any renewal of such license, upon finding that the licensee has:

**A. If a Retail Dealer's Off-Premise License or Retail Dealer's On-Premise License:**

- (1). Knowingly sold, served, or delivered beer to a person under the age of twenty-one (21) years; or
- (2). Sold, served or delivered beer to a person showing evidence of intoxication; or
- (3). Sold, served or delivered beer to a person during hours when such sale was forbidden by law; or
- (4). Made or offered to enter into an agreement, condition, or system, the effect of which would amount to the sale or possession of alcoholic beverages on consignment; or
- (5). Possessed or permitted to be possessed by his agents or servants or employees, on premises covered by his license or on premises adjacent thereto and directly or indirectly under his control, any alcoholic beverages that he is not authorized by law to sell at the place of business covered by the license sought to be cancelled by the Board or Administrator, except as provided in Section 23(a)(5) of Article I<sup>1</sup> or Section 17(1) of Article I of the Texas Liquor Control Act;<sup>2</sup> or
- (6). Does not have running water, such being available, or does not have separate toilets for males and females properly marked and identified, on the licensed premises; or
- (7). Permitted on the licensed premises any conduct by any person whatsoever that is lewd, immoral or offensive to public decency; or
- (8). Employed any person under the age of eighteen (18) years to sell, handle, or dispense or to assist in selling, handling, or dispensing beer in any establishment where beer is sold at retail to be consumed on the premises where sold; or
- (9). Conspired with any person to violate any of the provisions of Section 24 of this Article,<sup>3</sup> or accepted the benefits of any act prohibited by such Section; or
- (10). Refused to permit or interfered with an inspection of the licensed premises by an authorized representative of the Board or any peace officer; or
- (11). Repealed by Acts 1969, 61st Leg., p. 80, ch. 38, § 14, eff. Sept. 1, 1969.
- (12). Permitted his license to be used or displayed in the operation of a business

conducted for the benefit of any person not authorized by law to have an interest in said license; or

- (13). Maintained blinds or barriers at his place of business in violation of the law; or
- (14). That the place or manner in which the licensee conducts his business is of such a nature which, based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency, warrants the cancellation or suspension of the license; or
- (15). Violated any provision of this Act or any rule or regulation of the Board at any time during the existence of the license sought to be cancelled or within the next preceding license period of any license held by the licensee; or
- (16). Consumed or permitted the consumption of alcoholic beverages on the licensed premises during any time when such consumption is prohibited as provided in Section 4(c) of Article I of the Texas Liquor Control Act;<sup>4</sup> or
- (17). Purchased beer for the purpose of resale from any person other than the holder of a Distributor's, Manufacturer's, or Branch Distributor's License; or
- (18). Purchased, bartered, borrowed, loaned, exchanged or acquired any alcoholic beverage for the purpose of resale from another Retail Dealer of alcoholic beverages; or
- (19). Owned any interest in the business of any Distributor of beer, or any interest of any kind in the premises in which such Distributor conducts his or its business; or
- (20). Purchased, sold, offered for sale, distributed, delivered, consumed or permitted to be consumed on the licensed premises any alcoholic beverages during any period when his license was under suspension; or
- (21). Has made any false statement or misrepresentation in his original application or any renewal application; or
- (22). Purchased, possessed, or stored, or sold or offered for sale any beer in or from an original package bearing a brand or trade name of a Manufacturer other than the brand or trade name of the Manufacturer shown on the container; or
- (23). Repealed. Acts 1967, 60th Leg., p. 162, ch. 85, § 4, eff. Aug. 28, 1967.
- (24). Is in the habit of using alcoholic beverages to excess, or is mentally incompetent or physically unable to carry on the management of his establishment; or
- (25). Has been finally convicted of a felony during the period he is the holder of any license or any renewal thereof; or

(26). Imported beer into this State, except as provided in Section 3-b, Article II, of this Act;<sup>5</sup> or

(27). Occupied a premise in which any Manufacturer, General Distributor, Branch Distributor or Local Distributor has any interest of any kind; or

(28). If a Retailer, knowingly allowed or permitted a person, who had an interest in a permit or license which was cancelled for cause within one (1) year from the date of such cancellation, to sell or handle or to assist in selling or handling alcoholic beverages on his licensed premises; or

(29). Has been finally convicted for the violation of any penal provisions of this Act; provided, however, that no license authorizing the retail sale of beer in a hotel shall be cancelled for the causes specified in paragraphs (5), (30) and (31) hereof, in those cases where there is a place of business authorized to sell distilled spirits in unbroken packages on premises of the hotel other than that part of such premises covered by the Retail Beer Dealer's License; or

(30). Is financially interested in any place of business engaged in the selling of distilled spirits or has permitted any other person who has a financial interest in any place of business engaged in the sale of distilled spirits to be interested financially in the business authorized by his license, except as provided in Section 23(a)(5) and Section 17(1) of Article I of this Act; or

(31). Is residentially domiciled with or so related to any person engaged in the sale of distilled spirits, except as provided in Section 23(a)(5) or Section 17(1) of Article I of this Act, that there is a community of interest which the Board or Administrator may deem inimical to the purposes of this Act, or is so related to any person in whose name any license has been cancelled or revoked within the twelve (12) months next preceding any date fixed by the Board or Administrator for hearing upon a motion to cancel or revoke the existing license.

(32). The causes specified in the foregoing paragraphs (1) through (28) and (30) and (31) shall also mean and include each member of a partnership or association, and the president, manager or owner of the majority of the corporate stock of a corporation, except as provided in Section 23(a)(5) and Section 17(1) of Article I of the Texas Liquor Control Act.

(33). The causes specified in the foregoing paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (13), (15), (16), (17), (19), (21), (22), and (27) shall also mean and include any agent, servant, or employee of the licensee.

B. If a General Distributor's License, Local Distributor's License or a Branch Distributor's License:

(1). Violated any of the provisions of Section 24 of this Article; or

(2). Failed to comply with all lawful requirements of the Board as to keeping of records and making of reports; or

(3). Failed to pay any taxes due to the State as provided in this Article on any beer sold, stored, or transported by the licensee; or

(4). Refused to permit or interfered with any inspection of his licensed premises or vehicles or books and records by any authorized representative of the Board; or

(5). Consummated any sales of beer outside the county or counties in which his license authorized him to sell; or

(6). Violated any provision of this Act or any rule or regulation of the Board at any time during the existence of the license sought to be cancelled or within the preceding license period of any license held by the licensee; or

(7). Purchased, sold, offered for sale, distributed or delivered any beer during any period when his license was under suspension; or

(8). Permitted his license to be used in the operation of a business conducted for the benefit of any person not authorized by law to have an interest in said business; or

(9). Has made any false or misleading representation or statement in his original application or any renewal application; or

(10). Is in the habit of using alcoholic beverages to excess, or is mentally incompetent or physically unable to carry on the management of his establishment; or

(11). Misrepresented to a Retailer or the public any beer sold by him; or

(12). Employed any person under the age of eighteen (18) years to sell, deliver, or distribute, or to assist in selling, delivering or distributing any beer; or

(13). Knowingly sold or delivered beer to any person under the age of twenty-one (21) years; or

(14). Repealed by Acts 1969, 61st Leg., p. 80, ch. 38, § 14, eff. Sept. 1, 1969.

(15). Purchased, possessed, stored, sold, or offered for sale any beer in an original package bearing a brand or trade name of a Manufacturer other than the brand or trade name of the Manufacturer shown on the container; or

(16). Has been finally convicted of a felony during the period he is the holder of any license or any renewal thereof; or

(17). Has been finally convicted for the violation of any penal provisions of this Act.

(18). The causes specified in the foregoing paragraphs (1) through (17) shall also mean and include each member of a partnership or association, and the president, manager, or owner of the majority of the corporate stock of a corporation.

The causes specified in the foregoing paragraphs (4), (5), (7), (11), (12), (13) and (15) shall also mean and include any agent, servant, or employee of the licensee.

**C. If a Manufacturer:**

The Board or Administrator shall have the power and authority to suspend, after notice and hearing, the license of any Manufacturer to sell beer in this State when such licensee has violated any provision of this Act applying to Manufacturers or any rule or regulation of the Board applying to Manufacturers, until said licensee obeys all lawful orders of the Board or Administrator requiring such licensee to cease and desist from such violations.

**D.** Any act of omission or commission enumerated herein as cause for the cancellation or suspension of any type of license shall also be a violation of this Act and subject to the penalties provided in Section 26 of this Article,<sup>6</sup> provided, however, that the penalty for the making of any false or untrue statements in any application for a license or in any statement, report, or other instrument to be filed with the Board, and which is required to be sworn to, shall be as is provided in Section 17(a)(2) of Article I of this Act.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 19; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 17; Acts 1949, 51st Leg., p. 1011, ch. 543, § 16; Acts 1953, 53rd Leg., p. 643, ch. 249, § 13; Acts 1967, 60th Leg., p. 162, ch. 85, § 4, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 80, ch. 38, § 14, eff. Sept. 1, 1969.]

<sup>1</sup> Article 666-23(a)(5).

<sup>2</sup> Article 666-17(1).

<sup>3</sup> Article 667-24.

<sup>4</sup> Article 666-4(c).

<sup>5</sup> Article 667-3b.

<sup>6</sup> Article 667-26.

**Art. 667-19A. Suspension of License in Lieu of Cancellation**

As to any causes for cancellation of licenses herein provided, in lieu of such cancellation, the Board or Administrator shall have the discretionary power and authority to suspend any such license for a period not to exceed sixty (60) days.

[Acts 1943, 48th Leg., p. 509, ch. 325, § 19.]

**Art. 667-19B. Lewd or Immoral Conduct; Conduct Offensive to Public Decency**

For the purposes contemplated by this Act,<sup>1</sup> conduct by any person at a place of business where the sale of beer at retail is authorized that is lewd,

immoral, or offensive to public decency is hereby declared to include but not be limited to the following prohibited acts; and it shall be unlawful for any person engaged in the sale of beer at retail, or any agent, servant or employee of said person, to engage in or to permit such conduct on the premises of the Retailer:

(a). The use of or permitting the use of loud and vociferous or obscene, vulgar, or indecent or abusive language.

(b). The exposure of person or permitting any person to expose his person.

(c). Rudely displaying or permitting any person to rudely display a pistol or any other deadly weapon in a manner calculated to disturb the inhabitants of such place.

(d). Solicitation of any person for coins to operate musical instruments or other devices.

(e). Solicitation of any person to buy drinks or beverages for consumption by the Retailer or his employees.

(f). Becoming intoxicated on licensed premises or permitting any intoxicated person to remain on such premises.

(g). Permitting entertainment, performances, shows, or acts that are lewd or vulgar.

(h). Permitting solicitations of persons for immoral or sexual purposes or relations.

(i). Failing or refusing to comply with or failure or refusal to maintain the retail premises in accordance with the health laws of this State or any sanitary laws or with sanitary or health provisions of any city ordinance.

(j). Possession of any narcotic.

(k). Possession of any equipment used for or designed for the use of administering any narcotic.

(l). Permitting any person to possess on the licensed premises any narcotic or any instrument used for or designed for the use of administering any narcotic.

[Acts 1943, 48th Leg., p. 509, ch. 325, § 19; Acts 1949, 51st Leg., p. 1011, ch. 543, § 17; Acts 1953, 53rd Leg., p. 643, ch. 249, § 14.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

**Art. 667-19C. Purchases Other Than for Cash; Dishonor of Checks or Drafts**

The Board or Administrator may cancel or suspend for a period of time not exceeding sixty (60) days, after notice and hearing, any Retail Dealer's Off-Premise License or Retail Dealer's On-Premise License or any renewal of such license, upon finding that the licensee has:

(a) Purchased after the effective date of this Act, any beer or the containers or original packages in which the same is contained or packaged except for cash paid to the seller on or before the delivery thereof. Any maneuver, device, subterfuge or shift of any kind whereby credit

is accepted shall constitute a violation of this Act and shall subject the license of the offender to cancellation or suspension. Payment by post-dated check or draft is prohibited and the use or attempted use thereof for the purpose of making such purchases is hereby made unlawful. Credit for the return of unbroken or undamaged containers or original packages previously paid for by the purchaser may be accepted as cash by the seller in an amount not to exceed the amount originally paid therefor by said purchasers; or

(b) Has given a check or checks, either as the maker or endorser thereof, or has given a draft or drafts, either as the drawer or endorser thereof, in payment in whole or in part for beer or the containers or original packages in which such beer is contained or packaged which check or checks or draft or drafts is dishonored by the drawee when presented to such drawee for payment.

[Acts 1951, 52nd Leg., p. 28, ch. 22, § 1.]

**Art. 667-19D. Acquiring Beverages for Resale from Other Licensees; Storing Beer for Sale Off Licensed Premises; Exchange or Transportation between Licensed Premises under Same Ownership**

It shall be unlawful for the holder of any Retail Dealer's Off-Premise License or Retail Dealer's On-Premise License to borrow, loan, exchange or acquire any alcoholic beverage for the purpose of resale from any other holder of a Retail Dealer's Off-Premise License or a Retail Dealer's On-Premise License, or to own, possess or store beer for the purpose of resale other than on the licensed premises. In the case of two (2) or more licensed retail premises under the same ownership it shall be unlawful to exchange or transport beer between them or between any warehouse, place of storage or distribution center which is either directly or indirectly under the control of said common ownership unless all of the conditions set out in Section 52 of Article I<sup>1</sup> hereof be met.

[Acts 1953, 53rd Leg., p. 643, ch. 249, § 15.]

<sup>1</sup> Article 666-52.

**Art. 667-19E. Display of Sign on Penalty for Carrying Weapons in Premises**

(a) Each holder of a license issued under the provisions of the Texas Liquor Control Act shall display in a prominent place on his premise a sign, at least 6 inches high and 14 inches wide, stating:

FELONY. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF FIVE YEARS' IMPRISONMENT FOR CARRYING WEAPONS WHERE ALCOHOLIC BEVERAGES ARE SOLD, SERVED, OR CONSUMED.

(b) A licensee who violates this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$25.

[Acts 1968, 60th Leg., 1st C.S., p. 12, ch. 3, § 2, eff. July 19, 1968.]

**Art. 667-20. Hearings**

The Board or Administrator shall have the power and authority upon its own motion, and it is hereby made its duty upon petition of the County Judge, County Attorney, or Sheriff of the county, or the Mayor or Chief of Police of the incorporated city or town wherein may be located the place of business of the licensee complained of in such petition, to fix a date for hearing, and give notice thereof to the licensee complained of for the purpose of determining whether or not the license of such licensee is to be cancelled by the Board or Administrator, and to notify such licensee that he may appear to show cause why such license should not be cancelled. The Board or Administrator is authorized and empowered to cancel the license of any licensee upon determining after hearing that the holder thereof has given cause for such cancellation in any manner enumerated in Section 19<sup>1</sup> or Section 19-B of this Article.<sup>2</sup>

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 20; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 18; Acts 1949, 51st Leg., p. 1011, ch. 543, § 18.]

<sup>1</sup> Article 667-19.  
<sup>2</sup> Article 667-19B.

**Art. 667-21. Suspension of License**

The Board or Administrator shall have the power and authority to suspend for a length of time not exceeding thirty (30) days the license of any retail beer dealer upon ascertaining that any act constituting a breach of the peace has occurred upon the premises covered by the license of such retail dealer or under his control, and at the expiration of the date to which such license has been suspended the Board or Administrator shall cancel the license unless it shall have been shown to the satisfaction of the Board or Administrator that the act was beyond the control of the person holding the license and did not result from improper supervision by the licensee of the conduct of persons permitted by him to be on the licensed premises or premises under his control. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 21; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

**Art. 667-22. Appeal; Suit to Restrain Suspension; Evidence; Effect of Cancellation or Suspension**

Any order of the Board or Administrator cancelling a license shall have the effect that it shall immediately be unlawful, after notice thereof given, for the holder of such cancelled license to sell beer for a period of one year thereafter except during the period that the order of cancellation is superseded pending trial, or unless he shall prevail in any final judgment, rendered upon appeal as herein provided. Appeals from decisions or orders of the Board or Administrator cancelling, suspending or refusing a license may be had under the same conditions and provisions prescribed in Section 14<sup>1</sup> of Article I of this Act.

No appeal shall lie from an order suspending a retail dealer's license, except a license issued to the holder of a retail permit at the same location. No suit of any nature shall be maintained in any court in the state seeking to restrain the Board or Administrator or any other officer from enforcing any order of suspension issued by the Board or Administrator; and if at any hearing thereon it be shown to the satisfaction of the Board or Administrator that any alcoholic beverage was sold on or from the premises covered by a license during the period of suspension, then such proof shall be sufficient to warrant cancellation of the license.

The cancellation or suspension of any license shall not excuse nor relieve the violator from the penalties provided in this Article.

[Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, § 22; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 19; Acts 1969, 61st Leg., p. 80, ch. 38, § 12, eff. Sept. 1, 1969.]

<sup>1</sup> Article 666-14.

#### Art. 667-23. Tax on Beer

There is hereby levied and assessed a tax at the rate of Five Dollars (\$5) per barrel on the first sale of all beer manufactured in Texas and on the importation of all beer imported into this state.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1949, 51st Leg., p. 1011, ch. 543, § 22; Acts 1951, 52nd Leg., p. 695, ch. 402, § XX; Acts 1954, 53rd Leg., 1st C.S., p. 3, ch. 2, art. IV, § 1; Acts 1955, 54th Leg., p. 1080, ch. 404, art. III, § 1; Acts 1971, 62nd Leg., p. 1206, ch. 292, art. 8, eff. July 1, 1971; Acts 1971, 62nd Leg., 1st C.S., p. 21, ch. 3, § 4, eff. July 1, 1971; Acts 1971, 62nd Leg., 1st C.S., p. 23, ch. 3, § 10, eff. June 8, 1971.]

#### Art. 667-23½. Collection of Tax on Beer Declared Unsalable; Refund

(a). It is not intended that the tax levied under Section 23 of this Act on beer manufactured or distributed in this state shall be imposed on or collected for beer which the Board, or Administrator, has found and declared to be unsalable for any reason. If such tax is paid on any such beer by a manufacturer or distributor, a claim for refund of such tax may be made at the time and in the manner prescribed by the Board or Administrator, and such tax shall be refunded to the manufacturer or distributor who has paid the same.

(b). If any manufacturer or distributor of beer through oversight, mistake, error, or miscalculation, has paid more tax on beer than is legally due thereon, the manufacturer or distributor who paid such excess tax shall be entitled to a refund thereof, and a claim for such refund may be made at the time and in the manner prescribed by the Board or Administrator, and such excess tax shall be refunded to the manufacturer or distributor who has paid the same, or credit may be allowed on future tax payment.

(c). Refunds for beer tax may be made by the Board from the revenues derived from the collection of such tax before the same has been allocated, and

so much of such funds as may be necessary is hereby appropriated for that purpose.

[Acts 1959, 56th Leg., p. 358, ch. 174, § 2, eff. May 18, 1959.]

#### Art. 667-23¼. Exemption of Certain Manufacturers from Tax

There is exempt from the tax imposed under Section 23 of Article II of the Texas Liquor Control Act<sup>1</sup> twenty-five percent (25%) of the tax imposed under such section on each barrel of beer manufactured in this state by a manufacturer whose annual production of beer in this state does not exceed seventy-five thousand (75,000) barrels of beer each year.

[Acts 1971, 62nd Leg., p. 1728, ch. 500, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Article 667-23.

Section 2 of the 1971 act provided: "If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act shall be held invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision."

#### Art. 667-23¼. Tax Levied only on First Sale; Duty of Paying; Exemptions; Importation of Beer; Bonds; Statements and Remittances; Prima Facie Evidence

(a). The tax levied in Section 23 of Article II of the Texas Liquor Control Act<sup>1</sup> is levied only on its first sale in Texas or only on its importation into Texas, whichever shall first occur.

(b). On beer imported into this State the duty of paying the tax shall rest primarily upon the Importer, and said tax shall become due and payable on the fifteenth day of the month following that month in which said beer was imported into this State.

(c). On beer manufactured in this State the duty of paying the tax shall rest primarily upon the Manufacturer, and said tax shall become due and payable on the fifteenth day of the month following that month in which the first sale of said beer was made in this State.

(d). It is not intended that the tax levied in Section 23 of Article II of the Texas Liquor Control Act shall be collected on beer shipped out of this State for consumption outside this State, or sold aboard ships for ship's supplies, or on beer shipped to any installation of the National Military Establishment, wherein the State of Texas has ceded police jurisdiction, for consumption by military personnel within said installation, and the Board shall provide forms on which Distributors and Manufacturers may claim and obtain exemption from the tax on such beer. If any Distributor or Manufacturer has paid the tax on any beer and thereafter said beer is shipped out of this State, for consumption outside this State, or sold aboard ships for ship's supplies, or is shipped into any installation of the National Military Establishment as referred to above, for consumption by military personnel therein, a claim for refund may be made at the time and in the manner prescribed by the Board or Administrator. So much of any funds derived hereunder as may be necessary,

not to exceed two per cent (2%) thereof, is hereby appropriated for such purpose. The Board may promulgate rules and regulations generally for the enforcement of this provision.

(e). It shall be unlawful for any Importer, unless he be the holder of an Importer's Carrier's License, to import beer into this State except by steam, electric and motor power railway carriers, and common carrier motor carriers operating under certificates of convenience and necessity issued by the Railroad Commission of Texas, or such certificates issued by the Interstate Commerce Commission. Any such carrier shall be the holder of a Carrier's Permit provided for in Section 15(12), Article I of the Act,<sup>2</sup> and shall comply with all the requirements thereof as in the transportation of liquor. It shall be unlawful for any carrier enumerated herein to transport beer into this State unless the same shall be consigned to an Importer.

(f). As used in Article II,<sup>3</sup> an "Importer" is a person who imports beer into this State in quantities in excess of two hundred and eighty-eight (288) fluid ounces in any one (1) day. It shall be unlawful for any Importer to import beer into this State unless and until he shall first obtain from the Board an Importer's License, the fee for which shall be Five Dollars (\$5) per year or fraction thereof. The application for such license shall contain such information as the Board may require. No Importer's License shall be granted any person who is not already the holder of a Manufacturer's License or a Distributor's License, and all Importer's Licenses shall terminate at the same time as the primary license under which it was issued.

(g). No Importer shall import beer into this State by any means of transportation other than those set out in paragraph (e) hereof unless he shall first obtain from the Board an Importer's Carrier's License, which license shall entitle him to import beer into this State in vehicles owned or leased in good faith by him. The fee for such license shall be Five Dollars (\$5) per year or fraction thereof. The application for such license shall contain such information as to description of the vehicles and such other information as the Board may require. All vehicles used under such licenses shall have painted or printed thereon such designation as the Board may require. It shall be unlawful for any Importer to import beer into this State in any vehicle not fully described in his application, except as is permitted in paragraph (e) hereof. No Importer's Carrier's License shall be issued to any person who is not already the holder of an Importer's License, and all Importer's Carrier's Licenses shall terminate at the same time as the primary license under which it was issued.

(h). The Board is hereby authorized and empowered to require of all Manufacturers of beer in this State, and of all Manufacturers of beer imported into this State, and of all Importers and Distributors, such information as to purchases, sales and shipments as will enable the Board to collect the full

amount of the tax due the State, and it shall be unlawful for any such Manufacturer, Importer or Distributor of beer to fail or refuse to give the Board such information. The Board shall have the power to seize and withhold from sale any beer the Manufacturer, Importer or Distributor of which fails or refuses to give to the Board any information which the Board may require under this provision, or fails or refuses to permit the Board to make investigation of pertinent records, whether they be located within or without this State.

(i). Any person in possession of beer on which the tax is delinquent shall be held in violation of this Article and liable for the taxes herein provided and for the penalties for such violations.

(j). The Board shall require of Manufacturers of beer in Texas, and of Importers of beer into Texas, a bond or bonds executed by the Manufacturer or Importer as principal, and a surety company, duly qualified and doing business in this State, as surety, and said bond or bonds shall be made payable to the order of the State of Texas and conditioned as the Board may require and approved by the Attorney General of Texas as to form. Said bond or bonds shall be in such amount as will adequately protect the State against the anticipated tax liability of the principal during any six (6) weeks period.

(k). Such sworn statements of taxes due as may be required by the Board, and remittances therefor made payable to the State Treasurer, shall be forwarded to the Board each month not later than the due date set out herein. All such remittances shall be turned over by the Board to the State Treasurer, and after the allocation of funds to defray administrative expenses of the Board as provided in the current Departmental Appropriation Act, all remaining funds shall be deposited in the State Treasury as set out in paragraphs (a) and (b) of Section 23<sup>1</sup>/<sub>2</sub> of Article II of the Texas Liquor Control Act.<sup>4</sup>

(l). In any suit brought to enforce the collection of any tax due on beer manufactured in or imported into Texas, a certificate by the Board or Administrator showing the delinquency shall be prima facie evidence of the levy of the tax, or the delinquency of the amount of tax and penalty set forth therein and of compliance by the Board with all provisions of this Act in relation to the computation and levy of the tax.

(m). This Section shall be effective on and after October 1, 1949, and on and after that date the purchase, affixing or mutilation of beer tax stamps shall no longer be required in Texas, and all requirements as to beer tax stamps in the Texas Liquor Control Act as amended<sup>5</sup> heretofore and herein are hereby specifically repealed.

[Acts 1949, 51st Leg., p. 1011, ch. 543, § 21; Acts 1953, 53rd Leg., p. 643, ch. 249, § 16.]

<sup>1</sup> Article 667-23.

<sup>2</sup> Article 666-15(12).

<sup>3</sup> Article 667-1 et seq.

<sup>4</sup> Article 667-23<sup>1</sup>/<sub>2</sub>.

<sup>5</sup> Articles 666-1 et seq., 667-1 et seq.

**Art. 667-23½. Funds Derived from Taxes on Beer; Disposition**

After allocation of funds to defray administrative expenses as provided in the current Departmental Appropriation Act, all funds derived from taxes on beer shall be deposited in the State Treasury as follows:

(a) One-fourth ( $\frac{1}{4}$ ) to the Available School Fund.

(b) Three-fourths ( $\frac{3}{4}$ ) to the Clearance Fund as provided in Section 2, Article XX of H. B. No. 8, Chapter 184, Acts of the Regular Session of the Forty-seventh Legislature,<sup>1</sup> for the purposes designated by such Act.

[Acts 1943, 48th Leg., p. 509, ch. 325, § 23; Acts 1953, 53rd Leg., p. 643, ch. 249, § 17.]

<sup>1</sup> Civil Statutes, art. 7083a.

**Art. 667-23a. Additional Tax**

In addition to all other taxes, there is hereby levied and assessed a tax at the rate of ten per cent (10%) of One Dollar and twenty-four cents (\$1.24) per barrel on the first sale of all beer manufactured in Texas and on the importation of all beer imported into this State.

The tax levied herein is levied only on its first sale in Texas or only on its importation into Texas, whichever shall first occur.

On beer imported into this State the duty of paying the tax shall rest primarily upon the importer, and said tax shall become due and payable on the fifteenth day of the month following that month in which said beer was imported into this State.

On beer manufactured in this State the duty of paying the tax shall rest primarily upon the manufacturer, and said tax shall become due and payable on the fifteenth day of the month following that month in which the first sale of said beer was made in this State.

This tax is subject to all the terms, conditions, penalties, bonds, exemptions, and provisions for refunds as is now provided in the Texas Liquor Control Act, as amended, for the tax therein levied on the sale and importation of beer. The liability for such tax is on and such tax shall be paid by the same parties and in the same manner as is now provided by the Texas Liquor Control Act for the payment of the tax on the sale and importation of beer. This tax is levied on such sales and importations made prior to September 1, 1951, and not thereafter.

[Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, art. XVI, § 1.]

**Art. 667-24. Marketing Practices**

(1). It shall be unlawful for any manufacturer or distributor directly or indirectly, or through a subsidiary or affiliate, any agent or any employee, or by any officer, director, or firm member:

(a). Ownership of Interest or Real Estate: To own any interest in the business of any retail dealer in beer, or any interest of any kind in the

premises in which any such retail dealer conducts his or its business.

(b). Retail Licenses: To hold the ownership or any interest in any license to sell brewery products for consumption on the premises covered by such license, except the license of manufacture to dispense their own products on the brewery premises.

(c). Loans and Guaranties: To furnish, give, or lend any money or other thing of value to any person engaged or about to engage in selling brewery products for consumption on or off the premises where sold, or to any such person for the use, benefit, or relief of said person, or to guarantee the repayment of any loan or the fulfillment of any financial obligation of any person engaged or about to engage in selling beer at retail.

(d). Consignment Sales: To make any delivery of beer under any agreement, arrangement, condition, or system whereby the person receiving the same has the right at any time to relinquish possession to or return same to the shipper, or whereby the title to such beer remains in the shipper; or to make any delivery of beer under any agreement, arrangement, condition, or system whereby the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver, including any delivery of beer to a factor or broker; or to employ any other method whereby any person is placed in actual or constructive possession of beer without acquiring title thereto, or whereby any person designated by the shipper or seller as the purchaser did not in fact purchase the same, or to make any other kind of transaction which in law may be construed as a consignment sale.

(e). Equipment and Fixtures: To furnish, give, rent, lend, or sell any equipment, fixtures, or supplies to any person engaged in selling brewery products for consumption on the premises where sold. This subsection does not apply to such equipment, fixtures, or supplies furnished, given, loaned, rented, or sold prior to November 16, 1935, except that such transactions made prior to this date are not to be used as a consideration for an agreement thereafter made respecting the purchase of brewery products; provided that equipment, fixtures, or supplies furnished, given, rented, loaned, or sold to any person engaged in selling brewery products for consumption on the premises where sold, prior to November 16, 1935, when removed from the premises of such person or repossessed by any manufacturer or distributor of brewery products or by his agents or employees, shall not again be furnished, given, rented, loaned, or sold to any person engaged in the sale of brewery products for consumption on the premises where sold.

(f). Allowances and Rebates for Advertising and Distribution Service: To pay or to make any allowance to any retail dealer for an advertising or distribution service.

(g). Prizes and Premiums: To offer any prize, premiums, gift, or other inducement to any dealer in or consumer of brewery products.

(h). Advertising: To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication or by any sign or outdoor advertisement or any other printed or graphic matter any advertisement of any brewery product, if such advertisement causes, or is reasonably calculated to cause, deception of the consumer with respect to the product advertised. An advertisement shall be deemed misleading if it is untrue in any particular or if directly or by ambiguity, omission, or inference, it tends to create a misleading impression. Any advertisement of or reference to alcoholic content of any brewery product or any advertisement disparaging of a competitor's products, or that is obscene or indecent, shall be unlawful.

(i). Misbranding: To sell or otherwise introduce into commerce any brewery product that is misbranded. A product is misbranded:

(1). Food and Drug Act Requirement: If it is misbranded within the meaning of the Food and Drug Act.

(2). Standards of Fill: If the container is so made, formed, or filled as to mislead the purchaser, or if its contents fall below the recognized standards of fill.

(3). Standards of Quality: If it misrepresents the standard of quality of products in the branded container.

(4). Labels: If it is so labeled that it purports to be any product other than is actually in the container.

(j). Exclusive Outlet: To require, by agreement or otherwise, that any retailer engaged in the sale of brewery products shall purchase any such products from such persons to the exclusion in whole or in part, of the products sold or offered for sale by any other person engaged in the manufacture or distribution of brewery products, or to require the retailer to take or dispose of a certain quota of any such product.

(k). Commercial Bribery: To give or permit to be given money or anything of value in an effort to induce agents, employers, or representatives of customers or prospective customers to influence their employers or principals to purchase or contract to purchase brewery products from the maker of such gift, or to influence such employers or principals to refrain from dealing or contracting with competitors.

(l). Returnable Container: It shall be unlawful for any manufacturer to accept as a return or to purchase or use any barrel, half-

barrel, keg, case, or bottle permanently branded or imprinted with the name of another manufacturer.

(m). Labeling: To manufacture or sell or otherwise introduce into commerce in this State any brewery product unless it bear a label showing in plain, legible type the name and address of the manufacturer and the name of the distributor for whom any special brand is manufactured, the brand or trade name, and the net content of the bottle in terms of United States liquor measure; or to manufacture or sell, or otherwise introduce into commerce in this state any beer or container or dispensing equipment, carton, or case for beer bearing a label or imprint which by wording, lettering, numbering, or illustration, or in any other manner carries any reference or allusion or suggestion to the alcoholic strength of the product or to any manufacturing process, ageing, analysis, or scientific matter of fact, or upon which appears any such words or combination of words or abbreviations thereof, as "strong", "full strength", "extra strength", "high test", "high proof", "pre-war strength", "full old time alcoholic strength", or any words or figures or other marks or characters alluding or relating to "proof", "balling" or "extract", contents of the product, or which bears a label that is untrue in any particular or which directly or by ambiguity, omission, or inference tends to create a misleading impression or causes, or is reasonably calculated to cause deception of the consumer or buyer with respect to the product.

(n). Administrative Authority to Relax: It is hereby specifically provided that the Board may by rule and regulation relax the restrictions contained in subdivisions (c), (e), and (g) of this sub-section in respect to the sale or gift of novelties advertising the products of the Manufacturer or Distributor; as to gifts made to civic, religious, or charitable organizations; as to cleaning and maintenance of coil connections for dispensing draught beer; as to the lending of equipment for special occasions; and as to acts of a courtesy nature only; provided that such regulations shall establish definite limitations not inconsistent with the general provisions of this Section.

(2). It shall be unlawful for any retail dealer to dispense any draft beer unless each faucet or other dispensing apparatus is equipped with a sign clearly indicating the name or the brand of the particular product being at the time dispensed through each faucet or other apparatus, which sign shall be in legible lettering and in full sight of the purchaser.

(3). In addition to other power and authority granted by this Act<sup>1</sup> to the Board or Administrator, said Board shall have the power and authority upon finding it necessary to effectuate the purposes of this Article to adopt rules and regulations to provide a schedule of deposits required to be obtained on any

beer containers delivered by any licensee, and any violation of any such regulation shall be unlawful.

(4). Provided that if any provision of this Section 24 is for any reason held unconstitutional and invalid, such decision shall not affect the validity of the remaining portions, and the Legislature hereby declares that it would have passed this Section, and each Sub-section, provision, sentence, clause, or phrase thereof, irrespective of the fact that any provision is declared unconstitutional.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1943, 48th Leg., p. 509, ch. 325, § 24.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

#### Art. 667-24 $\frac{1}{4}$ . Sale Other Than for Cash; Dishonored Checks or Drafts

It shall be unlawful for any manufacturer or distributor directly or indirectly, or through a subsidiary or affiliate, any agent, or any employee, or by any officer, director, or firm member:

(a) Cash Sales: To sell beer or the containers or original packages in which the same is contained or packaged, to any holder of a Retail Dealer's Off-Premise License or to any holder of a Retail Dealer's On-Premise License except for cash paid on or before the delivery to the purchaser of same; to accept post-dated checks or drafts in payment for such beer, containers or original packages. Any maneuver, device, subterfuge or shift of any kind whereby credit is extended to such licensee shall constitute a violation of this Act and shall subject the license of the offender to cancellation or suspension. Valid checks or drafts payable on demand may be accepted as cash. When such checks or drafts are accepted in payment for such commodities, they must be deposited in the bank for payment or presented for payment forthwith and within two (2) days (Sundays and legal holidays excepted) after they are received. If any such checks or drafts are dishonored by the drawee when presented to the drawee for payment, then it shall be the duty of the manufacturer or distributor accepting them to report such non-payment forthwith and within two (2) days (Sunday and legal holidays excepted) after receiving notice of non-payment of same to the Board. Such report shall be on forms prescribed by the Board and contain such information as required by the Board. The purpose of this provision is to prohibit the sale of beer or the containers or original packages in which it is contained or packaged except for cash, and the Board is hereby given the authority to promulgate and enforce any and all necessary rules and regulations to accomplish this purpose.

[Acts 1951, 52nd Leg., p. 28, ch. 22, § 2.]

#### Art. 667-24a. Outdoor Advertising

1. The term "outdoor advertising" as used herein shall mean any sign bearing any words, marks, description or other device and used to advertise the

alcoholic beverage business of any person engaged in the manufacture, sale or distribution of alcoholic beverages, or in the advertisement of any beverage containing alcohol in excess of one-half of one per cent ( $\frac{1}{2}$  of 1%) by volume, when such sign is displayed anywhere outside the walls or enclosure of any building or structure where there exists a license or permit to sell alcoholic beverages. The term "outdoor advertising" shall not be inclusive of any advertising appearing on radio or television, or in any public vehicular conveyances for hire, or in a newspaper, magazine or other literary publication published periodically. Any such sign erected inside a building and within five (5) feet of any exterior wall of such building facing a street or highway and so placed that it may be observed by a person of ordinary vision from outside the building, shall be deemed outdoor advertising. For the purposes of this Section the word "sign," as applied to its use by a Retailer, shall not include any identifying label affixed to any container as authorized by law, nor to any card or certificate of membership in any association or organization, provided such card or certificate is not larger than eighty (80) square inches.

The word "billboard" as used herein shall mean a structure directly attached to the land, or to any house or building, and having one (1) or more spaces used for displaying thereon a sign or advertisement of the alcoholic beverage business of any person engaged in the manufacture, sale or distribution of alcoholic beverages, or for the advertisement of any beverage containing alcohol in excess of one-half of one per cent ( $\frac{1}{2}$  of 1%) by volume, whether or not such structure or sign be illuminated by artificial means. The term "billboard" shall not be inclusive of any wall or other part of any structure used as a building, fence, screen, front or barrier.

The term "electric sign" as used herein shall mean a structure or device, other than an illuminated billboard, by means of which artificial light created through the application of electricity is utilized for the advertisement of the alcoholic beverage business by any person engaged in the manufacture, sale or distribution of alcoholic beverages, or for the advertisement of any beverage containing alcohol in excess of one-half of one per cent ( $\frac{1}{2}$  of 1%) by volume.

2. All outdoor advertising as herein defined is hereby prohibited within the State of Texas except as herein expressly provided:

(a) The use of billboards or electric signs as herein defined is hereby authorized unless located or to be located in a manner contrary to the limitations imposed by this Act.<sup>1</sup>

(b) The holders of Retailer's Licenses or Permits are authorized to erect or maintain at their respective places of business one (1) sign only containing the words:

If a Beer Retailer, the word "Beer."

If a Beer Off-Premise Retailer, the word or words "Beer" or "Beer to go."

If a Wine and Beer Retailer, the word or words "Beer," "Beer and Wine," or "Beer, Wine and Ale."

If a Wine and Beer Off-Premise Retailer, the word or words "Beer," "Beer to go," "Beer and Wine," "Beer and Wine to go," "Beer, Wine and Ale" or "Beer, Wine and Ale to go."

If the holder of a Package Store Permit, the word or words "Package Store," "Liquors," or "Wines and Liquors," and if also the holder of a Retail Dealer's Off-Premise License, the word or words "Package Store," "Wines, Liquors and Beer," or "Wines, Liquors and Beer to go."

If the holder of a Wine Only Package Store Permit, the word "Wine" or "Wines," and if also the holder of a Retail Dealer's Off-Premise License, the words "Wines and Beer," or "Wine and Beer," or "Wine and Beer to go."

Such sign may be placed within or without the place of business so as to be visible to the general public. No such signs shall contain letters of greater height than twelve (12) inches, and no such sign shall contain any wording, insignia or device representative of the brand or name of any alcoholic beverage. The Commission or Administrator is hereby authorized to expand this provision to the extent of permitting a licensee to erect or maintain one (1) such sign at each entrance or side of a building occupied by a licensee and facing more than one street or highway.

(c) The use of billboards, electric display signs or other signs to designate the firm name or business of any holder of a permit or license authorizing the manufacture, rectification, bottling or wholesaling of alcoholic beverages, when displayed at the place of business of such person is hereby authorized.

(d) The use of alcoholic beverages or printed or lithographed material advertising alcoholic beverages inside a premise where there exists a permit or license to sell alcoholic beverages, when used as a part of a display, is hereby authorized, provided such alcoholic beverages or advertising material so used may not be placed within six (6) inches of any window or opening facing upon a street, alley or highway, and provided further that the term "advertising material" as used in this Section shall not be construed to mean or include any card or certificate of membership in any association or organization, if such card or certificate is not larger than eighty (80) square inches.

(e) The Commission shall have the power and authority, and it is hereby made its duty, to adopt rules and regulations permitting and regulating the use of business cards, menu cards,

stationery, and service vehicles and equipment and delivery vehicles and equipment bearing advertisement of alcoholic beverages, and permitting and regulating the use of insignia advertising beer by brand name on caps, regalia or uniforms worn by employees of a Manufacturer or Distributor or by participants in any game, sport or athletic contest or revue when said participants are sponsored by a Manufacturer or Distributor.

3. It shall be unlawful for any person to erect or maintain any billboard or electric sign in violation of any ordinance of an incorporated city or town.

It shall be unlawful for any person to erect or maintain any billboard or electric sign within an area or zone where the sale of alcoholic beverages is prohibited by law.

4. It shall be unlawful for any person to erect or maintain any billboard or electric sign within two hundred (200) feet of any place where there exists a permit or license to sell the advertised beverage at retail without first securing from the Commission a permit to erect or maintain such billboard or electric sign, provided no such permit shall be required for billboards or electric signs if not located within two hundred (200) feet of any place where there exists a license to sell the advertised beverage at retail. Application for any exception to this provision shall be addressed to the Commission or Administrator upon such form as may be prescribed and containing such information as may be deemed necessary by the Commission or Administrator. The application shall be made under oath and shall state in addition to such other information as may be required by the Commission, that the erection or maintenance of any such billboard or electric sign will not serve to advertise or direct patronage to any particular place of business licensed to sell any alcoholic beverage at retail.

The Commission or Administrator shall refuse to issue a permit for the erection or maintenance of any billboard or electric sign if it finds any statement in the application therefor to be false; and the Commission or Administrator shall grant the permit for erection or maintenance of any such billboard or electric sign if it finds all statements in the application therefor to be true, and if it finds that the erection or maintenance thereof would not be contrary to this Act or any lawful rule or regulation of the Commission.

All billboards and electric signs authorized by this Act shall be subject to all applicable provisions of Section 24, Article II, of the Texas Liquor Control Act.<sup>2</sup>

It shall be unlawful for any person to erect, maintain or display any outdoor advertising, billboard, or electric sign not conforming in all respects to the provisions of this Act; and any billboard or electric sign displayed contrary thereto is hereby declared illegal equipment and subject to seizure and forfeiture as provided for such action in respect to illicit

beverages and other illegal equipment under the provisions of this Act.

The owner of any outdoor advertising, the erection, maintenance or display of which would be in violation of the provisions of this Section, shall be responsible for the removal thereof from public view immediately, and failure so to remove shall be a violation of this Act.

[Acts 1941, 47th Leg., p. 684, ch. 427, § 1; Acts 1943, 48th Leg., p. 509, ch. 325, § 25½-A; Acts 1949, 51st Leg., p. 1011, ch. 543, § 20; Acts 1969, 61st Leg., p. 80, ch. 38, § 15, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 748, ch. 325, § 1, eff. June 12, 1973.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

<sup>2</sup> Article 667-24.

**Art. 667-24b. Applicability of Advertising Provisions to Mixed Beverage Permits; Rules and Regulations**

The provisions of this Act applicable to outdoor advertising and advertising in or on the premises do not apply to establishments for which a Mixed Beverage Permit has been issued. The Commission or Administrator shall promulgate reasonable rules and regulations relating to such advertising, and violation of those rules and regulations is a violation of this Act.

[Acts 1971, 62nd Leg., p. 698, ch. 65, § 23, eff. April 21, 1971.]

**Art. 667-25. Transportation of Beer; Possession in Dry Area**

(a). It is hereby declared to be lawful to transport beer, as herein defined, from any place in this State where the sale, manufacture, and distribution of said beer is authorized by law to any other place within this State where same may be lawfully manufactured, sold, or distributed; and from the State boundary to any such place, even though in the course of such transportation the route over which the same is being transported may traverse local option territory in which the manufacture, sale and distribution of said beer is prohibited. Provided, however, that any such shipments must be accompanied by a written statement furnished and signed by the shipper, showing the name and address of the consignor and the consignee, the origin and destination of such shipment, and such other information as may be required by the Board or Administrator; and it shall be the duty of the person in charge of such cargo while it is being so transported to exhibit such written statement to any representative of the Board or any peace officer making demand therefor, and said statement shall be accepted by such officer as prima facie evidence of the lawful right to transport such beer. The transportation of beer not accompanied by statement herein required, or failure to exhibit the same upon lawful demand, shall be a violation of this Act, and any beer being transported in violation hereof shall be subject to seizure without warrant.

(b). Possession by any person in any dry area of beer in any quantity exceeding twenty-four (24)

bottles having a capacity of twelve (12) ounces shall be prima facie evidence of possession for the purpose of sale in a dry area.

(c). Common carriers shall be privileged to deliver beer in dry areas only when consigned to the holder of a Local or General Distributor's License, and when such Distributor has previously declared his intention to transport the same to a licensed place of business in a wet area. The transportation of beer received by a Distributor from a common carrier in a dry area shall be in strict accordance with the requirements of this Section.

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1943, 48th Leg., p. 509, ch. 325, § 25; Acts 1953, 53rd Leg., p. 643, ch. 249, § 18.]

**Art. 667-26. Penalty**

Conviction upon criminal prosecution for any violation of this Article shall require assessment of penalty or penalties as provided in Section 41, Article I of this Act.<sup>1</sup>

[Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 20; Acts 1943, 48th Leg., p. 509, ch. 325, § 21.]

<sup>1</sup> Article 666-41.

**Art. 667-27. Restraining Orders and Injunction; Violation of Injunction or Restraining Order, Effect Of**

Upon having called to his attention by affidavit of any credible person that any person is violating, or is about to violate, any of the provisions of the Texas Liquor Control Act or if any permit or license was wrongfully issued, it shall be the duty of the Attorney General, or the District or County Attorney, to begin proceedings to restrain any such person from the threatened or any further violation, or operation under such permit or license, and the District Judge shall have authority to issue restraining orders without hearing, and upon notice and hearing to grant injunction, to prevent such threatened or further violation by the person complained against, and may require the person complaining to file a bond in such amount and containing such conditions and in such cases as the Judge may deem necessary. Upon any judgment of the Court that violation of any restraining order or injunction issued hereunder has occurred, such judgment shall operate to cancel without further proceedings, any license or permit held by the person who is defendant in the proceedings, and no license or permit shall be reissued to any person whose license or permit has been so cancelled, revoked, or forfeited within one year next preceding the filing of his application for a new license or permit. It shall be the duty of the District Clerk to notify the County Judge of the county wherein was issued any license or permit so cancelled, and to notify the Board of any judgment of a Court which may operate hereunder to cancel a license or permit. [Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

**Art. 667-28. Samples and Labels**

It shall be unlawful for any person to ship or cause to be shipped into this State, or to import into

this State, or to manufacture and then offer for sale within this State, or to distribute, sell or store within this State any beer, ale or malt liquor unless and until a sample of such beer, ale or malt liquor, or a sample of the same type and quality of beer, ale or malt liquor, has been submitted to the Texas Liquor Control Board for the purpose of analysis, and has been found by the Texas Liquor Control Board or its representatives to be in compliance with all rules and regulations of the Board relating to quality, purity and standards of measure.

It shall also be unlawful for any person to import any beer, ale or malt liquor into this State, or to manufacture or brew and then offer for sale within this State, or to distribute and then offer for sale within this State, or to distribute, sell or store within this State any beer, ale or malt liquors unless and until the label thereof has been submitted to the Texas Liquor Control Board or its authorized representatives, and such label has been approved by the Texas Liquor Control Board or its authorized representatives as being in compliance with all rules and regulations of the Texas Liquor Control Board or any provision of the Act relating to the labeling of beer, ale or malt liquor. Any beer, ale or malt liquor so imported into this State, or manufactured or brewed and then offered for sale within this State, in violation of this Section shall be an illicit beverage.

Only the holder of a Brewer's Permit or a Nonresident Brewer's Permit or a Manufacturer's License or a Nonresident Manufacturer's License is authorized to apply for and receive label approval on beer, ale or malt liquor. Provided however, that the provisions of this Section shall not apply in any case where beer, ale or malt liquor is imported into this State for personal consumption and not for sale. [Acts 1949, 51st Leg., p. 1011, ch. 543, § 21; Acts 1961, 57th Leg., p. 1126, ch. 511, § 3.]

#### Art. 667-29. Transportation, Consignment to Licensees Only

It shall be unlawful for a common carrier or any person to transport beer into this State, except military beer consigned to military installations, unless the same shall be consigned and delivered to the holder of a Manufacturer's, General Distributor's, Branch Distributor's, or Local Distributor's License, except as provided in Section 3-b of Article II.<sup>1</sup> [Acts 1949, 51st Leg., p. 1011, ch. 543, § 21.]

<sup>1</sup> Article 667-3b.

#### Art. 667-30. Security for Costs

No security for cost shall ever be required of any representative of the Texas Liquor Control Board in any matter wherein said representative protests the issuance of a license or permit in any hearing conducted by the County Judge to determine whether or not a license or permit shall be issued. [Acts 1949, 51st Leg., p. 1011, ch. 543, § 21.]

#### Art. 667-31. Conduct of Business Limited to Licensed Premises

It shall be unlawful for any person licensed to sell beer at retail other than a Manufacturer or Distributor to use or display a license, or to exercise any privilege granted by a license except at the place, address, premise, or location for which the license is granted, except that deliveries of beer and collections therefor may be made in areas where the sale thereof is not prohibited under the local option provisions of this Act under such license off the licensed premises in the county where licensed on bona fide order placed in person by the customer at the licensed premises or by mail or telephone to the licensed premises.

[Acts 1949, 51st Leg., p. 1011, ch. 543, § 21.]

#### Art. 667-32. Ownership by Manufacturer of Premises Licensed and Used for Athletic Contests

Notwithstanding any other provision of this Act,<sup>1</sup> it shall not be cause for denying an application for a retail license, nor cause for suspension or cancellation of a retail license if it be determined that a Manufacturer is the owner in whole or in part of premises licensed or sought to be licensed which are primarily designed and used for athletic contests. [Acts 1953, 53rd Leg., p. 643, ch. 249, § 19.]

<sup>1</sup> Articles 666-1 et seq., 667-1 et seq.

#### Art. 667-33. Method of Collecting Tax on Ale and Malt Liquor

(a) The tax levied in Section 21 of Article I<sup>1</sup> on ale and malt liquor is levied only on its first sale in Texas, or only on its importation into Texas, whichever shall first occur.

(b) On ale or malt liquor imported into this State the duty of paying the tax shall rest primarily upon the importer and said tax shall become due and payable on the fifteenth day of the month following that month in which said ale or malt liquor was imported into this State.

(c) On ale or malt liquor brewed in this state the duty of paying the tax shall rest primarily upon the brewer, and said tax shall become due and payable on the fifteenth day of the month following that month on which the first sale of said ale or malt liquor was made in this State.

(d) It is not intended that the tax herein levied in Section 21 of Article I of the Texas Liquor Control Act shall be collected on ale or malt liquor shipped out of this State for consumption outside this State, or sold aboard ships for ship's supplies, and the Commission shall provide forms for obtaining exemption from such taxes and shall provide by rule and regulation for equitable and final disposition of any tax credit brought about by such payment of any such unintended or excess tax. The Commission may promulgate rules and regulations generally for the enforcement of this provision.

(e) The Commission is hereby authorized and empowered to require of all Brewers and Nonresident

Brewers, and all Importers, Wholesalers, and Class B Wholesalers of ale and malt liquor such information as to purchases, sales, and shipments as will enable the Commission to collect the full amount of tax due the State, and it shall be unlawful for any such Brewer, Nonresident Brewer, Importer, Wholesaler, or Class B Wholesaler of ale or malt liquor to fail or refuse to give the Commission such information. The Commission shall have the power to seize and withhold from sale any ale or malt liquor the Brewer, Nonresident Brewer, Importer, Wholesaler, or Class B Wholesaler of which refuses to give to the Commission any information which the Commission may require under this provision, or fails or refuses to permit the Commission to make investigation of pertinent records, whether they be located within or without this State.

(f) Any person in possession of ale or malt liquor on which the tax is delinquent shall be held in violation of this Article and liable for the taxes herein provided and for the penalties for such violations.

(g) The Commission shall require of Brewers of ale and malt liquor in Texas and of Importers of ale and malt liquor a bond or bonds executed by the Brewer or Importer as principal, and a surety company duly qualified and doing business in this State, as surety, and said bond or bonds shall be made payable to the order of the State of Texas and conditioned as the Commission may require and approved by the Attorney General of Texas as to form. Said bond or bonds shall be in such amount as will adequately protect the State against the anticipated tax liability of the principal during any six (6) weeks' period.

(h) Such sworn statements of taxes due as may be required by the Commission, and remittance therefor made payable to the State Treasurer, shall be forwarded to the Commission each month not later than the due date set out herein. All such remittances shall be turned over by the Commission to the State Treasurer, and after the allocation of funds to defray administrative expenses of the Commission as provided in the current Departmental Appropriation Act, all remaining funds shall be deposited in the State Treasury as set out in paragraphs (a) and (b) of Section 23½ of Article II of the Texas Liquor Control Act.<sup>2</sup>

(i) In any suit brought to enforce the collection of any tax due on ale or malt liquor brewed in or imported into Texas, a certificate by the Commission or Administrator showing the delinquency shall be prima facie evidence of the levy of the tax, or the delinquency of the amount of tax and penalty set forth therein and of compliance by the Commission with all provisions of this Act in relation to the computation and levy of the tax.

(j) The Commission by rule and regulation and the Administrator by directive are hereby empowered to do any and all things necessary to carry out the intent of this Section.

(k) This section shall be effective on and after September 1, 1967, and on and after that date the purchase, affixing or mutilation of ale or malt liquor tax stamps shall no longer be required in Texas, and all requirements as to ale and malt liquor tax stamps in the Texas Liquor Control Act, as amended heretofore and herein, are hereby specifically repealed. [Acts 1967, 60th Leg., p. 145, ch. 75, § 1, eff. Sept. 1, 1967; Acts 1973, 63rd Leg., p. 511, ch. 219, § 3, eff. Aug. 27, 1973.]

<sup>1</sup> Article 666-21.

<sup>2</sup> Article 667-23½.

Sections 2 and 3 of Acts 1967, 60th Leg., p. 145, ch. 75, provided: "Sec. 2. If any section, subsection, paragraph, sentence, clause, or provision of this Act is for any reason held invalid, such invalidity shall not affect any other portion of this Act; but this Act shall be construed and enforced as if such invalid provision had not been contained therein.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

### TITLE 13. OFFENSES AGAINST PUBLIC PROPERTY

*Chapter 6 of Title 13 in the Penal Code of 1925, Game, Fish and Oysters, consisting of articles 871 to 978n-2, was not repealed by, nor incorporated into, the new Texas Penal Code. These articles will be included in the Parks and Wildlife Code as a unit of the Texas Legislative Council's statutory revision program (see Civil Statutes, art. 5429b-1). In the interim these articles are published as Penal Auxiliary Laws and retain their original article number designations.*

#### CHAPTER SIX. GAME, FISH AND OYSTERS

##### Uniform Wildlife Regulatory Act

*Acts 1967, 60th Leg., p. 1959, ch. 730, The Uniform Wildlife Regulatory Act, codified as article 978j-1, conferring upon the Parks and Wildlife Commission the power and duty of protecting and regulating the harvest of wildlife resources in various counties and repealing various acts of a similar nature, provides, inter alia, in section 18: "All game laws, General or Special, presently in force or enacted during the 60th Legislature, pertaining to the State of Texas or any county or counties therein, shall be in full force and effect until the Parks and Wildlife Commission shall, in accordance with this Act issue a proclamation, rule or regulation dealing with the subject matter of the county affected by such presently existing game law." See article 978j-1, § 18.*

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**Art. 871. "Commissioner"**

The word "Commissioner" wherever used in this chapter shall be held to mean the Game, Fish and Oyster Commissioner<sup>1</sup> of the State of Texas.  
[1925 P.C.]

<sup>1</sup> See article 978f-3.

**Art. 871a. Wild Birds and Animals**

All wild animals, wild birds, and wild fowl within the borders of this State are hereby declared to be the property of the people of this State.  
[1925 P.C.]

**Art. 871b. Capture or Transporting of Wild Birds and Animals; Permits**

Sec. 1. No person may capture or transport any game mammals, or game birds captured from the wild and not privately owned, which are indigenous to this state or any part of this state without having first received a written permit from the Parks and Wildlife Commission.

Sec. 2. The Parks and Wildlife Commission is hereby expressly given the power and authority to issue permits for trapping and transporting game mammals or game birds from the wild state and which are not privately owned which are indigenous to this state or any part of this state as a means of better wildlife management by making adjustments in game population.

Sec. 3. No provisions of this bill shall apply to any game animals or game birds which are privately owned or privately raised.

[Acts 1971, 62nd Leg., p. 2463, ch. 802, eff. June 8, 1971.]

**Art. 872. Game Birds Defined**

Wild turkey, wild ducks of all varieties, wild geese of all varieties, wild brant, wild grouse, wild prairie chickens or pinnated grouse, wild pheasants of all varieties, wild partridge and wild quail of all varieties, wild pigeons of all varieties, wild mourning doves and wild white-winged doves, wild snipe of all varieties, wild shore birds of all varieties, wild Mexican pheasants or chachalacas, wild plover of all varieties, and wild sand-hill cranes, are hereby declared to be game birds within the meaning of this Act.

[1925 P.C.; Acts 1961, 57th Leg., p. 504, ch. 243, § 1.]

**Art. 873. Bag Limit; Open Season; Possession of Illegally Killed Game Bird or Animal**

Any person killing or taking more than the daily, weekly or seasonal bag-limits as set forth in this chapter; or any person killing, taking, hunting, wounding, or shooting at any game bird or game animal at any other time of the year, except during the open season as provided for in this chapter; or any person killing, taking, capturing, wounding or shooting at any game bird or game animal for which no open season is provided by this chapter, or any person in possession of an illegally killed game bird or game animal, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than ten (\$10.00) dollars nor more than two hundred (\$200.00) dollars; and each game bird or game animal unlawfully taken or in possession shall constitute a separate offense.

[1925 P.C.; Acts 1971, 62nd Leg., p. 2646, ch. 869, § 1, eff. June 9, 1971.]

**Art. 874. Protection of Nongame Birds**

(a) No person may catch, kill, injure, pursue, or have in his possession, either dead or alive, or purchase, sell, expose for sale, transport, or ship to a point within or without the state, or receive or deliver for transportation, any bird other than a game bird, or have in his possession any part of the plumage, skin, or body of any bird other than a game bird, except as permitted by Article 913, Penal Code of Texas, 1925, or disturb or destroy the eggs, nest, or young of such a bird.

(b) European starlings, English sparrows, grackles, ravens, redwinged blackbirds, cowbirds, and crows may be killed at any time, and their nests or eggs may be destroyed at any time.

(c) Providing that nothing in this Act shall prevent the purchase and sale of canaries and parrots, or other exotic nongame birds, or the keeping of same as domestic pets.

(d) A person who violates any provision of this Article is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$200. Each bird or any part thereof taken or had in possession contrary to this Article constitutes a separate offense.

[1925 P.C.; Acts 1969, 61st Leg., p. 1650, ch. 514, § 1, eff. Sept. 1, 1969.]

#### Art. 874a. Private Bird Shooting Area

Hunting or Taking Authorized; License; Resort Operator

Sec. 1. Subject to the provisions of this Act, it shall be lawful to hunt or take privately owned or pen-reared game birds when such game birds are hunted or taken on private bird shooting areas. A "private bird shooting area" is defined as an area upon which the hunting or taking of privately owned game birds is consummated within the provisions of this Act. This Act shall authorize a person and guests to hunt or take privately owned or pen-reared game birds from private bird shooting areas only after such person has received a license from the Texas Parks and Wildlife Department, granting him the right to take or hunt such game birds. However, nothing in this section shall prevent a bona fide shooting resort operator from obtaining a private bird shooting area license and establishing a private bird shooting area as authorized in this Act. When a bona fide shooting resort operator operates a private bird shooting area, such operator may accommodate any guest on either area without regard to the rules on guests contained in Section 1 of this Act.

Area Included; Lettered Markers

Sec. 2. A private bird shooting area shall contain an area of not more than 300 contiguous acres on which privately owned or pen-reared game birds are banded and released to provide game bird shooting for all activities related to field dog competition and training and the sport of shooting, hunting or taking privately owned or pen-reared game birds. A private bird shooting area shall be distinguished from any other club, shooting resort, shooting preserve or leased premises for hunting purposes, by clearly marking its boundaries with wood or metal markers bearing the words, "Private Bird Shooting Area, Licensed by the Texas Parks and Wildlife Department". The lettering on these markers shall be large enough to permit reading under ordinary conditions at 200 feet. These markers shall be placed so as to clearly mark the boundaries of each designated area and each entrance.

Fee; Affidavit

Sec. 3. Before a license is issued, the person applying for a license shall pay the Parks and Wildlife Department the sum of \$25. The licensee shall file with the Parks and Wildlife Department an affidavit stating that he will not violate any of the provi-

sions of this Act and that he will endeavor to prevent guests from violating its provisions.

Banding and Holding in Captivity; Season; Licensees Permitted

Sec. 4. All privately owned or pen-reared game birds released on a private bird shooting area shall be banded with a band indicating the permit number of the licensee and the band shall remain on the bird after it is killed and until finally processed. A private bird shooting area licensee shall be entitled to hold in captivity game birds for use on the area for which he is licensed. On a private bird shooting area where privately owned or pen-reared game birds are released for hunting, the season for hunting such birds shall be January 1 through December 31 of each year. Only those persons holding a valid Texas hunting license shall be permitted to hunt, take or shoot privately owned or pen-reared game birds under the provisions of this Act.

Form for License

Sec. 5. It shall be unlawful for any person to issue or accept the license referred to by the provisions of this Act except on the form prescribed by the Parks and Wildlife Department.

Penalty

Sec. 6. Any person who violates the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in the sum of not less than \$25 nor more than \$200.

[Acts 1973, 63rd Leg., p. 386, ch. 171, eff. May 25, 1973.]

#### Art. 875. Repealed by Acts 1969, 61st Leg., p. 1650, ch. 514, § 2, eff. Sept. 1, 1969

The repealed article, listing birds not protected by this Chapter, was derived from: Acts 1939, 46th Leg., Spec. Laws, p. 827, § 1; Acts 1967, 60th Leg., p. 108, ch. 52, § 1; Acts 1969, 61st Leg., p. 1563, ch. 472, § 1.

See, now, art. 874.

#### Art. 876. Possession of Wild Game

It shall be unlawful for any person to have in possession at any one time more than forty-five wild doves, or thirty-six wild quail, or thirty-six wild Mexican pheasant or chachalaca; or to have in possession at any one time more than fifty waterfowl, shorebirds, and other game birds, all kinds and varieties being considered in making up the one total of fifty; provided, that the provisions of this section shall not apply to transportation companies which have in their possession, for the purpose of transportation, such wild birds, where the provisions of this chapter with reference to shipment of game have been complied with; nor shall the provisions of this chapter apply to owners, agents, managers, or receivers of cold storage plants which receive wild game for storage; provided, however, that it shall be unlawful for the owner, agent, manager, or receiver of such cold storage plant to receive or have in possession at any one time for himself or any one person more than the limits of the wild game birds as provided in this article.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less

than ten (\$10.00) dollars, nor more than two hundred (\$200.00) dollars. The possession of each bird or fowl over the number designated herein, shall be deemed a separate offense.

[1925 P.C.]

#### Art. 877. Turkey Hens

It shall be unlawful for any person to take, kill, wound, shoot at, hunt or possess, dead or alive, any wild turkey hen at any season of the year except as hereinafter provided.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars.

[1925 P.C.]

#### Art. 878. Division into Zones

In order to divide the State for the purpose of better regulating the open and closed seasons for the hunting of wild game birds and wild game animals of this State, a line beginning on the Rio Grande River directly West of the town of Del Rio, Texas; thence East to the town of Del Rio; thence easterly following the center of the main track of the Southern Pacific Railroad through the towns of Spofford, Uvalde, Hondo; thence to the point where the Southern Pacific Railroad crosses the I. & G. N. R. R. at or near San Antonio; thence following the center of the track of said I. & G. N. R. R. in an easterly direction, to the point in the City of Austin, where it joins Congress Avenue, near the I. & G. N. R. R. Depot; thence across said Congress Avenue to the center of the main track of the H. & T. C. R. R. where said track joins said Congress Avenue, at or near the H. & T. C. R. R. Depot; thence following the center line of the track of said H. & T. C. R. R. in an easterly direction through the towns of Elgin, Giddings, and Brenham, to the point where said railroad crosses the Brazos River; thence with the center of said Brazos River in a general northerly direction, to the point on said river where the Beaumont branch of the Santa Fe Railway, crosses the same; thence with the center of the track of said G. C. & S. F. Railway, in an easterly direction through the towns of Navasota, Montgomery, and Conroe, to the point at or near Cleveland, where said G. C. & S. F. Ry. crosses the Houston, East and West Texas Railroad; thence with the center of said H. E. & W. T. Railroad track to the point in said line, where it strikes the Louisiana line. All that portion of the State lying north or northerly shall be known as the North Zone and all that portion of the State lying south or southerly of said line shall be known as the South Zone.

[1925 P.C.; Acts 1927, 40th Leg., p. 326, ch. 222, § 1.]

#### Art. 878a. Open Seasons on White-Winged Doves

For the purposes of this Act a line beginning in the center of the main track of the Texas-Mexican Railway at the international boundary line between

the United States and the Republic of Mexico, where said Texas-Mexican Railway crosses the international bridge between the United States and the Republic of Mexico at Laredo, Texas; thence, along the center of the main track of the Texas-Mexican Railway to the center of the main track opposite the passenger station served by the Texas-Mexican Railway in the City of Corpus Christi, Texas; thence, due east from said passenger station to the Gulf of Mexico; shall be the division line for the two zones hereby created for the purposes of this Act only. All that territory within the State of Texas lying north or northerly of said division line shall be known as the North White-Wing Zone, and all that territory within the State of Texas lying south or southerly of said division line shall be known as the South White-Wing Zone.

[Acts 1931, 42nd Leg., p. 238, ch. 142, § 1.]

#### Art. 879. Repealed by Acts 1930, 41st Leg., 4th C.S., p. 29, ch. 19, § 1

#### Art. 879a. Wild White-Winged Doves

There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild white-winged doves in the North White-Wing Zone, August 8th to October 31st of each year, both days inclusive; in the South White-Wing Zone, August 20th to October 31st of each year, both days inclusive.

[Acts 1927, 40th Leg., p. 316, ch. 215, § 1; Acts 1929, 41st Leg., p. 173, ch. 74, § 1; Acts 1931, 42nd Leg., p. 238, ch. 142, § 2.]

#### Art. 879a-1. Repealed by Acts 1931, 42nd Leg., Spec.Laws, p. 211, ch. 102

#### Art. 879a-2. Open Season for Doves in Archer and Other Counties

There shall be an open season or period of time when it shall be lawful to hunt, take or kill wild mourning<sup>1</sup> doves in Archer, Baylor, Clay, Knox, Wilbarger, Young, Hill, Falls, Johnson, Somervell, Bell, Navarro, Bosque, McLennan, Wichita, Limestone and Milam Counties during the months of September and October of each year and it shall be unlawful to hunt, take or kill any such doves at any other time of the year. Any provision of law in conflict herewith, whether passed by the First Called Session of the 41st Legislature or at any other time, is hereby repealed.

[Acts 1929, 41st Leg., 2nd C.S., p. 192, ch. 89, § 1.]

<sup>1</sup> So in enrolled bill. Should probably read "mourning."

#### Art. 879a-3. Open Season for Doves

Sec. 1. There shall be an open season or period of time when it shall be lawful to hunt, take or kill wild mourning doves in the North Zone during the months of September and October; in the South Zone during the months of October and November, as such zones are defined in Article 878 of the Penal Code of the State of Texas, as amended in Chapter 222, page 326 of the 40th Legislature, Regular Session. All laws or parts of laws in conflict with this Act shall be and the same are hereby repealed.

Sec. 2. It shall be unlawful to hunt, take or kill any wild mourning doves at any time except as provided in Section 1 of this Act.

Sec. 3. Any person who shall hunt, take or kill any wild mourning doves at any time except as provided in Section 1 of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten (\$10.00) Dollars, nor more than One Hundred (\$100.00) Dollars, and each bird so taken or killed shall constitute a separate offense.

[Acts 1930, 41st Leg., 4th C.S., p. 29, ch. 19.]

**Art. 879a-4. Repealed by Acts 1941, 47th Leg., p. 397, ch. 231, § 7.**

**Art. 879a-5. Mourning Doves and White-Winged Doves**

Open Season

Sec. 1. The open season for taking mourning doves and white-winged doves in this State shall be as follows: Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Haskell, Throckmorton, Young, Palo Pinto, Parker, Johnson, Ellis, Kaufman, Van Zandt, Rains, Hopkins, Franklin, and Red River, and in all counties north and west thereof during the period September 1st to October 31st of each year. In the remainder of the State, the open season shall be during the period September 15th to November 15th, except that in the Counties of Webb, Zapata, Starr, Hidalgo, Cameron, and Willacy it shall be lawful to hunt, take, or kill mourning doves or white-winged doves only on each Sunday, Tuesday, and Thursday, between the hours of twelve noon and sunset, from September 15th to October 15th of each year, and on no other days or at any other times. In the other portions of the State, it shall be unlawful to hunt mourning doves or white-winged doves except during the open season provided therefor and then only during the hours from 7:00 a. m. to sunset. This Act shall not apply to Shelby and Panola Counties.

Limitation on Number

Sec. 2. It shall be unlawful for any person to take or kill more than twelve (12) mourning doves or more than twelve (12) white-winged doves, or an aggregate of more than twelve (12) of both species, during any one day, and it shall be unlawful for any person to have in possession at any one time more than one day's limit of such birds.

Restriction on Gauge of Shotgun and Number of Shells

Sec. 3. It shall be unlawful to hunt or shoot mourning doves, white-winged doves, or any migratory bird, or any other game bird of this State, with a shotgun larger than ten-gauge, and that is capable of holding more than three (3) shells at one loading, including the shell that may be held in the chamber of such gun, and providing that if a magazine-loading is used and the magazine of such gun would otherwise hold more than two (2) shells, before such gun is used it shall be permanently plugged so that such magazine will be rendered incapable of holding more than two (2) shells.

Affidavits of Game Law Violations

Sec. 4. Any game warden of the State of Texas is hereby authorized to take the affidavit of any person concerning or involving violation of any of the game laws of the State of Texas, and for such purpose is authorized to administer oaths. It shall be the duty of any person when requested by a game warden to give affidavit concerning any facts within such person's knowledge as to violation of any game laws of the State, provided no person shall be required to make affidavit of any fact that might incriminate the person making such affidavit.

Nesting and Propagating Grounds for Doves and Chachalaca

Sec. 5. Portion of the State lying between the Rio Grande River and a line extending from a point on the Rio Grande River North along the common boundary line of Zapata and Starr Counties to the South boundary line of State Highway 4; thence along the South boundary line of the right of way of State Highway 4 to a point where said South right of way boundary intersects the West boundary of the city limits of the City of Brownsville in Cameron County; thence along the West city limits of the City of Brownsville to the point where same intersects the Rio Grande River, is hereby recognized as an area in which white-winged doves and chachalaca nest and propagate; and said area is hereby set aside as a nesting and propagating grounds for white-winged doves, chachalaca and other game within which area it shall be unlawful at any time to hunt, take, shoot, or kill any kind or species of wild fowl hereinabove mentioned.

Violations

Sec. 6. Any person who takes, or attempts to take, any mourning dove or white-winged dove at any time other than the open season provided in this Act for taking same, or otherwise violates any provision of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten Dollars (\$10), nor more than Two Hundred Dollars (\$200). Each bird taken, or possessed, in violation of any provision of this Act shall constitute a separate offense. Any person who, in making an affidavit as authorized and provided in this Act, shall knowingly make a false affidavit of fact, shall be deemed guilty of false swearing and punished in accordance with the provisions of the law regarding the offense of false swearing.

[Acts 1941, 47th Leg., p. 397, ch. 231; Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.]

**Art. 879a-6. White-Winged Dove; Stamp**

Stamp

Sec. 1. No person may hunt or kill white-winged dove in this state unless he has in his possession a white-winged dove stamp issued to him as provided in this Act.

Stamp Fee and Form

Sec. 2. (a) The Parks and Wildlife Commission or its agent may issue a white-winged dove stamp to any person on the payment to the commission or its agent of a fee of \$3.

(b) The stamp shall be issued in the form prescribed by the Parks and Wildlife Department and must be signed on its face by the person using the stamp.

Hunting or Killing Authorization

Sec. 3. The acquisition of a white-winged dove stamp as required by this Act does not authorize a person to hunt or kill white-winged dove without having a hunting license as required by Chapter 370, Acts of the 55th Legislature, Regular Session, 1957, as amended,<sup>1</sup> or authorize the hunting or killing of white-winged dove at any time or by any means not otherwise authorized by law.

Disposition of Fees

Sec. 4. (a) Ten cents of the fee required by this Act may be retained by the issuing officer as his fee for collection, except that employees of the Parks and Wildlife Department may not retain the collection fee.

(b) After deduction of the amount allowed by Subsection (a) of this section, the money collected from sales of the stamp shall be sent to the Parks and Wildlife Commission.

(c) The commission shall deposit the proceeds from the sales of stamps in the state treasury in Special Game and Fish Fund No. 9. One-half of these proceeds may be expended only for research and management for the protection of white-winged dove and the other one-half of these proceeds may only be expended for the acquisition of white-winged dove habitat in the state.

Violations

Sec. 5. Any person who violates the provisions of Section 1 of this Act is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. A person hunting or killing white-winged dove who refuses on demand of any game management officer or peace officer to exhibit a white-winged dove stamp is presumed to be in violation of Section 1 of this Act.

[Acts 1971, 62nd Leg., p. 928, ch. 142, eff. May 10, 1971.]

<sup>1</sup> Article 895c.

Art. 879b. Wild Quail and Mexican Pheasant

There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild quail of all kinds, and wild Mexican pheasant or chachalaca in the North Zone, December 1st to the following January 16th, both days inclusive; in the South Zone, December 1st to the following January 16th, both days inclusive.

[Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879c. Wild Turkey Gobblers

There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild turkey gobblers, in both the North and South Zones, November 16th, to the following December 31st, both days inclusive; provided, however, it shall be unlawful for any person or persons to hunt, take or kill wild turkey for a period of five years, from and

after November 15, 1929, in any of the following counties: Callahan, Eastland, Stephens, Palo Pinto and Shackelford.

[Acts 1927, 40th Leg., p. 316, ch. 215, § 1; Acts 1929, 41st Leg., 2nd C.S., p. 52, ch. 32, § 1.]

Art. 879c-1. Repealed by Acts 1945, 49th Leg., p. 427, ch. 270, § 1

Art. 879d. Wild Rail and Plover

There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild rail (other than coot and gallinules), wild black-bellied plover and wild golden plover, and yellow-legs, the months of September and October of each year, in both the North and South Zones.

[Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879e. Wild Ducks, Geese, Brant, Snipe and Gallinules

There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild ducks of all kinds (except wild wood ducks), wild geese, wild brant, wild snipe of all kinds, (except Ross' geese and cackling geese), wild gallinules and wild coot or mud hen, in the North Zone from 12:00 o'clock noon October 16th, to the following January 15th, inclusive; in the South Zone from 12:00 o'clock noon, November 1st to the following January 15th inclusive.

[Acts 1927, 40th Leg., p. 316, ch. 215, § 1; Acts 1931, 42nd Leg., p. 251, ch. 151, § 1.]

Art. 879e-1. Open Season for Wild Ducks, Geese and Brant

Sec. 1. The open season or period of time when it shall be lawful to take wild ducks, geese or brant shall be, for the North Zone, from twelve o'clock noon November 1st to December 31st inclusive, and for the South Zone from twelve o'clock noon November 16th to January 15th inclusive, except that there shall be no open season for Wood-duck, Ruddy-duck, Bufflehead-duck and Swans, and it shall be unlawful in any one day to take more than twelve (12) ducks of which not more than eight (8) of any one or eight (8) in the aggregate are of the following species: Canvasback, Redhead, Greater Scaup, Lesser Scaup, Ringneck, Blue-winged Teal, Green-winged Teal, Cinnamon Teal, Shoveler and Gadwall; and it shall be unlawful for any person to have in possession at any one time more than two days' bag limit of ducks. It shall be unlawful for any person, in any one day, to take more than four (4) geese and/or brant or to possess at any one time more than eight (8) geese and/or brant.

Sec. 2. The zone line referred to in this Act shall be the same as defined by Article 878, Penal Code, 1925, as amended by Chapter 222, Acts of Fortieth Legislature.

Sec. 3. Any person who takes any wild duck, goose or brant at any time other than the open season provided therefor, or who takes any wild duck, goose or brant for which there is no open

season provided, or who takes any wild duck, goose or brant in excess of the daily bag limit, or any person who has in possession more than the possession limit of wild ducks, geese or brant, as defined in this Act, shall be guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars and each such duck, goose or brant taken or possessed in violation of this Act shall constitute a separate offense.

[Acts 1933, 43rd Leg., 1st C.S., p. 52, ch. 18.]

#### Art. 879f. Wild Prairie Chickens

There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild prairie chicken or pinnated grouse, in both the North and South Zones, September 1st to September 10th, of each year, both days inclusive, provided there shall be no open season on wild prairie chicken in the Counties of Collingsworth, Donley, Wheeler and Gray until September 1st, 1929.

[Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

#### Art. 879f-1. Prairie Chickens or Pinnated Grouse

Sec. 1. It shall be unlawful for any persons to take, capture, kill or possess, or to attempt to take, capture or kill any prairie chicken or pinnated grouse at any time other than the open season provided therefor; provided that game lawfully taken during the open season may be held in possession for ten days after the close of the open season.

Sec. 2. The open season for prairie chickens or pinnated grouse shall be from the first day of September to the fourth day of September of each year, both days inclusive; provided that there shall be no open season on wild prairie chicken in Collingsworth and Wheeler Counties for a period of two years.

Sec. 3. It shall be unlawful to take, kill or have in possession more than ten prairie chickens or pinnated grouse in any one day or during the open season of each year.

Sec. 4. Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in any sum not less than Fifty (\$50.00) Dollars nor more than Two Hundred (\$200.00) Dollars, and each bird killed or possessed in violation of this Act shall create a separate offense.

[Acts 1929, 41st Leg., p. 450, ch. 209.]

#### Art. 879f-2. Open Season for Prairie Chickens

Sec. 1. The open season for prairie chicken shall be from the 1st day of September to the 4th day of September of each year, both days inclusive; provided that there shall be no open season on wild prairie chicken in Collingsworth and Wheeler Counties.

Sec. 2. Any person violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Fifty (\$50.00) Dollars nor more than Two Hundred

(\$200.00) Dollars, and each bird killed or possessed in violation of this Act shall create a separate offense. [Acts 1931, 42nd Leg., Spec.Laws, p. 297, ch. 152.]

Art. 879f-3. Repealed by Acts 1933, 43rd Leg., p. 212, ch. 96

Art. 879f-4. Expired 90 days after June 25, 1942

Art. 879f-5. Expired Sept. 1, 1946

#### Art. 879f-6. Prairie Chickens; Hunting, Killing or Possessing Prohibited; Certain Counties Excepted

Sec. 1. It shall be unlawful for any person to hunt, take or kill, or to possess any prairie chicken in the State of Texas.

Sec. 2. Any person who violates any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100), and shall automatically forfeit his hunting license and right to purchase a hunting license, and his right to hunt in this State for a period of one (1) year from date of conviction. Each prairie chicken taken, killed or possessed in violation of this Act shall constitute a separate offense, and shall be seized and disposed of as provided in Article 897, Penal Code, 1925.

Sec. 3. The provisions of this Act shall not apply to the counties of Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Cottle, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher and Wheeler, to which counties the provisions of Senate Bill No. 47, Acts 1950, First Called Session, Fifty-first Legislature,<sup>1</sup> apply.

[Acts 1951, 52nd Leg., p. 588, ch. 345.]

<sup>1</sup> Article 978n-1.

#### Art. 879g. Wild Buck Deer and Wild Bear

There shall be an open season, or period of time, when it shall be lawful to hunt, take, or kill wild buck deer and wild bear, in both the North and South Zones, November 16th to December 31st of each year, both days inclusive; provided, however, it shall be unlawful for any person or persons to hunt, take, or kill wild deer for a period of five (5) years, from and after November 15, 1929, in any of the following Counties: Callahan, Eastland, Stephens, Palo Pinto, and Shackelford. That it shall not be unlawful to hunt, kill, or take wild bear within the territorial limits of Polk County, Texas.

[Acts 1927, 40th Leg., p. 316, ch. 215, § 1; Acts 1929, 41st Leg., 2nd C.S., p. 52, ch. 32, § 2; Acts 1937, 45th Leg., p. 878, ch. 433, § 1.]

#### Art. 879g-1. Black Tail Deer West of Pecos River

Hereafter it shall be unlawful to hunt, take or kill any Black Tail Deer in any part of this State west of the Pecos River, except during the period from the sixteenth to the thirtieth day of November inclusive of each year, and in said territory during said open

season it shall be unlawful to hunt, take or kill any such deer unless it be a buck, with pronged horn, and it shall be unlawful to kill more than one such pronged horn buck during any one open season in said territory. Any person violating any provision of this Act shall be subject to fine of not less than fifty dollars nor more than two hundred dollars. [Acts 1929, 41st Leg., p. 230, ch. 95, § 1.]

**Art. 879g-2. Collared Peccary or Javelina Protected; Open Season**

The Collared Peccary, commonly called Javelina, is hereby declared to be a game animal and it shall be unlawful for anyone to take, attempt to take, capture, shoot, or kill, any Collared Peccary or Javelina at any time except during the open season provided for taking same, which said open season shall be during the period November 16th to January 1st of each year, and it shall be unlawful at any time for any person to take any Collared Peccary or Javelina or to have any Collared Peccary or Javelina, or any part of the same, in possession for the purpose of barter or sale, or to sell or offer for sale any Collared Peccary or Javelina or any part of same, and it shall be unlawful for any person to take in any one season more than two (2) Collared Peccary or Javelina. Provided, however, that the provisions of this Act shall not apply to any Collared Peccary or Javelina or their hides heretofore or hereafter imported from another State or foreign country. [Acts 1939, 46th Leg., Spec.Laws, p. 831, § 1; Acts 1939, 46th Leg., Spec.Laws, p. 832, § 1.]

**Art. 879g-2a. Collared Peccary or Javelina in Jim Hogg, Dimmit, Frio, Kinney and Other Counties**

It shall be lawful to take, capture, shoot, or kill collared peccary or javelina at any time in the Counties of Jim Hogg, Dimmit, Frio, Kinney, La Salle, Maverick, McMullen, Starr, Upton, Uvalde, Val Verde, Webb, Zapata, and Zavala; provided, however, that it shall be unlawful in any of the aforesaid Counties to have or take any collared peccary or javelina or any part of same, in possession for the purpose of barter or sale, or to sell or to offer for sale any collared peccary or javelina or any part thereof. [Acts 1941, 47th Leg., p. 445, ch. 281, § 1; Acts 1945, 49th Leg., p. 158, ch. 110, § 1; Acts 1947, 50th Leg., p. 35, ch. 28, § 1; Acts 1947, 50th Leg., p. 264, ch. 160, § 1; Acts 1949, 51st Leg., p. 14, ch. 16, § 1; Acts 1959, 56th Leg., p. 139, ch. 81, § 1.]

**Art. 879g-3. Penalty**

Any person violating any provision of this Act<sup>1</sup> shall be guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50) and each Collared Peccary or Javelina taken or possessed or offered for sale or possessed for the purpose of sale, or sold, in violation of this Act shall constitute a separate offense.

[Acts 1939, 46th Leg., Spec.Laws, p. 831, § 2.]

<sup>1</sup> This article and art. 879g-2.

**Art. 879g-4. Penalty**

Any person violating any of the provisions of this Act<sup>1</sup> shall be guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50); and each collared peccary or javelina, or any part of same, in possession for the purpose of barter or sale, or to sell or to offer for sale, or sold, in violation of this Act shall constitute a separate offense.

[Acts 1959, 56th Leg., p. 139, ch. 81, § 2.]

<sup>1</sup> This article and art. 879g-2a.

**Art. 879h. Wild Squirrels**

There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild red or fox squirrels and wild gray squirrels, in both the North and South Zones, in the months of May, June and July, and in the months of October, November and December of each year; provided, however, that nothing in this Chapter shall prevent the keeping of squirrels in cages as domestic pets; and provided further, that it shall not be unlawful to kill squirrels in the following counties at any time, to wit: DeWitt, Caldwell, Guadalupe, San Saba, Mason, Gillespie, Llano, Kimble, Menard, Comal, McCulloch, Brown, Kerr, Burnet, Mills, Schleicher, Edwards, Gonzales, Austin, Real, Kendall, Victoria, Medina, Uvalde, Jackson, Wharton, Bandera, Lavaca, Fayette, Colorado, Callahan, Stephens, Eastland, Bastrop, Travis, Dimmit, Zavala, Blanco, Lampasas, Hamilton, Coryell, Matagorda, Brazoria, Washington, Throckmorton, Karnes, Wilson, Comanche, Hays, Goliad, Erath, Bosque, Hill, Waller, Tarrant, Wise, Cooke, Montague and Fort Bend.

[Acts 1927, 40th Leg., p. 315, ch. 215, § 1; Acts 1929, 41st Leg., p. 108, ch. 52, § 1.]

**Art. 879h-1. Archery Season on Buck Deer, Bear, Turkey and Collared Peccary or Javelina**

There shall be an open archery season, or period of time, when it shall be lawful to hunt, take and kill solely with bows and arrows, wild buck deer, wild bear, wild turkey gobblers and collared peccary or javelina in both the North and South Zones, October 1 to October 31 of each year both days inclusive. [Acts 1959, 56th Leg., p. 423, ch. 189, § 1.]

**Art. 879h-2. Possessing Firearm or Crossbow While Hunting During Archery Season**

It shall be unlawful to hunt, take or kill wild buck deer, wild bear, wild turkey gobblers and collared peccary or javelina from October 1 to October 31 of each year while having any type of firearm or crossbow on the person and at the same time have in his or her possession bow and arrow in an automobile or in a hunting camp or otherwise having any type of firearm or any type of crossbow in possession.

Any person violating any provision of this law shall be deemed guilty of a misdemeanor and upon

conviction shall be fined in any sum not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

[Acts 1959, 56th Leg., p. 423, ch. 189, § 1.]

**Art. 879h-3. Bows and Arrows; Specifications; Use; Violations; Penalties**

It shall be unlawful at any time to hunt, take or kill with bows and arrows wild buck deer, wild bear, wild turkey gobblers and collared peccary or javelina under each of these circumstances: using a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of one hundred and thirty (130) yards; using arrows that are not equipped with broadhead hunting points at least seven-eighths inches ( $\frac{7}{8}$ " in width and not over one and one half inches ( $1\frac{1}{2}$ " in width; using arrows that do not have on them in some non-water-soluble media the name and address of the user; using either poisoned, drugged or explosive arrows.

Any person violating any provision of this law shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten Dollars (\$10) nor more than One Hundred Dollars (\$100).

[Acts 1959, 56th Leg., p. 423, ch. 189, § 1.]

**Art. 879h-4. Deer, Definition**

Deer shall be defined in this Act as a buck with three points or more.

[Acts 1959, 56th Leg., p. 423, ch. 189, § 1.]

**Art. 879h-5. Length of Archery Season**

In counties where the hunting season on wild buck deer, wild bear, wild turkey gobblers and collared peccary or javelina is less than thirty-one (31) days, the Game and Fish Commission shall determine the length of the season to hunt wild buck deer, wild bear, wild turkey gobblers and collared peccary or javelina with bows and arrows not to exceed the firearms hunting season and shall fix the number of days of the hunting season with bows and arrows. The Game and Fish Commission shall also set the opening and closing days of such season.

[Acts 1959, 56th Leg., p. 423, ch. 189, § 1.]

**Art. 879h-6. Hunting with .22 Caliber Jetgun, Rocketgun, or Firearm using Rimfire Ammunition**

Sec. 1. No person shall use any .22 caliber jetgun, rocketgun, or firearm which utilizes rimfire ammunition in the taking or shooting of, or in attempting to take or shoot, wild deer, wild elk, wild antelope, wild Aoudad sheep, or wild desert bighorn sheep.

Sec. 2. Any person who shall violate the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200). Each wild deer, wild elk, wild antelope, wild Aoudad sheep, or wild desert bighorn sheep taken or shot in violation

of this Act shall constitute a separate offense. Each attempt to take or shoot a wild deer, wild elk, wild antelope, wild Aoudad sheep, or wild desert bighorn sheep in violation of this Act shall constitute a separate offense.

[Acts 1965, 59th Leg., p. 1269, ch. 583, eff. Aug. 30, 1965; Acts 1971, 62nd Leg., p. 716, ch. 78, § 1, eff. Aug. 30, 1971.]

**Art. 879i. Eagles, Open Season For**

From and after the passage of this Act it shall be lawful for any person to hunt, trap, shoot, or kill any Golden Eagle or Mexican Brown Eagle in the State of Texas.

[Acts 1941, 47th Leg., p. 429, ch. 259, § 1.]

**Art. 880. Hunting with Dogs**

Sec. 1. It is hereby declared unlawful for any person or persons to make use of a dog or dogs in the hunting of or pursuing or taking of any deer. Any person or persons owning or controlling any dog or dogs and who permits or allows such dog or dogs to run, trail, or pursue any deer at any time shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than Twenty-five Dollars (\$25), and not more than Two Hundred Dollars (\$200); provided, however, that this article shall not apply to the Counties of Brazoria, San Augustine, and Fort Bend. And, provided further, that it shall be lawful to use dogs for the purpose of trailing a wounded deer in the Counties of Concho, Jones, Zapata, and Angelina.

Sec. 2. Nothing in this article affects the provisions of the Uniform Wildlife Regulatory Act.

[Acts 1925, 39th Leg., p. 396, ch. 172, § 25; Acts 1926, 39th Leg., 1st C.S., p. 42, ch. 24; Acts 1927, 40th Leg., 1st C.S., p. 227, ch. 83; Acts 1929, 41st Leg., p. 463, ch. 214; Acts 1931, 42nd Leg., p. 853, ch. 361; Acts 1932, 42nd Leg., 4th C.S., p. 12, ch. 4; Acts 1934, 43rd Leg., 4th C.S., p. 57, ch. 23, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1947, ch. 47, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1950, ch. 49, § 1; Acts 1941, 47th Leg., p. 1320, ch. 593, § 1; Acts 1949, 51st Leg., p. 15, ch. 18, § 1; Acts 1953, 53rd Leg., p. 528, ch. 192, § 1; Acts 1953, 53rd Leg., p. 886, ch. 365, § 1; Acts 1957, 55th Leg., p. 856, ch. 372, § 3; Acts 1961, 57th Leg., 1st C.S., p. 134, ch. 30, § 1, eff. Aug. 18, 1961; Acts 1971, 62nd Leg., p. 1855, ch. 543, § 1, eff. June 1, 1971.]

**Art. 880a. Brazoria, Matagorda, Fort Bend or Wharton Counties; Use of Dogs in the Taking of Deer**

From and after the effective date of this Act it shall be unlawful for any person to make use of a dog or dogs in the taking of any deer in Brazoria County, Matagorda County, Fort Bend County or Wharton County.

[Acts 1957, 55th Leg., p. 19, ch. 14, § 1; Acts 1961, 57th Leg., p. 247, ch. 127, § 1, eff. May 15, 1961.]

**Art. 880b. Shelby County; Hunting with Dogs**

Sec. 1. It shall be unlawful for any person to make use of a dog or dogs in the hunting of or pursuing or taking of any deer in that portion of Shelby County, Texas, lying and being situated

South and West of U. S. Highways 59 and 96, and being that portion of Shelby County lying South and West of the public highways leading from Carthage in Panola County, Texas, through Tenaha and Center, in Shelby County, Texas, to San Augustine, in San Augustine County, Texas, at any time.

Sec. 2. Any person owning or controlling any dog who permits or allows such dog to run, trail, or pursue any deer at any time shall, upon conviction, be guilty of a misdemeanor, and shall be fined in any sum not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00).

[Acts 1957, 55th Leg., 2nd C.S., p. 170, ch. 13.]

#### Art. 880c. Morris County; Hunting with Dogs

It shall be unlawful for any person to make use of a dog or dogs in the hunting of or pursuing or taking of any deer in Morris County. Any person owning or controlling any dog who permits or allows such dog to run, trail, or pursue any deer at any time shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[Acts 1959, 56th Leg., p. 124, ch. 71, § 1.]

#### Art. 880d. Taking or Possessing Raptors; Falconry Permits; Fees; Rules and Regulations; Advisory Board

Sec. 1. It shall be unlawful for any person to take, capture, or possess or attempt to take or capture any native raptors without a valid Falconer's Permit issued by the Texas Parks and Wildlife Department, provided that nothing contained in this Act shall prohibit the collecting and holding of protected species of wildlife for scientific, zoological and propagation purposes under permit issued by the Parks and Wildlife Department, under the provisions of Article 913, Penal Code of Texas, 1925, as amended.

(a) Falconry Permit shall be classified as either a Beginner's Permit or a General Permit. No Beginner's Permit shall be issued to any person under the age of 17 years. No General Falconer's Permit shall be issued except to a person over the age of 20 years with a minimum of three years hunting experience with raptors.

(b) Any person holding a Texas Beginner's Falconer's Permit shall be limited to possession of not more than one (1) raptor specimen. Species of raptor are to be designated by the Parks and Wildlife Department.

(c) Any person holding a General Falconer's Permit may take or possess up to three (3) native raptors. Species will be determined by the Parks and Wildlife Department.

#### Sec. 2. Fees for permits

(a) The fee for a Beginner's Falconer's Permit shall be Twenty-five Dollars (\$25.00) and shall expire August 31 following date of is-

suance; annual renewal fee shall be Five Dollars (\$5.00).

(b) The fee for a General Falconer's Permit shall be Thirty-five Dollars (\$35.00) and shall expire August 31 following date of issuance; annual renewal fee shall be Five Dollars (\$5.00).

(c) All applications for renewal shall be accompanied by a report, accounting for all activities during license year as specified by the Parks and Wildlife Department.

Sec. 3. Any person holding a Beginner's Falconer's Permit or General Falconer's Permit, and a valid Texas Hunting License may hunt native species of wild birds, wild animals and migratory game birds during any prescribed open season in general law counties and provided by any regulatory proclamations; provided, however, any nonresident or alien entitled to a nonresident hunting license may hunt with the aid of a validly held raptor for a period of five (5) consecutive days upon payment of a fee of Five Dollars (\$5.00). Unprotected species of wildlife, including English sparrows, European starlings, crows and ravens may also be taken by means of falconry.

Sec. 4. It shall be unlawful for any person to buy, sell, barter or exchange or offer to buy, sell, barter or exchange any raptors in the State of Texas.

Sec. 5. All raptors captured, taken or possessed in this State shall remain the property of the people of this State except for special privileges granted herein. Any person holding raptors under a valid Falconer's Permit permanently leaving the State may file application with the Texas Parks and Wildlife Department for a special permit to transport said raptors out of the State of Texas.

Sec. 6. (a) The Texas Parks and Wildlife Department may prescribe reasonable rules and regulations for the taking and possessing of raptors, time and area from which raptors may be taken, and species that may be taken, provide standards for possessing and housing of raptors held under Falconer's Permit, annual reporting requirements and procedures, and prescribe eligibility requirements for any Falconer's Permit.

(b) The Department shall give particular attention to those raptors classified as "rare" or "endangered" by the United States Bureau of Sports, Fisheries and Wildlife, and shall insure that the taking and possessing for falconry purposes of such raptors be restricted to competent and experienced individuals, and to such numbers as are consistent with the good management practices and the then current population status of the individual species or subspecies involved.

(c) The Department, further, shall establish an "advisory board" consisting of three mature and experienced falconers selected from among nominees submitted by the Texas Hawking Association, the North American Falconers Association, and from among any unaffiliated resident falconers. The pur-

pose of this board shall be to advise the Department as required on the development and implementation of the rules and regulations prescribed under this section.

Sec. 7. It shall be unlawful for any nonresident of this State as defined by Article 920, Penal Code of Texas, 1925, to take, capture or possess, or attempt to take or capture any raptors in this State except by special permit from the Parks and Wildlife Department, except that any nonresident establishing permanent residence in this State holding raptors under valid permit from another state shall apply to the Parks and Wildlife Department within ten (10) days for a State of Texas Falconer's Permit.

Sec. 8. The terms citizen and nonresident as used herein shall have the same meaning as assigned to them by Article 920 of the Penal Code of Texas, 1925.

Sec. 9. Any person violating any provision of this Article shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) for each violation thereof.

[Acts 1971, 62nd Leg., p. 987, ch. 176, eff. May 13, 1971.]

#### Art. 881. Possessing More Than Bag Limit

It shall be unlawful to take, kill, or possess any birds or animals in greater number than the daily, weekly or seasonal bag limit or number of such game birds and game animals permitted to be killed or taken, such bag-limits to be as follows:

Wild mourning doves and wild white-winged doves, fifteen in any one day, and not more than forty-five in any one week of seven days.

Wild quail of all kinds, and wild Mexican pheasant or chachalaca, twelve in any one day, and not more than thirty-six in any one week of seven days, and all kinds and varieties of these shall be considered in making up the limit of twelve.

Wild turkey gobblers, three during the open season of any one year, as herein provided.

Wild geese and brant of all kinds, four in any one day, and not more than twelve in any one week of seven days.

Wild ducks of all kinds, wild snipe of all kinds, wild black-bellied plover, wild yellowlegs, wild gallinule or Indian hen, and wild coot or mud hen, twenty-five in any one day, and not more than fifty in any one week of seven days; provided, that all kinds and varieties of game birds mentioned in this section shall be considered in making up the daily limit of twenty-five or weekly bag-limit of fifty.

Wild prairie chicken or pinnated grouse, five in any one day, and not to exceed ten in the open season of any one year.

Wild buck deer, two during the open season of any one year, as provided in this chapter.

Wild bear, one during the open season of any one year, as provided in this chapter.

Wild squirrel, ten in any one day.  
[1925 P.C.]

#### Art. 881a. Bag Limit of Wild Ducks and Geese

Sec. 1. It shall be lawful for any person to take, capture or kill not more than fifteen wild ducks and not more than four wild geese in any one day and to have in possession not more than thirty wild ducks and to have in possession not more than eight wild geese at any one time. All laws or parts of laws relative to bag limit and possession limit of wild ducks and wild geese in conflict herewith are hereby repealed.

Sec. 2. It shall be unlawful for any one person to take, capture or kill more than fifteen wild ducks in any one day and it shall be unlawful for any person to take or kill more than four wild geese in any one day. It shall be unlawful for any person to have in possession more than thirty wild ducks at any time and it shall be unlawful for any person to have in possession at any time more than eight wild geese at any one time. Provided, that any ducks or geese killed, taken or possessed in accordance with this Act must be taken, killed or possessed during the open season or period of time when ducks and geese may be taken, killed and possessed.

Sec. 3. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten (\$10.00) Dollars and not more than Two Hundred (\$200.00) Dollars, and each fowl so taken, killed or possessed in violation of this Act shall constitute a separate offense.

[Acts 1930, 41st Leg., 4th C.S., p. 8, ch. 7.]

#### Art. 881b. Open Season and Bag Limit for Migratory Game Birds; Regulations

##### Purpose; Regulations

Sec. 1. The purpose of this Act is to provide for the making of suitable regulations to govern the taking of certain migratory game birds, the taking of which is also governed by regulations made under the authority of the United States Government because of treaties affecting the conservation of migratory game birds between the United States Government and the Governments of Great Britain and the United States of Mexico. Such regulations as may be provided for under the provisions of this Act shall apply only to wild ducks of all species, wild geese and wild brant of all species, wild coot, wild rail, wild gallinules, wild plovers, Wilson's snipe or jack snipe, woodcock, mourning doves, white-winged doves and wild sand-hill cranes, which for the purpose of this Act are hereafter referred to as migratory game birds.

##### Acts Prohibited; Definitions

Sec. 2. It shall be unlawful for anyone to hunt, take or pursue any migratory game bird at any time other than during the open season provided for

taking, hunting or pursuing of such game bird, or to have in possession or retain such game bird in excess of the bag limit or time provided therefor, or to kill in any one day, or in any one week or in any open season any migratory game bird in excess of the bag limit provided for such period; or to take or attempt to take any migratory game bird by any means, method or device other than that which may hereafter be permitted for the taking of same. For the purpose of this Act, "open season" is defined as the period of time when it shall be lawful to take, kill or pursue or attempt to take or kill any of the game birds named in this Act, and "bag limit," for the purpose of this Act, is defined as the maximum number of game birds or aggregate of same of the species named in this Act that any person may kill, take or possess during any period for which such a bag limit is provided.

Penalty

Sec. 3. Any person who takes, kills, pursues or attempts to take or kill any migratory game bird by any means or device other than that permitted under the authority given in this Act, or at any time other than during the open season provided for same; or any person who kills any migratory game bird in excess of the bag limit provided for the killing of same, or any person who possesses any migratory game bird in excess of the limit provided for the possession of same, or any person who retains such birds in his possession beyond the period prescribed for the retention of same, or any person who otherwise takes, kills, possesses or retains any migratory game bird except in accordance with the permission given because of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction therefor, shall be fined in a sum not less than Twenty-five Dollars (\$25), nor more than One Hundred Dollars (\$100), and shall automatically forfeit his right to hunt with a gun in this State for a period of one (1) year following the date of his conviction; and further provided that each migratory game bird killed or possessed or retained in violation of any provision of this Act shall constitute a separate offense.

Repeals

Sec. 4. All laws or parts of laws of this State, in so far as they provide an open season, bag limit, possession limit, retention or storage limit, or govern the means or devices that may be used for taking migratory game birds or any of them, be and the same are hereby repealed.

Duties of Game, Fish and Oyster Commission

Sec. 5. The Game, Fish and Oyster Commission of the State of Texas is hereby charged with the duty of providing the open season, bag limits, possession limits and retention limits for the taking, possession and retention of migratory game birds, and to declare the means, methods and devices by which such birds may be taken. An open season shall be provided for only such length of time as is justified by the supply of the species of migratory game birds affected in this State, or in the zone or section of the

State to which such open season shall apply, and any bag limit or possession limit for any species of migratory game bird shall be provided so as to permit the most equitable harvest in this State of the species affected and which will grant only such privileges as experience has proven will not prevent a future normal supply of game birds of the species affected in this State or in the zone or section of the State to which such regulations may apply.

Investigations

Sec. 6. It shall be the duty of the Game, Fish and Oyster Commission to make such investigations and procure such information as will permit it to proclaim open seasons and bag limits for any migratory game bird when such is justified by the supply of same in order that said Commission shall carry out the mandate of the Legislature as expressed in this Act.

Proclamation of Open Season, Bag Limit, Etc.

Sec. 7. Any open season, bag limit, possession limit, means, method or device, or retention limit for migratory game birds shall be issued by the Game, Fish and Oyster Commission in the form of a suitable proclamation which regulations shall become effective on the day named therein, which shall not be earlier than ten (10) days after same is issued. Such a regulation shall remain in full force and effect for the time specified therein or until same is suspended or amended by the Game, Fish and Oyster Commission after the manner of issuing the original proclamation. Whenever any proclamation as authorized under the provisions of this Act is issued by the Game, Fish and Oyster Commission the same shall be incorporated in the minutes of the meeting at which it was adopted, and a copy of same shall be filed in the office of the Secretary of State and a copy mailed to each County Clerk and each County Attorney of this State for filing in their respective offices.

Suit to Contest Validity of Regulations

Sec. 8. Any interested party affected by the conservation regulations of this State, promulgated by the Game, Fish and Oyster Commission as directed in this Act, and who may be dissatisfied therewith, shall have a right to file a suit in a Court of competent jurisdiction in Travis County, Texas, and not elsewhere, against the Commission as defendant to test the validity of said regulations or any of them. Such suit shall be filed for trial and be determined as expeditiously as possible, and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the Court. In all trials under this Section, the burden of proof shall be upon the party complaining of such regulations, and such regulations or order so complained of shall be prima facie valid until otherwise shown. [Acts 1934, 43rd Leg., 3rd C.S., p. 114, ch. 61; Acts 1943, 48th Leg., p. 376, ch. 252, § 1; Acts 1961, 57th Leg., p. 504, ch. 243, § 2.]

Repealed in Part

*Acts 1945, 49th Leg., p. 2, ch. 2 (Article 909a-2), specifically repealed that portion of this arti-*

*cle relative to retention limits on certain migratory birds and fowl and the fixing of retention limits thereon.*

#### Art. 882. Closed Season Defined

The term "Closed Season" shall, for the purpose of enforcement of the game laws of this State mean the period of time during which it is unlawful to hunt, kill, attempt to kill, or take any of the game animals, wild fowl, or birds enumerated in this chapter, and the term "Open Season" shall mean the period of time in which it is lawful to hunt, kill, or take certain game, game animals, wild fowl, and birds set forth in this chapter.

[1925 P.C.]

#### Art. 882a. Temporary Closed Seasons because of Fire Hazards

If the State Forester determines that the continuation of any hunting season is likely to cause a serious forest fire hazard in any of the following counties of this State, Red River, Titus, Camp, Harrison, Gregg, Henderson, Van Zandt, Anderson, Nacogdoches, Angelina, San Augustine, Sabine, Trinity, Walker, Montgomery, Polk, Liberty, Tyler, Hardin, Jasper, Newton, Grimes and San Jacinto, he shall immediately notify the State Game and Fish Commissioner of such local conditions and recommend that any hunting season then open be closed temporarily. The State Game and Fish Commissioner shall make a complete statement of the local conditions which contribute to the danger of a fire hazard and forward such statement to the Governor of the State of Texas. If the Governor shall find that an extreme fire hazard exists, he shall proclaim a closed season to remain in effect in such county or counties until the danger abates. The Governor of the State of Texas may revoke such proclamation at any time the best interests of the people of Texas may require.

[Acts 1953, 53rd Leg., p. 1019, ch. 419, § 1.]

#### Art. 883. Five Year Closed Season

It shall be unlawful for any person to hunt, kill, or take or to have in possession, within a period of five years from the passage of this Act, any wild woodcock, wild wood duck, wild sandhill crane, or whooping crane, wild inca and ground dove, or wild pheasant, except as hereinafter provided. Any person violating any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars, and each bird killed or possessed in violation of this article shall constitute a separate offense.

[1925 P.C.]

#### Art. 884. Unlawful Possession of Game

It shall be unlawful for any person to sell or offer for sale, or to buy or offer to buy, or to have in possession for sale, or to have in possession after purchase has been made (either by himself or by another) any wild bird, wild fowl, wild game bird or

wild game animal, dead or alive, or any part thereof, protected by this Chapter, except deer hides and antlers and except as hereinafter provided. This Article and all other Articles in this Chapter, shall apply to any bird or animal coming from without this State; and in prosecution for violation of this Chapter, it shall be no defense that such bird or animal was not taken or killed within this State.

It shall be further unlawful to bring into this State for any purpose whatever, during the closed season or time when it is unlawful to possess such bird or animal, dead or alive, any kind of bird or animal protected by this Chapter, except as hereinafter provided.

[1925 P.C.; Acts 1947, 50th Leg., p. 1014, ch. 432, § 2; Acts 1973, 63rd Leg., p. 607, ch. 259, § 1, eff. June 11, 1973.]

#### Art. 885. Bringing Game into This State

Any person violating any of the provisions of Article 884 shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than twenty-five (\$25.00) dollars nor more than two hundred (\$200.00) dollars; and the bringing in of each separate bird or animal protected by this chapter in violation of said article shall constitute a separate offense. Provided, that any person who shall buy any game bird or game animal, the sale of which is prohibited by this chapter, for the purpose of establishing testimony, shall not be prosecuted for such purchase, and a conviction may be had upon the uncorroborated testimony of such purchaser.

[1925 P.C.]

#### Art. 886. Wild Ducks, Geese and Brant

It shall be unlawful to hunt, kill, or take any wild duck, goose, or brant, by any means other than the ordinary gun, not to exceed ten gauge, capable of being held to and shot from the shoulder. Any person violating any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars, and each bird or fowl taken or killed in violation of this article shall constitute a separate offense.

[1925 P.C.]

#### Art. 887. Hunting at Night

It shall be unlawful to kill, hunt or shoot at any wild bird, wild game bird, wild fowl, or wild game animal protected by this Act<sup>1</sup> at any season of the year, between one-half hour after sunset and one-half hour before sunrise in any county in this State. Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars, and each bird or animal so killed shall constitute a separate offense.

[1925 P.C.]

<sup>1</sup> So in enrolled bill. Pen.Code 1925 reads "his chapter."

Art. 888. Depredation of Wild Birds or Animals

(a) Whenever any of the wild birds or animals protected by the laws of this state are found to be damaging or destroying crops or domestic animals, the person whose property is being injured shall give written notice of the facts to the county judge of the county in which the damage is being done if a depredation permit is desired. The county judge shall notify the Parks and Wildlife Department of the location of the property where the damage is being done, the type of crops or animals being destroyed, and the name of the applicant. The Department shall inspect the property and shall determine whether damage is being done as alleged. If so, the Department shall make such recommendations to the owner of the property as are feasible and appropriate for controlling the damage.

(b) When the county judge receives the notice under Section (a) of this article, he shall immediately cause a substantial copy of the notice to be posted in the county courthouse.

(c) On receiving an application as prescribed in this section, the Department may in its discretion issue permits for killing wild birds and animals without regard to closed season, bag limit, or night shooting. The application must be in writing, must contain a statement of the facts and an agreement to comply with the requirements of this article relating to the disposition of game, and must be sworn to by the applicant. The application must be accompanied by (1) a signed statement of the employee of the Department who made the investigation that damage is being done and that control measures have been recommended; (2) a statement of fact by applicant that he has taken all measures recommended by Department for prevention of damage; and (3) a certification by the county judge that the sworn application is true.

(d) Each permit issued by the Department shall distinctly specify the time period for which it is granted, the area which it covers, the kind of birds or animals to be killed, and the person or persons permitted to kill the noxious birds or animals. The permit shall not authorize the killing of migratory game birds protected by the Federal Migratory Bird Treaty Act<sup>1</sup> unless the applicant has first procured a permit from the United States Fish and Wildlife Service.

(e) If the Department decides to issue the permit, it shall deliver the permit to the county judge, but not until at least 24 hours have elapsed since the Department received the initial notice from the county judge under Section (a) of this article.

(f) If the permit authorizes the killing of deer, then the permittee, as soon as practicable after a deer is killed, shall notify the game warden or other employee of the Department of the area covered by the permit, of the place where the deer carcass is located. The officer notified shall cause the carcass to be disposed of by donating it to a charitable institution or hospital or to needy persons.

(g) The Department may cancel the permit if the permittee violates any term or condition of the permit, or exceeds the authority granted by the permit, or if issuance of the permit does not accomplish the intended purposes.

(h) A permittee who fails to give the notice required by Section (f) of this article, or who disposes of a deer carcass or allows its disposition in any manner except as provided in Section (f) of this article, or who violates any term or condition of the permit, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$500.

[1925 P.C.; Acts 1957, 55th Leg., p. 805, ch. 339, § 1; Acts 1967, 60th Leg., p. 883, ch. 383, § 1, eff. Aug. 28, 1967.]  
<sup>1</sup> 16 U.S.C.A. §§ 703 to 711.

Savings Provision

*Acts 1967, 60th Leg., p. 1959, ch. 730, The Uniform Wildlife Regulatory Act, codified as article 978j-1, conferring upon the Parks and Wildlife Commission the power and duty of protecting and regulating the harvest of wildlife resources in various counties and repealing various acts of a similar nature, provides in section 15, inter alia, that "in Colorado County the provisions of Article 888, Penal Code of Texas, 1925, shall not be affected."*

Art. 888a. Taking Game Bird by Net or Trap

Whoever sets a net or trap or other device for taking any bird mentioned in article 872, or who snares or takes by such devices any such bird, without first obtaining from the Game, Fish and Oyster Commissioner a permit in writing so to do, shall be fined not less than ten nor more than one hundred dollars.

[1925 P.C.]

Art. 889. Specimens for Taxidermist

Any person shall have the right to ship or carry to and from a taxidermist or tannery, for mounting or preserving purposes or to his home, any specimen or part of specimen of the wild birds or wild animals of this State, where same have been lawfully taken or killed by such person, and when such specimens or parts of specimens are not for sale, except as provided in Articles 884 and 923h, Penal Code of Texas, 1925, as amended, but before making shipment as herein provided, such person shall first make the following affidavit in writing before some officer authorized to administer oaths, and deliver same to the common carrier transporting same, or its agents:

State of Texas }  
County of \_\_\_\_\_ }

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, who after being duly sworn, upon oath says: I live at \_\_\_\_\_ in the County of \_\_\_\_\_, State of \_\_\_\_\_; that I have personally killed \_\_\_\_\_, which I desire to ship from \_\_\_\_\_ to \_\_\_\_\_ County, State

of \_\_\_\_\_, which I have lawfully killed for lawful use, that I have not killed during the present hunting season more than the bag limit, as provided by law, of any of the wild game birds, wild fowl, or wild animals.

Signature \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_.

Office held \_\_\_\_\_

The affidavit thus prepared by the affiant shall be attached to the shipment, and shall not be removed during the period of transportation. If such game is carried by the person killing same, it shall not be necessary to attach the affidavit herein set forth. [1925 P.C.; Acts 1973, 63rd Leg., p. 608, ch. 259, § 3, eff. June 11, 1973.]

#### Art. 890. Penalty

Any person who so ships any game from any place within this State without making the foregoing affidavit; or any agent of any express company or other common carrier who receives any shipment without it being accompanied by such affidavit and list attached; or any auditor or conductor or other person in charge of any railroad train, who knowingly permits any person to carry any wild birds, wild fowl or wild animals without such affidavit being made, as herein provided, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars.

All express agents, conductors, and auditors of trains, captains of boats, and the Game, Fish and Oyster Commissioner and his deputies are hereby empowered to administer oaths necessary to the shipment of game, and for administering such oaths they are hereby authorized to collect the sum of twenty-five (25¢) cents from the person making such oath. [1925 P.C.]

#### Art. 891. Destroying Nests or Eggs of Birds

It shall be unlawful for any person to destroy or take the nest, eggs, or young of any wild game bird, wild bird, or wild fowl, protected by this chapter, except as provided herein. Any person violating any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars. [1925 P.C.]

#### Art. 892. Certain Animals Declared to be Game Animals

Wild deer, wild elk, wild antelope, wild Desert Bighorn sheep, wild black bear, wild gray or cat squirrels, wild fox squirrels or red squirrels, and collared peccary or javelina, are hereby declared to be game animals within the meaning of this Act. However, no species of any of these animals or any

other animals is classified as a game animal if it is not indigenous to the state or any part of the state. Aoudad sheep are game animals in Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher Counties.

[1925 P.C.; Acts 1963, 58th Leg., p. 8, ch. 6, § 1; Acts 1965, 59th Leg., p. 782, ch. 372, § 1, eff. June 9, 1965; Acts 1967, 60th Leg., p. 868, ch. 374, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 44, ch. 21, § 1, eff. Aug. 30, 1971.]

#### Art. 893. Repealed by Acts 1967, 60th Leg., p. 116, ch. 61, § 2, eff. Aug. 28, 1967

Prior to repeal, this article was amended by Acts 1953, 53rd Leg., p. 11, ch. 5, § 1, and related to forfeiture of license.

#### Art. 894. Form of License

All hunting licenses issued shall have printed across their faces the year for which they are issued; they shall bear the name and address or residence of the person to whom issued, and shall give the approximate weight, height, age, color of hair, and color of eyes of such person, in order that proper identification may be had in the field, and shall have printed thereon a statement, to be subscribed to in ink by the person to whom issued, that such person will not exceed in any one day the bag limit as printed on the license. Such license shall be dated on the date of issuance, and shall remain in effect until the last day of August thereafter; provided that non-resident or alien licenses shall have printed thereon the following: This license does not entitle the holder thereof to hunt upon the enclosed and posted lands of another, without the consent of the owner or agent. [1925 P.C.]

#### Art. 895. County Clerk to Issue License

The county clerk of each county in this State, is hereby authorized to issue hunting licenses under his official seal, to all persons complying with the provisions of this Act, and shall fill out correctly and preserve for the use of the Game, Fish and Oyster Commission, the stubs attached thereto; and the county clerk shall keep a complete and correct record of hunting licenses issued, showing the name and place of residence of each license and the serial number and date of the license issued. Said license stubs and penalties and forfeitures of bonds imposed and collected for violation of any of the provisions of this chapter, shall belong to the special game fund of this State, and shall be paid over by the Game, Fish and Oyster Commissioner, to the State Treasurer during the first week of each month, and shall be credited to such special game fund; and such fund shall be used solely for the purpose of wild bird and game protection; for the creation, purchase, and maintenance of game sanctuaries and public hunting-ground; for the purchase, introduction, propagation, and distribution of game and wild birds; for the dissemination of information pertaining to the conservation and economic value of wild animal life; and in the employment of special deputy game commissioners, payment of their necessary expenses and the purchase and supply of means to enable the

Game, Fish and Oyster Commissioner and his deputies to enforce the game laws of this State. All expenditures shall be verified by affidavit to the Game, Fish and Oyster Commissioner; and on the approval of such expenditures by the Game, Fish and Oyster Commissioner, it shall be the duty of the Comptroller of the State to draw his warrant on the Treasurer of the State for the amount of such expenditures in favor of the person claiming the same, such warrant to be paid out of the special game fund. All moneys and all balances now in such fund from moneys already paid into the State Treasury, or that may hereafter be paid into said fund through or because of this chapter, are made available as soon as paid into the State Treasury, and are hereby specifically appropriated to the use of the Game, Fish and Oyster Commissioner for the several purposes herein specified. The county clerk shall, within ten days after the close of each calendar month, make out a detailed report under the seal of his office, showing the serial number and date of each license issued during the month covered by the report, and the name and address of the person to whom issued, and shall forward such report, with remittance of fees due the State, to the Game, Fish and Oyster Commission at Austin, and said Commission shall credit such county clerk with the amount so remitted. As soon as possible after the licenses in a license book have all been issued, and only the stubs remain therein, such county clerks shall forward such used license book to the Game, Fish and Oyster Commission at Austin, in order that such Commission may furnish necessary information regarding holders of licenses to any officers in the State.

[1925 P.C.]

**Art. 895a. License to Hunt Deer and Turkey**

**Big Game Hunting License**

Sec. 1. It shall be unlawful for any citizen of this State to hunt, take or kill any deer or turkey in this State without first having procured from the Game, Fish and Oyster Commission, or one of its authorized agents, a big game hunting license. Such license shall entitle the holder to all privileges now or otherwise allowed under a resident hunting license. The fee for a big game hunting license shall be Two Dollars and Fifteen Cents (\$2.15). Of this amount fifteen cents (15¢) may be retained by the issuing officer as his collection fee.

**Form of License**

Sec. 2. It shall be unlawful for any person to issue or accept any license required by the provisions of this Act, except on a form provided by the Game, Fish and Oyster Commission. Each license issued under the provisions of this Act shall have attached thereto the number of deer tags equal to the number of deer permitted to be killed during the deer season fixed by law for the year for which such big game license is issued. Each deer tag shall bear the serial number of the license to which it is attached. Each license and the deer tags thereto attached shall bear the name, address and residence of the person to

whom issued, and the license shall give the approximate weight, height, age, color of hair and eyes of such person, in order that proper identification may be had in the field. Each license and deer tags thereto attached shall be dated on the date of issuance, and shall have printed across its face the year for which it is issued; and such license shall expire on the last day of August thereafter. Each license and the tags thereto attached shall be signed by the licensee at the time such license is received by him.

**Duplicate License**

Sec. 3. It shall be unlawful for any person to procure or possess more than one big game license during a license year. Provided, however, in the event the holder of a license provided for in this Act shall have lost such license, or same shall have become destroyed, such license holder may file with the Game, Fish and Oyster Commission or its authorized agent an application in the form of an affidavit as to the facts of such loss or destruction, which affidavit shall contain a statement as to the number of deer, if any, said applicant has killed under such lost or destroyed license; whereupon said Commission or its authorized agent may issue to such person a duplicate license, the fee for which shall be fifty cents (50¢), without exception; provided, however, that such issuing officer shall remove a deer tag from such duplicate license for each deer killed by such applicant.

**False Swearing**

Sec. 4. Any person who, in making an affidavit as provided for in this Act shall knowingly make a false affidavit of fact, shall be deemed guilty of false swearing and shall be punished in accordance with the provisions of Article 310, Penal Code, State of Texas.

**Deer Tag**

Sec. 5. It shall be unlawful for any person to have in his possession at any time the carcass of any wild deer that does not have attached thereto a tag issued to such person under the provisions of this Act, bearing the date and place of kill of the deer to which it is attached. Such tag will be so constructed that once placed upon a deer could not be removed without mutilation. Such deer tag shall remain on said deer carcass while on storage and until finally processed or destroyed. It shall be unlawful for any person to use more deer tags during one license year than are attached to his big game license for that year. It shall be unlawful for any person to use the same deer tag on more than one deer. It shall be unlawful for any person to use a deer tag which was not issued to such person. Nothing in this Act shall be construed to authorize any person to exceed any bag limit or to hunt deer during closed season provided for deer; and the fact that a deer tag was attached to the carcass or hide of any deer shall not be prima-facie evidence that such deer was lawfully killed.

## Disposition of Fees and Fines

Sec. 6. The method of collecting, recording, reporting and remitting the fees derived from sale of licenses provided for herein shall be the same as that provided by law for other hunting licenses; and all moneys received by the Game, Fish and Oyster Commission from sale of big game hunting licenses as well as moneys collected from violations of this Act, shall be deposited in the State Treasury to the credit of the Special Game and Fish Fund and used for the purposes provided by law.

## Exemption

Sec. 7. No citizen of this State under seventeen (17) years of age shall be required to pay the fee prescribed for the license provided for in this Act; nor shall any citizen be required to pay said fee before taking, killing or hunting deer or turkey on land on which he is residing. Provided, however, that any person exempted by this Section shall first register with the Game, Fish and Oyster Commission or one of its authorized agents, on a form to be furnished by said Commission, and receive from said Commission a big game license which shall be in the form and signed by such exemption licensee as prescribed herein for licenses for which a fee is charged; but in addition thereto, such exemption license shall clearly show on its face that it is an exemption license.

## Penalty

Sec. 8. Any person who shall violate any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction therefor shall be fined in a sum not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200). [Acts 1949, 51st Leg., p. 704, ch. 369.]

### Art. 895b. Hunting Licenses; Necessity, Form, Etc.; Offenses; Disposition of Revenues

## Resident Hunting License

Sec. 1. No citizen of this State shall hunt outside of the county of his residence with a gun without first having procured from the Game, Fish and Oyster Commission, or one of its authorized agents, a license to hunt, and for which he shall pay the sum of Two Dollars and Fifteen Cents (\$2.15); Fifteen Cents (15¢) of which amount shall be retained by the issuing officer as his fee for collecting.

## Non-resident Hunting License

Sec. 2. No non-resident citizen of this State or alien shall hunt with a gun in this State without first having procured from the Game and Fish Commission, or one of its authorized agents, a non-resident hunting license. The fee for a non-resident citizen or alien hunting license shall be Twenty-five (\$25.00) Dollars; Three (\$3.00) Dollars of such amount shall be retained by the officer issuing such license as his fee for collecting, issuing, and making report on license so issued and for remitting the remaining Twenty-two (\$22.00) Dollars to the Game and Fish Commission; provided, however, that a hunting license entitling the holder thereof to hunt

migratory birds only for a period of five consecutive days shall be issued to any person entitled to a non-resident citizen or alien hunting license upon payment of a fee of Five (\$5.00) Dollars, Fifty (50¢) Cents of which amount shall be retained by the issuing officer.

## Exception

Sec. 3. It shall be unlawful for any citizen of this State to hunt, take or kill any deer or wild turkey in this State without first having procured from the Game, Fish and Oyster Commission, or one of its authorized agents, or from any county clerk in this State, a hunting license.

## Form of License

Sec. 4. It shall be unlawful for any person to issue or accept any license required by the provisions of this Act, except on a form provided by the Game, Fish and Oyster Commission. Each license issued under the provisions of this Act shall be accompanied by the number of deer tags equal to the number of deer permitted to be killed during the deer season fixed by law for the year for which such hunting license is issued. Each deer tag shall bear the serial number of the license which it accompanies. Each license and each deer tag shall bear the name, address and residence of the person to whom issued, and the license shall give the approximate weight, height, age, color of hair and eyes of such person, in order that proper identification may be had in the field. Each license and deer tag shall be dated on the date of issuance, and shall have printed across its face the year for which it is issued; and such license shall expire on the last day of August thereafter. Each license and each deer tag shall be signed by the licensee at the time such license is received by him.

## Duplicate License

Sec. 5. It shall be unlawful for any person to procure or possess more than one hunting license during a license year. Provided, however, in the event the holder of a license provided for in this Act shall have lost such license, or same shall have become destroyed, such license holder may file with the Game, Fish and Oyster Commission or its authorized agent an application in the form of an affidavit as to the facts of such loss or destruction, which affidavit shall contain a statement as to the number of deer, if any, said applicant has killed under such lost or destroyed license; whereupon said Commission or its authorized agent may issue to such person a duplicate hunting license, the fee for which shall be Fifty Cents (50¢), without exception; provided, however, that such issuing officer shall remove a deer tag from such duplicate license for each deer previously killed by such applicant.

## False Swearing

Sec. 6. Any person who, in making an affidavit as provided for in this Act, shall knowingly make a false affidavit of fact shall be deemed guilty of false swearing and shall be punished in accordance with the provisions of Article 310, Penal Code, State of Texas.<sup>1</sup>

Deer Tag

Sec. 7. It shall be unlawful for any person to have in his possession at any time the carcass of any wild deer that does not have attached thereto a tag issued to such person under the provisions of this Act, bearing the date and place of kill of the deer to which it is attached. Such deer tag shall remain on said deer carcass while on storage and until such carcass is finally processed or destroyed. It shall be unlawful for any person to use more deer tags during one license year than are originally attached to his hunting license for that year. It shall be unlawful for any person to use the same deer tag on more than one (1) deer. It shall be unlawful for any person to use a deer tag which was not issued to such person. Nothing in this Act shall be construed to authorize any person to exceed any bag limit or to hunt deer during closed season provided for deer; and the fact that a deer tag was attached to the carcass or hide of any deer shall not be prima-facie evidence that such deer was lawfully killed.

Disposition of Fees and Fines

Sec. 8. The method of collecting, recording, reporting and remitting the fees derived from sale of licenses provided for herein shall be the same as that provided by law for resident fishing licenses; and all moneys received by the Game, Fish and Oyster Commission from sale of hunting licenses as well as moneys collected from violations of this Act, shall be deposited in the State Treasury to the credit of the Special Game and Fish Fund and used for the purposes provided by law.

Exemption

Sec. 9. No citizen of this State under seventeen (17) years of age shall be required to pay the fee prescribed for the license provided for in this Act; nor shall any citizen be required to pay said fee before taking, killing or hunting on land on which he is residing. Provided, however, that any person exempted by this Section, before hunting deer or wild turkey, shall first register with the Game, Fish and Oyster Commission or one of its authorized agents, on a form to be furnished by said Commission, and receive from said Commission a hunting license which shall be in the form and signed by such exempted licensee as prescribed herein for licenses for which a fee is charged; but in addition thereto, such exemption license shall clearly show on its face that it is an exemption license.

Hunting under License of Another

Sec. 10. Any person who shall hunt under the license issued to another person, or any person who shall permit another person to hunt under a license issued to him, shall be guilty of a violation of this Act.

Exhibiting License

Sec. 11. Any person required to hold a hunting license under the provisions of this Act, who fails or refuses, on demand by any officer, to show such officer his hunting license, shall be deemed guilty of a violation of this Act.

Penalty

Sec. 14. Any person who shall violate any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction therefor shall be fined in a sum not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[Acts 1951, 52nd Leg., p. 124, ch. 77; Acts 1953, 53rd Leg., p. 452, ch. 137, § 1.]

<sup>1</sup> Repealed; see, now, Penal Code, § 37.02.

Art. 895c. Hunting Licenses; Necessity; Form; Exemptions, Etc.

Resident Hunting License

Sec. 1. No citizen of this State shall hunt any wild bird or animal outside the county of his residence without first having procured from the Game and Fish Commission, or one of its authorized agents, a license to hunt, for which he shall pay the sum of Five Dollars and Twenty-Five Cents (\$5.25); twenty-five cents (25 cents) of which amount shall be retained by the issuing officer as his fee for collecting except employees of the Texas Parks and Wildlife Department; except that members of the Armed Services on active duty for a period greater than thirty (30) days at any Federal installation or facility within this State may purchase a resident hunting license. Adequate proof of length of duty assignment may be required from each license applicant. The validity of each license shall be made contingent upon such proof supplied by the applicant either by certification upon the license or by separate form promulgated by the State Agency charged with issuance of the license.

Non-resident Hunting License

Sec. 2. No non-resident citizen of this state or alien shall hunt any wild bird or wild animal in this state without first having procured from the Game and Fish Commission, or one of its authorized agents, a non-resident hunting license. The fee for a non-resident citizen or alien hunting license shall be Thirty-Seven Dollars and Fifty Cents (\$37.50), Twenty-Five Cents (\$.25) of such amount shall be retained by the officer issuing such license as his fee for collecting, issuing, and making report on license so issued and for remitting the remaining Thirty-Seven Dollars and Twenty-Five Cents (\$37.25) to the Game and Fish Commission; provided, however, that a hunting license entitling the holder thereof to hunt migratory birds only for a period of five (5) consecutive days shall be issued to any person entitled to a non-resident citizen or alien hunting license upon payment of a fee of Ten Dollars and Twenty-Five Cents (\$10.25), Twenty-Five Cents (\$.25) of which amount shall be retained by the issuing officer. That any person entitled to a hunting license shall be permitted to hunt migratory waterfowl in this state by procuring a non-resident or alien hunting license for a fee of Ten Dollars and Twenty-Five Cents (\$10.25), Ten Dollars (\$10) of which shall be paid into the Game and Fish Fund and Twenty-Five Cents (\$.25) shall be retained by the issuing officer; provided, however, that this license shall apply to those non-resident citizens or aliens who live in a

state or legal domicile which affords to the State of Texas similar reciprocal privileges at the same cost and which shall apply only to migratory waterfowl.

Exception

Sec. 3. It shall be unlawful for any citizen of this State to hunt, take or kill any deer or wild turkey in this State without first having procured from the Game and Fish Commission, or one of its authorized agents, or from any county clerk in this State, a hunting license.

Form of License

Sec. 4. It shall be unlawful for any person to issue or accept any license required by the provisions of this Act except on a form provided by the Game and Fish Commission. Each license issued under the provisions of this Act shall be accompanied by the number of deer tags equal to the number of deer permitted to be killed during the deer season fixed by law for the year for which such hunting license is issued. Each license and tag required by this Act shall be on forms provided by the Game and Fish Commission.

Duplicate License

Sec. 5. It shall be unlawful for any person to procure or possess more than one hunting license during a license year. Provided, however, in the event the holder of a license provided for in this Act shall have lost such license, or same shall have become destroyed, such license holder may file with the Game and Fish Commission, or its authorized agent, an application in the form of an affidavit as to the facts of such loss or destruction, which affidavit shall contain a statement as to the number of deer, if any, said applicant has killed under such lost or destroyed license; whereupon said Commission, or its authorized agent, may issue to such person a duplicate hunting license, the fee for which shall be fifty cents (50¢) without exception; provided, however, that the issuing officer shall issue only the number of deer tags unused on the lost or destroyed license. The officer issuing the duplicate license shall retain twenty-five cents (25¢) as his fee for issuing same.

Deer Tag

Sec. 6. (a) (1) "Carcass" means the dead body of a deer minus the offal and inedible organs, or the trunk with the limbs and head attached, with or without the hide.

(2) "Final destination" means the permanent residence of the hunter, the permanent residence of any other person receiving a deer carcass or any part of a deer carcass, or a commercial processing plant after the carcass has been finally processed.

(b) It shall be unlawful for any person to have in his possession at any time before the deer has been finally processed and delivered to the final destination the carcass of a wild deer that does not have attached thereto a tag provided by the Parks and Wildlife Department and issued to the person who killed the deer.

(c) It shall be unlawful to possess the carcass of any deer with head removed until the carcass has been finally processed and delivered to its final destination. It shall be unlawful for any person other than the person who killed the deer to receive or possess any part of a deer without a legible document attached which has been signed by the hunter who killed the deer, with his address, date of kill, hunting license number, and name of ranch and county where the deer was killed. The signed document shall remain with any part of said deer until finally processed and delivered to its final destination.

(d) To be valid under Subsection (a) of this section, the deer tag shall be filled out to show the date and place of the kill of the deer to which the tag is attached.

(e) It shall be unlawful for any person to use more deer tags during one (1) license year than are originally provided by his hunting license for that year. It shall be unlawful for any person to use the same deer tag on more than one (1) deer. It shall be unlawful for any person to use a deer tag which was not issued to such person.

(f) Nothing in this Act shall be construed to authorize any person to exceed any bag limit or to hunt deer during closed season provided for deer; and the fact that a deer tag was attached to the carcass or hide of any deer shall not be prima facie evidence that such deer was lawfully killed.

Disposition of Fees and Fines

Sec. 7. All moneys received from the sale of licenses provided for herein, after the payment of the fees allowed under this Act have been deducted, and all moneys received from penalties assessed for violations of this Act, and for violations of any of the hunting laws not otherwise disposed of by law, after deduction of fees allowed by law, shall be remitted to the Game and Fish Commission at Austin, and be deposited by said Commission in the State Treasury to the credit of the Special Game and Fish Fund, and shall be used for the propagation and distribution, management and protection of game animals in the State, including control of undesirable species and the dissemination of information pertaining to the conservation of game animals in this State.

Exemptions

Sec. 8. No citizen of this state who is under 17 years of age or 65 years of age or over shall be required to pay the fee prescribed for the license provided for in Section 1 of this Act; nor shall any citizen be required to pay that fee before taking, killing, or hunting on land on which he is residing. Provided, however, that any person exempted by this section, before hunting deer or wild turkey, shall first register with the Parks and Wildlife Department or one of its authorized agents, on a form to be furnished by the Department, and receive from the Department a hunting license, for which he shall pay a fee of 25 cents, 15 cents of which is to be retained by the issuing officer and 10 cents of which

is to be forwarded to the Parks and Wildlife Department to be used as other license fees, and which shall be in the form and signed by the exempted licensee as prescribed in this Act for licenses for which a regular fee is charged; but in addition thereto, such exemption license shall clearly show on its face that it is an exemption license.

Hunting under License of Another

Sec. 9. Any person who shall hunt under the license issued to another person, or any person who shall permit another person to hunt under a license issued to him, shall be guilty of a violation of this Act.

Exhibiting License

Sec. 10. Any person required to hold a hunting license under the provisions of this Act, who fails or refuses, on demand by any officer, to show such officer his hunting license, shall be deemed guilty of a violation of this Act.

Effective Date

Sec. 11. This Act shall become effective on September 1, 1957.

Repealing Clause

Sec. 12. All laws or parts of laws in conflict herewith are hereby repealed.

Penalty

Sec. 13. Any person who shall violate any provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction therefor shall be fined in a sum of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[Acts 1957, 55th Leg., p. 852, ch. 370; Acts 1961, 57th Leg., p. 1044, ch. 463, § 1, eff. Aug. 28, 1961; Acts 1965, 59th Leg., p. 617, ch. 306, § 1, eff. Aug. 30, 1965; Acts 1971, 62nd Leg., p. 908, ch. 134, § 1, eff. May 10, 1971; Acts 1973, 63rd Leg., p. 39, ch. 26, § 2, eff. April 9, 1973; Acts 1973, 63rd Leg., p. 258, ch. 125, §§ 1, 2, eff. Sept. 1, 1973; Acts 1973, 63rd Leg., p. 140, ch. 71, § 1, eff. Aug. 27, 1973.]

**Art. 895c-1. Combination Hunting and Fishing License**

(1) The Parks and Wildlife Department may issue to residents of this state a combination hunting and fishing license.

(2) The fee for a resident combination hunting and fishing license is \$8.75. Twenty-five cents of the fee may be retained by an agent of the department issuing the license as his collection fee. The collection fee may not be retained by employees of the department.

(3) A resident who has acquired a combination hunting and fishing license is not required to acquire the hunting license required by Section 1, Chapter 370, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 895c, Vernon's Texas Penal Code), or the fishing license required by Section 1, Chapter 239, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 4032b-1, Vernon's Texas Civil Statutes), or as prescribed in Sections 1 and 2 of this Act.

(4) The Parks and Wildlife Department shall prescribe the form of this license and shall attach to it deer tags as required by Chapter 370, Acts of the 55th Legislature, Regular Session, 1957, as amended. Duplicate licenses may be issued for the same fee and in the same manner as hunting licenses.

(5) A person who holds a combination hunting and fishing license shall comply with the requirements of and is subject to the penalties of Chapter 370, Acts of the 55th Legislature, Regular Session, 1957, as amended, and Chapter 239, Acts of the 55th Legislature, Regular Session, 1957, as amended, unless the requirements or penalties of those Acts conflict with this Act.

[Acts 1973, 63rd Leg., p. 259, ch. 125, § 4, eff. Sept. 1, 1973.]

**Art. 895d. Nonforfeiture of Sport Licenses for Violation of Game and Fish Laws**

Notwithstanding any other provision of law, hunting licenses, required by Chapter 370, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 895c, Vernon's Texas Penal Code), and fishing licenses, required by Chapter 239, Acts of the 55th Legislature, Regular Session, 1957 (Article 4032b-1, Vernon's Texas Civil Statutes), are not subject to forfeiture for violation of any general, local or special game or fish law or for violation of any rule or regulation of the Parks and Wildlife Commission. No other license issued by the Parks and Wildlife Commission is subject to forfeiture unless forfeiture is expressly provided by law, and in such cases the question of forfeiture is a matter to be decided by the jury, or by the judge in the absence of a jury, in the same manner as other penalties are assessed.

[Acts 1967, 60th Leg., p. 116, ch. 61, § 1, eff. Aug. 28, 1967.]

**Art. 896. License Fees Under Control of Council**

All license fees and hunting-boat registration fees collected under this Act, and all fines that may be made from this fund shall be expended for land or other real estate only upon the authorization of a majority vote of a council composed of Game, Fish and Oyster Commissioner, one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years, and the State Comptroller, who shall act on this council during their respective terms of office.

[Acts 1963, 58th Leg., p. 1138, ch. 442, § 15.]

**Art. 897. Game Unlawfully Taken to be Disposed of By Commissioner**

All wild birds, wild fowl, or wild game animals, or parts thereof, which have been killed, taken in any way, shipped, held in storage, or found in a public eating place, contrary to the provisions of this chapter, shall be disposed of by order of the Game, Fish and Oyster Commissioner, or one of his deputies by donating same to charitable institutions, hospitals, or needy widows and orphans.

If such birds, fowl or animals mentioned in this article are required to be placed in cold storage, the expense of such storage shall, upon his conviction, be placed in a bill of cost against the defendant or person from whom they were taken.

The Game, Fish and Oyster Commissioner, or any of his deputies shall have the right to search the game bag or any other receptacle of any kind whenever such Game, Fish and Oyster Commissioner or his deputy has reason to suspect that such game bag, or other receptacle or any buggy, wagon, automobile, or other vehicle may contain game unlawfully killed or taken, and any person who refuses to permit the searching of the same, or who refuses to stop such vehicle when requested to do so by the Game, Fish and Oyster Commissioner, or his deputy, shall be fined not less than ten (\$10.00) nor more than one hundred (\$100.00) dollars.  
[1925 P.C.]

**Art. 897a. Seizure and Sale of Unlawfully Possessed Marine Life**

(a) When an enforcement officer of the Parks and Wildlife Department believes that a person has unlawful possession of any fish, oysters, shrimp, or other marine life, he shall seize the marine life and deliver it to a court of competent jurisdiction in the county in which it was seized.

(b) The court shall order the marine life sold to the highest bidder, provided, however, that said sale shall not be for less than the prevailing market price, and the proceeds of the sale deposited with the court pending the outcome of the action taken against the person charged with the illegal possession. Upon the conclusion of the action the court shall order the proceeds of the sale either deposited in the state treasury to the credit of the special game and fish fund or paid to the owner of the marine life, as determined by the court.  
[Acts 1969, 61st Leg., p. 714, ch. 254, § 1, eff. May 21, 1969.]

**Art. 898. Commissioner to Keep Lists of Fees and Fines**

It shall be the duty of the Game, Fish and Oyster Commissioner to keep in his office, at Austin, a complete list of the license fees and fines collected; said records shall be kept open for inspection of the State Comptroller and of the public. At the close of each calendar month the Game, Fish, and Oyster Commissioner, shall file with the Comptroller, a report in writing, showing all fines, licenses, and other fees collected, their disposition, and any other particulars which he may deem proper.  
[1925 P.C.]

**Art. 899. Hunting Under the License of Another**

Any person who shall hunt under the license issued to any other person, or any person who shall permit any other person to hunt under a license issued to him, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any

sum of not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars.  
[1925 P.C.]

**Art. 900. Hunting for Hire**

It shall be unlawful for any person to hire or employ any other person, or to be hired or employed by any other person, by the payment, or by the promise of payment, of money or any other thing of value, to hunt any bird, wild fowl, or game animal protected by this chapter. Any person violating any of the provisions of this article shall be deemed guilty of misdemeanor, and upon conviction shall be fined in any sum of not less than twenty-five (\$25.00) dollars, nor more than two hundred (\$200.00) dollars. Provided, that if any person who has received money, or a promise of money or other thing of value, to hunt any wild bird, wild fowl, or game animal protected and mentioned by this chapter, testifies against the person employing him, all prosecutions against him in the case in which he testifies shall be dismissed.  
[1925 P.C.]

**Art. 901. Hunting for Motor Vehicle, Aircraft or Boat**

It is hereby declared unlawful for any person at any time and in any manner, except as herein provided, to hunt, take, capture, or kill, or attempt to hunt, take, capture, or kill any of the wild game birds, wild game fowl, or wild game animals protected by the laws of this State from any type of aircraft or airborne device, a motor vehicle, a powerboat, a sailboat, any boat under sail; or any floating device towed by powerboat or sailboat, except that game animals and game birds not classified as migratory, may be hunted or taken from a motor vehicle within the boundaries of private property by any person who is legally on the property for the purpose of hunting, provided no attempt will be made to hunt, shoot, take, capture, or kill any of the wild game birds, wild game fowl, or wild game animals upon any part of the road system of this State. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).  
[1925 P.C.; Acts 1961, 57th Leg., p. 1107, ch. 499, § 1, eff. Aug. 28, 1961; Acts 1971, 62nd Leg., p. 43, ch. 20, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 354, ch. 152, § 1, eff. Aug. 27, 1973.]

**Savings Provision**

*Acts 1967, 60th Leg., p. 1959, ch. 730, The Uniform Wildlife Regulatory Act, codified as article 978j-1, conferring upon the Parks and Wildlife Commission the power and duty of protecting and regulating the harvest of wildlife resources in various counties and repealing various acts of a similar nature, provides in section 15, inter alia, that "in Webb County Articles 901, 902, and 924a of the Penal Code of the State of Texas shall not be affected."*

**Art. 902. Hunting with Headlight**

It shall be unlawful for any person at any time of the year to hunt deer or any other animal or bird protected by this chapter, by the aid of what is commonly known as a headlight or hunting-lamp, or by artificial light attached to an automobile, or by the means of any form of artificial light. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than fifty (\$50.00) dollars nor more than two hundred (\$200.00) dollars, or by confinement in the county jail for not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment. The possession of a headlight, or any other hunting light used on or about the head when hunting at night, between sunset and one-half hour before sunrise, by any person hunting in a community where deer are known to range, shall be prima facie evidence that the person found in possession of said headlight, or other hunting light, is violating the provisions of this article.

[1925 P.C.]

**Savings Provision**

*Acts 1967, 60th Leg., p. 1959, ch. 730, The Uniform Wildlife Regulatory Act, codified as article 978j-1, conferring upon the Parks and Wildlife Commission the power and duty of protecting and regulating the harvest of wildlife resources in various counties and repealing various acts of a similar nature, provides in section 15, inter alia, that "in Webb County Articles 901, 902, and 924a of the Penal Code of the State of Texas shall not be affected."*

**Art. 903. Boat Owner to Have License**

It is hereby declared unlawful for any person owning or navigating a sailboat or powerboat, to receive on board such boat for pay any person or persons engaged in hunting, before such person owning or navigating such boat shall have applied for and received a license from the Game, Fish and Oyster Commissioner, or one of his deputies, granting him the right for one year, to receive and carry on his boat persons engaged in hunting. Before such license is issued, the person applying for it shall pay to the Game, Fish and Oyster Commissioner, or one of his deputies, the sum of Twenty-Five Dollars (\$25), and shall file with such Game, Fish and Oyster Commissioner, the name of his vessel, her accommodations for passengers, and the number of her crew and shall file with the Game, Fish and Oyster Commissioner, or one<sup>1</sup> his deputies, an affidavit to the effect that he will not violate any of the provisions of this chapter, and will endeavor to prevent anyone whom he carries on his boat from violating any of the provisions of this chapter, and that he will not carry any hunter on his boat who does not possess a hunting license. Whenever any boat owner or navigator fails or refuses to comply with any of the provisions of this section, the Game, Fish and Oyster Commissioner is authorized and empowered to cancel

his license, without a refund or return of the license fee paid; and no license shall be renewed or issued to him thereafter for a period of one year.

Any person who carries out any hunting parties for reward or pay of any kind without first having procured his license, as provided in this article, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars.

[1925 P.C.; Acts 1973, 63rd Leg., p. 261, ch. 125, § 9, eff. Sept. 1, 1973.]

<sup>1</sup> So in enrolled bill; probably should read "one of his".

**Art. 904. Hunting with Gun; License For**

No citizen of this State shall hunt outside of the county of his residence with a gun without first having procured from the Game, Fish and Oyster Commissioner, or one of his deputies, or from any county clerk in this State, a license to hunt, and for which he shall pay either of such officers the sum of two (\$2.00) dollars; fifteen cents of which amount shall be retained by said officer as his fee for collecting.

The fee for a non-resident citizen or alien hunting license shall be twenty-five (\$25.00) dollars; three (\$3.00) dollars of such amount shall be retained by the officer issuing such license as his fee for collecting, issuing, and making report on license so issued and for remitting the remaining twenty-two (\$22.00) dollars to the Game, Fish and Oyster Commission.

Any person hunting with a gun out of the county of his residence without a license authorizing him to hunt out of the county of his residence, or any person who fails or refuses on demand by any officer to show such officer his hunting license required of him by this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten (\$10.00) dollars, nor more than one hundred (\$100.00) dollars; provided, that the provisions of this article requiring hunting license shall not apply to persons under seventeen years of age

[1925 P.C.]

**Art. 904a. Non-resident and Alien License**

Any non-resident of this State or any alien who shall hunt wild game and birds in this State without first securing a license to hunt from the Commissioner or his deputy or the county clerk shall be fined not less than ten nor more than one hundred dollars.

[1925 P.C.]

**Art. 905. Commissioner to Enforce Game Law**

The Game, Fish and Oyster Commissioner and his deputies shall have the same power and authority as sheriffs to serve criminal processes in connection with cases growing out of the violations of this chapter, shall have the same power as sheriffs to require aid in executing such process, and shall be entitled to receive the same fees as are provided by law for sheriffs in misdemeanor cases.

Said Commissioner or any of his deputies may arrest without a warrant any person found by them in the act of violating any of the laws for the protection and propagation of game, wild birds or fish, and take such person forthwith before a magistrate having jurisdiction. Such arrests may be made on Sunday, and in which case the person arrested shall be taken before a magistrate having jurisdiction, and proceeded against as soon as may be, on a week day following the arrest.

[1925 P.C.]

#### Art. 906. Deputy Commissioners to Enforce Law

It is hereby made a special duty of the Game, Fish and Oyster Commissioner to enforce the statutes of this State for the protection and preservation of wild game and wild birds; and to bring, or cause to be brought, actions and proceedings in the name of the State of Texas, to recover any and all fines and penalties provided for in the laws now in force, or which may hereafter be enacted, relating to wild game and wild birds. Said Game, Fish and Oyster Commissioner may make complaint and cause proceedings to be commenced against any person for violating any of the laws for the protection and propagation of game or birds without the sanction of the county attorney of the county in which such proceedings are commenced; and in such cases he shall not be required to furnish security for costs.

[1925 P.C.]

#### Art. 907. Prima Facie Evidence

(a) Except as provided in this article, the possession of any wild game bird, wild game animal, or other protected species of wildlife mentioned in this chapter, whether dead or alive, during the time when killing or taking is prohibited shall be prima facie evidence of the guilt of the person in possession during the time when killing or taking is prohibited by law;

(b) It is not unlawful to ship or bring any wild game birds, wild game animals, or other protected species of wildlife from the Republic of Mexico into this state at any season if the person importing the wildlife has procured:

(1) an importation permit from the Parks and Wildlife Department or an authorized agent; and

(2) a statement from the United States Customs Officer at the port of entry showing that the wildlife was brought from the Republic of Mexico.

(c) An importation permit shall be on a form provided by the Parks and Wildlife Department and shall be issued for a period not to exceed 30 days.

(d) The fee for an importation permit is \$1. The officer issuing the importation permit, except employees of the Parks and Wildlife Department, may retain 25 cents as his collection fee. After deducting the allowed collection fee, all receipts shall be deposited in the state treasury to the credit of Game and Fish Fund No. 9.

(e) Within 10 days after the expiration date of the importation permit, the holder of the permit must return one copy of the permit to the Parks and Wildlife Department showing the species of wildlife imported, the number of each, the date of importation, and the port of entry.

(f) The Parks and Wildlife Department may prescribe reasonable rules and regulations for the importation of wild game birds, wild game animals, and other protected species of wildlife, and the number of each species that may be imported during a calendar week under this Act.

(g) Wild game birds, wild game animals, and other protected species of wildlife imported into this state under this Act are subject to Article 884, Texas Penal Code, 1925, as amended.

[1925 P.C.; Acts 1973, 63rd Leg., p. 1282, ch. 475, § 1, eff. June 14, 1973.]

#### Art. 908. Hunting on Game Preserves for Pay

Licenses; Applications of Owners of Shooting Resorts; Accommodation of Members Prior to Receipt

(a) It is hereby declared unlawful for any person or persons, who may be acting as manager of any club, or the owner of any club, or shooting resort or shooting preserve, or lessor of premises leased for hunting purposes, to receive or accommodate as guest or member of such club, or shooting resort, or shooting preserve, or lessee of premises leased for hunting purposes, for pay, any person or persons engaged in hunting, before such manager of such club, shooting resort, shooting preserve, or premises leased for hunting purposes, shall have applied for and received a license from the Game and Fish Commission, or one of its authorized agents, granting him the right for the year beginning September 1st and ending August 31st, following, to receive and accommodate any such person or persons at such club, shooting resort, shooting preserve, or premises leased for hunting purposes.

##### Shooting Preserve, Definition

(b) A "shooting preserve" is defined as any premises leased for hunting purposes which is a separate, unconnected, and distinct tract of land with a continuous and unbroken boundary.

##### Shooting Resort, Definition

(c) A "shooting resort" shall be defined as an area of not less than six hundred (600) acres nor more than two thousand (2000) acres, that are contiguous to each other on which pen-raised fowls and/or imported game birds, banded and marked in accordance with the provisions of this Act, are released to provide hunting for members or guests authorized by the hunting laws of this state.

##### Marking Boundaries of Shooting Resorts

(d) A "shooting resort" shall be distinguished from any other club, shooting preserve, or leased premises for hunting purposes, by clearly marking the boundaries of said shooting resort with markers of a metal construction being at least eighteen (18) inches by twenty-four (24) inches in size and bearing the words "Shooting Resort Licensed by the Game

and Fish Commission of Texas." "Hunting by Permit Only." The lettering on said markers to be of such size and proportions as will permit reading under ordinary conditions at two hundred (200) feet. These markers shall be placed around the perimeter of a shooting resort at a distance of not to exceed one thousand (1000) feet from each other marker and in addition shall be placed at all entrances.

*Annual Release of Quail or Pheasants; Restocking Resort with Game*

(e) Anyone operating a "shooting resort" shall be required to release a minimum of five hundred (500) quail annually or a minimum of five hundred (500) pheasant or chukar annually on each six hundred (600) acres of land licensed as a shooting resort. Any individual operating a shooting resort shall within thirty (30) days of the close of the game season as hereinafter outlined release at least five percent (5%) of the total number of killed birds from said area for the purpose of restocking same with game.

*Issuance of Licenses for Preserves and Resorts*

(f) There shall be issued one (1) license for each shooting preserve and/or shooting resort in the manner prescribed in this Act.

*Fees; Affidavits of Licensees; Non-resident Licenses; Purchase*

(g) Before such license is issued the person applying for a shooting preserve license shall pay to the Game and Fish Commission the sum of Twenty-Five Dollars (\$25). If the license applied for is a shooting resort license, the person shall pay to the Game and Fish Commission the sum of Twenty-Five Dollars (\$25). In each event the licensee shall file with the Game and Fish Commission the name of said club, shooting preserve or shooting resort, and shall file with the Game and Fish Commission an affidavit that he will not violate any of the provisions of this article and will endeavor to prevent guests of said club, shooting preserve, shooting resort or premises leased for hunting purposes from doing so and that no guests will be accommodated who have not previously secured a hunting license. A non-resident license, for use only on state-licensed shooting resorts during the shooting resort season from October 1st to April 1st, may be purchased for the sum of Five Dollars (\$5), and will be considered a valid license for out-of-state guests. Twenty-five cents (25 cents) of the fee collected for any license provided for in this Subsection may be retained by the issuing agent, except that employees of the Game and Fish Commission may not retain such fee.

*Bands; Contents; Retention on Birds after Killing and Processing*

(h) All game birds that are killed on said areas as above described shall be banded with a band carrying the permit number of the owner of said shooting resort and the band shall remain on the bird after it is killed and processed.

*Season for Resorts with Pen-raised Fowl or Imported Game Birds*

(i) On said "shooting resort" or "hunting areas" that have been stocked by the owners with game birds such as quail, chukar and pheasant, or any other pen-raised fowls and/or imported game birds,

season on such birds in such areas shall be October 1st to April 1st of each year.

*Record Book for Registration of Guests; Contents*

(j) All managers of clubs, shooting resorts, shooting preserves and premises leased for hunting shall be required to keep a suitable record book, and each guest or member shall be required to register, showing his name and place of residence, license number, and a record of each day's kill of different birds and game, and a complete record must be made to the Game and Fish Commission by such manager of such club, shooting resort, shooting preserve, or premises leased for hunting purposes not later than May 1st of each year.

*Failure to Comply with Section; Cancellation of License; Renewals*

(k) Whenever any manager of any club, shooting resort, shooting preserve, or premises leased for hunting purposes, fails or refuses to comply with any of the provisions of this Section, the Game and Fish Commission or its authorized agent is authorized and empowered to cancel his license without refund or return of the license fee, and no license shall be renewed or issued to such party, or parties, thereafter for a period of one (1) year.

*Failure to Secure License; Penalties; Special Game Fund*

(l) Any manager of any club, shooting resort, shooting preserve, or premises leased for hunting purposes, who accommodates hunters for reward, without first having secured the necessary license as provided in this Section, or who shall fail to comply with any of the provisions of this Act or shall violate any provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined the sum of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00), or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment. Such fines shall be placed to the credit of the special game fund.

*Blank Licenses; Preparation; Distribution; Contents; Collection of Fees*

(m) For the purpose of carrying out the provisions of this Section it shall be the duty of the Game and Fish Commission or its authorized agent to have prepared and to furnish all persons authorized by law to issue hunting and fishing licenses, blank licenses with stubs attached, numbered serially, such licenses to be clearly marked "shooting preserve license"—"shooting resort license." It shall be the duty of the Game and Fish Commission or its authorized agent issuing said license to indicate the type of license issued and to collect the fee provided in this Act; such shooting license shall have printed across the face the year for which it is issued, shall bear the name and address of the licensee, name of the club, shooting preserve or shooting resort, character of game found on such area and the expiration date of such license; said license must bear the seal of the Game and Fish Commission and must be signed by one of its authorized agents. On the reverse side of said license shall be printed the open seasons and bag limits as provided in this Chapter.

[1925 P.C.; Acts 1953, 53rd Leg., p. 854, ch. 346, § 1; Acts 1955, 54th Leg., p. 1154, ch. 438, § 1; Acts 1959, 56th Leg., p. 28, ch. 18, § 1; Acts 1959, 56th Leg., 2nd C.S., p. 124, ch. 24, §§ 1 to 5; Acts 1963, 58th Leg., p. 963, ch. 386, § 4, eff. Aug. 23, 1963; Acts 1973, 63rd Leg., p. 260, ch. 125, § 5, eff. Sept. 1, 1973.]

#### Art. 909. Storage after Closed Season

It shall be unlawful for any person to place in any public cold storage plant, or for any operator or employee of any such cold storage plant to place or accept for placing in such cold storage plant, any game bird or game animal of this State at any time except during the open season provided for the taking of same and for a period of three days immediately thereafter.

The owner or operator of any public cold storage plant, which intends to accept or does accept, any game bird or game animal of this State for storage, before accepting same shall provide a book in which he shall keep a legible record. Such record shall show the name of each and every person placing any game bird or game animal on storage in such public cold storage plant, the name of the person for whom it is placed on storage, the number of same, the kind of game bird or game animal placed on storage and the date on which such game bird or game animal is placed on storage. For the purpose of this Act, any plant in which game is stored for any person, other than the owner of such plant, is hereby defined as a public cold storage plant. Any public cold storage plant, or the record book required to be kept in such a plant, shall be subject to inspection by any game and fish warden of this State at any time and no warrant shall be required therefor.

Provided, however, that it shall be unlawful to place on<sup>1</sup> storage or keep on storage, any migratory bird or migratory waterfowl protected under the provisions of the Migratory Bird Treaty Act with Great Britain, at any time other than during the open season for taking same and for a period of ten days thereafter.

Any person placing any game bird or game animal in any public cold storage plant, in violation of any provision of this Act and/or any person accepting any game bird or game animal for storage or keeping same in storage in violation of any provision of this Act, or any person failing to keep the record required under the provisions of this Act, or any operator of a public cold storage plant refusing to permit any game and fish warden to inspect his plant or the record book, as required under the provisions of this Act, shall be guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Twenty-five (\$25.00) Dollars nor more than Two Hundred (\$200.00) Dollars.

[1925 P.C.; Acts 1933, 43rd Leg., p. 55, ch. 26.]

<sup>1</sup> So in enrolled bill. Session Laws read "an."

Art. 909a. Repealed by Acts 1943, 48th Leg., p. 106, ch. 77, § 1

#### Art. 909a-1. Possession in Public or Private Storage Plant of Game Birds or Water Fowls Permitted

It shall be lawful for any person to have in his possession or in any public or private storage plant any game birds, or water fowls, or migratory water fowls at any time, not in excess of the number or amount permitted by law, and provided such game birds, water fowls or migratory water fowls were killed or taken during the open season for same. All laws and parts of laws in conflict with this section are hereby repealed.

[Acts 1943, 48th Leg., p. 106, ch. 77, § 1a.]

#### Art. 909a-2. Possession or Storage of Game Birds, Animals, Etc., Lawfully Taken or Killed; Repeal of Conflicting Provisions

Sec. 1. It shall be lawful for any person at any time to have in his possession, or to place in and have in any public or private storage plant, refrigerator or locker, any game birds, (migratory or other), game animals, water fowl or migratory water fowl, lawfully taken or killed, not in excess of the number or amount permitted by law to be possessed.

Sec. 2. All laws and parts of laws in conflict herewith are repealed hereby to the extent of such conflict; and specifically repealed hereby is that portion of House Bill No. 451, Chapter 252, Acts of the Regular Session, 48th Legislature,<sup>1</sup> relative to retention limits on certain migratory birds and fowl, and the fixing of retention limits thereon; and especially repealed hereby are any and all other laws, or parts of laws, to the extent which such place limitation upon the time within which game birds, game animals, water fowl or migratory water fowl, lawfully taken or killed, may be possessed, or placed in or kept in any public or private storage plant, refrigerator or locker.

[Acts 1945, 49th Leg., p. 2, ch. 2.]

<sup>1</sup> Article 881b.

#### Art. 910. Female Deer, Fawn or Young Buck

Except as authorized by the Parks and Wildlife Department under the Uniform Wildlife Regulatory Act, or authorized by special law, it shall be unlawful for any person to take, kill, wound, shoot at, or hunt any wild female deer, wild fawn deer, or any wild buck deer without a pronged horn.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than fifty (\$50) dollars, nor more than two hundred (\$200) dollars.

[1925 P.C.; Acts 1973, 63rd Leg., p. 141, ch. 71, § 2, eff. Aug. 27, 1973.]

#### Art. 911. Chief Deputy to Act as Commissioner

The Game, Fish and Oyster Commissioner shall appoint a chief deputy commissioner, who shall maintain an office in the Capitol of this State; and said chief deputy commissioner shall take the constitutional oath of office, and shall act as general

assistant to the said Game, Fish and Oyster Commissioner; and, during the absence, sickness, or disability of the commissioner, he shall exercise the duties of the said commissioner. Said chief deputy commissioner shall devote his entire time to the work of his office. The chief deputy game, fish and oyster commissioner shall, before assuming the duties of his office, file with the Secretary of State a good and sufficient bond in the sum of five thousand (\$5,000.00) dollars, conditioned on the faithful performance of the duties of his office, which bond shall be approved by the Game, Fish and Oyster Commissioner. It shall be the duty of the chief deputy game, fish and oyster commissioner to prepare and furnish to each county clerk, blank hunting licenses, with stubs attached, numbered serially; and said chief deputy commissioner shall cause an account to be opened in his office with each county clerk, and charge said clerk with the number of licenses furnished him. He shall also open an account with each deputy of the Game, Fish and Oyster Commission and charge such deputy with the number of licenses furnished him. Said accounts shall show the serial numbers of such licenses.

[1925 P.C.]

#### Art. 912. Clerk and Justice of the Peace to Remit Fines

Sec. 1. It shall be the duty of any justice of the peace, clerk of any court, or any other officer of this State, receiving any fine or penalty imposed by any court for violation of any of the laws of this State pertaining to the protection and conservation of wild birds, wild fowl, wild animals, fish, oysters and other wildlife, Acts, 1943, Regular Session, Forty-eighth Legislature, General and Special Laws, page 418, Chapter 285, as amended by Acts, 1945, Regular Session, Forty-ninth Legislature, General and Special Laws, page 373, Chapter 240,<sup>1</sup> and any other law of this State which it is now or may hereafter be the duty of the Game, Fish and Oyster Commission to enforce, after the deduction of the fees allowed by law, to remit said fine or penalty, within ten (10) days from and after collection of same, to the Game, Fish and Oyster Commission or one (1) of its bona fide employees, giving docket number of case, name of person fined, and Section or Article of the law under which conviction was secured. In justice court cases the amount to be remitted to said Commission shall be eighty-five per cent (85%) of such fines and penalties; in county court cases the amount to be remitted to said Commission shall be eighty per cent (80%) of such fines and penalties.

Sec. 2. It is the intention of the Legislature that fees as provided for in Articles 950 and 951, Code of Criminal Procedure, 1925, shall be deducted from all fines and penalties imposed for violations of said laws and that the balance shall be deposited in the State Treasury by said Commission to the credit of the Special Game and Fish Fund for use as provided by law.

[1925 P.C.; Acts 1951, 52nd Leg., p. 359, ch. 225, § 1.]

<sup>1</sup> Article 698b, § 5.

#### Art. 913. Propagation and Scientific Purposes

Permits; Application; Requirements

Sec. 1. The Parks and Wildlife Department is empowered to permit qualified persons to take protected wildlife or fish for propagation, zoological gardens or scientific purposes. Permits may be granted upon application made under oath indicating the particular species and purpose of collection. No permit may be granted for the taking of any species unless the application is endorsed by two recognized specialists in the biological field concerned, who are residents of the United States and who have known the applicant for at least five years. No permit may be granted for the taking of any migratory birds unless the applicant has obtained from the United States Government a permit to collect such birds.

Alligators and Marine Mammals; Capture; Permits

Sec. 1A. The Parks and Wildlife Department may permit the capture of alligators and marine mammals for use and display in public or commercial aquariums. A permit under this section may be issued on the application of any person found by the department to be qualified to carry out the capture in a scientific manner without cruelty. The permit shall specify the species and quantity of animals to be captured.

Permits; Expiration; Authority

Sec. 2. All permits shall expire at the end of the calendar year of issuance. Such permits shall authorize the holder thereof to take, possess, and transport the number and species of individuals specified therein.

Rules and Regulations

Sec. 3. The Parks and Wildlife Department may prescribe reasonable rules and regulations concerning the taking and possession of protected wildlife species indigenous to the State of Texas or fish indigenous to the State of Texas for scientific purposes, zoological gardens, and for propagation purposes. Said department may cancel any permit granted pursuant to this Act for violation of such rules and regulations.

Reports

Sec. 4. Each person who receives a permit pursuant to this Act shall file a written report not later than 10 days after the expiration date of the permit with the Parks and Wildlife Department indicating the number and disposition of specimens taken pursuant to such permit and the results of any research conducted by him during the year.

Powers of Department

Sec. 5. The Parks and Wildlife Department at all times shall have the power to take, transport, release or manage any of the wildlife and fish of this state for investigation, propagation, distribution or scientific purposes.

## Defenses

Sec. 6. It shall be no defense in any prosecution for violation of any of the wildlife or fishing laws of this state that the taking or transporting of wildlife or fish was done for scientific purposes unless such defense is offered on behalf of a person holding a Parks and Wildlife Department permit which was valid at the time of the alleged offense, or on behalf of an employee of the Parks and Wildlife Department acting within the scope of his authority.

## Penalties

Sec. 7. Any person violating any provision of this article shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine of not less than \$25 nor more than \$200; and each bird, fowl, animal, quadruped, nest, egg or fish taken or possessed in violation of this article shall constitute a separate offense.

[Acts 1969, 61st Leg., p. 1595, ch. 490, eff. June 10, 1969; Acts 1971, 62nd Leg., p. 994, ch. 181, § 1, eff. May 13, 1971; Acts 1971, 62nd Leg., p. 2913, ch. 964, § 1, eff. June 15, 1971.]

## Saved from Repeal

*Acts 1973, 63rd Leg., p. 268, ch. 126, relating to the protection of endangered species, provides in § 9: "This Act does not repeal Article 913, Penal Code of Texas, 1925, as amended." See article 913a, § 9.*

## Art. 913a. Protection of Endangered Species

## Definitions

Sec. 1. As used in this Act:

(1) "Director" means the executive director of the parks and wildlife department.

(2) "Department" means the parks and wildlife department.

(3) "Fish or wildlife" means any wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, product, egg, offspring, dead or alive, of a wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean.

(4) "Person" means any individual, firm, corporation, association, or partnership.

(5) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and the maintaining of such levels. The term "management" likewise includes the entire range of activities constituting a full scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

## Nongame Species

Sec. 2. (a) The department shall conduct investigations on nongame fish and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determination, the department shall issue proposed regulations not later than one year from the effective date of this Act and develop management programs designed to insure the continued ability of nongame fish and wildlife to perpetuate themselves successfully. The proposed regulations shall set forth species or subspecies of nongame wildlife which the department deems in need of management pursuant to this section, giving their common and scientific names by species and subspecies. The department shall conduct ongoing investigations of nongame fish and wildlife and may from time to time amend such regulations by adding or deleting therefrom species or subspecies of nongame wildlife.

(b) The department shall by regulations establish proposed limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage nongame fish and wildlife. The regulations shall become effective 60 days after being proposed and during that period public comment shall be solicited. The department shall hold a public hearing, notice of which shall be published in at least three major newspapers of general circulation in this state at least one week prior to the hearing date. On the basis of public comments received or the testimony at a hearing the department may make such changes in the proposed regulations as are consistent with effective management of nongame fish and wildlife.

## Endangered Species

Sec. 3. Fish or wildlife are classified as endangered species if they appear on:

(1) the present United States List of Endangered Foreign Fish and Wildlife (50 C.F.R. Part 17, Appendix A);

(2) the present United States List of Endangered Native Fish and Wildlife (50 C.F.R. Part 17, Appendix D); or

(3) the list filed by the director under this Act of fish or wildlife threatened with statewide extinction.

## Statewide Extinction

Sec. 4. Fish or wildlife may be classified by the director as threatened with statewide extinction if the department finds that the continued existence of the fish or wildlife is endangered in this state due to any of the following factors:

(1) the destruction, drastic modification, or severe curtailment of its habitat;

(2) the over-utilization of it for commercial or sporting purposes;

(3) the effect on it of disease or predation; or

(4) other natural or man-made factors affecting its continued existence.

Initial Classification by Director

Sec. 5. Within 45 days after the effective date of this Act, the department shall file with the secretary of state a proposed list of fish or wildlife threatened with statewide extinction. This list shall become effective on the 45th day after the date it is filed. Before the effective date of the proposed list, the department shall hold a public hearing on the proposed list. Notice of the hearing shall be published in at least three major newspapers of general circulation in this state at least one week prior to the hearing date. The proposed list may be amended prior to its effective date.

Classification Amendment by Director

Sec. 6. (a) If the federal lists set out in Section 3 of this Act are subsequently altered, the director shall file an order with the secretary of state accepting the alteration. The order is effective immediately.

(b) The department may amend the list filed under Section 5 of this Act by filing an order with the secretary of state. Notice of the intent to file the order and the contents of the proposed order must be given 60 days prior to the date of filing. If petition procedures set out in Section 7 of this Act are initiated relating to the contents of the proposed order during the 60-day notice period, the order may not be filed until the conclusion of the proceedings. The order is effective on the date of filing.

Petition for Reclassification

Sec. 7. (a) On the petition of three interested persons presenting substantial scientific evidence for the addition or deletion of fish or wildlife classified as threatened with statewide extinction, the department may conduct a review of the classification and file an order with the secretary of state adding or deleting fish or wildlife from the list of fish or wildlife threatened with statewide extinction.

(b) If the department refuses to conduct a review of the classification of fish or wildlife threatened with statewide extinction under Subsection (a) of this section, a petition of 50 interested persons presenting scientific evidence for the addition or deletion of fish or wildlife classified as threatened with statewide extinction may be presented to the department. On receipt of this petition, the department must hold a public hearing to review the classification. Notice of the hearing shall be published in at least three major newspapers of general circulation in this state at least one week prior to the hearing date. Based on findings from the public hearing, the department may file an order with the secretary of state adding or deleting fish or wildlife from the list of fish or wildlife threatened with statewide extinction.

(c) Orders filed under this section are effective immediately.

Use of Name for Sale

Sec. 8. No person may advertise, offer for sale, or sell any other species of fish or wildlife under the name of any fish or wildlife classified as an endangered species.

Permit to Take Certain Fish or Wildlife

Sec. 9. (a) No person may take, possess, or transport fish or wildlife classified as endangered species for zoological gardens or scientific purposes or take or transport fish or wildlife classified as endangered species from the wild or from their natural habitat for propagation for commercial purposes, unless he has obtained a permit under Article 913, Penal Code of Texas, 1925, as amended, or under a federal permit.

(b) A permit may not be granted under Article 913, Penal Code of Texas, 1925, as amended, if the taking, possessing, or transporting of the fish or animal classified as an endangered species is specifically prohibited by federal law.

(c) The department may refuse to grant a permit to take or transport fish or wildlife classified as an endangered species from the wild or from their natural habitat for propagation for commercial purposes if the fish or wildlife may be legally obtained from a source in this state other than the wild or its natural habitat.

(d) Fish or wildlife classified as an endangered species shall be considered and included within the meaning of "protected fish or wildlife" as that term is used in Article 913, Penal Code of Texas, 1925, as amended.

(e) Failure to comply with this section is a violation of this Act. Failure to comply with the terms of a permit issued under Article 913, Penal Code of Texas, 1925, as amended, is a violation of that article.

(f) The provisions of this Act do not apply to the possession of mounted or preserved endangered species by public or private nonprofit educational, zoological, or research institutions held prior to the effective date of this Act. The department may require such institutions to furnish a list of mounted or preserved endangered species which they hold, together with adequate proof of the time of acquisition.

Propagation

Sec. 10. No person may possess fish or wildlife classified as endangered species for the purpose of propagating them for sale unless he has obtained a commercial propagation permit issued under this Act.

Original Commercial Propagation Permit

Sec. 11. (a) An applicant for an original commercial propagation permit must submit to the department the permit fee of \$300 and an application containing information or statements required by the department.

(b) The department shall issue an original commercial propagation permit to an applicant on compliance with Subsection (a) of this section if the

department is satisfied that the fish or wildlife to be used for initial breeding stock was acquired by the applicant for commercial propagation purposes under Section 9 of this Act, federal rules, regulations, or permits, or from a person or source authorized to possess, sell, or dispose of the fish or wildlife under the laws of this state, another state, or federal law.

(c) Each original commercial propagation permit which is issued shall contain a description of the fish or wildlife classified as an endangered species which may be possessed by the permit holder.

(d) An original commercial propagation permit expires one year from the date of issuance.

#### Renewal Commercial Propagation Permit

Sec. 12. (a) The department shall renew a commercial propagation permit on receipt of an application and the \$550 renewal fee prior to or within 10 days of the expiration date of the permit.

(b) A renewal commercial propagation permit expires three years from the date of issuance and may be renewed under the same conditions as renewal of the original permit.

(c) The department may refuse to renew any permit when it is deemed to be in the best interest of the species.

#### Duty of Permittee

Sec. 13. A person holding a commercial propagation permit must submit annually to the department:

(1) a written report by a veterinarian licensed to practice in this state containing an evaluation of the physical conditions of the propagation facilities and the condition of the fish or wildlife held by the permit holder; and

(2) a written report by the permit holder on forms prepared by the department relating to the general propagation activity during the previous year.

#### Refusal or Cancellation of Permit

Sec. 14. (a) If, on the basis of the reports required by Section 13 of this Act or from an investigation or inspection of an authorized employee of the department, the department finds that a permit holder is improperly caring for or handling the fish or wildlife held under the permit, the department shall give written notice of the objectionable actions or conditions to the permit holder.

(b) If the department finds that the improper caring for or handling of the fish or wildlife is detrimental to the fish or wildlife and the fish or wildlife need immediate protection, the department may seize the fish or wildlife and authorize proper care pending the correction of the improper conditions or actions.

#### Appeal

Sec. 15. (a) A person whose application for a commercial propagation permit or for renewal of a commercial propagation permit has been refused by the department or whose permit has been cancelled may take an appeal within 20 days from the date of

refusal to any district court of Travis County or to any district court of the county of his residence.

(b) A case reviewed under the provisions of this section proceeds in the district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this state. Appeal from the judgment of the district court lies as in other civil cases.

#### Disposition of Fish or Wildlife

Sec. 16. A person who holds a commercial propagation permit and fails to renew the permit or his renewal application is denied, or whose permit is cancelled under Section 14 of this Act, must dispose of the fish or wildlife held under the permit and any increase in the fish or wildlife in the manner specified by the department.

#### Rules and Regulations

Sec. 17. The department shall make rules and regulations to administer the provisions of this Act including:

(1) permit application forms, fees, and procedures;

(2) hearing procedures;

(3) procedures for identifying fish or wildlife classified as endangered species or goods made from fish or wildlife classified as endangered species which may be possessed, propagated, or sold under the provisions of this Act;

(4) publication and distribution of lists of the species or subspecies of fish or wildlife or products of fish or wildlife classified as endangered species; and

(5) other rules and regulations necessary to attain the objectives of this Act.

#### Disposition of Funds

Sec. 18. Money received from the issuance of permits under this Act or from violations of this Act shall be deposited by the department in the state treasury to the credit of the general revenue fund.

#### Sale of Fish or Wildlife Classified as Endangered Species

Sec. 19. (a) No person may sell, process, offer for sale, advertise for sale, or distribute fish or wildlife classified as endangered species unless the fish or wildlife have been lawfully born and raised in captivity for commercial purposes under the provisions of this Act or federal law.

(b) No person may sell, process, offer for sale, advertise for sale, or distribute goods made from fish or wildlife classified as endangered species unless the goods were made from fish or wildlife which were lawfully born and raised in captivity for commercial purposes under the provisions of this Act or federal law.

(c) Fish or wildlife classified as endangered species or goods made from fish or wildlife classified as endangered species sold under this section must be tagged or labeled in a manner to indicate compliance with this section.

## Exemptions

Sec. 20. The provisions of this Act do not apply to coyotes (prairie wolves), cougars, bobcats, prairie dogs or red foxes.

No provision of this Act shall apply to any animals, fish or fowl which are privately owned or to the management or taking of such privately owned animals, fish or fowl by the private owners of such animals, fish or fowl.

## Enforcement

Sec. 21. (a) The provisions of this Act shall be enforced by the department.

(b) Any commissioned peace officer in this state, including game management officers commissioned as peace officers in this state may execute a warrant to search for and seize fish or wildlife or goods made from fish or wildlife taken, sold, or possessed in violation of this Act or the rules and regulations issued under this Act. The officer may arrest without warrant a person who the officer has probable cause to believe is violating any provision of this Act or a rule or regulation issued under this Act.

(c) An officer who has made an arrest of a person for a violation of this Act or the rules and regulations issued under this Act may search the person at the time of arrest and seize fish or wildlife, or goods made from fish or wildlife, taken, possessed, or made in connection with a violation of this Act or the rules and regulations issued under this Act.

(d) Fish or wildlife, or goods seized under this section shall be delivered to the department and held by the department pending disposition of court proceedings. Subsequent to the disposition of court proceedings, the department shall dispose of fish or wildlife, and goods in accordance with rules and regulations established by the department. Any costs of maintenance for fish or wildlife seized under this section incurred by the department during the pendency of court proceedings may be assessed to the defendant.

## Penalty

Sec. 22. A person who violates a provision of this Act or a rule or regulation issued under this Act is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than \$100 nor more than \$200. A person who is convicted for a second violation of a provision of this Act or a rule or regulation issued under this Act is punishable by a fine of not less than \$200 nor more than \$500, or confinement in the county jail for not less than 30 days nor more than 90 days, or both. A person who is convicted for a third or subsequent violation of a provision of this Act or a rule or regulation issued under this Act is punishable by a fine of not less than \$500 nor more than \$2,000, and confinement in the county jail for not less than six months nor more than one year.

## Conflict of Laws

Sec. 23. Any species or subspecies of fish or wildlife classified as an endangered species shall be governed exclusively by the provisions of this Act

and no other regulatory or licensing laws of this state shall be applicable. This Act does not repeal Article 913, Penal Code of Texas, 1925, as amended.

## Funding

Sec. 24. Funds for the administration of this Act may be appropriated from the general revenue fund by legislative appropriation.

## Issuance of Permits on Effective Date

Sec. 25. Any person who is engaged in the business of commercial propagation of a species of fish or wildlife classified as an endangered species on the effective date of this Act, may obtain a permit under Section 11 of this Act regardless of the method in which the fish or wildlife were initially obtained. Application for a permit under this section must be submitted within 120 days from the effective date of this Act.

## Effective Date

Sec. 26. Subsection (b) of Section 19 of this Act shall become effective September 1, 1974.

[Acts 1973, 63rd Leg., p. 268, ch. 126, eff. Aug. 27, 1973; § 19(b) eff. Sept. 1, 1974.]

**Art. 914. Special Deputy Game Commissioners**

It shall be the duty of the Game, Fish and Oyster Commissioner to appoint special deputy game commissioners, who shall be ex officio deputy game, fish and oyster commissioners to enforce conservation laws in the various districts of the State, with all the powers of the latter to enforce the game, fish and oyster laws of this State. Such special deputy game commissioners shall not receive more than one hundred and fifty (\$150.00) dollars per month and expenses. Each special deputy game commissioner shall take the oath of office, and shall give a good and sufficient bond in the sum of one thousand (\$1,000.00) dollars for the faithful performance of his duties, such bond to be approved by and filed with the Game, Fish and Oyster Commissioner. Such special deputy game commissioners shall hold office at the discretion of the Game, Fish and Oyster Commissioner, and shall have all the powers in the discharge of their duties as are conferred on the Game, Fish and Oyster Commissioner.

The Game, Fish and Oyster Commissioner, in order to enforce conservation laws in the various sections of the State, shall also have the power to appoint deputy game commissioners in any county of the State; and said deputies shall have, in the discharge of their duties, the same powers and authority as are herein provided for the Game, Fish and Oyster Commissioner, and shall be subject to the supervision and control of and removal by said Game, Fish and Oyster Commissioner; except that they shall not be authorized to carry on or about their person, saddle, or saddle-bags any pistol, dirk, dagger, slung-shot, sword-cane, spear or knuckles made of any metal or any hard substance, Bowie knife or other knife manufactured or sold for the purpose of offense or defense. Such deputy game commissioners shall not receive more than three (\$3.00) dollars a day for each day of service per-

formed, together with all necessary expenses incurred, when same have been rendered on sworn account, and when the performance of said services was authorized by the Game, Fish and Oyster Commissioner, the chief deputy commissioner, or a special deputy game commissioner, which account shall be approved by the Game, Fish and Oyster Commissioner or chief deputy commissioner, and paid on warrant drawn by the Comptroller.

[1925 P.C.]

#### Art. 915. Season for Turkeys

The open season for killing wild turkeys shall be during November and December. Whoever kills wild turkey hen, or more than three wild turkey gobblers during any one year shall be fined not less than ten nor more than one hundred dollars. Each gobbler killed above three shall be a separate offense.

[1925 P.C.]

#### Art. 915a. Special Deputy Commissioners Required to Enforce Game Law

All special deputy game commissioners and deputy game commissioners are hereby empowered and required to enforce the game, fish and oyster laws of this State, and such deputy who violates such laws shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than one hundred (\$100.00) dollars nor more than two hundred (\$200.00) dollars.

[1925 P.C.]

#### Art. 916. Killing Turkeys in Certain Counties

It shall be unlawful for any person to take, kill, wound, shoot at, hunt for, or possess, dead or alive any wild turkey gobbler, or turkey hen in the counties of Cameron, Hidalgo, Starr, Willacy, Kennedy, Brooks, Kleburg, or Nueces until November 16, 1930, from and after which time it shall be lawful to kill only turkey gobblers as herein provided in this bill.

[1925 P.C.]

#### Art. 917. Game Preserves—How Acquired

Any person, firm or corporation owning and in possession of lands in the State of Texas, may transfer by an instrument of writing, duly acknowledged before an officer, authorized under the laws of this State to take acknowledgments, to the State of Texas the right to preserve, protect and introduce for propagation purposes any of the game birds or game animals mentioned in this chapter on the lands mentioned therein, for a period of not less than ten years. Such instrument of writing shall be filed in the office of the Game, Fish and Oyster Commissioner, whereupon the Game, Fish and Oyster Commissioner may at his discretion declare the lands described in said instrument a State Game Preserve, and thereafter for the period named therein shall for all the purposes relating to the preservation, protection and propagation of game birds and game animals be under the control of the Game, Fish and

Oyster Commissioner. The aggregate acreage of all preserves which may be designated in any one county shall never exceed ten per cent of the total acreage of such county. Such preserves shall be numbered in the order of the filing of the instrument therefor. The Game, Fish and Oyster Commissioner shall cause notices to be prepared containing the words "State Game Preserve," "Trespassing Prohibited," and cause such notices to be posted at each gate or entrance thereto. All State game preserves established under the provisions of this chapter shall for all purposes of preservation, protection and propagation of game birds and game animals thereon be under the control and management of the Game, Fish and Oyster Commissioner, and he and his deputies may at all times enter in and upon such preserves in the performance of their duties.

It shall be unlawful for any person to hunt, pursue, shoot at, kill, take, destroy, or in any manner molest any of the game birds or game animals within the exterior boundaries of any game preserve, and any person who shall violate any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty (\$50.00) dollars nor more than two hundred (\$200.00) dollars.

[1925 P.C.]

#### Art. 918. Cautioning Sportsmen

It shall be the duty of the Game, Fish and Oyster Commissioner and his deputies, in addition to their duties provided for in this chapter, to caution sportsmen and other persons while in the woods, marshes, or prairies of the State of danger from fire; and, to the extent of their power, to extinguish all fires left burning by any one, and to give notice, when possible to any and all persons, interested, of fires ranging beyond control to the end that same may be controlled and extinguished.

[1925 P.C.]

#### Art. 919. Power of Commissioners to Enter on Lands

The Game, Fish and Oyster Commissioner and his deputies shall at all times have the power to enter upon any lands or water where wild game or fish are known to range or stray for the purpose of enforcing the game, and fish laws of this State, and for the purpose of making scientific investigations or for research work as to such wild game or fish, and no action in any court shall be sustained against the commissioner or any of his deputies to prevent their entrance upon lands or waters when acting in their official capacity as herein set forth.

[1925 P.C.]

#### Art. 920. Citizen, Non-resident and Alien Defined

For the purpose of this chapter, any person, except an alien, who has been a bona fide resident of this State for a period of time exceeding six months, continuously and immediately before applying for a hunting license, shall be considered a citizen of this State.

An alien is any person who is not a natural born citizen of the United States of America, and who has not declared his intention to become a citizen of the United States of America.

A non-resident shall be any person who is a citizen of any other State, or who has not continuously or immediately previous to the time of applying for a hunting license, been a bona-fide resident of the State of Texas, for a period of time more than six months.  
[1925 P.C.]

#### Art. 921. Constitutionality

If any paragraph, section, or part of this chapter shall be held unconstitutional or inoperative, it shall not affect any other paragraph, section, or part of this chapter; and the remainder of this chapter, save the part declared unconstitutional or inoperative, shall continue to be in full force and effect.  
[1925 P.C.]

#### Art. 922. Name of Bill

This bill shall be known as the "Boyd-Hubby Game Bill" and shall take effect and be in force from and after September 1, 1925.  
[1925 P.C.]

#### Art. 923. Killing Birds in Closed Season

No person shall kill or take any of the birds or fowls enumerated in Article 872 except during the open season as fixed for each kind of bird or fowl, and if any person shall kill, take or have in his possession, any of the birds or fowls enumerated in Article 872 at any time of the year except during the open season as provided for in this chapter, he shall be fined not less than ten nor more than one hundred dollars.  
[1925 P.C.]

#### Art. 923a. Importing Game in Closed Season

It shall be unlawful to bring into this State for any purpose whatever during the closed season, either alive or dead, any kind of wild game birds or fowl or animal, enumerated in this chapter, or to bring into this State for sale or exchange or barter or shipment for sale any such bird or fowl or animal, during the open season as set out in this chapter except as provided in article 908. Any person bringing such game bird or fowl or animal into the State during the closed season or bringing such game bird or fowl or animal for sale or barter or shipment for sale during the open season, shall be fined not less than ten nor more than two hundred dollars. The bringing in of each game bird or fowl or animal herein interdicted is a separate offense.  
[1925 P.C.]

Art. 923b. Repealed by Acts 1957, 55th Leg., p. 355, ch. 164, § 1

#### Art. 923b-1. Brown Pelican; Permit to Kill Required

Sec. 1. From and after the passage of this Act it shall be unlawful to kill, take or attempt to take or

kill any brown pelican in this State, unless permit is first obtained from the Game, Fish and Oyster Commission of the State of Texas.

Sec. 2. Any person violating this Act shall be deemed guilty of a misdemeanor and shall be fined in a sum not more than Ten (\$10.00) Dollars.  
[Acts 1939, 46th Leg., Spec.Laws, p. 828.]

#### Art. 923c. Birds Protected by Audubon Society

After the recording of the lease made by the Commissioner of the General Land Office to the National Association of Audubon Societies for the purpose of protecting birds and bird life on and about the property leased in Kleberg County, known as North Bird Island and South Bird Island and on Green Island in Cameron County and on the group of three islands in Big Bay in Cameron County and on the flats and reefs and shallow waters near all of said islands as described in the laws of this State, it shall be unlawful for any person whomsoever except a representative, an agent or an employé of said Association or a peace officer of this State or of the United States to enter upon such leased area without the knowledge and consent of said association, for the purpose of catching or killing any bird or birds or for the purpose of taking any bird or bird eggs or to destroy any bird nests or bird eggs; it shall be unlawful for any person whomsoever to catch, kill or maim any bird or birds on such leased area or to catch, kill or maim or attempt to catch, kill or maim any bird or birds on or above said area by any means whatsoever even though such person may be above or outside of such leased area; it shall be unlawful for any person whomsoever to discharge any firearms or other explosive on or above such leased area; or to land, tie or anchor any fishing boat within such leased area. Nothing herein shall be construed to prohibit any representative, agent or employé of said Association from catching, killing or destroying within any such leased area any bird or birds and any animals that may be known to prey upon bird life or bird eggs nor to prohibit such representatives, agent or employé from taking bird eggs and catching any bird for propagation or conservation or scientific purposes only, nor to prohibit persons from taking refuge on such area on account of storms. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than five hundred dollars, or be imprisoned in jail for not less than ten days nor more than six months, or both.  
[1925 P.C.]

#### Art. 923d. Refusing to Stop Vehicle for Search

The Commissioner or any of his deputies shall have the right to search the game bag or any other receptacle of any kind whenever such Commissioner or his deputy has reason to suspect that such game bag, or other receptacle or any buggy, wagon, automobile or other vehicle may contain game unlawfully killed or taken, and any person who refuses to permit the searching of the same, or who refuses to

stop such vehicle when requested to do so by the Commissioner or his deputy, shall be fined not less than ten nor more than one hundred dollars. [1925 P.C.]

#### Art. 923e. Buying for Evidence

One who buys, for the purpose of establishing testimony, a game bird or animal the sale of which is prohibited by this chapter shall not be prosecuted for such purchase. [1925 P.C.]

#### Art. 923f. Shipping Deer

Whoever ships any deer or any part thereof by common carrier without the person shipping it making the affidavit prescribed in Article 889, and whoever ships or receives for shipment as the agent of any transportation company any deer or any part thereof, shall be fined not less than ten nor more than one hundred dollars. [1925 P.C.]

#### Art. 923f-1. Trapping, Transporting and Transplanting Wild White-Tailed Deer

Sec. 1. The purpose of this Act is to prevent the wasting of surpluses of wild white-tailed deer in areas where present methods of harvest are inadequate for the maintenance of a balanced supply of this wildlife resource. In order to assure better utilization of surpluses of wild white-tailed deer, which have increased in some areas to such densities as to become a threat to the livestock and agricultural industries, and which, in other areas, are below carrying capacity, it is deemed for the public welfare that this Legislature enact legislation adaptable to changing conditions so that the supply of this important wildlife resource may be kept more constantly adequate and that waste will be reduced.

Sec. 2. It shall be the duty of the Game and Fish Commission to issue to any person or persons qualifying under the terms of this Act a permit or permits for the trapping of wild white-tailed deer in overpopulated areas, where harvest provisions are inadequate for maintaining a balanced supply of this wildlife resource, and for transporting and transplanting such wild white-tailed deer into other areas of adaptable habitat for appropriate harvest. Such permits shall not entitle anyone to take, trap or reduce to possession wild white-tailed deer on any privately owned land without the landowner's express written permission.

Sec. 3. The trapping, transporting, and transplanting of wild white-tailed deer under permit issued by the Game and Fish Commission shall be accomplished at no expense to the State, with all costs to be borne by the person or persons obtaining the permit.

Sec. 4. Under the provisions of this Act, the Game and Fish Commission shall issue such permits for the trapping, transporting, and transplanting of wild white-tailed deer upon a showing satisfactory to it that there is an overpopulation of such deer in

the area in which they are to be trapped and that the area to which such deer are to be removed and transplanted will be suitable therefor.

Sec. 5. It shall be unlawful to hunt, take, or kill wild white-tailed deer transplanted under terms of this Act except as provided by law for the hunting, taking, or killing of native wild white-tailed deer in the county to which such deer are transplanted. [Acts 1961, 57th Leg., p. 426, ch. 208, eff. May 24, 1961.]

#### Art. 923(g). Using Deer Call

Any person who at any time of the year in hunting deer uses a deer call, whistle, decoy, call pipe, reed or other device, mechanical or natural, for the purpose of calling or attracting any deer, except by rattling deer horns, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail not less than twenty nor more than ninety days, or both. [1925 P.C.]

#### Art. 923g. Deer in Bosque County

For a period of five years after June 12, 1923, whoever shall hunt, trap, ensnare or kill any wild deer within Bosque County shall be fined not less than twenty-five nor more than one hundred dollars. [1925 P.C.]

#### Art. 923g-1. Deer in Parker and Palo Pinto Counties

Sec. 1. For five years from and after the passage of this Act, it shall be unlawful for any person to shoot at, or kill, any wild deer in Parker or Palo Pinto Counties.

Sec. 2. Whosoever shall violate the provisions of this act shall be guilty of misdemeanor and upon conviction thereof shall be fined not less than One Hundred (\$100.00) Dollars and not more than Two Hundred (\$200.00) Dollars, provided each deer so shot shall constitute a separate offense. [Acts 1929, 41st Leg., p. 507, ch. 243.]

#### Art. 923g-2. Deer in Hemphill and Other Counties

Sec. 1. For five years from and after the passage of this Act, it shall be unlawful for any person to shoot at, or kill, any wild deer in Hemphill, Roberts or Hutchinson Counties.

Sec. 2. That whosoever shall violate the provisions of this Act shall be guilty of misdemeanor and upon conviction thereof shall be fined not less than One Hundred (\$100.00) Dollars and not more than Two Hundred (\$200.00) Dollars, provided each deer so shot shall constitute a separate offense. [Acts 1929, 41st Leg., p. 506, ch. 242.]

#### Art. 923h. Sale or Purchase of Game; Sale by Taxidermists or Tanners of Unclaimed Heads or Hides

Whoever shall sell or offer for sale, or have in his possession after purchase, any wild deer, wild ante-

lope or Rocky Mountain sheep killed in this State, or the carcass, hide or antlers of wild antelope or Rocky Mountain sheep, or the carcass of wild deer, shall be fined not less than Ten Dollars (\$10), nor more than One Hundred Dollars (\$100), but it shall be lawful to sell deer hides or antlers or to possess deer hides or antlers after sale.

Provided, further, that a taxidermist or tanner having in his possession heads or hides of any such animal mounted or tanned which have not been claimed by the owner thereof, within a period of ninety (90) days after notification by the tanner or taxidermist, and for which said tanner or taxidermist has not received compensation for labor performed on same, may sell said heads or hides for the amount due him, accompanied by the original affidavit of the person leaving same to be mounted or tanned with said taxidermist or tanner, as provided for in Article 889 of Chapter 6, Title 13, of the Penal Code of the State of Texas, 1925, as to manner of killing said animal in accordance with the laws of the State of Texas. Said taxidermist or tanner shall make immediate report of said sale to the Parks and Wildlife Department, giving the name of the person to whom sold and accompanied by affidavit as to the manner in which said hide or head was obtained, as provided for in Article 889, Chapter 6, of the Penal Code of the State of Texas.

[1925 P.C.; Acts 1933, 43rd Leg., p. 324, ch. 124; Acts 1947, 50th Leg., p. 1014, ch. 432, § 1; Acts 1973, 63rd Leg., p. 607, ch. 259, § 2, eff. June 11, 1973.]

**Art. 923i. Liberty County Squirrels**

Whoever shall ship or cause to be shipped beyond the limits of Liberty County, or any agent or employé of any express or railroad company or other common carrier who receives for the purpose of transportation, or who shall transport, carry or take beyond the limits of said county, any wild squirrels, shall be fined not less than ten nor more than one hundred dollars.

[1925 P.C.]

**Art. 923k. Montgomery County Squirrels**

Whoever sells or offers for sale or ships for sale in Montgomery County any squirrels shall be fined not less than twenty-five nor more than one hundred dollars.

[Act 1909, p. 117.]

**Art. 923l. Killing Squirrels Prohibited**

Whoever kills any squirrels in the counties of Angelina, Cherokee, Hardin, Liberty, Nacogdoches, Dallas, Rockwall, Tyler, Jefferson, Orange, Jasper, or Newton during the months of January to July inclusive, or kills more than five squirrels in any one day during any other month in any of said counties shall be fined not to exceed fifty dollars.

[Acts 1917, 3rd C.S., p. 69.]

**Art. 923ll. Hardin County Squirrels**

Sec. 1. From and after the passage of this Act it shall be unlawful for anyone to kill squirrels in

Hardin County, Texas, during the months of February 1st to October 15th, inclusive.

Sec. 2. During the other months of the year it shall be unlawful for anyone to kill more than ten squirrels in any one day.

Sec. 3. Every person violating any of the provisions of this Act shall upon conviction be punished by a fine of not less than ten dollars or more than one hundred dollars.

[Acts 1927, 40th Leg., 1st C.S., p. 137, ch. 45.]

**Art. 923ll-1. Open Season for Squirrels in Certain Counties**

Hereafter it shall be lawful to kill squirrels at any time in the Counties of Runnels, Travis, Williamson, San Saba, Llano, Lampasas, Burnet, Goliad, Blanco, Hays, Tom Green, Irion, Sterling, Concho, Erath, Bell and Hood.

[Acts 1929, 41st Leg., p. 304, ch. 141, § 1; Acts 1930, 41st Leg., 5th C.S., p. 230, ch. 72, § 1; Acts 1949, 51st Leg., p. 11, ch. 11, § 1.]

**Art. 923ll-2. Squirrels in Panola and Other Counties**

Sec. 1. It shall be unlawful for any one to hunt, take or kill any squirrel, except during the months of November, December and January of any year, in the following counties: Panola, Rusk, Angelina, Tyler, Sabine, San Augustine, Nacogdoches, Jasper, Newton, Cherokee, Jefferson, Orange, Hardin, Liberty, Shelby, San Patricio, Chambers.

It shall be lawful for any one to hunt, take and kill squirrels in the Counties of Marion, Cass, Bowie, Morris and Smith during the months of May, June, July, November, December and January of any year.

Sec. 2. Any one who shall hunt, take or kill any squirrel in the counties named in this Act at any time except during the months of November, December and January shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten (\$10.00) Dollars nor more than Fifty (\$50.00) Dollars and his hunting license shall be automatically cancelled and he shall not be entitled to receive another such license for a period of one year from the date of his conviction. Provided that each squirrel taken or killed in violation of this Act shall constitute a separate offense.

[Acts 1929, 41st Leg., p. 449, ch. 208; Acts 1929, 41st Leg., 2nd C.S., p. 53, ch. 33, § 1.]

**Art. 923ll-3. Williamson County Squirrels**

It shall be unlawful for any person to take or kill any squirrel or squirrels in Williamson County, Texas, during the months of January, February, March, April, August and September of any year, and the remainder of each year shall be an open season during which it shall not be unlawful to hunt or take wild squirrels in said county. Any person violating this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$10.00 nor more than \$100.00. Any provision of any law in

conflict with this act whether enacted at this Session or some other Session of the Legislature is hereby repealed insofar as Williamson County is concerned. [Acts 1929, 41st Leg., p. 431, ch. 199, § 1.]

#### Art. 923H-4. Squirrels in Colorado and Other Counties

Sec. 1. It shall be unlawful for any person to hunt, take or kill squirrel, except during the months of May, June, July, October, November and December of any year in the following named counties: Colorado, San Patricio, Titus, Morris, Smith, Walker, San Jacinto, Waller, Fort Bend, Rusk, Matagorda, Brazoria, Bowie, Cherokee, Austin and Panola.

Sec. 2. Any person who shall hunt, take or kill any squirrel in violation of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten Dollars (\$10.00), nor more than Fifty Dollars (\$50.00).

[Acts 1929, 41st Leg., 2nd C.S., p. 35, ch. 21; Acts 1931, 42nd Leg., Spec.Laws, p. 101, ch. 36; Acts 1933, 43rd Leg., Spec.Laws, p. 18, ch. 17.]

#### Art. 923H-5. Squirrels in Marion, Cass and Bowie Counties

Sec. 1. That from and after the passage of this Act it shall be unlawful for any person to hunt, take, or kill any squirrel except during the months of May, June, July, October, November, and December in the counties of Marion, Cass, and Bowie.

Sec. 2. Any person who shall hunt, take, or kill any squirrel in the counties named in this Act at any time except the above designated months shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten (\$10.00) Dollars nor more than Fifty (\$50.00) Dollars, provided that each squirrel killed in violation of this Act shall constitute a separate offense.

[Acts 1930, 41st Leg., 4th C.S., p. 29, ch. 18.]

#### Art. 923H-6. Bag Limit on Squirrels

It shall be unlawful for any person to take or kill more than ten (10) squirrels in any one day or to have in possession at any time more than twenty (20) squirrels; provided, however, that the terms and provisions of this Act shall not apply to the following counties: Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Blanco, Brown, Bosque, Brazoria, Burnet, Caldwell, Calhoun, Callahan, Chambers, Colorado, Cooke, Coryell, Comanche, Comal, Concho, Delta, DeWitt, Dimmit, Eastland, Edwards, Erath, Fayette, Fort Bend, Franklin, Galveston, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hamilton, Hill, Hopkins, Jackson, Karnes, Kerr, Kendall, Kimble, Lamar, Lampasas, Lavaca, Live Oak, Llano, Mason, Matagorda, McCulloch, Menard, Medina, Mills, Montague, Real, Red River, Refugio, San Patricio, San Saba, Schleicher, Stephens, Tarrant, Throckmorton, Travis, Uvalde, Victoria, Waller, Washington, Wharton, Wilson, Wise, Zavala. [Acts 1931, 42nd Leg., Spec.Laws, p. 453, ch. 233, § 1.]

#### Art. 923H-7. Squirrels in Polk and Other Counties

Sec. 1. It shall be unlawful for anyone to hunt, take or kill any squirrel in Polk, Trinity, Nacogdoches, Shelby and Kaufman Counties, except during the months of November, December and January in each year; and unlawful for anyone to hunt, take or kill any squirrel in Jefferson County, except during the months of June, July, November, December and January of each year.

Sec. 2. Anyone who shall hunt, take or kill any squirrel in the counties named in this Act at any time, except during the months of November, December and January, for the Counties of Polk, Trinity, Nacogdoches, Shelby, Angelina and Kaufman; and June, July, November, December and January, for the County of Jefferson, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten Dollars (\$10.00) nor more than Fifty Dollars (\$50.00), and his hunting license shall be automatically cancelled and he shall not be entitled to receive another such license for a period of one (1) year from the date of his conviction. Provided that each squirrel taken or killed in violation of this Act shall constitute a separate offense.

[Acts 1932, 42nd Leg., 3rd C.S., p. 9, ch. 8.]

#### Art. 923m. Fur-bearing Animals

##### Definition

Sec. 1. All fur-bearing animals of this State are hereby declared to be the property of the people of this State. For the purposes of this Act, wild beaver, wild otter, wild mink, wild ring-tail cat, wild badger, wild polecat or skunk, wild raccoon, wild muskrat, wild opossum, wild fox and wild civet are hereby declared to be fur-bearing animals.

##### Open Season

Sec. 2. It shall be unlawful for any person to take or attempt to take the pelt of any fur-bearing animal of this State at any time other than the open season provided therefor. The open season for taking pelts of fur-bearing animals shall be during the months of December and January of each year, except muskrats, the open season for which shall be from the 15th day of November to the 15th day of March, both days inclusive, and except mink, the open season for which shall be November 15th to January 15th, both days inclusive. A person may hunt, take or kill a fur-bearing animal, as defined in this Act, for purposes other than taking its pelt for sale during any month of the year.

##### Possession of Pelts in Closed Season

Sec. 3. The possession of green or undried pelts of fur-bearing animals after January 31st of any year shall be prima-facie evidence of a violation of this Act.

##### Mink; Hunting with Dogs; Exception

Sec. 4. No person shall hunt, take, or kill or attempt to hunt, attempt to take, or attempt to kill wild mink in the State of Texas with dogs, and no person shall have in his possession a mink pelt while

hunting with dogs. This Section shall not apply, however, to the counties of Hopkins, Delta, Franklin, Camp, Rains, Grayson, and Fannin.

Penalty

Sec. 5. A person who violates this Act shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[Acts 1925, 39th Leg., ch. 177, p. 434, § 1; Acts 1957, 55th Leg., p. 839, ch. 367, § 1; Acts 1959, 56th Leg., p. 565, ch. 256, § 1; Acts 1963, 58th Leg., p. 815, ch. 311, § 1; Acts 1965, 59th Leg., p. 311, ch. 142, § 1, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 848, ch. 410, § 1, eff. Aug. 30, 1965.]

**Art. 923m-1. Incorporated in Art. 923m**

Article 923m-1 consisted of Acts 1957, 55th Leg., p. 839, ch. 367, §§ 2 to 5.

**Art. 923mm. Trapper Defined**

The term trapper as used under the provisions of this Act is any person who traps, kills or takes any of the animals or pelts thereof, herein mentioned, for the purpose of sale or barter.

[Acts 1925, 39th Leg., ch. 177.]

**Art. 923n. Trapping License**

All residents, non-residents, and alien trappers desiring to trap, kill or take any of the wild fur-bearing animals or the pelts thereof mentioned in Section 1, of this Act,<sup>1</sup> for sale or barter, shall procure a license to do so, as hereinafter provided, and any person who fails to procure such license as herein provided for, shall be deemed guilty of a misdemeanor; which license shall expire February 15th after date of issuance and shall entitle the holder to trap or take any of the fur-bearing animals or the pelts thereof, mentioned in Section 1 of this Act, for sale or barter, during the season when it is lawful to do so; which license shall state the residence, age, height, weight, color of hair and color of eyes of the licensee. The fee for each resident license shall be one dollar (\$1.00), ten cents of which shall be retained by the officer issuing and reporting the same as his commission. The fee for a non-resident or an alien license shall be fifty dollars (\$50.00) for each county in which said alien or non-resident shall take, kill or trap such animals, five dollars of which shall be retained by the officer issuing and reporting the same, as his commission.

[Acts 1925, 39th Leg., ch. 177, p. 435, § 3.]

<sup>1</sup> Article 923m.

**Art. 923nn. Resident Trapper; Non-resident Trapper; Alien Trapper; Definitions**

For the purposes of this Act a resident trapper of this State is any person who has been a bona fide resident of this State for a period of time exceeding twelve months continuously and immediately before applying for a trapper's license. A non-resident is any person who is a citizen of any other State of the United States of America or who has not continuously and immediately preceding the time of applying for a trapper's license been a bona fide resident of the State of Texas for a period of twelve months.

An alien is any person who is not a natural born American citizen or who has not received the final naturalization papers of United States citizenship. [Acts 1925, 39th Leg., ch. 177, p. 435, § 4.]

**Art. 923o. Trapping License; Commissioner to Provide Forms**

The Game, Fish and Oyster Commissioner shall cause to be printed blank trapper's license which shall contain the requirements as provided for in Section 3 of this Act,<sup>1</sup> and shall distribute the same to his deputies and to various county clerks of the State of Texas, taking their receipts therefor by members and quantity, and it is hereby declared to be the duty of the Game, Fish and Oyster Commissioner, his deputies, and the county clerks of this State to issue licenses as provided in this Act, and to make reports and remittances therefor, which reports and remittances shall be made during the first week of the month, succeeding such sale.

[Acts 1925, 39th Leg., ch. 177, p. 435, § 5.]

<sup>1</sup> Article 923n.

**Art. 923oo. License Not Required for Tenants and Owners**

Owners and tenants and their children who are residents, as defined in this Act, shall have the right to kill or take from their premises any of the fur-bearing animals or pelts thereof for sale or barter during the time when it is lawful to do so, without procuring a trapper's license.

[Acts 1925, 39th Leg., ch. 177, p. 435, § 6.]

**Art. 923p. Tenant Defined**

The term tenant as herein used shall mean any person who has resided on the land they occupy for a period in excess of twelve months continuously and who shall have the same rented or leased for agricultural or grazing purposes.

[Acts 1925, 39th Leg., ch. 177, p. 435, § 7.]

**Art. 923pp. Beaver, Otter and Fox Protected**

It shall be unlawful for any person to kill, take or have in his possession for barter or sale within a period of ten years after the passage of this Act any wild beaver, wild otter or wild fox or the pelts thereof. Provided that this Section shall not apply to wild fox in that portion of West Texas lying North and West of a line starting at the mouth of the San Antonio River where it empties into the Corpus Christi Bay; thence following the meanders of the said San Antonio River Northerly to the mouth of the Cibolo River where same empties into the San Antonio River; thence following said Cibolo River Northerly to the Northwest line of Guadalupe County, the boundary between Guadalupe and Comal Counties; thence easterly with the North boundary line of Guadalupe, Caldwell, Bastrop, Lee, Bureson and Brazos Counties to the Brazos River; thence following the meanders of the Brazos River North to the intersection of the East boundary line of Young County; thence North along the West boundary line of Jack and Clay Counties to the Red

River; provided that the counties of Hays, Milam, and Williamson shall be exempted from the provisions of this Bill applying to the territory west of the boundary line herein set out and shall be in and under the full effects of the law applicable to the territory East of said Division Line; provided that it shall be unlawful to take, hunt, capture, or kill, or attempt to hunt, capture, or kill any wild game or wild animals by means of traps or any other mechanical device within the limits of Limestone County for a period of five years from and after the passage of this Act.

Provided that in Young County, it shall be unlawful for any person to kill, take or have in his possession for barter or sale within a period of ten years after the passage of this Act any wild beaver, wild otter or wild fox or the pelts thereof.

[Acts 1925, 39th Leg., p. 436, ch. 177, § 8; Acts 1927, 40th Leg., p. 49, ch. 35, § 1; Acts 1927, 40th Leg., 1st C.S., p. 102, ch. 34, § 1.]

#### Art. 923q. Furbearing Animals; Closed Season

##### Open Season for Taking Pelts

Sec. 1A. It shall be unlawful for any person to take or attempt to take the pelt of any furbearing animal of this State at any time other than the open season provided therefor. The open season for taking pelts of furbearing animals shall be during the months of December and January of each year, except muskrats, the open season for which shall be from the 15th day of November to the 15th day of March, both days inclusive.

##### Trapper's License

Sec. 2. Any person over the age of seventeen (17) years who takes or attempts to take the pelt or pelts of any of the fur-bearing animals of this State for the purpose of barter or sale, except persons who take the pelt or pelts of fur-bearing animals from their own land, or land on which such persons reside, before doing so, shall procure a trapper's license. If the trapper has been a resident of this State for twelve (12) months before applying for such license, he shall pay for such license the sum of One Dollar and Ten Cents (\$1.10), Ten (10¢) Cents of which shall be retained by the officer issuing the license. If he has not been a resident of this State for twelve (12) months prior to applying for such license, he shall pay for a nonresident trapper's license the sum of Twenty-five Dollars (\$25.00). Such license shall be issued by the Game, Fish and Oyster Commission and shall be available on and after September 1st of each year, and shall expire August 31st of the following year. All trapper's licenses shall have blanks for the name of the trapper, his place of residence, age, height, weight, color of eyes and color of hair.

##### Tax on Pelts

Sec. 3. There is hereby levied a tax of one cent on each pelt taken from the furbearing animal, except pelts of raccoons and mink, the tax for which shall be five cents on each pelt, which tax shall be payable as herein provided.

##### Tags for Pelts

Sec. 4. It shall be the duty of the Game, Fish and Oyster Commission to provide suitable tags to be attached to the pelts of furbearing animals, as a receipt for the tax which has been paid thereon. Such tag shall be available on and after September 1st of each year and shall be valid until August 31st of the year following. Tags shall be printed with the words "State of Texas—fur tax received 1 cent" and "State of Texas—fur tax received 5 cents," and shall show date of expiration, and have a blank for date pelt was tagged. The Game, Fish and Oyster Commission, or its authorized agents, shall issue tax receipt tags upon payment of the amounts for which such receipts are issued.

##### Attaching Tax Receipt Tag to Pelts

Sec. 5. It shall be the duty of the trapper to attach to the pelt of each furbearing animal taken by him a tax receipt tag as described herein for the amount of tax due on such pelt and place on each tag date it was tagged, before such pelt may be shipped, bartered, sold or offered for sale, and providing that all pelts held by a trapper for the purpose of sale shall be tagged within 5 days after the close of the open season for taking such pelts. It shall be unlawful for any dealer to purchase a pelt taken in this State or shipped from any point in this State which does not bear a tax receipt tag.

##### License for Dealers

Sec. 6. Any person, firm or corporation, except the trapper selling his own catch, who barter, buys, offers to barter, offers to buy, sells or offers for sale the pelt or pelts of any furbearing animal protected by the laws of this State, before engaging in such business in this State, shall procure a license as a dealer from the Game, Fish and Oyster Commission or its authorized agents by the payment of the sum of Five Dollars and fifty cents (\$5.50), fifty cents of which shall be retained by the officer issuing such license, provided that such applicant has been a resident of this State for 12 months prior to the application for license or is a resident firm or corporation organized 12 months prior to such application. All others shall be non-residents and shall procure a non-resident dealer's license from the Game, Fish and Oyster Commission at Austin, Texas, by the payment of Fifty (\$50.00) Dollars for each such license.

##### Reports by Dealers

Sec. 7. Every dealer as defined in this Act must file with the Game, Fish and Oyster Commission not later than the 10th day of each month a complete sworn report on printed forms furnished by the Game, Fish and Oyster Commission of the kind and number of the pelts of furbearing animals purchased in this State and shipped out of this State during the preceding month. Provided that no report shall be required for those months during which no pelts are purchased in this State. And providing that those dealers who purchase pelts for manufacturing into a finished product in this State shall report by the 10th day of each month the number and kind of pelts purchased during the preceding month.

Possession in Closed Season as Prima Facie Evidence

Sec. 8. The possession in this State of any undried pelt from a furbearing animal at any time other than during the open season for taking of such pelt, or within fifteen days after the close of such season, shall be prima facie evidence that such pelt was taken during the closed season.

Propagation Permits

Sec. 9. Any person who desires to take alive any of the furbearing animals of this State for the purpose of sale before taking any of the furbearing animals of this State for such purpose shall apply to the Game, Fish and Oyster Commission at Austin, Texas, for a Propagation Permit for which he shall pay the sum of Ten Dollars (\$10), which Permit shall be available on and after the first day of September of each year and shall be valid until August 31st of the following year. Any person holding a Propagation Permit may take and hold furbearing animals protected by the laws of this State, provided that such animals are taken during the period of time that it is lawful to do so, and provided that the pelts from such animals may not be taken at any time other than during the open season for taking such pelts. Any person who holds a Propagation Permit shall file a report with the Game, Fish and Oyster Commission not later than the 16th day of March of each year, showing the number of each kind of furbearing animals held in captivity and giving the Commission the number of each kind of furbearing animals and pelts disposed of during the year previous.

Pelts as State Property until Payment of Tax

Sec. 10. The pelts of all furbearing animals of this State are declared to be and continue to be the property of this State until all taxes levied thereon are paid, receipts for such taxes are issued and attached to such pelts, and all regulations herein are followed; provided, however, that any pelts taken during the open season for the taking of such pelts shall not come within the provision of this Act, when they are held for personal use.

Seizure of Illegal Pelts

Sec. 11. The Game, Fish and Oyster Commission and all Game and Fish Wardens in its employ are hereby directed to seize any and all pelts illegally taken or held by anyone and to hold them as evidence until after trial of the person or persons charged with illegally taking or holding of such pelt or pelts, and if the defendant is found guilty of taking or possessing such pelt or pelts, in violation of any provision of this Act, the pelt or pelts so seized as evidence shall be delivered to the office of the Game, Fish and Oyster Commission by the Game and Fish Warden, and the Game, Fish and Oyster Commission is hereby directed to sell such pelt or pelts. Prosecutions under this Act may be begun and carried on either in the county in which the pelts or animals were taken or from where they were shipped or in the county of this State in which they are received for sale.

Forfeiture of License

Sec. 12. It shall be unlawful for any person, firm or corporation to take, sell, offer for sale or buy or offer to buy the pelts of furbearing animals in this State for a period of twelve months after date of conviction. Any person, firm or corporation violating any of the provisions of this Act upon conviction shall be fined in any sum not less than Ten (\$10.00) Dollars and not more than One Hundred (\$100.00) Dollars, and his trapper's or dealer's license shall be forfeited at time of conviction, and he shall not be entitled to purchase another such license for a period of one year.

Monies Credited to Special Game Fund

Sec. 13. All monies collected from taxes, licenses, fines, sale of confiscated pelts and penalties for violations of this Act shall be deposited with the Treasurer of this State during the first week of each month and shall be credited to the Special Game Fund and used for the purposes provided for by law.

Cottle County

Sec. 13-A. Provided, that the open season for taking pelts of furbearing animals in Cottle County shall be during the months of December, January and until the 15th day of February of each year, except muskrats, the open season for which shall be from the 15th day of November to the 1st day of April, both days inclusive.

[Acts 1925, 39th Leg., p. 436, ch. 177; Acts 1929, 41st Leg., p. 472, ch. 221; Acts 1930, 41st Leg., 5th C.S., p. 185, ch. 45, § 1; Acts 1931, 42nd Leg., p. 188, ch. 109, § 1; Acts 1931, 42nd Leg., Spec.Laws, p. 416, ch. 201, § 1; Acts 1973, 63rd Leg., p. 261, ch. 125, § 8, eff. Sept. 1, 1973.]

Repealed in Part

*Acts 1937, 45th Leg., p. 596, ch. 299, specifically repealed that provision of the law of this State requiring a tax tag to be attached to the pelt of each fur-bearing animal of this State before same is sold or offered for sale,<sup>1</sup> and specifically repealed the law of this State now in existence requiring a Trapper's license<sup>2</sup> and a Resident Fur Dealer's license<sup>3</sup> or a Non-resident Fur Dealer's license.<sup>4</sup>*

<sup>1</sup> See §§ 4, 5 of this article.

<sup>2</sup> See § 2 of this article.

<sup>3</sup> See § 6 of this article.

<sup>4</sup> See § 6 of this article.

Art. 923q1. Repealed by Acts 1929, 41st Leg., p. 70, ch. 36, § 1

This article, Acts 1927, 40th Leg., p. 234, ch. 160, related to the taking or trapping of fur-bearing animals in Cass County by means of a snare, dead fall or steel trap.

Art. 923qa. License to Trap Fur-bearing Animals or Traffic in Pelts Required

Definitions

Sec. 1. For the purpose of this Act the following words, terms, and phrases are hereby defined:

(a) "Wholesale Fur Buyer." A Wholesale Fur Buyer is any person who purchases for himself or on behalf of another person, the pelt or pelts of any of the fur-bearing animals of this State from a Retail Fur Buyer and/or from the Trapper.

(b) "Retail Fur Buyer." A Retail Fur Buyer is any person who purchases the pelt or pelts of any of the fur-bearing animals of this State from the Trapper only.

(c) Resident trapper; non-resident trapper. A trapper is any person who takes for the purpose of barter or sale, and who sells or offers for sale, the pelt or pelts of any of the fur-bearing animals of this State, and for the purpose of this Act, trappers are hereby divided into two (2) classes, namely "resident" and "non-resident." Resident trappers are those who have, for a period of twenty-four (24) months previous to their application for license, been bona fide residents of this State. All others are non-resident trappers.

(d) "Person," shall include the plural as well as the singular, as the case demands, and shall include individuals, partnerships, associations, and corporations.

Licenses Required; Cost of License; Expiration of License

Sec. 2. Before any person shall operate in this State as a Wholesale Fur Buyer, Retail Fur Buyer, or Trapper, he shall be required to obtain and have in his possession a valid license entitling him to the privileges given in this Act and to no other privileges. Such license or licenses shall be obtained from the Game, Fish and Oyster Commission, or from one of their authorized agents.

(a) A Wholesale Fur Buyer's license may be purchased for the sum of Twenty-five Dollars (\$25) and shall entitle the holder to the privilege of purchasing the pelts of fur-bearing animals in this State from Trappers, Retail Fur Buyers, and Wholesale Fur Buyers, and the privilege of handling such pelts for shipment and sale.

(b) A Retail Fur Buyer's license may be purchased for the sum of Five Dollars (\$5) and shall entitle the holder to the privilege of purchasing the pelts of fur-bearing animals from the Trapper only and handling same for the purpose of shipment and sale.

(c) A resident trapper's license may be purchased for the sum of Five Dollars (\$5), and a non-resident trapper's license may be purchased for the sum of Two Hundred Dollars (\$200), and the respective licenses shall entitle the holder to sell only his own catch of pelts of fur-bearing animals of this State, which he has lawfully taken.

All licenses provided for in this Section shall be valid until August 31st following date of issuance

Monies Deposited to Credit of Special Game Fund

Sec. 3. All moneys collected from the sale of licenses provided for under the provisions of this Act, after the fees for issuing same are deducted, shall, before the 10th day of the month following the sale of such license, be remitted to the office of the Game, Fish and Oyster Commission at Austin, Texas, and shall be deposited in the State Treasury to

the credit of the Special Game Fund and shall be used for any and all of the purposes provided by law. County Clerks and other authorized agents of the Game, Fish and Oyster Commission shall be entitled to a fee of Twenty (20) Cents for each license issued.

Wholesale or Retail Fur Buyers' Licenses for Each Place of Business; Display of License; License on Person; Inspection of Vehicles Used

Sec. 4. When a person, firm, or corporation operates as a Wholesale Fur Buyer or as a Retail Fur Buyer, a license shall be required for each place of business and be publicly displayed in said place of business at all times, and all such places of business shall be subject to inspection, without warrant, by any game and fish warden at any time. If a person operates as a Wholesale Fur Buyer, Retail Fur Buyer, or as a Trapper, other than at an establishment for which a license has been issued, he shall have on his person, whenever conducting such operations, the license required of him as a Wholesale Fur Buyer, Retail Fur Buyer, or Trapper, and any vehicle which he operates shall be subject to inspection, without warrant, by any game and fish warden at all times that such vehicle is being used for the collection of the pelts of fur-bearing animals or for the purpose of transporting same.

Repeal of Conflicting Law

Sec. 5. All laws or parts of laws, in so far as they conflict with any portion of this Act, and specifically that provision of law of this State requiring a tax tag to be attached to the pelt of each fur-bearing animal of this State before same is sold or offered for sale, and specifically the law of this State now in existence requiring a Trapper's license and a Resident Fur Dealer's license or a Nonresident Fur Dealer's license, are hereby repealed.

Purchase of Pelts from Unlicensed Person Unlawful; Operation as Wholesaler, Retailer, or Trapper Without License Unlawful

Sec. 6. It shall be unlawful for any Wholesale Fur Buyer or any Retail Fur Buyer to purchase the pelt of any fur-bearing animal of this State from any person unless such person holds a Trapper's license or a Wholesale Fur Buyer's license or a Retail Fur Buyer's license, and it shall be unlawful for any person to operate as a Wholesale Fur Buyer, Retail Fur Buyer, or Trapper, as defined in this Act, without first obtaining the license required for the business engaged in.

Penalty; Forfeiture of License

Sec. 7. Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200), and any person convicted under any provision of this Act shall automatically forfeit any license which he may hold under any provision of this Act and shall not be permitted to obtain any license provided for under this Act for a period of one year from date of his conviction.

[Acts 1937, 45th Leg., p. 596, ch. 299; Acts 1939, 46th Leg., p. 237, § 2; Acts 1973, 63rd Leg., p. 261, ch. 125, § 7, eff. Sept. 1, 1973.]

**Art. 923qa-1. Trapping Fur-bearing Animals in Certain Counties**

Sec. 1. For the purposes of this Act the wild beaver, wild otter, wild mink, wild ringtail cat, wild badger, wild polecat or skunk, wild opossum, wild fox and wild civet-cat are hereby declared to be fur-bearing animals.

Sec. 2. It shall be unlawful for any person at any time to take any fur-bearing animals of this State with a steel trap, snare, or deadfall or any other mechanical device other than a gun or pistol in any of the counties to which this Act applies.

Provided, however, that this provision shall not apply to a trapper employed by the United States Government, the State of Texas, or by the Commissioners' Court of any of the counties mentioned herein, and that this provision shall not apply to trapping within the bounds of the State Game Preserves that may be located in any of the counties herein mentioned when doing so is under the direction of the Game, Fish and Oyster Commissioner.

Provided, however, that this Act shall apply only to the Counties of Panola, Shelby, Nacogdoches, Rusk, Cherokee, Angelina, San Augustine, Hardin, Harris, Harrison, Polk, San Jacinto, Trinity, Liberty, Anderson, Sabine, Brazos, Burleson, Washington, Madison, Grimes and Montgomery.

Sec. 3. Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than \$10.00 and not more than \$200.00 and the setting of any trap, snare, or deadfall in any of the counties mentioned herein shall be prima facie evidence of guilt and the setting of each trap, deadfall, or snare shall constitute a separate offense. [Acts 1929, 41st Leg., 2nd C.S., p. 36, ch. 22; Acts 1931, 42nd Leg., p. 847, ch. 355, § 1.]

**Art. 923qa-2. Expired****Art. 923qa-3. Transportation of Wolves Forbidden**

Sec. 1. It shall be unlawful for any person to transport, or to cause to be transported, any live wolf within this State.

Sec. 2. It shall be unlawful for any person to possess or to receive, or to transport or to have for the purpose of transporting, or for the purpose of turning loose, or to turn loose, or to cause to be turned loose, any live wolf within this State.

Sec. 3. It shall not be unlawful for a State or County Official, in the performance of any official duty, to transport a live wolf, or for the owner or agent of any licensed circus, zoo or menagerie, to have, possess or transport any live wolf for exhibition or scientific purposes, only.

Sec. 4. Any person who violates any provision of the preceding Sections of this Act shall be guilty of a felony and shall upon conviction be confined in the penitentiary for not less than six months nor more than five years.

[Acts 1930, 41st Leg., 4th C.S., p. 87, ch. 46.]

**Art. 923qa-4. Trapping Fur-bearing Animals, Exception of Certain Counties**

Sec. 2. It shall be unlawful to take the pelts of any of the fur-bearing animals of this State at any time other than the open season provided therefor. The open season for taking the pelts of wild beaver, for that portion of the State of Texas lying west of the Pecos River, shall be during the month of January of each year. It shall be unlawful to take the pelts of wild beaver in any other portion of this State or to take the pelts of wild otter in any portion of this State within a period of ten (10) years following the passage of this Act. Provided that it shall be unlawful to trap any fur-bearing animal in Angelina County during any month of the year, but it shall be lawful to sell the pelts and furs of fur-bearing animals in said county during December and January.

Sec. 3. There is hereby levied a tax of five (5) cents on each pelt taken from a wild beaver which shall be payable as provided in House Bill No. 86, Acts 5th Called Session of the 41st Legislature.<sup>1</sup>

Sec. 4. Any person who violates any provision of this Act shall be deemed guilty of a misdemeanor and shall be fined in any sum not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00) and his trapper's and dealer's license shall be forfeited at the time of conviction and he shall not be entitled to purchase another such license for a period of one (1) year.

Sec. 5. Provided that the provisions of this Act shall in no way apply to McLennan, Falls, Limestone, or Milam Counties nor to the Counties composing the following Senatorial Districts: eight (8), ten (10), eleven (11), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty (20), twenty-one (21), and twenty-eight (28); except, however, it shall be effective as to Brazos County of the Fourteenth (14) Senatorial District.

Sec. 6. Provided that it shall be unlawful for any person to kill, take, or have in his possession for barter or sale within Caldwell, Milam, or Lee Counties, for a period of ten (10) years after the passage of this Act, any wild beaver, wild otter, or wild fox, or the pelts thereof.

[Acts 1931, 42nd Leg., p. 440, ch. 264; Acts 1937, 45th Leg., p. 860, ch. 425, § 1.]

<sup>1</sup> Article 923q.  
Section 1 repealed Acts 1929, 41st Leg., 1st C.S., p. 181, ch. 68 and Acts 1930, 41st Leg., 5th C.S., p. 154, ch. 24.

**Art. 923qa-5. Trapping Fur-bearing Animals in Nacogdoches and Houston Counties; Exceptions**

Sec. 1. It shall be unlawful for any person at any time to take fur-bearing animals of this State with a steel trap, snare or deadfall or any other mechanical device other than a gun or pistol in any of the Counties to which this Act applies; provided, however, that this provision shall not apply to a trapper employed by the United States Government, the State of Texas, or by the Commissioners' Court of

any of the Counties mentioned herein, and that this provision shall not apply to trapping within the bounds of the State Game Preserves that may be located in any of the Counties mentioned, when doing so is under direction of the Game, Fish and Oyster Commission; provided, however, that this Act shall apply only to the Counties of Nacogdoches and Houston.

Sec. 2. Any person who violates any provisions of this Act shall be deemed guilty of a misdemeanor and shall be fined in any sum not less than Ten Dollars (\$10.00), nor more than One Hundred Dollars (\$100.00), and his trappers' and dealers' license shall be forfeited at the time of conviction and he shall not be entitled to purchase another such license for a period of one year.

[Acts 1932, 42nd Leg., 3rd C.S., p. 7, ch. 6; Acts 1933, 43rd Leg., Spec.Laws, p. 15, ch. 15.]

#### **Art. 923qa-6. Animals Designated as Fur-bearing; Application to Certain Counties**

Sec. 1. All the fur-bearing animals of this State are hereby declared to be the property of the people of this State. For the purposes of this Act, wild beaver, wild otter, wild mink, wild ringtail cat, wild badger, wild polecat or skunk, wild racoon, wild muskrat, wild opossum, wild fox, and wild civet cat are hereby declared to be fur-bearing animals.

Sec. 2. It shall be unlawful for any person to kill, take, or have in his possession for barter or sale, after the passage of this Act, any wild beaver, wild otter, or wild fox, or the pelts thereof. Providing that this Section shall apply to Nacogdoches, Walker, San Jacinto, Shelby, Rusk, and Jefferson Counties.

Sec. 3. Every person violating any provision of this Act shall, upon conviction, be punished by a fine of not less than Ten Dollars (\$10), nor more than One Hundred Dollars (\$100).

[Acts 1932, 42nd Leg., 3rd C.S., p. 8, ch. 7; Acts 1941, 47th Leg., p. 410, ch. 239, § 1.]

#### **Art. 923qa-7. Beaver or Otter; License Required to Trap Outside County of Residence**

Sec. 1. It shall be unlawful for any resident of this State to trap or attempt to take or trap beaver or otter outside the county of his residence without first obtaining from the Game, Fish and Oyster Commission, or one of its authorized agents, a Beaver-Otter Trapping License, for which he shall pay the sum of Fifty Dollars (\$50), Fifty (50) Cents of which sum shall be retained by the officer issuing said license, balance of which shall be promptly remitted to the Game, Fish and Oyster Commission and deposited in the State Treasury to the credit of the Special Game Fund, where it shall be used for the purposes provided by law.

Sec. 2. It shall be unlawful to take or attempt to take or trap any beaver or otter in this State, or for any person to sell or offer for sale, the pelt of any

beaver or otter for a period of five (5) years from and after the passage of this Act. Providing, however, that it shall be lawful to take or trap beaver and sell the pelts of same in that portion of the State of Texas west of the Pecos River and in Val Verde and Kimble Counties. The open season for taking or trapping beaver in that portion of the State west of the Pecos River and in Val Verde and Kimble Counties shall be only during the period January 1st to January 15th of each year, and it shall be unlawful for any person during any open season provided for in this Section of this Act to take more than three (3) beaver.

Sec. 2a. Provided further, that all of the provisions of this Act shall also apply to and prevail in Maverick County.

Sec. 3. Any person who takes any beaver at any time it is unlawful to do so, or attempts to sell the pelt of a beaver in any county of this State unless same is permitted under the provisions of this Act, or any person who otherwise violates any provision of this Act, shall be deemed guilty of a misdemeanor, and upon conviction therefor, shall be fined in a sum not less than One Hundred Dollars (\$100), nor more than Two Hundred Dollars (\$200).

[Acts 1943, 48th Leg., p. 287, ch. 183; Acts 1945, 49th Leg., p. 157, ch. 109, § 1.]

#### **Art. 923qq. Fund for Enforcement**

All moneys collected from the fines and penalties for the violation of this Act, and all moneys collected from the sale of trapper's licenses shall belong to the special game fund of this State, and shall be paid over by the Game, Fish and Oyster Commissioner to the Treasurer of the State during the first week of each month, and shall be credited to such special game fund for the enforcement of this Act and the game laws in general, provided county attorneys shall receive ten per centum and officers making collection five per centum of any fines or fine assessed for violation of this Act.

[Acts 1925, 39th Leg., p. 436, ch. 177, § 10.]

#### **Art. 923r. Trapping Without Owner's Consent Prohibited**

It shall be unlawful for any person to trap, or set any trap or deadfall on the inclosed lands of another without the consent or permission of the owner of said land.

[Acts 1925, 39th Leg., p. 436, ch. 177, § 11.]

#### **Art. 923rr. Trapping, Killing or Possession of Muskrats Without Consent of Land Owner or Lessee; Punishment for Violation**

Sec. 1. It shall be unlawful for any person, at any time, to set a trap for or trap or kill any muskrat upon any land of another, or be in possession of a muskrat or the hide of such animal taken from such land, without the consent of the owner or lessee of such land to trap thereon; provided that such person may, in relief against this provision,

show a rightful, legal possession of such muskrat or the hide of such animal.

Sec. 2. Every person violating any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars.

[Acts 1925, 39th Leg., p. 436, ch. 177, § 12; Acts 1941, 47th Leg., p. 173, ch. 125.]

#### Art. 923s. Molesting Muskrat Beds and Nests

It shall be unlawful for any person to destroy the beds, nests or breeding places of any muskrat or muskrats, or to take or kill any of such animals except by trapping; provided, however, that any person shall have the right to kill such animal upon his own premises at any time or by any means.

[Acts 1925, 39th Leg., p. 436, ch. 177, § 13.]

#### Art. 923ss. Purchase of Muskrats Trapped on Lands of Another

It shall be unlawful for any person to purchase the hide or furs of muskrats on the land of another, taken or trapped on the land of another, from any person other than the owner of such land or the duly authorized agent of such owner.

[Acts 1925, 39th Leg., p. 436, ch. 177, § 14.]

#### Art. 923t. Inclosed Lands Defined

By inclosed land is meant any land inclosed by a fence or fences, or by water, or partly by fence and partly by water, or by any barrier, natural or artificial, that is used by owners as methods or means of inclosure.

[Acts 1925, 39th Leg., p. 436, ch. 177, § 15.]

#### Art. 923tt. Posted Land Defined

Posted land within the meaning of this Act shall have signs at the gate or gates and at any streams entering said inclosure reading "Posted" in a conspicuous place, shall be deemed posted within the meaning of this Act.

[Acts 1925, 39th Leg., p. 436, ch. 177, § 16.]

#### Art. 923u. Refusal to Carry and Exhibit License to Officer

Any person required to procure a license under this Act and who fails to carry said license on his person when trapping, killing or taking any of the fur-bearing animals or the pelts thereof for sale or barter, or who fails or refuses to exhibit the same to any officer authorized to enforce the laws of this State, or who uses the license of another or permits another to use his license shall be deemed guilty of a misdemeanor.

[Acts 1925, 39th Leg., p. 436, ch. 177, § 17.]

#### Art. 923uu. Trapping License Required

It shall be unlawful for any person required by this Act to procure a trapper's license to kill or take any of the fur-bearing animals or the pelts thereof mentioned in this Act, for the purpose of sale or

barter, without having procured a license to do so, as required by Section 3 of this Act.<sup>1</sup>

[Acts 1925, 39th Leg., p. 437, ch. 177, § 18.]

<sup>1</sup> Article 923n.

#### Art. 923v. Commissioner to Enforce

It shall be the duty of the Game, Fish and Oyster Commissioner and his deputies to enforce the provisions of this Act.

[Acts 1925, 39th Leg., p. 437, ch. 177, § 19.]

#### Art. 923vv. Penalty

Every person violating any of the provisions of this Act shall, upon conviction, be punished by a fine of not less than ten dollars nor more than one hundred dollars.

[Acts 1925, 39th Leg., p. 437, ch. 177, § 20.]

#### Art. 923w. Repeal of Conflicting Laws

All laws and parts of laws in conflict herewith be and the same are hereby repealed.

[Acts 1925, 39th Leg., p. 437, ch. 177, § 21.]

#### Art. 923ww. Partial Invalidity

If any section of this bill shall be held unconstitutional, it shall not affect any other section of this bill, and all sections save the one that may be declared unconstitutional shall continue to be in full force and effect.

[Acts 1925, 39th Leg., p. 437, ch. 177, § 22.]

#### Art. 923x. Possession, Transportation and Sale of Live Coypu

Sec. 1. It shall be unlawful for any person to have in his possession, or to transport or sell any live coypu (nutria) unless he has obtained a written permit for such possession, transportation, or sale from the Game and Fish Commission.

Sec. 2. Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not less than Ten Dollars (\$10) nor more than Two Hundred Dollars (\$200).

[Acts 1961, 57th Leg., p. 465, ch. 232.]

#### Art. 924. Explosives and Poisons

It shall be unlawful for any person to place in any of the waters of this State any poison, lime, dynamite, nitroglycerin, giant powder<sup>1</sup> or other explosives or to place in such waters any drugs, substances or things deleterious to fish life for the purpose of catching or attempting to catch fish by the use of such substances or things, or for any other purpose whatsoever, provided however that in event it becomes necessary to place any explosive in waters in connection with construction work, same may be authorized by written order of the County Judge of the County where the work is to be done.

Any one violating any provision of this Act shall be deemed guilty of a misdemeanor and on conviction shall be fined not less than Fifty Dollars (\$50),

nor more than One Hundred Dollars (\$100), and shall serve a sentence in the county jail of not less than sixty (60) days, nor more than ninety (90) days. [1925 P.C.; Acts 1935, 44th Leg., p. 646, ch. 260, § 1.]

<sup>1</sup> So in enrolled bill. Session Laws read "power."

#### Art. 924a. Electricity Producing Apparatus to Shock Fish

It shall be unlawful for any person at any time of the year to catch or attempt to catch or obtain fish by the aid of what is commonly known as "telephoning" or by using any other electricity-producing apparatus designed for shocking fish. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine in any sum of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200). The possession of any such equipment in any boat or along any bank or shore of any of the rivers, creeks, lakes and bays of this State shall be prima-facie evidence that the person found in possession of such electrical equipment is violating the provisions of the Act. Provided, however, that it shall be lawful for a duly licensed Commercial Gulf Shrimp Boat as such term "Commercial Gulf Shrimp Boat" is defined in Section 3(f), Chapter 340, Acts of the Regular Session of the Fifty-eighth Legislature of Texas, 1963, as amended,<sup>1</sup> to use an electricity-producing apparatus, with applied voltage not to exceed three (3) volts, connected to a trawl or not otherwise conforming to the provisions of Section 7(f), of Chapter 340, Acts of the Regular Session of the Fifty-eighth Legislature of Texas, 1963, as amended,<sup>1</sup> to catch shrimp in the outside waters of the State of Texas, having a depth of more than seven (7) fathoms, as such term "outside waters" is defined by Section 3(a), of Chapter 340, Acts of the Regular Session of the Fifty-eighth Legislature of Texas, 1963, as amended,<sup>1</sup> such trawl or net thus electrically equipped being herein designated as an "electro-trawl"; and the possession of such electro-trawl on board a Commercial Gulf Shrimp Boat in any of the waters of the State of Texas shall not be unlawful, but, except as specifically provided herein, such electric trawl, and the use thereof, shall in all other respects conform with all of the provisions of the Texas Shrimp Conservation Act, Chapter 340, Acts of the Regular Session of the Fifty-eighth Legislature of Texas, 1963, as amended.<sup>1</sup>

[Acts 1955, 54th Leg., p. 530, ch. 163, § 1; Acts 1967, 60th Leg., p. 1796, ch. 686, § 1, eff. June 17, 1967; Acts 1969, 61st Leg., p. 712, ch. 253, § 1, eff. May 21, 1969.]

<sup>1</sup> See Civil Statutes, art. 4075b.

#### Savings Provision

*Acts 1967, 60th Leg., p. 1959, ch. 730, The Uniform Wildlife Regulatory Act, codified as article 978j-1, conferring upon the Parks and Wildlife Commission the power and duty of protecting and regulating the harvest of wildlife resources in various counties and repealing various acts of a similar nature, provides in section*

*15, inter alia, that "in Webb County Articles 901, 902, and 924a of the Penal Code of the State of Texas shall not be affected."*

Sections 2 and 3 of the amendatory act of 1967 provided:

"Sec. 2. All laws or parts of laws in conflict with provisions of this Act are repealed to the extent of such conflict only.

"Sec. 3. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any section, word, clause, sentence, or part of this Act shall be declared unconstitutional shall in no event affect any other section, word, clause, sentence, or part thereof; and it is hereby declared to be the intent of the Legislature to have passed each sentence, section, part, or clause hereof irrespective of the fact that any other section, sentence, clause, or part thereof may be declared invalid."

Sections 2 and 3 of the 1969 amendatory act provided:

"Sec. 2. All laws or parts of laws in conflict with provisions of this Act are repealed to the extent of such conflict only.

"Sec. 3. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any section, word, clause, sentence, or part of this Act shall be declared unconstitutional shall in no event affect any other section, word, clause, sentence, or part thereof; and it is hereby declared to be the intent of the Legislature to have passed each sentence, section, part or clause hereof irrespective of the fact that any other section, sentence, clause, or part thereof may be declared invalid."

#### Art. 925. Taking Fish without Consent of Owner

Whoever shall take, catch, ensnare or trap any fish by means of nets or seines or by poisoning, polluting, or by use of any explosive, or by muddying, ditching or draining in any lake, pool or pond in any county in this State without the consent of the owner of such lake, pool, or pond, shall be fined not less than ten nor more than one hundred dollars. In prosecutions hereunder the burden to prove such consent shall be upon the defendant.

[1925 P.C.]

#### Art. 926. Fresh Water Streams Defined

For the purpose of establishing the dividing line between the salt and fresh waters of this State, in so far as it pertains to the fishing laws, all fresh water rivers and streams in this State, and all lakes, lagoons, and bodies of rivers, except tidal bays or coastal waters, such as bays and gulfs, shall be and are hereby declared to be fresh water streams and rivers to their mouths, and it shall be unlawful to set nets or drag seines or fish in other ways in such streams, rivers and their connecting lakes, lagoons, and bodies of water mentioned, except in conformity with the laws enacted to govern, apply and control in fresh water fishing.

[1925 P.C.]

#### Art. 927. Fishing in Fresh Waters

Except the ordinary hook and line or trot line, or a set or drag net or seine, the meshes of which shall be three or more inches square, or a minnow seine not more than twenty feet long used for catching bait, no person shall place in any fresh water river, creek, lake, bayou, pool, lagoon or tank, in this State, any net, trap or other device for catching fish, or take or catch any fish from said waters with any net, seine, device, or hook and line or trot line, other than as permitted herein. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than one hundred dollars.

[1925 P.C.]

**Art. 927a. Fresh Water Fish; No Closed Season; Size and Limits; Penalty; Repeal of Conflicting Local, General or Special Laws**

Sec. 1. There shall be no closed season or period of time when it shall be unlawful to take, catch or retain fresh water fish by the use of ordinary hook and line or artificial lures. Other devices, the use of which is permitted by law, may be used for the purpose of taking fresh water fish at any time of the year, but only in compliance with such other restrictions as are placed on their use by the laws of this state.

Sec. 2. It shall be unlawful for any person to take from public fresh waters and retain, or place in any container, boat, creel, livebox or on any fish-stringer any large-mouth black bass, small-mouth black bass, spotted bass, or any sub-species of large-mouth black bass, small-mouth black bass, spotted bass, that is less than seven (7) inches in length.

Sec. 3. It shall be unlawful for any person in any one day to catch and retain, or to place on or in any device or container for holding same while he is fishing, any fish that is taken from the public fresh waters of this state in excess of the following limits: large-mouth black bass, small-mouth black bass, spotted bass, or any sub-species of the same, singly or in the aggregate, fifteen (15), of which not more than ten (10) shall be of greater length than eleven (11) inches; white bass, twenty-five (25); blue catfish, channel catfish and yellow catfish, singly or in the aggregate, twenty-five (25); crappie or white perch, twenty-five (25).

Sec. 4. Any person who violates any provisions of this Act, upon conviction shall be fined in a sum not less than Five (\$5.00) Dollars, nor more than Fifty (\$50.00) Dollars.

Sec. 5. All laws or parts of laws, local, general or special, insofar as they provide a closed season or period of time when it is unlawful to take or catch fish or to use artificial lures, or insofar as they provide a size limit, possession limit or daily catch limit, or otherwise conflict with any provision of this Act, shall be and the same are hereby repealed, except that nothing herein contained shall repeal Chapter 213, House Bill No. 654, Regular Session, 48th Legislature,<sup>1</sup> or regulations made thereunder to govern the taking of fish in Lake Texoma, which is the body of water impounded by the dam at Denison, Texas.

[Acts 1945, 49th Leg., p. 13, ch. 9.]

<sup>1</sup>Article 978I-3.

**Art. 928. Fishing in Closed Fresh Waters**

The Commissioner is authorized to close any fresh water river, creek, lake, pool, bayou, lagoon or tank in this State, against the use of nets or seines or any particular kind of such nets and seines whenever he thinks that such closing is necessary or best to protect and conserve the fish in such waters. Before closing such waters against the use of seines or nets

or any particular kind of seine or net, he shall give notice by posting his intentions for two weeks, at not less than three stores or other places in proximity to such waters. Whoever shall fish with a net or seine in such closed waters, or who shall use such particular kind of net or seine as forbidden in such waters after the notice given as above required, shall be fined not less than twenty-five nor more than one hundred dollars.

[1925 P.C.]

**Art. 928a. Fresh Water Fish Sanctuaries**

Reservation of Portions of Streams for Propagation of Fish

Sec. 1. It shall be the duty of the Game, Fish & Oyster Commission with the approval of the Commissioners' Court of any county of the State of Texas to set aside and reserve portions of each public fresh water stream or other body of water as fish sanctuaries in the said county for the propagation in their natural state of fresh water fish. The Commission shall by this means increase and preserve the supply of such fish in any and all such waters where from any cause such supply has been reduced below the maximum number of fish such waters will support in their natural state without the existence of the cause or causes of the diminished supply. Provided, that the provisions of this Act shall not apply to Wichita, Clay, Baylor and Wilbarger Counties.

Designation of Sanctuaries

Sec. 2. When the Commission shall determine that any such public fresh water has a lesser supply than it can support in its natural state, said Commission shall without delay set aside and designate one or more portions of such water as a fish sanctuary or sanctuaries. Such sanctuary or sanctuaries so set aside and designated shall be used by the Commission for the purpose of propagating fresh water fish therein in order to increase the supply of fish in this State. In no event shall a sanctuary be set aside or designated for a longer period than five (5) years. In no event shall more than fifty (50%) per cent of the public fresh waters in any county be set aside or designated as such sanctuary or sanctuaries.

Proclamation

Sec. 3. When a sanctuary or sanctuaries shall be set aside or designated, the Commission shall immediately give notice of such action by a proclamation, signed by the Chairman. Typewritten or printed copies of such proclamation shall be posted at the Courthouse door of each county where such sanctuary or sanctuaries are set aside or designated. Such proclamation shall describe as near as may be the area or areas which are set aside or designated as fish sanctuaries, the reason such area or areas are so set aside, the time when the same shall take effect, and the length of time the same shall be effective, and shall state that such area or areas have been set aside or designated fish sanctuaries under the provisions of this Act, and shall make special reference to this Act. In addition to the proclamation herein ordered, the Commission shall cause a brief notice of

its contents to be published in any newspaper in each county or counties where such sanctuary or sanctuaries shall be set aside or designated for five (5) consecutive issues if the same be a weekly newspaper, and once each week for five (5) weeks if the same be published more often than once each week, and if there be no newspaper in such county, then in any newspaper in an adjoining county. The Commission shall in addition to issuing such proclamation and publishing such notice, along and around the boundaries of such areas so set aside and designated, post any number of signs, not less than six (6), bearing the following conspicuous inscription: "State Fish Sanctuary No Fishing." Said proclamation shall become effective on and after the last publication of notice of same herein ordered.

Fishing in Sanctuaries Forbidden

Sec. 4. It shall be unlawful for any person to fish in any fish sanctuary set aside or designated by the Game, Fish & Oyster Commission, with nets, trot lines, seines, hooks and lines, artificial bait, or otherwise or in any manner to take or catch or remove, or attempt to take or catch or remove any fish from such fish sanctuary.

Punishment for Violations

Sec. 5. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than Twenty-five (\$25.00) Dollars, nor more than Two Hundred (\$200.00) Dollars. [Acts 1931, 42nd Leg., p. 840, ch. 351.]

**Art. 928b. Taking Fish from Waters of Public Park Under Control of State Parks Board**

Whoever shall take, catch, ensnare, or trap any fish by any means whatsoever in any waters which are within the confines of any public park under the control of the Texas State Parks Board, without the consent of the keeper, caretaker, or superintendent of said public park, shall be fined not exceeding One Hundred Dollars (\$100). Any peace officer is authorized to arrest without warrant any person found committing a violation of any provision of this Act. [Acts 1941, 47th Leg., p. 1410, ch. 642, § 1.]

**Art. 929. Oversize or Undersize Fish for Sale**

It shall be unlawful for any person to sell, or offer for sale, or to have in his possession, or to have on board any boat or to have in any mercantile business establishment, or in any market where merchandise is disposed of, any redfish or channel bass of greater length than thirty-two inches, or less than fourteen inches; any salt water or speckled sea trout of less length than twelve inches; any sheephead of less than nine inches in length; any flounder of less than twelve inches in length; any pompano of less than nine inches in length; any mackerel of less than fourteen inches in length, and any salt water gaff-topsail of less than eleven inches in length.

The place of sale or offering for sale or possession shall for the purpose of this chapter to establish

venue, be either the place from which such fish are shipped, or where the fish are found, or offered for sale. It shall be unlawful in selling or offering for sale any fish mentioned in this article to sever the head from the body, except in case of the redfish and catfish in which case the head shall only be severed through the gill-cavity and the gill-fins shall remain on the body of such redfish or catfish. Such headless body of a redfish shall not measure more than twenty-seven inches in length, and such headless body of a catfish shall not measure less than eight inches in length; and all fish marketed or sold as mentioned in this article, must be weighed and sold with the head attached, except redfish and catfish as mentioned herein.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined a sum not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars.

[1925 P.C.]

**Art. 930. Venue for Under or Oversize Fish**

A prosecution for a sale of fish of unlawful size may be begun and carried on either in the county where such fish were shipped or in the county where they were received or offered for sale, or in any county through which such shipments may pass. [1925 P.C.]

**Art. 931. Undersize Bass, Etc.**

Whoever shall take or catch from the fresh waters of this State, or have in his possession any bass of less length than eleven inches or any white perch or crappie of less length than seven inches shall be fined not less than ten nor more than one hundred dollars.

[1925 P.C.]

**Art. 931a. Minimum Size Limit on Redfish**

Sec. 1. It shall be unlawful for any person to take from the waters of the State of Texas and retain, or place in a container, boat, creel, live box, or on any stringer, any redfish less than 14 inches in length.

Sec. 2. Any person or persons who violates any provisions of Section 1 of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$200.

Sec. 3. All laws or parts of laws in conflict with provisions of this Act are suspended to the extent of such conflict only.

[Acts 1967, 60th Leg., p. 893, ch. 389, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1893, ch. 560, § 1, eff. Aug. 30, 1971.]

**Art. 932. Injuring Small Fish**

Whoever at any time shall catch or take from any fresh water river, lake, bayou, creek, pond, or other natural or artificial stream or pond of water by use of any means whatever any crappie or bass of less

length than he is permitted to catch or take from such water, shall immediately return the fish back into such water; and unnecessary injuring of such fish shall be an offense under this article. Whoever violates any provision hereof shall be fined not exceeding one hundred dollars.

[1925 P.C.]

#### Art. 933. Closed Season on Crappie or Bass

Any person who shall take or catch or have in possession any bass or crappie from the fresh waters of this State during the months of March or April of any year; or shall take, catch or have in possession any bass of less length than eleven inches, or any white perch or crappie of less length than seven inches, shall be deemed guilty of a misdemeanor, and on conviction shall be fined a sum of not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars.

[1925 P.C.]

#### Art. 933a. Repealed by Acts 1963, 58th Leg., p. 743, ch. 279, § 2, eff. Aug. 23, 1963

The repealed article was derived from Acts 1925, 39th Leg., p. 447, ch. 178, § 4, and prohibited the sale of bass and crappie.  
See, now, article 978e.

#### Art. 933½. Expired

#### Art. 933½a. Rainbow Trout; Closed Season After Expiration of Two Years

From and after the expiration of the closed season on rainbow trout as provided in Section 1 of this Act,<sup>1</sup> it shall be unlawful for any person to take, possess, sell or barter any rainbow trout from any of the fresh waters of Texas during the months of January, February, March, April and May of each year, which months shall constitute a closed season on rainbow trout.

[Acts 1925, 39th Leg., p. 374, ch. 163, § 2.]

<sup>1</sup> Article 933½ (expired).

#### Art. 933½b. Same; Size Limit

It is hereby made unlawful for any person to take or have in his or her possession any rainbow trout from any of the fresh waters of Texas, of a less length than fourteen inches, or to take and have in his or her possession more than five rainbow trout during any one day.

[Acts 1925, 39th Leg., p. 374, ch. 163, § 3.]

#### Art. 933½c. Same; Sale Prohibited

It is hereby made unlawful for any person to sell, barter, or offer for sale or barter any rainbow trout taken from any of the fresh waters of Texas.

[Acts 1925, 39th Leg., p. 374, ch. 163, § 4.]

#### Art. 933½d. Same; Penalty

Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00).

[Acts 1925, 39th Leg., p. 375, ch. 163, § 5.]

#### Art. 934. Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7

#### Art. 934a. Commercial Fisherman and Wholesale Dealer's License

##### Definitions

Sec. 1. The following words, terms and phrases used in this Act are hereby defined as follows:

(a) A "Commercial Fisherman" is any person who takes fish or oysters or shrimp or other edible aquatic products from the waters of this State, for pay, or for the purpose of sale, barter or exchange.

(b) A "Wholesale Fish Dealer" is any person engaged in the business of buying for the purpose of selling, canning, preserving or processing, or buying for the purpose of handling for shipments or sale, fish or oysters or shrimp or other commercial edible aquatic products, to Retail Fish Dealers, and/or to Hotels, Restaurants or Cafes and to the Consumer.

(c) A "Retail Fish Dealer" is any person engaged in the business of buying for the purpose of selling either fresh or frozen edible aquatic products to the consumer.

(d) A "Bait Dealer" is any person engaged in the business of selling either minnows, fish, shrimp or other aquatic products, for fish bait.

(e) A "Fish Guide" is any person who operates a boat for pay or anything of value, in accompanying or transporting any person engaged in fishing in the waters of this State.

(f) "Person" shall include the plural as well as the singular, as the case demands, and shall include individuals, partnerships, associations and corporations.

(g) "Population" is determined as shown by the last or any subsequent Federal Census.

##### License Required

Sec. 2. Before any person in this State shall engage in the business of a "Commercial Fisherman", "Wholesale Fish Dealer", "Retail Fish Dealer", "Bait Dealer", "Fish Guide"; or use or operate a shrimp trawl, net or seine, oyster dredge, boat or skiff, for the purpose of catching or taking any edible aquatic life from the waters of this State for pay, barter, sale or exchange, the proper license provided for in this Act privileging them so to do shall first be procured by such person from the Game, Fish and Oyster Commission of Texas or from one of its authorized agents.

##### License Fees; Sizes of Fish Which May be Sold

Sec. 3. The licenses and the fees to be paid for the same are hereby provided for in this Act and are as follows:

1. Commercial Fisherman's License, fee Ten Dollars (\$10), Twenty-Five Cents (\$.25) of the fee for each such license may be retained by the issuing agent for services in issuing such license, except that employees of the Texas Parks and Wildlife Department may not retain such fee. The license shall expire August 31st following the date of issuance.

2. Wholesale Fish Dealers' License, fee for each place of business, Two Hundred Fifty Dollars (\$250).

2a. Wholesale Truck Dealers' Fish License, fee for each truck, One Hundred Twenty-Five Dollars (\$125).

3. (a) Retail Fish Dealers' License, fee Six Dollars (\$6) for each place of business in each city or town of less than seven thousand five hundred (7,500) population.

(b) Retail Fish Dealers' License, fee Fifteen Dollars (\$15) for each place of business in each city or town of not less than seven thousand five hundred (7,500) and not more than forty thousand (40,000) population.

(c) Retail Fish Dealers' License, fee Twenty Dollars (\$20) for each place of business in each city or town of more than forty thousand (40,000) population.

(d) Retail Oyster Dealers' License, permitting the sale of oysters only, fee Five Dollars (\$5) for each place of business in each city or town of more than seven thousand five hundred (7,500) population. The sale of any fresh or frozen edible aquatic products, other than oysters, by a retail fish dealer possessing the license named in this subsection, shall constitute a violation of this Act.

(e) Retail Dealers' Truck License, permitting the sale of edible aquatic products from a motor vehicle to consumers only, fee Twenty-five Dollars (\$25) for each truck.

4. Bait Dealers' License, fee Ten Dollars (\$10) for each place of business.

5. (a, b). Repealed by Acts 1959, 56th Leg., p. 407, ch. 187, § 15(a).

6. Seine or Net License, to be of metal, for and to be firmly attached to each one hundred (100) feet or fraction thereof, fee One Dollar (\$1) for each one hundred (100) feet of the length thereof.

Provided, no license shall be issued for any seine or net longer than eighteen hundred (1800) feet, and also provided that after the passage of this Act no license shall be issued for any seine or net, the meshes of which are less than one and one-half (1½) inches from knot to knot.

7. Fish Boat License, for boats equipped with a motor of any kind or with sails, fee Three Dollars (\$3).

8. Skiff License, for boat propelled by oars or poles, to be of metal and firmly attached to skiff, fee One Dollar (\$1).

9. Oyster Dredge License, fee Fifteen Dollars (\$15).

10. Fish Guide License, fee Twenty-Five Dollars (\$25).

11. Place of business, as used in this Act, shall include the place where orders for aquatic products are received, or where aquatic products

are sold, and if sold from a vehicle, the vehicle on which, or from which such aquatic products are sold, shall constitute a place of business. The license shall at all times be publicly displayed by the dealer in his place of business so as to be easily seen by the public and the employees of the Game, Fish and Oyster Commission. And if any aquatic products are transported for the purpose of sale in any vehicle the license required of such dealer shall be displayed inside of such vehicle. Provided that no person shall bring into this State any aquatic products and in this State offer same for sale without procuring the license required for such a transaction by a dealer in this State, and the fact that such aquatic products are caught in another State shall not entitle the person claiming to have caught them to sell same in this State as a commercial fisherman.

12. Place of business as used in this Act shall not apply to a public cold storage vault, nor to a temporary receiving station or vehicle from which no orders are taken or from which no shipments or deliveries are made other than to the place of business of the licensee in the State of Texas.

13. Provided that it shall be unlawful for any person engaged in the business of commercial fishermen, wholesale or retail fish dealer as defined in this Chapter, to have in his possession, place of business, on a boat or vehicle for the purpose of sale, or for any person to buy, sell, or offer for sale, any of the following species of fish of greater or less length than hereafter set out:

Salt Water Species	Maximum Length	Minimum Length
Red Fish or Channel Bass	35 inches	14 inches
Flounder and Speckled Sea Trout	None	12 inches
Sheephead and Pompano	None	9 inches
Mackerel	None	14 inches
Gafftopsail	None	11 inches

Fresh Water Species. No fresh water fish of less length than provided by Section 3, Senate Bill No. 9 (93), page 13, Acts of the Forty-ninth Legislature,<sup>1</sup> provided that such limitations as to the numbers of catfish in possession shall not apply to persons licensed under this Chapter, where the same are caught or passed in accordance with other laws of this State and which provisions shall not apply in any county having a local or special law in conflict herewith.

Proof of the possession of any undersized or oversized fish in the place of business of any wholesale or retail fish dealer or on board any boat engaged in commercial fishing or in any commercial vehicle, shall constitute prima facie evidence of possession for the purpose of sale. Venue under this Act shall be established when such illegal fish are found in possession where such fish are sold or offered for sale or the place

from which said fish are shipped. Provided that it shall be lawful for any licensee to process and sell any lawful fish by cutting, filleting, wrapping and freezing or otherwise preparing the same for market.

14. Provided that all laws and parts of laws in conflict therewith are hereby repealed; providing for the repeal of Chapter 334, Acts of the Regular Session of the Forty-eighth Legislature;<sup>2</sup> Sections 1c, 1d, and 1e of Article 941 of the Penal Code, State of Texas; and providing for the repeal of Section 1 and Section 1a of Article 941, Penal Code, State of Texas, as amended, in so far as they apply to the tidal waters of Cameron County north of a line due east and west from a point on Padre Island shore, four (4) miles north of the North Brazos Santiago Jetties and by repealing Chapter 487, Acts of the Regular Session of the Forty-fifth Legislature.<sup>3</sup>

#### Inspection

Sec. 4. All aquatic products handled by or in the possession of any Commercial Fisherman, Wholesale Fish Dealer, or Retail Fish Dealer in this State, shall at all times and at any place, be subject to inspection by any employee of the Game, Fish and Oyster Commission of Texas; and the refusal to grant for such inspection shall constitute a violation of this Act.

#### Rebate on Existing Licenses

Sec. 5. All Wholesale Dealer's Licenses, Oyster Dredge Licenses, Commercial Fishing Licenses, Boat Captain Licenses, Boat Registration Permits, and Seine, Net and Trawl Permits heretofore issued by the Game, Fish and Oyster Commission of Texas, shall become null and void on the effective date of this Act; provided, that the owner of any such license or permit, shall be entitled to a rebate on the amount paid for same for the unused period of time as shown on such license or permit, when said owner shall return such license or permit to said Commission attached to a claim for the amount of rebate due therefor. When such claim is found to be correct and approved by the Executive Secretary of the said Commission, the same shall be paid out of any moneys available in the State Treasury upon warrant issued by the State Comptroller.

#### Penalty

Sec. 6. Any person failing to comply with or violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine in a sum not less than Ten Dollars (\$10.00), nor more than Two Hundred Dollars (\$200.00), and his license shall be automatically cancelled and he shall not be entitled to receive another such license or permit for one year from the date of such conviction.

#### Repeals

Sec. 7. All laws or parts of laws in conflict herewith, or contrary to this Act, and especially Articles 934, 936, 937, 938, 939, 940 of the Penal Code of the State of Texas, and Articles 4031, 4032, 4033, 4034

and 4044 of the Revised Civil Statutes of the State of Texas, be and the same are hereby repealed. Provided, however, that all license fees and taxes accruing to the State of Texas by virtue of laws repealed by this Act, before the effective date of this Act, shall be and remain valid and binding obligations due the State for all fees and taxes accruing under the provisions of prior or existing laws and all such taxes now or hereafter becoming delinquent to the State of Texas before the effective date of this Act are hereby expressly preserved and declared to be legal and valid obligations to the State. And further provided, that no offense committed and no fine, forfeiture or penalty incurred under such above repealed laws before the effective date of this Act, shall be affected by the repeal herein of any such laws, but the punishment of such offense and the recovery of such fines and forfeiture shall take place as if the law repealed had remained in force. Also providing, any person now or hereafter shown by a final judgment of a Court of competent jurisdiction to be indebted to and owing the State of Texas any amount for any license, fees or taxes on aquatic products handled, shall not receive any license named in this Act, until the time such indebtedness shall have been paid the Game, Fish and Oyster Commission of Texas.

#### Annual Fees

Sec. 8. All license fees provided for in this Act, are annual fees and all licenses shall be effective on and after September 1st of each year and shall be valid until August 31st of the year following.

All moneys collected under the provisions of this Act, or because of fines paid for violations of the provisions of this Act, shall be remitted to the Game, Fish and Oyster Commission at its office in Austin, Texas, not later than the tenth day of the month following their collection and shall be deposited by said Game, Fish and Oyster Commission in the State Treasury to the credit of the Fish and Oyster Fund.

Provided, however, this Act shall become effective on January 1, A.D.1934, and the license fees from that date until August 31, A.D.1934, shall be two-thirds the amount of the annual fees provided for in this Act.

#### Moneys to Fish and Oyster Fund

Sec. 9. All moneys collected under the provisions of this Act, or because of fines paid for violation of the commercial fishing laws, shall be remitted to the Game, Fish and Oyster Commission at its office in Austin, Texas, not later than the tenth day of the month following their collection, and shall be deposited by the Game, Fish and Oyster Commission in the State Treasury to the credit of a special fund designated as "Fish and Oyster Fund."

Such Fish and Oyster Fund shall be used for the enforcement of the Fish, Shrimp and Oyster laws of this State; for the dissemination of useful information pertaining to the economical value of marine life; for the making of scientific investigations and surveys of the sea food fishes and the marine life;

for the better protection and conservation of the sea food fishes, oysters, shrimp and the other useful marine life; for the purchase, repair, and operation of boats and dredges; for employment of deputies; and for supplies, equipment and all necessary expenses for the proper administration of the Fish, Shrimp and Oyster laws of this State.

Constitutionality

Sec. 10. If any paragraph, section or any part of this Act shall be held unconstitutional or inoperative, it shall not affect any other paragraph, section or part of this Act; and the remainder of this Act, except the part declared unconstitutional or inoperative shall continue to be in full force and effect. [Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29; Acts 1934, 43rd Leg., 3rd C.S., p. 83, ch. 40, § 1; Acts 1935, 44th Leg., p. 808, ch. 345, §§ 1, 2A, 3; Acts 1945, 49th Leg., p. 289, ch. 209, § 1; Acts 1959, 56th Leg., p. 407, ch. 187, § 15(a); Acts 1963, 58th Leg., p. 963, ch. 386, § 1, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 362, ch. 173, §§ 1, 2, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 262, ch. 125, § 10, eff. Sept. 1, 1973.]

<sup>1</sup> Article 927a.

<sup>2</sup> Article 978j note.

<sup>3</sup> Article 978m.

**Art. 934b-1. Repealed by Acts 1949, 51st Leg., p. 113, ch. 68, § 12**

**Art. 934b-2. Commercial Fishing in Tidal Waters**

Definitions

Sec. 1. The following words, terms and phrases used in this Act are hereby defined as follows:

(a) A "Commercial Fisherman" is any person who takes fish or oysters or shrimp or other edible aquatic products from tidal waters of this state, for pay, or for the purpose of sale, barter or exchange.

(b) A "Commercial Fishing Boat" is any boat or vessel which is required to be numbered or registered by and under the laws of the United States of America or the State of Texas, and which is used for the purpose of taking, catching, or assisting in taking or catching fish, shrimp, oysters, or any other edible aquatic life from tidal waters of the State of Texas for pay or for the purpose of sale, barter or exchange.

(c) "Tidal Waters" as that term is used herein, means all of the salt waters of the State of Texas, including that portion of the state's territorial waters in the Gulf of Mexico within three (3) marine leagues from shore.

Commercial Fishermen's Licenses

Sec. 2. Before any commercial fisherman shall take, catch or assist in taking, any fish, shrimp or oysters, or any other edible aquatic life from the tidal salt waters of this state, a license shall first be procured from the Texas Parks and Wildlife Department privileging him so to do. The fee for such Commercial Fisherman's License shall be Five Dollars (\$5). Fifteen cents (15¢) may be retained by the issuing agent for each license issued, except that employees of the Texas Parks and Wildlife Department may not retain such fee. The license shall expire August 31st following the date of issuance.

Commercial Fishing Boat Licenses

Sec. 3. Before any commercial fishing boat shall be used for the purpose of taking, catching, or assisting in taking or catching fish, shrimp, oysters, or any other edible aquatic life from the tidal waters of this State, for pay, or for the purpose of sale, barter or exchange, a license, to be known as a Commercial Fishing Boat License, shall first be procured by the owner of such commercial fishing boat from the Game and Fish Commission of Texas privileging such boat to be so used. The fee for a Commercial Fishing Boat License shall be Six Dollars (\$6). Twenty-five cents (25¢) may be retained by the issuing agent for each license issued, except that employees of the Game and Fish Commission may not retain such fee. The license shall expire August 31st following the date of issuance.

Quota of Boat Licenses

Sec. 4. In July of each year the Game, Fish and Oyster Commission of Texas shall set the quota of Commercial Fishing Boat Licenses to be issued the succeeding conservation year, which shall extend from September 1st of such year to August 31st of the succeeding year, after a survey and investigation and determination of the maximum poundage of shrimp, oysters and other edible aquatic life which may be caught during the following year commercially without danger to the maximum point of production; and when, in the opinion, finding and determination of the Commission, the maximum production has been reached so as to assure the ability to take a maximum crop for the following year, and the Commercial Fishing Boat Licenses and Commercial Fisherman's Licenses quotas for the current conservation year have been reached, then the Commission shall not issue any additional licenses except upon a public hearing after due notice to the public and persons interested under such rules and regulations as may be promulgated by the Commission. Within thirty (30) days after the effective date of this Act, the Commission shall determine the conservation quota for the period remaining until August 31, 1949, and shall issue licenses under such quota.

Duration of Existing Licenses

Sec. 4a. From and after the effective date of this Act all holders of present licenses shall be entitled to operate thereunder until September 1, 1949.

Renewal of Licenses; Priority; Applications by New Applicants

Sec. 5. After August 31, 1949, holders of prior licenses shall upon application made prior to September 1 of each year be entitled to a renewal thereof, and no new license shall be issued unless and until the holders of prior licenses who have applied for renewal licenses shall have been granted their licenses. Thereafter, new applicants who are resident citizens of Texas shall be given next priority in the order their applications were filed. In the event such applicant has not heretofore received for the current or prior year such license as applied for, or does not have the original or a duplicate thereof, such applicant shall make in writing, under oath,

duly acknowledged in the State of Texas, an application addressed to the Game, Fish and Oyster Commission of Texas, giving in full detail, information regarding the domicile, residence of the applicant, name, age, description, social security number, place of birth or naturalization; and if a resident of Texas, the date such residence was acquired and the place and state of former residence; whether or not the applicant has been convicted of violating the game and fish laws of the State of Texas, or of any other state or nation, and if so, the number, dates and places where convictions were had; and such other information as the Game, Fish and Oyster Commission of Texas shall require in order to determine the proper license and the rights of the applicant to receive or be denied such license or permit.

The failure of any applicant to give all of the information required herein shall constitute grounds for the refusal of such permit, and it shall be mandatory upon the Commission to refuse such permit. The making of any false statement shall constitute a felony, the crime of perjury punishable under the penal laws of this state, and shall be grounds for cancellation of any license issued under and by virtue of such application.

Acts Without License Unlawful

Sec. 6. It shall be unlawful for any commercial fisherman to take, catch, or assist in taking or catching any fish, shrimp, oysters or any other edible aquatic life, or for any commercial fishing boat to be used for such purposes within the tidal waters of this state, as herein defined, without first having obtained the licenses herein provided for.

Replacement of Lost or Destroyed Boat

Sec. 7. The owner of a Commercial Fishing Boat License whose licensed boat or vessel has been lost or destroyed due to fire or storm or abandonment of said vessel for commercial fishing purposes, may replace such boat by a boat of like size, or smaller size, without losing his license number for the year or his priority for future licenses.

Research Programs; Change in Quota

Sec. 8. The Game, Fish and Oyster Commission shall have the power to formulate research programs in the making of its annual survey and to determine whether or not a public necessity exists for a change in the quota of licenses for any succeeding year.

Powers and Duties of Commission; Review of Orders

Sec. 9. The Game, Fish and Oyster Commission shall have such powers and duties as are conferred upon it by this Act and by other laws of this state, and its findings and determination shall be subject to review by a court of competent jurisdiction. The orders of the Game, Fish and Oyster Commission may be appealed to a District Court of Travis County, Texas, and the trial therein shall be de novo the same as if such matter had been originally filed in such court. The Game, Fish and Oyster Commission shall have authority to promulgate rules and regulations to carry out the provisions of this Act and to prescribe the time and place of its meetings and hearings and the procedure to govern same.

Violations and Punishment; Seizures; Injunction

Sec. 10. Any person, corporation or association of persons failing to comply with, or who violates any provision of this Act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, or imprisonment in jail of not less than one (1) month nor more than one (1) year, or by both such fine and imprisonment; and providing that the Game, Fish and Oyster Commission of Texas, or its authorized agent, shall have the power and right to seize and hold boats, nets, seines, trawls or other tackle in the possession of any violator or violators of this Act, as evidence until after trial of the defendant or defendants. Such violations also may be enjoined by the Attorney General by suit filed in a District Court of Travis County, Texas, which shall have venue for such action.

Disposition of Fines

Sec. 11. All moneys collected under the provisions of this Act or because of fines paid for violation of the provisions of this Act shall be remitted to the Game, Fish, and Oyster Commission of Texas, not later than the 10th day of the month following that collection, and shall be deposited by said Game, Fish and Oyster Commission of Texas in the State Treasury to the credit of the Special Game and Fish Fund.

Partial Invalidity

Sec. 13. If any section or part whatsoever of this Act shall be held to be unconstitutional or invalid, such invalidity shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act without respect to such section or part so held to be invalid.

[Acts 1949, 51st Leg., p. 113, ch. 68; Acts 1963, 58th Leg., p. 963, ch. 386, §§ 2, 3, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 362, ch. 173, § 3, eff. Aug. 28, 1967.]

Art. 934b-3. Sale of Seafood Obtained in Commercial Joint Adventure

Sec. 1. (a) It shall be unlawful for any person who is engaged commercially in catching or taking fish, shrimp, oysters or other seafood in a joint adventure or other undertaking whereby he receives a percentage of the proceeds of the sale of the catch, or a share of the catch himself, to sell or offer for sale any of such products, obtained in the joint adventure, except in the regular course of such joint adventure, with the express or implied consent of his coadventurer or coadventurers.

(b) It shall be unlawful for any person who is employed on a salary or any other basis in the commercial catching or taking of fish, shrimp, oysters, or other seafood, to sell or offer for sale such products without the express or implied consent of his employer.

(c) It shall be unlawful for any person to purchase any fish, shrimp, oysters or other seafood, knowing it is offered for sale in violation of this Act.

Sec. 2. (a) Any person who violates any provision of this Act shall be, for the first offense, fined not less than One Hundred Dollars (\$100) nor more than Two Hundred Dollars (\$200); and, for the second and all subsequent offenses, shall be fined not less than Five Hundred Dollars (\$500) nor more than Two Thousand Dollars (\$2,000), or be sentenced to serve not less than five (5) days nor more than six (6) months in the county jail, or shall be punished by both such fine and imprisonment.

(b) Charges may be filed, prosecutions maintained, cases tried, and proceedings had, for violation of any provision of this Act, in the county wherein the offense occurs.

Sec. 3. Any and all laws or parts of laws of the State of Texas, General and Special, in conflict with any of the provisions of this Act are hereby expressly repealed to the extent of such conflict.

Sec. 4. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any section, word, clause, sentence, or part of this Act shall be declared unconstitutional shall in no event affect any other section, word, clause, sentence or part thereof, and it is hereby declared to be the intent of the Legislature to have passed each sentence, section, part or clause hereof irrespective of the fact that any other section, sentence, clause or part hereof may be declared invalid.

[Acts 1963, 58th Leg., p. 692, ch. 255.]

#### Art. 934b-4. Commercial Exploitation of Horned Toads

Killing, Capturing, Selling, or Transporting Horned Toads within the State of Texas

Sec. 1. (a) It shall be unlawful for any person to capture, trap, trap for, ensnare, wilfully kill or injure, take or have in his possession for the purpose of sale, barter, or commercial exploitation, horned toads in the State of Texas except for the propagation and scientific purposes as provided by law; provided further, that possession includes the transportation, shipping, or storing of horned toads, dead or alive, within the State of Texas.

(b) As used in this Act, "horned toad" means a horned toad or horned lizard of the genus *Phrynosoma*.

Penalty

Sec. 2. A person who violates the provisions of Section 1 of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$200. Providing further, that each horned toad taken, captured, killed, injured, or possessed, as provided by Section 1, shall constitute a separate offense and shall be subject to the penalty provided by this Section.

Injunction

Sec. 3. Any district attorney, county attorney, sheriff, the executive director of the Parks and Wildlife Department or his authorized representative, or proper authorities in any county of this state

may institute any appropriate action or proceedings, including the use of a petition for injunction, to prevent the violation of this Act.

[Acts 1967, 60th Leg., p. 761, ch. 316, eff. May 27, 1967.]

#### Art. 934b-5. Commercial Exploitation of Texas Tortoises

Killing, Capturing, Selling or Transporting Texas Tortoises (*Gopherus berlandieri*) within the State of Texas

Sec. 1. It shall be unlawful for any person to wilfully kill or injure, take or have in his possession for the purpose of sale, barter, or commercial exploitation, Texas Tortoises (*Gopherus berlandieri*) in the State of Texas except for propagation and scientific purposes as provided by law; provided further, that possession includes the transportation, shipping, or storing of Texas Tortoises (*Gopherus berlandieri*), dead or alive, within or into the State of Texas.

Penalty

Sec. 2. A person who violates the provisions of Section 1 of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$200 or by confinement in the county jail for not less than 10 days nor more than 60 days, or by both; providing further, that each Texas Tortoise (*Gopherus berlandieri*) taken, killed, injured, or possessed, as provided by Section 1, shall constitute a separate offense and shall be subject to the penalty provided by this Section.

Injunction

Sec. 3. Any district attorney, county attorney, sheriff or proper authorities in any county of this state, or the Director of the State Parks and Wildlife Department may institute any appropriate action or proceedings, including the use of a petition for injunction, to prevent the violation of this Act.

[Acts 1967, 60th Leg., p. 763, ch. 318, eff. May 27, 1967.]

#### Art. 934c. Menhaden Fishing in Salt Waters of Gulf of Mexico

Legislative Declaration

Sec. 1. The Legislature of the State of Texas hereby declares that it is to the best interest of the people of the State that the taking and catching of menhaden fish from the salt waters of the Gulf of Mexico should be fostered, encouraged, and regulated to the end that the benefits of such fishery may be enjoyed and protected. This Act shall, to that end, be liberally construed and interpreted.

Fishing Prohibited Except as Provided

Sec. 2. Except as otherwise provided in this Act, it shall be unlawful for any person to take menhaden fish from the tidal salt waters of the State of Texas for the purpose of sale, barter or exchange.

Commercial Fisherman's License

Sec. 3. Before any person shall take, catch or assist in taking or catching menhaden fish from the tidal salt waters of this State, a Commercial Fisherman's License under the applicable provisions of the law shall be first obtained from the Game, Fish and Oyster Commission of Texas, authorizing such per-

son to engage in the vocation of Commercial Fisherman.

Commercial Fishing Boat License

Sec. 4. Before any boat or vessel shall be used for the purpose of taking menhaden fish from the tidal salt waters of this State, a Commercial Fishing Boat License under the applicable provisions of the law shall be first obtained by the owner of such boat or vessel from the Game, Fish and Oyster Commission of Texas; provided, however, that the fee for such license be Two Hundred Dollars (\$200) per boat per year.

Area Within Which Fishing Permitted; Season; Nets and Seines

Sec. 5. Menhaden fish may be taken from the waters of the Gulf of Mexico within the gulfward boundary lines of Jackson, Calhoun, Refugio, Aransas, San Patricio, Kleberg, Kenedy, Willacy, Jefferson, and Cameron Counties from the coast line of the Gulf of Mexico to the continental shelf compiled, platted, fixed and located by the Commissioner of the General Land Office pursuant to Senate Bill No. 338, Chapter 287, Acts of the Fiftieth Legislature, 1947,<sup>1</sup> and filed and recorded in the office of the County Clerk of Jackson, Calhoun, Refugio, Aransas, San Patricio, Kleberg, Kenedy, Willacy, Jefferson, or Cameron Counties, between April 1st and December 1st of each year through the use of nets and purse seines, which, not including the bag, shall be not less than one and one half (1½) inch stretched mesh; provided, however, that no such nets and purse seines may be used in any bay, river, pass or tributary thereto, nor within one mile of any barrier, jetty, island, or pass, nor within one half (½) mile offshore in the Gulf of Mexico; provided, further, that no such net shall be used in the taking of menhaden fish until it shall have been examined and tagged in accordance with the provisions of Article 946 of the Penal Code of Texas.

Taking for Sale, Barter or Exchange

Sec. 6. The purse seine net or seine prescribed in Section 5 of this Act shall never be used for the purpose of taking edible aquatic products for the purpose of barter, sale, or exchange. No person taking menhaden fish from the tidal salt waters of the State under the provisions of this Act shall sell, barter, or exchange any edible aquatic products so taken in said purse seine net and the possession by any such person of edible aquatic fish in excess of five per cent (5%) by volume of menhaden fish then in the possession of such person shall constitute a prima facie violation of the provisions of this Act.

Menhaden Fish Plants

Sec. 6a. (a) Any person, firm, corporation or association of persons desiring to operate a menhaden fish plant in this State shall first obtain a permit from the Game, Fish and Oyster Commission. Applicants for permits shall furnish the Commission a certified copy of an order of the Commissioners Court of the County in which the plant is proposed to be located which order shall describe the plant and the location thereof and indicate the approval of the court for the construction and operation of same;

provided, that the decision of the Commissioners Court in approving or disapproving the construction of a plant shall be final and shall not be reviewable in any court by any party dissatisfied with the action of the court. Applications for permits shall be upon forms prescribed by the Commission and the Commission is authorized to require such information in support of applications as it may deem necessary. Applications shall be accompanied by a filing fee of Fifty Dollars (\$50) and all such fees shall be retained by the Commission to pay the cost of the administration of this section.

(b) The Commission shall set for hearing all applications within a reasonable time after the filing thereof and shall give notice of hearing on each application at least twenty (20) days prior to the date of hearing to the county judge of the county in which the plant is proposed to be located and to all known interested parties. If the Commission shall determine, pursuant to notice and hearing, that the granting of the permit and the operation of the proposed plant is in the public interest, the Commission shall issue a permit to the applicant. All permits issued by the Commission shall be renewed annually and the renewal fee shall be Fifty Dollars (\$50).

(c) Any menhaden fish plant in existence and bona fide operation within this State on the 31st day of August, 1950, may apply to the Commission for a permit and shall not be required to furnish a certified copy of an order of the Commissioners Court approving the construction and operation of the plant.

(d) For the purposes of this Act a "menhaden fish plant" means a fixed installation upon land designed, equipped and used to process fish and the by-products thereof by the application of pressure, heat and chemicals or a combination thereof to raw fish whereby the same are converted into fish oil, fish solubles, fish scraps or other products.

Violations; Punishment

Sec. 7. Any person violating any of the provisions of this Act shall be guilty of a misdemeanor and upon first conviction thereof shall be fined not less than Twenty Dollars (\$20) nor more than One Hundred Dollars (\$100) and shall have his license suspended for a period of not less than seven (7) nor more than thirty (30) days, at the discretion of the Game, Fish and Oyster Commission of Texas; upon second conviction thereof shall be fined not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) and shall have his license revoked and shall not be eligible for a new license for a period of six (6) months after the date of such conviction.

Cumulative Character; Repeals

Sec. 8. The provisions of this Act shall be cumulative of all other laws upon the subject but to the extent of any conflict between this Act and any other laws, such other laws are hereby repealed.

Partial Unconstitutionality

Sec. 9. If any section or part whatsoever of this Act shall be held to be unconstitutional or invalid,

such invalidity shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act without respect to such section or part so held to be invalid.

[Acts 1951, 52nd Leg., p. 19, ch. 14; Acts 1959, 56th Leg., p. 561, ch. 252, § 1; Acts 1973, 63rd Leg., p. 266, ch. 125, §§ 16, 17, eff. Sept. 1, 1973.]

<sup>1</sup> Civil Statutes, art. 1592a.

#### Art. 935. Refusal to Show License

Any person fishing for market or for the sale of marine life and having a license therefor who refuses to show it to the Commissioner, or his deputy when requested to do so, shall be fined not less than five nor more than twenty-five dollars.

[1925 P.C.]

**Arts. 936, 937. Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7**

#### Art. 937a. Tax on Fish, Crabs, and Shrimp; "Barrel of Oysters" Tax

There shall be and is hereby levied a tax of not less than one-fifth of one per cent per pound on all fish, crabs and shrimp, whether from private or public waters, taken and sold or offered for sale in this State, and not less than two cents a barrel on all oysters, sold or offered for sale in this State whether from private or public beds, and offered for sale or shipment, and not less than one-half a cent per pound on all turtles, and not less than twenty-five cents on each terrapin offered for sale and shipment. Such tax shall be paid under such rules and regulations as the Game, Fish and Oyster Commissioner shall prescribe. For all purposes mentioned in this title or section, a barrel of oysters shall be deemed and taken to consist of three boxes of oysters in the shell; said boxes to be the following dimensions; ten inches wide by twenty inches long, and thirteen and one-half inches in depth. In filling such boxes for measurement, such oysters shall not be placed or deposited in such box in a way that will make them fill the box more than two and one-half inches in the center above the height of the box. Provided that two gallons of shucked oysters without their shells shall be considered and deemed by this Act as equal to one barrel of oysters in the shell. It is hereby specially provided that the title to the shells, from which oysters are taken shall remain in the State and the Game, Fish and Oyster Commissioner is directed to handle, control or sell same as he may see fit. Provided such oyster shells shall not be sold for a lower price than twenty-five cents the cubic yard. All moneys and royalties collected under and by the provisions of this article shall be deposited by the Game, Fish and Oyster Commissioner to the credit of the fish and oyster fund, hereinafter provided for.

[Acts 1925, 39th Leg., ch. 178, p. 438, § 1 (art. 10).]

#### Art. 937b. Taking Sponge Crabs from Coastal Waters

Sec. 1. (a) No person, firm, or corporation shall take by any means any sponge crabs from the coastal waters of this State.

(b) In this Act, the term "coastal waters" has the same meaning as is assigned to it by the Texas Shrimp Conservation Act (Section 3, Article 4075b, Vernon's Texas Civil Statutes).

Sec. 2. A person, firm, or corporation which violates any provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$200.

Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1965, 59th Leg., p. 1349, ch. 611.]

**Arts. 938 to 940. Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7**

#### Art. 941. Using Seines or Gigs

It shall be unlawful for any person to place, set, use or drag any seine, net or other device for catching fish and shrimp other than the ordinary pole and line, casting rod and reel, artificial bait, trot line, set line, or cast net or minnow seine of not more than twenty feet in length for catching bait, or have in his possession any seine, net or trawl without a permit issued by the Game, Fish and Oyster Commissioners or by his authorized deputy in or on any of the waters of any of the bays, streams, bayous or canals of Orange, Jefferson, Chambers, Harris, Galveston and Brazoria Counties, or in or on any of the inland waters, streams, lakes, bayous or canals of Matagorda County, or within or on the waters of Agua Dulce Creek, Oso Creek, Shamrock Cove, Nueces Bay, Ingleside Cove; Red Fish Cove, Shoal Bay, Mud Flats, Shallow Bay, which are more clearly defined as beginning at the Southwest end of "Red Fish Cove", thence South on a line intersecting Corpus Christi Channel, and all the waters lying from this line, the said Channel, and between Harbor Island and the Mainland to Aransas Bay; all of Aransas Bay between Port Aransas and Corpus Christi Bayou and lying between Harbor Island and Mud Island; Copano Bay, Mission Bay in Refugio County, Puerto Bay, St. Charles Bay, Hynes Bay, Contec Lake, Powderhorn Lake, Oyster Lake; Sabine Pass, leading from Sabine Lake to the Gulf of Mexico; San Luis Pass, leading from Galveston West Bay to the Gulf of Mexico; Turtle Bay; Brown's Cedar Pass; Mitchell's Cut, Pass Cavallo, leading from Matagorda Bay to the Gulf of Mexico; Cedar Bayou, leading from Mesquite Bay to the Gulf of Mexico; North Pass or St. Jo Pass; Aransas Pass, leading from Aransas Bay to the Gulf of Mexico; Corpus Christi Pass, leading from Corpus Christi Bay to the Gulf of Mexico; Brazos Santiago Pass, leading from the Lower Laguna Madre to the Gulf of Mexico, or the pass on the north of Laguna Madre, leading into Corpus Christi Bay, which pass shall be defined as beginning one-fourth of a mile

southwest of Peat Island and running from said point to Flour Bluff in Nueces County, or in or on the waters within one mile of the passes herein mentioned, connecting the bays and tidal waters of this State with the Gulf of Mexico or in or on or within a mile of any other such passes, or within the waters of any pass, stream or canal leading from one body of Texas bay or coastal waters into another body of such waters; providing that nothing in this article shall prevent the use of spear or gig and light for the purpose of taking flounders.

Sec. 1a. Provided that it shall be unlawful for any person to drag any seine, or use any drag seine, or shrimp trawl for catching fish or shrimp, or to take or catch fish or shrimp with any device other than with the ordinary pole and line, casting rod, rod and reel, artificial bait, trot line, set line, or cast net, or minnow seine of not more than twenty feet in length for catching bait, or to use a set net, trammel net or strike net, the meshes of which shall not be less than one and one-half inches from knot to knot, in any of the tidal bays, streams, bayous, lakes, lagoons, or inlets, or parts of such tidal waters of this State not mentioned in Section 1 hereof.

Sec. 1b. Provided that shrimp trawls may be used for taking shrimp in Matagorda Bay, San Antonio Bay or that part of Aransas Bay and all that part of Corpus Christi Bay not mentioned in Section 1.

Secs. 1c to 1e. Repealed. Acts 1945, 49th Leg., p. 289, ch. 209, § 1.

Sec. 1f. Any person who shall violate any of the provisions of this Article shall be deemed guilty of a misdemeanor, and on first conviction shall be fined in a sum of not less than twenty-five (\$25) dollars nor more than one hundred (\$100) dollars; and on second or more convictions shall be fined in a sum of not less than one hundred (\$100) dollars nor more than two hundred (\$200) dollars and his fisherman's license or dealer's license or both shall be automatically canceled and he shall not be entitled to receive another fisherman's license or dealer's license for one year from the date of his conviction; and provided that the Game, Fish and Oyster Commissioner of Texas or his deputy shall have the power and right to seize and hold nets, seines or other tackle in his possession as evidence until after the trial of defendant and no suit shall be maintained against him therefor.

[1925 P.C.; Acts 1929, 41st Leg., p. 269, ch. 119; Acts 1945, 49th Leg., p. 289, ch. 209, § 1.]

#### Repealed in Part

*Sections 1 and 1a of this article were repealed, in so far as they apply to the tidal waters of Cameron County north of a line due east and west from a point on Padre Island shore, four miles north of the North Bragos Santiago Jetties by Act 1945, 49th Leg., p. 289, ch. 209, § 1.*

Art. 941-1. Repealed by Acts 1941, 47th Leg., p. 63, ch. 48

#### Art. 941-2. Using Nets for Fish and Shrimp in Matagorda Bay and Gulf of Mexico

Sec. 1. It shall be unlawful for any person to place, set, use or drag any seine, net or other device for catching fish and shrimp other than the ordinary pole and line, casting rod and reel, artificial bait, trot line, set line, or cast net or minnow seine of not more than twenty feet in length for catching bait, or spear or gig and light for taking flounder, in or on any of the waters of Pass Caballo leading from Matagorda Bay to the Gulf of Mexico which waters lie within the following points:

Beginning at a point on the southeast bank at the mouth of Saluria Bayou; thence in a northeasterly direction to a point on the Matagorda Bay shore of Matagorda Peninsula 4,000 yards southwest from a point on said shore which marks the boundary line between the Elijah Decrow survey and the John Allen survey on said Peninsula; thence across the Peninsula to a point on the Gulf of Mexico shore thereof 3,000 yards southwest from a point on the Gulf of Mexico shore which marks the boundary line between the Elijah Decrow survey and the John Allen survey; thence to a point in the Gulf of Mexico 300 yards directly offshore; thence to a point in the Gulf of Mexico 300 yards directly offshore from a point on Matagorda Island shore which is 300 yards southwest along the shore from the "Point of Rocks"; the line connecting these latter two points offshore in the Gulf of Mexico from Matagorda Peninsula to Matagorda Island curving so that it shall never be closer to Matagorda Peninsula and Matagorda Island than 300 yards; thence to the point on Matagorda Island shore which is 300 yards southwest from the "Point of Rocks"; thence up the shore line of Matagorda Island to the point of beginning.

The Texas Game and Fish Commission shall erect a suitable marker at each of the above described points on land.

Sec. 2. The purpose of this Act is to define with certainty the waters of Pass Caballo leading from Matagorda Bay to the Gulf of Mexico in which it is unlawful to use certain nets and other devices for catching fish and shrimp and in furtherance of such purposes this Act shall be construed as cumulative to existing law.

Sec. 3. Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and on first conviction shall be fined in a sum of not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00); and on second or more convictions shall be fined in a sum of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Dollars (\$200.00).

[Acts 1959, 56th Leg., p. 538, ch. 240; Acts 1959, 56th Leg., 2nd C.S., p. 85, ch. 3, § 1.]

**Art. 941-3. Trotline Tags**

Sec. 1. The Parks and Wildlife Department is authorized and directed to issue numbered tags for trotlines in salt waters of the State of Texas. It shall be unlawful for any person to use or to place in the salt waters of the state any trotline that does not have attached thereto numbered tags issued by the Parks and Wildlife Department or its agent. The Parks and Wildlife Department or its agent is authorized to charge a fee of \$1 for each numbered tag issued for trotlines. Each numbered tag shall be attached to each 300 feet, or fraction thereof, of trotline in use or placed in the salt waters of the state. The Parks and Wildlife Commission is authorized to adopt any necessary safety rules and regulations to implement this program.

Sec. 2. This Act shall be effective on the first day of September, 1969.

Sec. 3. Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in a sum of not less than \$25, nor more than \$200; and provided that the Parks and Wildlife Department or its authorized agent shall have the right and the power to seize and hold trotlines in their possession as evidence until after the trial of the defendant and no suit shall be maintained against them or their authorized agent therefor.

[Acts 1969, 61st Leg., p. 1597, ch. 491, eff. Sept. 1, 1969.]

**Art. 941a. Suckers, Buffalo, Shad and Carp**

Any and all persons shall be permitted to take or catch sucker, buffalo, carp, shad and gar at any time except during the months of March, April and May, in any fresh water rivers, creeks, or lakes in the counties of Burnet, Williamson, Lampasas, Dimmit, Zavala, Medina, Uvalde, DeWitt, Brown, Hamilton, Coryell, Gonzales, Lamar, Bell, Collin, Grayson, Gillespie, Kendall, Blanco, Llano, Mason, McCulloch, San Saba, Cooke, Denton, Jefferson, Orange, Mitchell, Fisher, Nolan, Chambers, Travis, Hardin, and Fannin with a seine, or net with not less than four-inch size mesh; provided, however, that any catfish, crappie, perch, bass or any other kind of fish caught by the above methods shall be immediately released in the waters from which they are caught; and provided, further, that the owner or the one in possession of any seine or net used for the purpose of seining shall first obtain a permit to seine such fish from the Game, Fish and Oyster Commissioner of this State under the regulations prescribed by the Department, and shall within five days from and after the using of any seine or net for the purpose of catching fish make a report under oath, to the Game, Fish and Oyster Commissioner, giving in said report the names of each and every person in the party, and showing in said report that all fish not permitted to be caught or taken with a seine or net were released in the waters from which they were taken immediately after they were caught.

Any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than Ten (\$10.00) Dollars, nor more than One Hundred (\$100.00) Dollars, and any person making a false affidavit shall be guilty of false swearing. [Acts 1925, 39th Leg., p. 170, ch. 38, § 2; Acts 1927, 40th Leg., p. 91, ch. 65, § 1; Acts 1929, 41st Leg., p. 109, ch. 53, § 1; Acts 1929, 41st Leg., 2nd C.S., p. 40, ch. 25, § 1.]

**Art. 941a-1. Sucker Fish in Gin and Glade Creeks**

Sec. 1. It shall not be unlawful for any person or persons to catch sucker fish in the streams of the Gin and Glade creeks during the months of February, March and April with any kind of trammel net.

Sec. 2. Any person catching or destroying any sucker fish in the streams named in Section 1 hereof by poisoning, trapping or dynamiting or in any manner except as provided in Section 1 hereof shall be punished in the manner provided by the General Laws of the State of Texas.

[Acts 1929, 41st Leg., p. 443, ch. 203.]

**Art. 941b. Minnows and Rough Fish, Manner of Taking**

Sec. 1. It shall hereafter be lawful to use a common funnel fruit jar type trap or its metallic counterpart, not longer than twenty-four (24) inches with throat no larger than one inch in diameter for the purpose of taking minnows for bait in the public waters of the State of Texas.

Sec. 2. It shall hereafter be lawful to use minnow seines not more than twenty (20) feet long and dip nets, cast nets, and umbrella nets of any size mesh constructed of nonmetallic materials for the purpose of taking bream, shad, carp, suckers, gar and buffalo fish from the public waters of the State of Texas.

[Acts 1949, 51st Leg., p. 845, ch. 460; Acts 1961, 57th Leg., p. 1121, ch. 508, § 1.]

**Art. 942. Unlawful Possession of Seine**

Whoever shall carry on, or over, or into the waters of any pass leading from the inland bays or tidal waters of this State to the Gulf of Mexico any seine or net except a cast net used for catching bait, or a minnow net not exceeding twenty feet in length, or shall carry by vehicle or in any other way, any seine or net except a cast net used for catching bait or a minnow seine not exceeding twenty feet in length to any point or place within one mile of such pass or shall have in his possession within one mile of any such pass any net or seine except a cast net for catching bait, or a minnow seine not exceeding twenty feet in length, shall be fined not less than twenty-five nor more than two hundred dollars, and be confined in the county jail not less than thirty nor more than ninety days. Nothing in this law shall apply to the carrying of nets or seines over closed waters within one mile of any town.

[1925 P.C.]

**Art. 943. Exceptions**

Nothing in the foregoing article shall apply to vessels engaged in carrying freight or passengers, and engaged as seagoing vessels in coast and foreign trade, and licensed and recognized as such by the Federal Government; provided further that the Game, Fish and Oyster Commissioner may grant permits to persons desiring to fish, to carry their boats, nets and seine, and vehicles into, over and on such passes or closed waters or on land to within the mile limits of such passes, and such permits shall state at what time such boats, vehicles, nets and seines shall be taken away from such mile limit and such passes.

[1925 P.C.]

**Art. 944. Proof of Possession**

In all prosecutions under articles 941 and 942 the identification of the boat or vehicle or the seine or net by which or from which the violation of the law occurred, shall be prima facie evidence against the owner or party last in charge of such boat, or against the owner of the vehicle or seines or net.

[1925 P.C.]

**Art. 945. Seining in Salt Water**

The mesh of all seines and nets used for taking fish in salt waters of this State, not including the bag, shall not be less than one and one-half inch square mesh. The mesh of the bags and for fifty feet on each side of the bags, shall not be larger than a one inch square mesh. No seine or net of any kind of over two thousand feet shall be dragged or pulled in the salt water of this State, and any person dragging such seine, or dragging two or more seines which are connected or tied together with a combined length of more than two thousand feet, shall be upon first conviction thereof fined not less than twenty nor more than one hundred dollars; upon second conviction thereof shall be fined not less than fifty nor more than two hundred dollars, and shall have his license revoked for a period not less than thirty nor more than ninety days; and upon third conviction thereof shall be confined in jail for not less than thirty nor more than ninety days, and shall have his license revoked for a period of not less than one year.

[1925 P.C.]

**Art. 945a. Permit to Use Pound Net in Gulf**

It shall be unlawful for any person, firm or corporation to erect, set, operate or maintain any fish pound net in any waters of the Gulf of Mexico within three nautical miles from the coast line of this State, without first obtaining a permit for such purpose. Application for such permits shall be made to the Game, Fish and Oyster Commissioner. Such commissioner shall issue to the person, firm or corporation applying therefor, if entitled thereto under the provisions of this Act, a permit duly signed, to erect, set, operate or maintain a fish pound net in the waters above specified. No person, firm or

corporation shall set, erect, operate or maintain any pound net at any place closer than three miles of any other pound net owned or operated by any other person, firm or corporation; provided, further, that no pound net shall ever be placed or operated closer than three miles of any pass mentioned in this Act. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than fifty (\$50.00) dollars nor more than two hundred (\$200.00) dollars.

[Acts 1925, 39th Leg., ch. 178, p. 447, § 3.]

**Art. 946. To Tag Seines and Nets**

All seines and nets used in the salt waters of this State shall be examined by the Commissioner or one of his deputies to see if they conform to the requirements of this law as to length and size of mesh, and if they are found to conform to such requirements, the Commissioner shall tag such seines or nets with a metal tag on which shall be indented the number of such seine and net; the cost of such tag to be paid by the owner of such seines or net. The Commissioner shall then issue to the owner of it a permit to use such seine or net for one year from the date of such permit; such permit shall state the name of the owner of such net, the date on which it was issued, the size of the mesh and the length and kind of such net. It shall be the duty of the owner of the seine or net to keep the tag attached to such seine or net, and where a seine or net is used without such tag being attached, it shall be prima facie evidence that such seine or net is an unlawful seine or net; and any person who shall drag, haul or set any seine or net in the salt waters of this State without first having such seine or net examined by the Commissioner, or his deputy, and tagged, or who shall fail to have a permit therefor issued by said Commissioner or his deputy, or shall not keep such tag attached to such seine or net or attached to its floats, as prescribed in this article shall be fined not less than twenty nor more than two hundred dollars.

[1925 P.C.]

**Art. 947. Seining Within One Mile from City**

It shall be unlawful for any person to catch or attempt to catch any fish, green turtle, loggerhead, terrapin or shrimp in any of the bays or navigable waters of this state, within the limits or within one mile of the limits of any city or town in this state, with seines, drags, fykes, set nets, trammel nets, traps, dams or weirs. A town or city in the meaning of this article shall be the collection of one hundred families within an area of one square mile. Anyone violating any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars. In all prosecutions the identification of the boat from which such violation occurs shall be prima facie evidence against the owner, lessee, person in charge or master of such boat. It shall be the duty of such town to establish and maintain the buoys, stakes or other marks designating the limits of the one mile within which such seines shall be

hauled and such nets set. The provisions of this Article apply only to those counties exempted from Section 1A, The Uniform Wildlife Regulatory Act, as specified by Subsection (b) of Section 1A.

[1925 P.C.; Acts 1973, 63rd Leg., p. 515, ch. 220, § 2, eff. Aug. 27, 1973.]

#### Art. 948. Metallic Seines

It shall be unlawful for any person to set or drag in any of the fresh waters of this State any net or seine made of wire or other metallic substance.

It shall be unlawful for any person to take or catch or attempt to take or catch fish in the fresh waters, rivers, creeks, lakes, bayous, lagoons, or in lakes or sloughs, subject to overflow from rivers or streams in this State, by any other means, other than by the ordinary hook and line or trotline, or by a set or drag net or seine or trammel net, the meshes of which are three or more inches square, or by a minnow seine, not more than twenty feet in length, and it shall be unlawful for any person to place in the fresh water rivers, creeks, lakes, bayous, lagoons, of this State any net or other device or trap for taking or catching fish other than as designated and permitted by this Article.

Any person violating any provision of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars.

Any fish trap, net or seine or other seine or other fishing device found in the waters of this State, in violation of this article are hereby declared to be a nuisance, and it shall be the duty of the Game, Fish and Oyster Commissioner and his deputies to destroy same whenever found, and no suit shall be maintained against them therefor.

The Game, Fish and Oyster Commissioner is authorized to close any of the waters mentioned in this article against the use of nets or seines or any particular kind of such nets and seines, whenever he thinks that such closing is necessary or best to protect and conserve the fish in such waters. But before closing such waters against the use of seines or nets or any particular kind of seine or net, he shall give notice by posting his intentions for two weeks at not less than three stores or other places in proximity to such waters.

Any person who shall fish with a net or seine in such closed waters or shall use such particular kind of net or seine, as forbidden in such waters, after the notice given as above required, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than twenty-five (\$25.00) dollars and no more than one hundred (\$100.00) dollars.

[1925 P.C.]

#### Art. 949. Seiners Shall Return Small Fish

Any person dragging a seine or engaging in taking fish in a set net shall return to the water all fish

under and above size according to the measure or weight established in this chapter, and all other fish except sharks, gars, rays, turtle and terrapin, sawfish and catfish, except the gulf-topsail cat, which may be retained, and any person not returning such fish to the water as required by this article shall be fined not less than fifty nor more than one hundred dollars.

[1925 P.C.]

#### Art. 950. Net for Shrimp

The Commissioner is hereby authorized to permit the use of any shrimp seine or other device for catching shrimp in the tidal waters of this State. Any person desiring to use such seine shall apply to the Commissioner, or his deputy, for a permit to use such seine, net or other contrivance for catching shrimp and such Commissioner or his deputy shall fix and establish the mesh, construction, depth and length of such seine or net or other contrivance so that it shall not be used for other purposes than in taking shrimp, and he shall tag such seine officially and issue such permit and shall state in what waters and localities such seines or nets shall be used. Any person using such shrimp seine or other contrivance for catching shrimp in the tidal waters of this State without the permit herein provided for, or who shall use any seine or contrivance or net in any waters or locality other than that stated in such permit, shall be fined not less than twenty-five nor more than two hundred dollars.

[1925 P.C.]

#### Art. 951. March and April Closed to Seines and Artificial Bait

It shall be unlawful for any person to catch any fish in the fresh waters of this State, with any seine or net other than minnow seine, not exceeding twenty feet in length, or to drag any seine, except such specified minnow seine, or to set any net, in the fresh waters of this State during the months of March and April, or to fish with any artificial bait of any kind in the fresh waters of this State during the months of March and April. Any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and shall be upon conviction fined a sum of not less than twenty (\$20.00) dollars nor more than one hundred (\$100.00) dollars. This article shall not apply to any artificial lake, pond or pool, owned by any person, firm, corporation, city or town, that does not have as its source of water supply a river or creek or is not subject to overflow from a river or creek.

[1925 P.C.]

#### Art. 951a. Fish Ladder

It shall be the duty of every person, firm or corporation, municipal or private who has erected, or who may erect any dam, water weir, or other obstruction on any regular flowing stream within this State, on the written order of the Commissioners' Court in the county in which such obstruction is erected, to construct and keep in repair fish ways or

fish ladders at such dam, weir or obstruction, at the discretion of the Fish Commissioner, so that at all seasons of the year fish may ascend above such dam, weir or obstruction to deposit their spawn. Whoever erects or owns or maintains any such dam, obstruction or weir, and shall fail or refuse to build, construct and keep in repair such fish way or fish ladder, within 90 days after having been notified by such Commissioner to do so, shall be fined not less than twenty-five nor more than five hundred dollars. Each week, after the expiration of 90 days after receiving such notice, of such failure or refusal is a separate offense.

[1925 P.C.]

#### Art. 952. Fish in Certain Counties

Sec. 1. Whoever shall barter or sell or offer for barter or sale any bass, perch, crappie, or catfish taken from any of the fresh water streams of the Counties of Guadalupe, Bexar, Kerr, Bandera, Medina, and Wilson shall be fined not less than Five Dollars (\$5), nor more than Fifty Dollars (\$50).

Sec. 2. Whoever shall use any dynamite, powder or other explosive in any of the fresh water streams of said counties and shall destroy any fish thereby shall be fined not less than one hundred nor more than one thousand dollars, and may be imprisoned in jail not exceeding one year.

Sec. 3. No person shall take or catch any fish in the fresh waters, creeks, lakes, bayous, pools, lagoons, or tanks in said counties by any other means than by the ordinary hook and line, or trot line or artificial baits, and no person shall place in the fresh waters, rivers, creeks, lakes, bayous, lagoons, ponds, or tanks in said counties any seine, net or other device or trap for taking or catching fish; any person may use a minnow seine which is not more than ten feet in length, and the meshes of which are not less than one-fourth inch square, for the purpose of catching minnows for bait. No person shall use the minnow seine herein permitted to take any fish other than minnows for bait.

Sec. 4. No person, firm or corporation or their agents shall take, catch, seine, entrap by any means, or have in their possession any bass, perch, or crappie, or catfish taken from any fresh waters in said counties from the first of February to the first of May of any year.

Sec. 5. If any person shall at any time, catch or take from any fresh water river, lake, bayou, lagoon, creek, pond, or other natural or artificial stream or pond of water within said counties by use of any means whatsoever any bass of less than eleven inches in length he shall immediately return same back into such water; and unnecessarily injuring such fish shall be deemed an offense under the provisions hereof. Each such fish shall constitute a separate offense.

Sec. 6. No person shall take from the fresh waters of said counties more than ten bass and ten crappie in any one day.

Any person violating any provision of Sections 3, 4, 5 and 6 of this article shall be fined not less than ten nor more than fifty dollars.

[1925 P.C.; Acts 1927, 40th Leg., p. 365, ch. 246, § 1; Acts 1939, 46th Leg., Spec.Laws, p. 812, § 1; Acts 1943, 48th Leg., p. 270, ch. 169, § 1.]

#### Art. 952a. Fish in Big Wichita River Waters; Sale Prohibited

It shall be unlawful for any person, firm or corporation, or their agent, or agents, to barter, or sell, or offer for barter or sale, or to buy any bass, perch, crappie or catfish, or any other fish, except minnows taken from any of the waters which are located in the valley of the Big Wichita River from where the lower or diversion dam on the Big Wichita River is located, which was built by the Wichita County Water Improvement District No. 1, in the northeast corner of Archer County, Texas, and from said dam and above the same up the valley of said Big Wichita River to the storage dam on said river built by said Wichita County Water Improvement District No. 1, in Baylor County, Texas, and up the valley of said river from said storage dam as far as the water by said storage dam is impounded in said river in Baylor County, Texas, or in any water which is impounded in Archer County, Texas, and in Baylor County, Texas, by said diversion dam, or in any water which is in Baylor County, Texas, by said storage dam, or in any water in Lake Wichita in Wichita County, Texas, and in Archer County, Texas, or in any water impounded by the dam across Holliday Creek forming said Lake Wichita in Wichita County, Texas, or in any water in the Big Wichita River in Baylor County, Texas, connecting with the big reservoir, or Lake Kemp, created by the storage dam, with the diversion reservoir, or Diversion Lake, formed in Baylor County or Archer County, Texas, by said diversion dam, or in any water of the irrigation canals connected with said Lake Kemp or said diversion dam, or in any water in laterals leading off from said canals in Baylor County, Texas, Archer County, Texas, Wichita County, Texas, or Wilbarger County, Texas, or in any water in Wichita County, Texas, or Archer County, Texas, in the lateral, canal, or drainage ditch leading from what is known as the South Side Canal out of said Diversion Lake from a point in the said South Side Canal in Section No. 16, of Denton County school lands, League No. 4, Wichita County, Texas, to Holliday Creek and thence down Holliday Creek to Lake Wichita in Wichita and Archer Counties, Texas, or in any water of Lake Arrowhead located in Clay or Archer Counties, or in any water of Buffalo Creek Reservoir, Lake Iowa Park, or Old City Lake, located in Wichita County. [Acts 1925, 39th Leg., p. 166, ch. 37, § 1; Acts 1971, 62nd Leg., p. 2388, ch. 743, § 1, eff. June 8, 1971.]

#### Art. 952aa. Fishing in Harrison and Other Counties

Sec. 1. It shall be unlawful for any person to take or attempt to take any fish in the public fresh waters, creeks, lakes, bayous, lagoons, pools, or tanks

in the Counties of Harrison, Marion, and Rusk, State of Texas, by any method or device other than by the ordinary hook and line, rod and reel, set hook and line, trotline, or artificial bait.

Sec. 2. Provided that nothing herein shall prohibit the use of a minnow seine not more than twenty feet in length, for the purpose of catching minnows for bait but that all fish other than minnows, sun perch for bait, not of a game fish variety, taken in such seine, shall be returned to the water immediately and while alive.

Sec. 3. Provided that nothing herein shall prevent the use of a hoop net, set net, or trammel net, the meshes of which are not less than three and one-half inches square, for the purpose of taking or attempting to take buffalo fish, garfish, catfish, shad, and bowfin or grindle at any time except during the months of February, March, April, and May of each year; and providing that all other fish taken by such nets shall be returned to the waters from which they were taken immediately and while alive. It shall be unlawful for any person to have in possession any fish, other than those mentioned in this Section, at any time a net is being used or while engaged in the use of such a net.

Sec. 4. All seines, nets, and fish traps, except minnow seines not more than twenty feet in length and hoop nets, set nets, and trammel nets, the meshes of which are not less than three and one-half inches square are hereby declared to be a nuisance when found in the public fresh waters of the Counties of Harrison, Marion, and Rusk, State of Texas, and it shall be the duty of all Game and Fish Wardens and other officers of this State to destroy same whenever found in such waters and no suit shall be maintained against them therefor.

Sec. 5. Any person who shall set any seine, net, or fish trap or operate any seine, net, or fish trap or who is found in possession of any seine, net, or fish trap or takes or attempts to take or has in his possession any fish, contrary to the provisions of this Act, shall be deemed guilty of a misdemeanor and shall be fined in a sum not less than Fifty (\$50.00) Dollars nor more than Two Hundred (\$200) Dollars and shall forfeit his right to take or attempt to take fish in this State for a period of one year following date of conviction. Any person who attempts to take fish in this State within a period of one year after he has been convicted for violation of the provisions of this Act shall be guilty of a misdemeanor and shall be fined in a sum not less than One Hundred (\$100.00) Dollars and by confinement in the county jail not less than thirty (30) days nor more than ninety (90) days.

[Acts 1927, 40th Leg., p. 275, ch. 193; Acts 1927, 40th Leg., 1st C.S., p. 98, ch. 32, § 1; Acts 1929, 41st Leg., p. 131, ch. 64, § 1; Acts 1929, 41st Leg., 3rd C.S., p. 233, ch. 3, § 1; Acts 1931, 42nd Leg., Spec.Laws, p. 204, ch. 97, § 1.]

#### Art. 952aa-1. Fishing in Jackson County

It is hereby made unlawful for any person to take or catch fish from any of the fresh water lakes,

streams, bayous, and lagoons in Jackson County, Texas, by any other means than hook and line or trot line or flounder gig and light or by the use of cast net or minnow seine, not exceeding twenty feet in length, used in catching bait. Any person dragging a seine or setting a net in any of the fresh water streams, lakes, bayous, or lagoons in Jackson County, or any person catching or taking fish by any other means than hook and line or trot line or cast net and minnow seine not exceeding twenty feet in length, shall be deemed guilty of a misdemeanor and shall be fined in a sum of not less than Ten Dollars nor more than One Hundred Dollars

[Acts 1927, 40th Leg., 1st C.S., p. 251, ch. 93, § 1.]

#### Art. 952aa-2. Fishing in Cherokee and Other Counties

Sec. 1. From and after the passage of this Act it shall be unlawful for any person to take or catch, or attempt to take or catch fish in the fresh waters, rivers, creeks, lakes, bayous, lagoons or in lake or sloughs, subject to overflow from the rivers or streams in the counties of Cherokee, Nacogdoches, San Augustine, Angelina, Sabina, Newton, Jasper and Tyler, by the use of a net; provided, however, the use of a minnow seine not more than twenty feet in length shall not be unlawful.

Sec. 2. Whoever shall violate the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five (\$25.00) nor more than One Hundred (\$100.00) Dollars.

[Acts 1929, 41st Leg., p. 369, ch. 167.]

#### Art. 952aa-3. Fishing in Cass and Other Counties

It shall be unlawful for any person to take or catch any fish in the public fresh waters, creeks, lakes, bayous, pools, lagoons or tanks in the Counties of Cass, Bowie, Morris and Titus, State of Texas, by any other means than by the ordinary hook and line, set hook and line, gig or artificial bait, and it shall be unlawful for any person to place in the public fresh water rivers, creeks, lakes, bayous, pools, lagoons, or tanks in the Counties of Cass, Bowie, Morris and Titus any seine, net or other device or trap for taking or catching fish; provided, however, that persons may use a minnow seine which is not more than twenty feet in length for the purpose of catching minnows for bait; provided, that in seining for minnows for bait as herein permitted, all fish and all minnows more than two and one-half inches in length shall be returned to the water at once while alive. No person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnows for bait; provided, however, that nothing in this Act shall be construed to prevent the taking or catching of buffalo, carp and catfish by the use of a hoop, trammel or gill set with meshes not less than three inches square in the fresh waters of Cass, Bowie, Morris and Titus Counties, State of Texas, save and except during the months of March and April of each year, and provided,

further, that pond nets are hereby entirely prohibited.

Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars. All laws and parts of laws in conflict herewith are hereby repealed.

[Acts 1930, 41st Leg., 5th C.S., p. 159, ch. 27, § 1.]

#### Art. 952aa-4. Fishing in Murvaul Lake in Panola County

##### Opening of Season

Sec. 1. It shall be unlawful for any person to fish or to attempt to take or catch fish from the waters of Murvaul Lake in Panola County, Texas, before 12:01 a. m. on May 30, 1959.

##### Camping on Lake Shore

Sec. 2. It shall be unlawful for any person or group of persons to camp on the shores of Murvaul Lake in Panola County, Texas, on any land owned by the Panola County Fresh Water Supply District No. 1, except at such point or places as may be designated as a camp site by the Board of Supervisors of the Panola County Fresh Water Supply District No. 1.

##### Swimming, Wading, Bathing or Water Skiing

Sec. 3. It shall be unlawful for any person to swim or to bathe or to wade or to water ski in or on the waters of Murvaul Lake in Panola County, Texas, except at the respective points designated and within the respective areas designated for swimming, bathing, wading, or engaging in water skiing by the Board of Supervisors of Panola County Fresh Water Supply District No. 1.

##### Use of Net or Seine; Permits

Sec. 4. It shall be unlawful for any person to use a net or seine to take fish or to attempt to take fish from the waters of Murvaul Lake in Panola County, Texas, without first securing a permit therefor from the Board of Supervisors of the Panola County Fresh Water Supply District No. 1 as hereinafter provided. This Section shall not prohibit nor make it unlawful for any fisherman to use a hand net to assist in the taking of any fish which such fisherman has theretofore hooked on a trotline or while fishing by hand.

##### Fishing from Dam or Near Spillway

Sec. 5. Repealed. Acts 1965, 59th Leg., p. 1348, ch. 610, § 1, eff. Aug. 30, 1965

##### Use of Trotlines

Sec. 6. It shall be unlawful to take or to attempt to take or catch any fish by the use of a trotline of any sort or description placed in the waters of Lake Murvaul in Panola County, Texas, except a trotline or trotlines of the maximum length or less and with the maximum number of hooks or less attached thereto as prescribed by the Board of Supervisors of the Panola County Fresh Water Supply District No. 1 and placed in such areas as are designated by the Board of Supervisors of Panola County Fresh Water

Supply District No. 1 for permissive fishing by the use of trotlines.

##### Possession of Rifles or Pistols; Applicability to Peace Officers or Wardens

Sec. 7. It shall be unlawful for any person to possess for the purpose of shooting, any rifle or pistol of any kind or character on or over the waters of Murvaul Lake in Panola County, Texas, and the possession by any person of a rifle or pistol of any kind or character within a distance of five hundred (500) feet from the waters of Murvaul Lake in Panola County, Texas, shall be prima-facie evidence of a violation of this Section, provided, however, that this Section shall not apply to any peace officers in the State of Texas or to any game warden or deputy warden of the State of Texas, or to any regular employee of the Panola County Fresh Water Supply District No. 1.

##### Designation as Wildlife Sanctuary; Hunting; Possession of Firearms

Sec. 8. Repealed. Acts 1965, 59th Leg., p. 1348, ch. 610, § 1, eff. Aug. 30, 1965

##### Traps

Sec. 9. It shall be unlawful for any person to use any kind or character of trap to take or to attempt to catch or take any fish from the waters of Murvaul Lake in Panola County, Texas.

##### Commercial Fishing Permit

Sec. 10. There is hereby created a permit to be known as Lake Murvaul Commercial Fishing Permit, and it shall be unlawful for any person to engage in Commercial fishing or to take or attempt to take any fish from the waters of Murvaul Lake in Panola County, Texas, for sale, barter, or trade without having first obtained a permit so to do from the Board of Supervisors of the Panola County Fresh Water Supply District No. 1, and such permit holder shall then only take or attempt to take for such purposes such specie or species of fish as are authorized under such Permit.

##### Bait

Sec. 11. It shall be unlawful for any person to use for bait while fishing in the waters of Murvaul Lake in Panola County, Texas, any Goldfish, or any other kind or character of bait belonging to the Carp specie.

##### Violations; Penalties

Sec. 12. Any person violating any Section or any provision of any Section of this Act shall upon conviction be fined in a sum of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200) and costs, and all net amounts of fines so collected shall be remitted monthly to the Game, Fish and Oyster Commission of the State of Texas, and shall be deposited in the special Game and Fish Fund and may be used for all of the purposes provided for by law for the use of said Fund.

The violation of any Section or any provision of any Section of this Act shall constitute a separate offense and shall be punishable as such.

[Acts 1959, 56th Leg., p. 91, ch. 46; Acts 1965, 59th Leg., p. 1348, ch. 610, § 1, eff. Aug. 30, 1965.]

**Art. 952aa-5. Fishing in Angelina River and Mud Creek**

Sec. 1. This Act applies to the Angelina River and Mud Creek in Rusk, Nacogdoches, and Cherokee Counties.

Sec. 2. No person may place any lime, poison, drug, dynamite, nitroglycerin, giant powder, or any other explosive or substance harmful to fish in the waters of the river or creek for the purpose of catching or attempting to catch fish.

Sec. 3. No person may catch or attempt to catch fish by the aid of what is commonly known as "telephoning," or by using any other electricity-producing apparatus designed for shocking fish. Possession of any such equipment in a boat or along the bank or shore of the River or Creek is prima facie evidence of a violation of this Section.

Sec. 4. A person who violates any provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$300 nor more than \$750. A person who has been once before convicted of a violation of this Act is punishable by a fine of not less than \$500 nor more than \$1,000 and by confinement in the county jail for not less than 30 days nor more than six months; and a person who has been at least twice before convicted of a violation of this Act is punishable by a fine of not less than \$1,000 nor more than \$2,000 and by confinement in the county jail for not less than six months nor more than one year.

[Acts 1965, 59th Leg., p. 855, ch. 415, eff. Aug. 30, 1965.]

**Savings Provision**

*Acts 1967, 60th Leg., p. 1959, ch. 730, The Uniform Wildlife Regulatory Act, codified as article 978j-1, conferring upon the Parks and Wildlife Commission the power and duty of protecting and regulating the harvest of wildlife resources in various counties and repealing various acts of a similar nature, provides in section 15, inter alia, that "in Rusk County the provisions of Chapter 415, Acts of the 59th Legislature, Regular Session, 1965, shall not be repealed."*

**Art. 952aa-6. Repealed by Acts 1973, 63rd Leg., p. 715, ch. 308, § 2, eff. June 11, 1973**

The repealed article, relating to methods of taking fish from the Sulphur River, was derived from Arts. 1965, 59th Leg., p. 1250, ch. 571.

**Art. 952b. Fish in Big Wichita River Waters; Explosives and Poisons Prohibited**

Any person who shall use any dynamite, powder or other explosive, or any poison in any of the waters described in Section 1 of this Act,<sup>1</sup> and shall injure or destroy any fish thereby shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than \$100 nor more than \$1,000, and may be imprisoned in the county jail for any time not exceeding one year.

[Acts 1925, 39th Leg., p. 167, ch. 37, § 2.]

<sup>1</sup> Article 952a.

**Art. 952c. Same; Seining Prohibited**

It shall be unlawful for any person to take or catch any fish in the waters described in Section 1 of this Act<sup>1</sup> by any other means than the ordinary hook and line, or trotline or artificial bait; and it shall be unlawful for any person to place in any of the waters described in Section 1 of this Act by any seine, net or other devise<sup>2</sup> or trap for taking or catching fish; provided, however, that any person may use a minnow seine which is not more than twenty feet in length and the meshes of which are not less than one-sixth inch square for the purpose of catching minnows for bait; provided, further, that in seining for minnows for bait, as herein permitted, all bass, species of bass, crappie, and white perch, calico bass, blue gill bream and strawberry bream of whatever size that may be taken by seining shall immediately be returned to the waters uninjured and all other fish more than three inches in length, except minnows, shall be immediately returned to the waters uninjured; provided, further that no person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnow for bait.

[Acts 1925, 39th Leg., ch. 37, p. 167, § 3.]

<sup>1</sup> Article 952a.

<sup>2</sup> So in enrolled bill. Should probably read "device."

**Art. 952d. Same; Closed Season**

It shall be unlawful for any person, firm or corporation, or their agent, or agents, to take, catch, seine, entrap by any action, or to have in their possession any bass, perch, crappie or catfish, or any other fish taken from any of the waters described in Section 1 of said Act,<sup>1</sup> the said Section 1 being Article 952a of the Penal Code of Texas, on and from the first day of March to the first day of May of any year.

[Acts 1925, 39th Leg., p. 168, ch. 37, § 4; Acts 1943, 48th Leg., p. 292, ch. 187, § 1.]

<sup>1</sup> Article 952a.

**Art. 952e. Same; Size and Daily Bag Limit**

It shall be unlawful for any person to catch or retain, or have in his possession any bass, or other fish of the bass species, which are less than eleven (11) inches in length or to catch or retain, or have in his possession, in any one day a total aggregate of more than ten (10) bass, or other fish of the bass species, taken from the waters described in Section 1 of this Act:<sup>1</sup> provided that it shall be unlawful for any person to catch and retain, or have in his possession from those waters in any one day bass, or other fish of the bass species, of any aggregate weight in excess of twenty (20) pounds; to catch and retain, or have in his possession any crappie or white perch or calico bass which are less than seven (7) inches in length, or catch and retain, or have in his possession any blue gill bream which are less than five (5) inches in length or to catch or retain, or have in his possession in any one day more than a total aggregate of twenty (20) crappie, or white perch or calico bass or blue gill bream or of any of or all those fish, taken from the waters described in Section 1 of this

Act; provided that it shall be unlawful for any person to catch and retain or have in his possession from those waters in any one day crappie or white perch, or calico bass, or blue gill bream or of any or all of those fish of an aggregate weight in excess of twenty (20) pounds; provided, further that it shall be unlawful for any person to catch and retain or have in his possession in any one day from the waters described in Section 1 of this Act, bass, or any other fish of the bass species, crappie, white perch or sunfish, or calico bass or blue gill bream, or other fish of the crappie, white perch or bream of sunfish species, or an aggregate weight in excess of thirty (30) pounds.

[Acts 1925, 39th Leg., ch. 37, p. 168, § 5; Acts 1927, 40th Leg., p. 274, ch. 192, § 1.]

<sup>1</sup> Article 952a.

#### Art. 952f. Same; Return of Undersized Fish

If any person shall at any time catch or take from any of the waters described in Section 1 of this Act<sup>1</sup> in the counties named in that section by use of any means whatsoever any bass, or other fish of the bass species, of less than eleven inches in length, or any crappie or white perch, or calico bass of less than seven (7) inches in length, or any blue gill bream of less than five (5) inches in length he shall immediately return the same into such water without unnecessarily injuring such fish; and the failure to immediately return such fish into such waters or the unnecessarily<sup>2</sup> injuring of such fish shall be deemed an offense under this Act.

[Acts 1925, 39th Leg., ch. 37, p. 168, § 6; Acts 1927, 40th Leg., p. 274, ch. 192, § 2.]

<sup>1</sup> Article 952a.

<sup>2</sup> So in enrolled bill. Should probably read "unnecessary."

#### Art. 952f-1. Daily Limit of Fresh Water Fish

Sec. 1. It shall be unlawful for anyone to catch and retain in any one day or have in his or her possession, caught in any one day in this State, more than fifteen (15) bass, fifteen (15) crappie or white perch, thirty-five (35) bream, or thirty-five (35) goggle-eyed perch from the fresh water rivers, lakes, ponds or lagoons of this State; provided however, that a person may catch and retain or possess during any one day, an aggregate of fifty (50) of the fish mentioned herein, and provided further, it shall be unlawful for any one person to have in his or her possession at any time more than thirty (30) bass, thirty (30) crappie or white perch, seventy (70) bream, or seventy (70) goggle-eyed perch, caught or taken from the fresh water rivers, lakes, ponds or lagoons of this State, and exempting the following counties, to-wit: Johnson, Hill, Ellis, Hood, Somervell, Wharton, Fort Bend, Matagorda, Brazoria, Galveston, Chambers, Kerr, Kendall, Bexar, Bandera, Scurry, Eastland, Callahan, Taylor, Nolan, Mitchell, Throckmorton, Fisher, Jones, Haskell, Shackelford, Stephens, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Gaines, Dawson, Borden, Andrews, Martin, Howard, Zavala, Frio, McMullen, LaSalle, Dimmit, Webb, Du-

val, Jim Hogg, Zapata, Jim Wells, Kenedy, Nueces, Kleberg, Willacy, Brooks, Starr, Hidalgo, and Cameron from the provisions of this Act.

Sec. 2. Anyone taking more than the daily limit, or anyone possessing more than the possession limit of fresh water fish as provided for herein, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten (\$10.00) Dollars, nor more than Fifty (\$50.00) Dollars, and any person convicted of violating any provision of this Act shall thereby, automatically forfeit his artificial lure license for said season. Any such person so convicted of violating any provision of this Act shall not be entitled to receive from the State a license to fish with an artificial lure for one year immediately following the date of his conviction, and it shall be unlawful for any person who is convicted of violating any of the provisions of this Act to purchase or possess an artificial lure license for a period of one year immediately following date of such conviction, and it shall be unlawful for any person so convicted of violating any of the provisions of this Act to fish in any of the fresh water rivers, lakes, ponds or lagoons of this State for a period of one year immediately following date of such conviction. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in any sum not less than Ten (\$10.00) Dollars, nor more than Fifty (\$50.00) Dollars.

[Acts 1931, 42nd Leg., p. 857, ch. 364.]

#### Art. 952g. Fish in Big Wichita River Waters; Trout and Char, Taking Prohibited

It shall be unlawful for any person to catch and retain or have in his possession any rainbow trout, or other species of trout or of any species of char within a period of six (6) years from the taking effect of this Act.

[Acts 1925, 39th Leg., p. 168, ch. 37, § 7.]

#### Art. 952h. Same; Leaving Dead Fish on Banks

It shall be unlawful for any person, or persons, knowingly to place, throw or deposit upon the banks or grounds adjacent to any of the waters described in Section 1 of this Act<sup>1</sup> in the counties named in Section 1 of this Act, any bass, crappie, white perch, sunfish, drum, catfish, or other edible fish, and leave such fish to die without any intent upon the part of such person to eat such fish, or in like manner to leave any minnows without any intent to use the same for bait. Any person found guilty of the violation of any provisions of this section shall be fined in any sum not less than \$1.00 nor more than \$25.00, and each fish so allowed to die shall constitute a separate offense.

[Acts 1925, 39th Leg., p. 168, ch. 37, § 8.]

<sup>1</sup> Article 952a.

#### Art. 952i. Same; Penalty

Any person violating any of the provisions of Sections I, III, IV, V, VI, of this Act<sup>1</sup> shall be guilty

of a misdemeanor and upon conviction shall be fined not less than \$5.00 nor more than \$50.00 for each violation of the law, and each fish caught, held in possession, sold or purchased in violation of this Act shall be deemed a separate violation hereof and a separate offense, and the person guilty thereof may be prosecuted either in the county where the fish are caught, where he is found, with them in his possession or where the fish are sold or bartered or offered for sale or bartered or bought.

[Acts 1925, 39th Leg., p. 169, ch. 37, § 9.]

<sup>1</sup> Articles 952a, 952c-952f.

#### Art. 952j. Same; Enforcement

It is made the duty of the district judges of the judicial districts in which the counties of Archer, Baylor, Wilbarger and Wichita are situated to give a special charge upon this law to the grand juries of these counties.

[Acts 1925, 39th Leg., p. 169, ch. 37, § 10.]

#### Art. 952k. Same; Act Cumulative

This law shall be cumulative of all General Laws relating to fish and the protection thereof.

[Acts 1925, 39th Leg., p. 169, ch. 37, § 11.]

#### Art. 952l. Same; Partial Invalidity

If any court should hold unconstitutional or invalid any provisions of this Act such unconstitutionality or invalidity of that part shall in no way effect<sup>1</sup> the constitutionality and validity of the remainder of this Act.

[Acts 1925, 39th Leg., p. 169, ch. 37, § 12.]

<sup>1</sup> So in enrolled bill. Should probably read "affect."

#### Art. 952I-1. Fishing in Gillespie and Other Counties

Sec. 1. It shall be unlawful for any person to fish for, take or attempt to catch any fish in any of the public fresh waters or tributaries of such waters in the Counties of San Saba, Gillespie, Blanco, Kendall, Kerr, Comal, Llano, Mason or Kimble by any means or device other than by ordinary pole and line, set line or throw line equipped with more than two hooks, except in the waters of the Colorado River; and providing that these restrictions shall not apply to artificial lures; and provided that the possession of any tackle, the use of which is prohibited by the provisions of this Act, within two hundred (200) yards of any fresh waters in the Counties named herein, shall be prima facie evidence of the violation of this Act.

Sec. 2. It shall be unlawful in the Counties of San Saba, Gillespie, Blanco, Kendall, Kerr, Comal, Llano, Mason, Kimble or Val Verde to sell, offer for sale or have in possession for the purpose of sale any black bass, crappie, catfish, or sunfish, commonly called perch.

Sec. 3. No person, firm or corporation or their agents shall take, catch or have in their possession any black bass, perch or crappie taken from any fresh waters in said Counties from the 1st day of

March to the 1st day of May of any year or to have in possession at any time any black bass of less length than eleven (11) inches, any catfish of less length than nine (9) inches or any crappie (commonly called white perch) of less length than seven (7) inches.

Sec. 4. Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten Dollars (\$10.00) nor more than Fifty Dollars (\$50.00).

Sec. 5. Any person violating any of the provisions in Sections 1, 3 and 4 of this Act shall be fined not less than Ten (\$10.00) Dollars nor more than Fifty (\$50.00) Dollars.

[Acts 1929, 41st Leg., p. 442, ch. 202; Acts 1929, 41st Leg., 1st C.S., p. 258, ch. 108; Acts 1929, 41st Leg., 2nd C.S., p. 44, ch. 28; Acts 1930, 41st Leg., 4th C.S., p. 43, ch. 23; Acts 1931, 42nd Leg., Spec.Laws, p. 374, ch. 187; Acts 1931, 42nd Leg., 1st C.S., p. 5, ch. 3, § 1; Acts 1933, 43rd Leg., Spec.Laws, p. 7, ch. 6.]

#### Art. 952I-2. Fishing in Denton County

It shall be unlawful for any person to take in one day from the public fresh waters in Denton County, more than twenty white perch or crappie, or more than fifteen bass, or more than twenty such fish combined. Any person violating this Act shall upon conviction be fined not less than twenty-five dollars and not more than one hundred dollars.

[Acts 1929, 41st Leg., 2nd C.S., p. 89, ch. 50, § 1.]

#### Art. 952I-3. Repealed by Acts 1935, 44th Leg., p. 723, ch. 314, § 1

#### Art. 952I-4. Regulating Taking of Shrimp

Sec. 1. It shall be lawful for any person at any time to take shrimp of any size for bait from any of the tidal waters of this State with a minnow seine of not more than 20 feet in length, with a cast net of a shrimp trawl, provided that such shrimp trawl shall not be more than 10 feet in width at the mouth and not more than 25 feet in length and providing that any and all persons who offer such bait shrimp for sale shall comply with the provisions of the laws of this State requiring a license before any of the marine products of this State may be taken for the purpose of sale.

Sec. 2. The towing of any shrimp trawl of a greater size than that herein specified in any of the waters of this State in which the use of shrimp trawls is otherwise prohibited shall be prima facie evidence of guilt.

Sec. 3. Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than \$25.00 nor more than \$100.00.

[Acts 1930, 41st Leg., 4th C.S., p. 11, ch. 11.]

#### Art. 952I-5. Fishing in Harrison and Marion Counties

Whoever shall take or catch from the fresh waters of Harrison or Marion Counties, Texas, or have in

his possession in either of these counties any crappie under the length of eight inches or any bass under the length of eleven inches, or whoever shall take or catch in either of these counties more than fifteen bass or more than twenty-five crappie or white perch in any one day or whoever shall have in his possession in either Harrison or Marion Counties more than thirty bass or more than fifty crappie or white perch shall be fined in any sum not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars, and each fish taken or possessed in violation of this Act shall constitute a separate offense.

[Acts 1930, 41st Leg., 4th C.S., p. 42, ch. 22; Acts 1930, 41st Leg., 5th C.S., p. 211, ch. 65, § 1.]

#### Art. 952I-6. Deer and Turkeys in San Saba and Harrison Counties

Sec. 1. For three years from and after the passage of this Act, it shall be unlawful for any person to shoot at, or kill, any wild deer or wild turkey in San Saba and Harrison Counties.

Sec. 2. Whosoever shall violate the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Fifty (\$50.00) Dollars and not more than One Hundred (\$100.00) Dollars, provided each deer or wild turkey so shot shall constitute a separate offense.

[Acts 1930, 41st Leg., 4th C.S., p. 89, ch. 48.]

#### Art. 952I-7. Regulating Fishing in Dimmit and Other Counties

Sec. 1. Any and all persons shall be permitted to take or catch suckers, buffalo, carp, shad or gar in any of the fresh waters of Bosque, Dimmit, Zavala, Medina, Uvalde, DeWitt, Coryell, Gonzales, Lamar, Bell, Collin, Grayson, Gillespie, Kendall, Menard, Kimble, McLennan, Mills, Jefferson, Blanco, Llano, Mason, McCulloch, San Saba, Cooke, Denton, Orange, Mitchell, Fisher, Nolan, Chambers, Travis, Hardin, Lampasas, Fannin, Burnet, Williamson, Parker and Comanche Counties, with a seine or net, the meshes of which shall not be less than one (1) inch square, and any and all persons shall be permitted to take or catch suckers, buffalo, carp, shad, or gar with wire, rope, or gig at any time of the year; provided, however, that any bass, crappie or white perch, catfish, perch, bream, or trout caught by the above-mentioned methods shall be immediately released in the waters from which they are caught.

Sec. 2. It shall be unlawful for any person to have in possession any bass, crappie or white perch, catfish, perch, bream or trout at the time that such person has in possession any suckers, buffalo, carp, shad or gar taken by methods permitted in this Act.

Sec. 3. It shall be unlawful for any person to have in possession any bass, crappie or white perch, catfish, perch, bream or trout caught while using a seine of not less than one inch square mesh or using wire rope or gig for the purpose of taking suckers, buffalo, carp, shad or gar from any of the fresh waters of the Counties mentioned in Section 1.

Sec. 4. Any person violating any of the provisions in Sections 1, 2 and 3 of this Article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars. Provided that this Act shall not apply to that part of Hamilton County drained by the tributaries of the Bosque River, which shall be controlled by the provisions of House Bill No. 671. [Acts 1931, 42nd Leg., Spec.Laws, p. 194, ch. 90; Acts 1933, 43rd Leg., Spec.Laws, p. 41, ch. 33; Acts 1941, 47th Leg., p. 392, ch. 224, § 1; Acts 1947, 50th Leg., p. 439, ch. 245, § 1; Acts 1949, 51st Leg., p. 211, ch. 117, § 1.]

#### Art. 952I-8. Protection of Deer in Marion and Other Counties

Sec. 1. It shall be unlawful for any person to hunt, trap, ensnare, kill, or attempt to kill, by any means whatsoever, any wild deer, buck, doe, fawn, or wild turkey in the Counties of Marion, Harrison, Red River, Cass, Bowie, Morris, Lamar, Camp, Titus, and Upshur, in the State of Texas, for a period of five (5) years from and after the passage of this Act.

Sec. 2. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined in any sum of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), and shall forfeit his right and license to hunt with a gun in this State for a period of one year following the date of his conviction.

[Acts 1931, 42nd Leg., 1st C.S., p. 26, ch. 13.]

#### Art. 952I-9. Sale of Fish from Sabine and Other Rivers and Tributaries

Sec. 1. It shall be unlawful for any person to sell, offer for sale or have in his possession for the purpose of sale, any black bass, trout, white perch, or catfish of less than eighteen (18) inches in length, that shall have been taken from the waters of the Sabine, Attoyoc, Angelina and Neches Rivers, or any of their tributaries, or lakes through which the flood stream of said Rivers or any of their tributaries flow, in the counties of Newton and Jasper.

Sec. 2. It shall be lawful for any person in the Counties of Angelina, Tyler, Newton and Jasper to use a net not under three (3) inches square mesh for the purpose of catching any fish allowed by law to be caught in said Counties. Any use of a net of smaller mesh than herein mentioned is hereby declared illegal.

Sec. 3. Any person violating the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Twenty-five Dollars (\$25.00) or more than Five Hundred Dollars (\$500.00), or be imprisoned in the county jail not less than ten (10) days or more than thirty (30) days or by both imprisonment and fine, and each sale or each violation of the provisions hereof shall constitute a separate offense.

[Acts 1931, 42nd Leg., 1st C.S., p. 35, ch. 22; Acts 1932, 42nd Leg., 3rd C.S., p. 100, ch. 35.]

**Art. 952I-10. Regulating Taking of Fish and Shrimp in Tidal Waters and Galveston Bay**

*Nets and Trawls*

Sec. 1. It shall be lawful to use strike nets, gill nets, trammel nets, or shrimp trawls as defined by the Statutes of this State for the taking of fish and shrimp from the waters of East Galveston Bay in the Counties of Galveston and Chambers, except for a hereinafter defined part thereof, and the small abutting bodies known as follows in which it shall be unlawful to use said strike nets, gill nets, trammel nets, or shrimp trawls: Swan Lake, Moses Lake, Clear Lake, Dickinson Bayou west of a line running from Miller's Point to April Fool Point, Turtle Bay, and all waters lying northwest of a line extending from Kemah in Galveston County to a point known as Mesquite Knoll in Chambers County, and all waters of Galveston Bay lying east of a line extending from the extreme western point of Smith's Point in Chambers County to the west bank of Siever's Cut where East Bay intersects with the north bank of the Intracoastal Canal on Bolivar Peninsula in Galveston County at Siever's Fish Camp, which Cut is at a point southwest of Elm Grove Point on Bolivar Peninsula in Galveston County, Texas, and northeast of Baffle Point on Bolivar Peninsula in Galveston County, Texas, during the period beginning August 15th and ending May 15th of each year. Provided, however, nothing in this Act shall be construed to prohibit the use of shrimp trawls of not more than ten (10) feet in width at the mouth and not more than twenty-five (25) feet in length as permitted by Chapter 11, Acts 1930, Forty-first Legislature, Fourth Called Session.<sup>1</sup> It shall be unlawful for any person to use a strike net, gill net, trammel net, or shrimp trawl, contrary to the provisions of Chapter 119, Page 269, Acts of the Regular Session of the Forty-first Legislature.<sup>2</sup>

*Possession of Seines, Nets or Trawls*

Sec. 2. It shall be unlawful to have in possession any seine, strike net, gill net, trammel net, or shrimp trawl in or on any of the tidal waters of this State where the use of said seine, strike net, gill net, trammel net, or shrimp trawl is prohibited from being used in taking or catching fish and/or shrimp, unless such seine, strike net, gill net, trammel net, or shrimp trawl is on board a vessel when such vessel is at port or in a channel while en route to or from the Gulf of Mexico.

*Arrest; Disposition of Seine, Nets or Trawl Seized*

Sec. 3. When any officer of this State sees any seine, strike net, gill net, trammel net, or shrimp trawl in or on any of the tidal waters of this State where the use of such seine, strike net, gill net, trammel net, or shrimp trawl is prohibited from being used for the purpose of taking fish and/or shrimp, and has reason to believe and does believe that the same is being used or possessed in violation of the provisions of this Act, it shall be his duty to arrest the party using or possessing said seine, strike net, gill net, trammel net, or shrimp trawl and,

without a warrant, shall seize such seine, strike net, gill net, trammel net, or shrimp trawl as evidence. It shall be the duty of such officer to deliver such seine, strike net, gill net, trammel net, or shrimp trawl to the County Judge or Justice of the Peace of the county in which it was seized, where it shall be held as evidence until after the trial. If the defendant is found guilty of possessing or using such seine, strike net, gill net, trammel net, or shrimp trawl unlawfully, the Court shall enter an order directing the immediate destruction of such seine, strike net, gill net, trammel net, or shrimp trawl by the Sheriff or constable of the county where the case was tried, and the Sheriff or constable of the county shall immediately destroy such seine, strike net, gill net, trammel net, or shrimp trawl and make a sworn report to said County Judge or Justice of the Peace, showing how, when, and where said seine, strike net, gill net, trammel net, or shrimp trawl was destroyed. When such device is found by an officer of this State in or on any of the tidal waters of this State without anyone in possession where its use is prohibited, it shall be seized by such officer without warrant and delivered to the County Judge or Justice of the Peace in the county in which it was found. Said officer shall make affidavit that such seine, strike net, gill net, trammel net, or shrimp trawl was found in or on the tidal waters of this State at a point where its use was prohibited, which said affidavit shall describe such seine, strike net, gill net, trammel net, or shrimp trawl and the Court shall direct the Sheriff or any constable of the county to post a copy of said affidavit in the Courthouse of the county in which said seine, strike net, gill net, trammel net, or shrimp trawl was seized, and said officer shall make his return to the Court showing when and where said notice was posted. Thirty (30) days after such notice is posted, the Court, either in termtime or in vacation, shall enter an order directing the immediate destruction of such seine, strike net, gill net, trammel net, or shrimp trawl by the Sheriff or any constable in the county, and said officer executing said order, shall, under oath, make his return to said Court, showing how, when, and where such seine, strike net, gill net, trammel net, or shrimp trawl was destroyed.

*Violations; Punishment; Cancellation of License*

Sec. 4. Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Twenty-five Dollars (\$25) and not more than Two Hundred Dollars (\$200), and his fisherman's license or dealer's license, or both, shall be automatically cancelled, and he shall not be entitled to receive another fisherman's license or dealer's license for one year from the time of such conviction.

*Repeal*

Sec. 5. All laws or parts of laws in conflict herewith shall be and the same are hereby repealed. [Acts 1932, 42nd Leg., 3rd C.S., p. 91, ch. 28; Acts 1939, 46th Leg., Spec.Laws, p. 818, § 1.]

<sup>1</sup> Article 952I-4.

<sup>2</sup> Article 941.

**Art. 952I-11. Shrimp; Classification of Fish; Taking Nongame Fish**

Closed Season; Shrimp Trawl; Means of Taking; Possession

Sec. 1. It shall be unlawful to catch or have in possession any shrimp from the inland salt waters of this State during the period of time from and between the 15th day of July and the 31st day of August and during the period of time from and between the 15th day of December and the 1st day of March of any year.

It shall be unlawful to use, operate, or possess any shrimp trawl in or on any of the salt waters of this State except the Gulf of Mexico, or except to have such a shrimp trawl aboard a duly licensed boat while in port, or while in any channel en route to or from open waters of the Gulf, during such inland closed season as provided above, except as hereinafter provided in this Act.

Par. 3. Repealed by Acts 1959, 56th Leg., p. 407, ch. 187, § 15(c).

Provided that it shall be unlawful during the open season for taking shrimp from the inland tidal waters of this State, for any person, firm or corporation, to use or employ, or to permit the use or employment of a shrimp trawl of greater width, as measured along the cork line, than sixty-five (65) feet, for the taking or catching of shrimp.

Par. 5. Repealed by Acts 1959, 56th Leg., p. 407, ch. 187, § 15(c).

Provided it shall be unlawful for any person, firm, or corporation to have in possession or on board of any commercial fishing boat or vessel, within the territorial waters of this State, any amount of shrimp of any salt water species, which said shrimp shall average in count of individual specimens, more than sixty-five (65) (headless shrimp or tails) to the pound, or if said amount of shrimp be in their natural state with heads attached, which said shrimp shall average in count of individual specimens with heads attached, more than thirty-nine (39) to the pound; which said counts shall be taken in the following manner and means:

The officer, agent or deputy of the Game, Fish and Oyster Commission shall, in the presence of any owner thereof, his or its officials, employees or agents, possessing said shrimp, select at random from said quantity of shrimp not less than three (3) samples; each sample shall consist of sufficient specimens to weigh out five (5) pounds; each five (5) pound sample shall be weighed and counted, and the count divided by five (5); after three (3) or more such counts shall have been taken, the averages obtained by each count shall be totaled and the final average count determined by dividing that total by the number of samples counted. Such average count so determined shall constitute prima-facie evidence of the average count of said shrimp in the entire cargo or quantity in possession.

Provided that the above limitations shall not apply to shrimp taken for bait, or by the use of a bait

trawl, where the same is taken and possessed not in violation with the following provisions:

It shall be unlawful to take shrimp for bait by any means other than a cast net, a minnow seine of not more than twenty (20) feet in length, or by the use of a bait trawl of a legal size and under legal operations.

It shall be unlawful for any person to take or assist in the taking of shrimp from the inland waters of this State by the use and operation of a bait trawl towed by a power boat, which said bait trawl shall be more than ten (10) feet at the mouth, as measured along the webbing attached to the cork line, or twenty-five (25) feet in length, or by the use and employment of doors or other boards to spread and open said bait trawl which are of greater size or dimension than twelve (12) by eighteen (18) inches, or to tow or assist in the towing of more than one such bait net or trawl from a power boat, or to tow other boats engaged in taking bait shrimp; and it shall be unlawful for any person operating a bait trawl to have on board any boat any amount of bait shrimp during the closed season in inland waters as above provided, in excess of one hundred and fifty (150) pounds of shrimp in their natural state with heads attached. Provided that during such closed season in Galveston County it shall be lawful to take shrimp for bait by the use and employment of doors or boards of not greater dimension than twenty (20) by sixty (60) inches and to possess not more than two hundred and fifty (250) pounds of shrimp with heads attached.

It shall be unlawful for any person during the closed season as above provided, to ship or transport any amount of bait shrimp in excess of twenty-five (25) pounds to any point of destination in the interior or not within fifty (50) miles of any county bordering on any salt water bay on the coast of Texas.

**Violations**

Sec. 1a. Any person, firm or corporation violating any of the provisions of the foregoing Act shall be deemed guilty of a misdemeanor, and upon conviction, if the same be the first offense, shall be fined not less than Twenty-five Dollars (\$25) and not more than Two Hundred Dollars (\$200). If the same be a second offense, then in the event of conviction in addition to such fine all commercial fishing or other commercial licenses shall automatically be cancelled and the offender shall not be entitled to receive other fisherman's license or dealer's license for a period of three (3) months from the time of such conviction.

**Repeal—Suspension; Partial Invalidity**

Sec. 1b. All laws and parts of laws in conflict herewith are hereby repealed in so far as they conflict herewith; especially provided that the third paragraph of Section 4A of House Bill No. 379,<sup>1</sup> Acts of the Fiftieth Legislature is hereby suspended for a period of two (2) years; and in the event any provision of this Act be held unconstitutional, the same

shall not affect the remaining parts, and the same shall remain in full force and effect.

<sup>1</sup> Article 934b-1 (repealed).

*Trawling at Night in Certain Waters*

Sec. 1c. Provided, however, that it shall be lawful to trawl for and take shrimp at any time, during the day or night, so long as the trawling for and the taking of same shall be outside of and exclusive of any and all inland bays and waters, from those portions of the Gulf of Mexico thirteen (13) fathoms or more in depth in the territorial waters of the State of Texas lying within the following boundaries:

A line extending from the mouth of the Colorado River due southeast a distance of twenty-five (25) miles into the Gulf of Mexico and a line extending from the mouth of the Rio Grande River at the international boundary between the United States and the Republic of Mexico twenty-five (25) miles out from shore in the Gulf of Mexico; and said last named boundary to extend along the said international boundary as far out as the territorial waters of the State of Texas extend.

Provided further that it shall be lawful to trawl for and take shrimp at any time during the day or night with a bait trawl of not more than twenty (20) feet in length and not more than ten (10) feet across the mouth as measured by the length of the floatline of the trawl, and that the spreader boards be of no greater dimension than thirty-six (36) inches in length and eighteen (18) inches in height, length and height being—for descriptive purposes—length and height of the boards while in operating position while trawling, and that no device of any nature whatever shall be used in connection with or in conjunction with a trawl as prescribed above which will in any way increase the effective width of the trawl while in actual use, so long as the trawling for and taking of the same shall be for use as bait and shall be from the following waters in Jackson County and Calhoun County: the waters of Garcitas Creek; the waters of Carancahua Creek; the waters of Lavaca River from its mouth to a point where the Navidad River enters Lavaca River, and the waters of Lavaca Bay within a radius of one thousand (1000) yards from the mouth of Lavaca River and Garcitas Creek.

*Repeal*

Sec. 2. Providing that Section 1-D of Article 941 of the Penal Code is hereby repealed and that all laws or parts of laws in so far as they may conflict with the provisions of this Act be, and the same are hereby repealed.

*Classification of Salt-Water Fish; Permits to Take Nongame Fish*

Sec. 3. It shall be the duty of the Game, Fish and Oyster Commission to make continued investigations and classify and reclassify the salt-water fish of this State into two divisions, (1) the game fish, and (2) the nongame fish.

The game fish shall include all fish which strike or bite at a hook baited with natural or artificial lures

and which species is desirable to be encouraged and repropagated because of its value for sport and recreation.

The nongame fish shall include those having no sporting value, the predators, bony or rough-fleshed species, or any species of fish whose numbers should be controlled in order to protect and encourage the other game fish of this State.

In order to control such nongame marine species and to permit their utilization and when it has been found that the taking of such nongame species will not adversely affect the conservation of game species, it shall be the duty of the Game, Fish and Oyster Commission to issue permits for the use of any net or device for the taking of such nongame species under the terms, conditions, and stipulations herein provided.

(a) Permits shall be granted only to citizens of the United States who have continuously resided in the State of Texas for a period of at least six (6) months prior to their application for such permit, and who have not been convicted of violating any of the fishing regulations of this State for a period of two (2) years. For such permit the applicant shall pay to the Game, Fish and Oyster Commission the sum of Five Dollars (\$5), which it shall be the duty of the said Commission to deposit in the State Treasury to the credit of the Fish and Oyster Fund. A permit issued hereunder shall be valid for one year from date of issuance unless earlier revoked or suspended in accordance with the provisions of this Act.

(b) It shall be unlawful for the holder of a permit issued hereunder to operate any net or device that is not now legal in any of the tidal waters of this State in which a trammel net, set net, or gill net is now prohibited by law. And it shall be unlawful to operate a device permitted under the terms of this Act until such device has been inspected, approved, and tagged, and while in operation bears a metal tag identifying said device, issued by said Commission.

(c) It shall be unlawful to use a device otherwise prohibited by the laws of this State but permitted under the terms of this Act for the taking and possession of any game fish or any other species of salt-water fish, excepting those specifically named in the permit authorizing the use of said device; or to operate or permit the operation of such a device in a manner that will or does needlessly or carelessly injure marine products other than those permitted to be taken in the especially authorized net or device.

*Seizure of Devices used Unlawfully*

Sec. 4. Whenever an agent of the Game, Fish and Oyster Commission finds that any device for which a permit has been issued under the laws of this State is being used contrary to any provisions of this Act, it shall be the duty of said officer to immediately seize such device and hold same until

after the trial of this defendant, and no suit shall be maintained therefor. Pending the trial of the defendant, it shall be unlawful for said defendant to operate any device such as is permitted under the provisions of this Act in any of the tidal waters of this State.

## Violations

Sec. 5. Any person violating any provision of this Act, or any of the conditions of a permit issued hereunder, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten Dollars (\$10), nor more than Two Hundred Dollars (\$200), and shall automatically forfeit all privileges granted under this Act.

[Acts 1941, 47th Leg., p. 525, ch. 322; Acts 1947, 50th Leg., p. 149, ch. 87, § 1; Acts 1949, 51st Leg., p. 330, ch. 160, § 1; Acts 1957, 55th Leg., p. 346, ch. 159, § 1; Acts 1959, 56th Leg., p. 407, ch. 187, § 15(c).]

### Art. 952I-12. Taking of Fish from Espiritu Santo Bay and Other Bays and Lakes

#### Taking Fish by Means Other than Hook and Line; Fines

Sec. 1. It is hereby made unlawful for any person to take or catch fish from the waters of Espiritu Santo Bay or in those portions of San Antonio Bay south or southeast of the Intracoastal Waterway, including all bays, bayous, lagoons, lakes, and inlets located between the Intracoastal Waterway and the Gulfward shoreline of Matagorda Island, or within one mile of Pass Caballo, as described in Article 941-2 of the Penal Code, or within one mile of any other pass leading from the above-described waters to any other bay or into the Gulf, located in Calhoun County, Texas, by any other means than hook and line, rod and reel, or trotline, or flounder gig and light, or by the use of a cast net or minnow seine, used in catching bait, not exceeding twenty (20) feet in length. Any person drawing a seine or setting a net for the purpose of taking fish in the waters of Espiritu Santo Bay or in those portions of San Antonio Bay south or southeast of the Intracoastal Waterway, or any of the waters between the Intracoastal Waterway, and the Gulfward shoreline of Matagorda Island, or within one mile of any pass located in Calhoun County, Texas, or any person catching or taking fish in such waters by any other means than by hook and line, rod and reel, or trotline, or flounder gig and light, or by the use of cast net or minnow seine not exceeding twenty (20) feet in length shall be deemed guilty of a misdemeanor, and shall be fined in a sum of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00).

#### Arrests; Disposition of Seized Seines and Nets

Sec. 2. When any peace officer of this state or any law enforcement officer employed by the Parks and Wildlife Department sees any seine, strike net, gill net, or trammel net, or any device the use of which is prohibited under Section 1 of this Act where the use of such device is prohibited and has reason to believe and does believe that the same is being used or possessed in violation of the provisions

of this Act, it shall be his duty to arrest the party using or possessing such device and, without a warrant, shall seize such device as evidence. It shall be the duty of such peace officer or employee to deliver such device to a court of competent jurisdiction of the county in which it was seized, where it shall be held as evidence until after the trial. If the defendant is found guilty of possessing or using such device unlawfully, the court shall enter an order directing the immediate destruction of such device by any state game warden or by the sheriff or constable of the county where the case was tried, and the game warden or sheriff or constable of the county shall immediately destroy such device and make a sworn report to the judge of such court, showing how, when, and where said device was destroyed. When such device is found by a peace officer of this state or any law enforcement officer employed by the Parks and Wildlife Department without anyone in possession where its use is prohibited, it shall be seized by such officer without warrant and delivered to the appropriate court in the county in which it was found. Said peace officer or employee shall make affidavit that such device was found in or on the tidal waters of this state at a point where its use was prohibited, which said affidavit shall describe such device and the court shall direct the game warden or sheriff or any constable of the county to post a copy of said affidavit in the courthouse of the county in which said device was seized, and said officer shall make his return to the court showing when and where said notice was posted. Thirty (30) days after such notice is posted, the court, either in term-time or in vacation, shall enter an order directing the immediate destruction of such device by any game warden or the sheriff or any constable in the county, and said officer executing said order, shall, under oath, make his return to said court, showing how, when, and where, such device was destroyed. It shall be the duty of the Parks and Wildlife Department to enforce this Act.

The Parks and Wildlife Department when requested by authorized representatives of units of The University of Texas System and the Texas A & M University System, engaged in teaching and research related to marine science and oceanography, may transfer to such units of The University of Texas System and the Texas A & M University System fish nets, seines, and other marine equipment, which have been confiscated under this Act, to be used in carrying out the teaching and research programs within said institutions.

#### Admissibility of Geodetic Maps

Sec. 3. All United States Geodetic Maps of the Coast of Texas and the Intracoastal Waterway of Texas are admissible<sup>1</sup> in evidence in the prosecution for the violation of this Act.

<sup>1</sup> So in enrolled bill.

#### Repealer

Sec. 4. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict only.

## Severability

Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid; such invalidity shall not affect other provisions or applications to the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

## Effective Date

Sec. 5a. This Act shall become effective on September 1, 1964.

[Acts 1963, 58th Leg., p. 624, ch. 230, eff. Sept. 1, 1964; Acts 1967, 60th Leg., p. 1154, ch. 511, § 1, eff. June 14, 1967; Acts 1969, 61st Leg., p. 1820, ch. 611, § 1, eff. June 11, 1969.]

## Savings Provision

*Acts 1967, 60th Leg., p. 1959, ch. 730, The Uniform Wildlife Regulatory Act, codified as article 978j-1, conferring upon the Parks and Wildlife Commission the power and duty of protecting and regulating the harvest of wildlife resources in various counties and repealing various acts of a similar nature, provides in section 15, inter alia, that Acts 1963, 58th Leg., p. 624, ch. 230, and any other laws relating to netting for fish in Calhoun or Victoria Counties shall not be altered or affected. See article 978j-1, § 15.*

**Art. 953. Repealed by Acts 1927, 40th Leg., p. 365, ch. 246, § 2**

**Art. 953a. Fishing in Young County**

Barter or Sale; Devices, Size of Mesh; Length of Fish Taken

Sec. 1. It shall be unlawful for any person, firm or corporation, or their agent or agents, to barter or to sell or offer for barter or for sale, or to buy any bass, crappie, perch or catfish, or any other fish except minnows taken from any river, creek, lake, slough, bayou, tank or pond that flows or is situated within the boundary lines of Young County; provided however, that the Brazos River and the Clear Fork of the Brazos River be excepted and not included in these waters situated within the boundaries of Young County; provided further, that it shall be unlawful for any person to place in the waters of the Clear Fork of the Brazos River situated within the boundaries of Young County, any seine, net or other device or trap for taking or catching fish with a mesh of less than two (2) inches square and on conviction thereof shall be fined not less than Five Dollars (\$5) nor more than Fifty Dollars (\$50); provided further, that it shall be unlawful for any person to retain or have in his possession any bass or channel catfish which are less than eleven (11) inches in length, or any crappie or white perch, or calico bass, or drum of less than eight (8) inches in length taken from the waters of the Clear Fork of the Brazos River situated within the boundaries of Young County and provided that fish of less than the described length shall be immediately returned to the waters where taken without necessarily injuring, and any person found guilty of a violation shall

be fined not less than Five Dollars (\$5) nor more than Fifty Dollars (\$50).

Use of Lime, Dynamite, Etc.

Sec. 2. Any person who shall use any lime, dynamite, nitroglycerin, giant powder or other explosive, or shall use any poisons, drugs, substances or things deleterious to fish life, in catching, taking or attempting to catch or take any fish in any of the rivers, creeks, lakes, sloughs, bayous, tanks or ponds that flow or are situated within the boundary lines of Young County, including the Brazos River, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred (\$100.00) dollars nor more than one thousand (\$1,000.00) dollars and in addition thereto be imprisoned in the County Jail for any term not exceeding one year.

Seines, Nets or Traps

Sec. 3. It shall be unlawful for any person to take or catch any fish in the waters described in Section One of this Act by any other means than the ordinary hook and line, or trotline or artificial baits; and it shall be unlawful for any person to place in any of the waters described in Section One of this Act any seine, net or other device or trap for taking or catching fish; provided, however, that any person may use a minnow seine which is not more than twenty feet in length, and the meshes of which are not less than one-sixth of an inch square for the purpose of catching minnows for bait, provided further that in seining for minnows for bait, as herein permitted, all bass, species of bass, crappie, white perch, calico bass and bream of whatever size that may be taken by seining shall be immediately returned to the waters uninjured and all other fish more than three inches in length except minnows, shall be immediately returned to the waters uninjured provided further that no person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnows for bait.

Trolling from Motor Boat

Sec. 4. It shall be unlawful for any person to take or catch or attempt to take or catch any fish in the waters described in Section One of this Act by trolling from or in a motor boat. By a motor boat, as used in this section, is meant any boat to which is attached a gasoline motor, an electric motor or other means of propelling said boat other than by oars operated by hand, whether said motor or other means of propelling said boat is running or not; and providing further that any person desiring to troll from any boat commonly propelled by an outboard motor, shall dismount the motor or other means of power from its accustomed place, and either leave it on the shore or place it in the bottom of floor of said boat.

Closed Season

Sec. 5. It shall be unlawful for any person, firm or corporation, or their agent or agents to take or catch from or have in their possession any bass, crappie, white perch or bream taken from any of the waters named in Section One of this Act, on and

from the First of February to the First day of May of any year. Provided, however, that the owner of any private lake, tank or pond, that is stocked with fish purchased from a commercial hatchery, may take or catch any fish said waters may contain at any time during the year; and provided further that any privately owned lake, tank or pond that has been stocked with fish from a State or Federal hatchery shall be closed to the taking of any bass, crappie, white perch, or bream, except for the purpose of transferring said bass, crappie, white perch or bream to other waters for breeding purposes only, during the period between the First day of February and the First day of May of any year; and further provided that after five years from date of last stocking said lake, tank or pond with fish from a State or Federal hatchery, said owner may catch or take, or permit to be caught or taken from said waters, any bass, crappie, white perch or bream, at any time during the year, for any purpose except to sell or barter them to any other person, firm or corporation, or their agent or agents.

Limits

Sec. 6. It shall be unlawful for any person to catch or retain, or have in his possession any bass, or other fish of the bass species, which are less than eleven (11) inches in length, or to catch or retain, or have in his possession, in any one day a total aggregate of more than eight (8) bass, or other fish of the bass species, taken from the waters described in Section One of this Act; provided that it shall be unlawful for any person to catch or retain, or have in his possession from those waters in any one day bass or other fish of the bass species, of an aggregate weight in excess of twenty (20) pounds; to catch or retain, or have in his possession any crappie or white perch or calico bass which are less than eight (8) inches in length, or catch and retain or have in his possession any bream which are less than five (5) inches in length, or to catch or retain from, or have in his possession in any one day more than a total aggregate of sixteen (16) crappie or white perch or calico bass or bream or of any or all of those fish taken from the waters described in Section One of this Act; provided that it shall be unlawful for any person to catch and retain or have in his possession from those waters in any one day crappie or white perch, or calico bass, or bream or of any or of all of those fish of an aggregate weight in excess of twenty (20) pounds; provided, further, that it shall be unlawful for any person to catch and retain or have in his possession in any one day from the waters described in Section One of this Act, bass, or any other fish of the bass species, crappie, white perch or sunfish, or calico bass, or bream, or other fish of the crappie, white perch or bream or sunfish species, of an aggregate weight in excess of thirty (30) pounds.

Size of Fish

Sec. 7. If any person shall at any time catch or take from any of the waters described in Section One of this Act in the county named in that section

by use of any means whatsoever any bass, or other fish of the bass species, of less than eleven (11) inches in length, or any crappie or white perch, or calico bass of less than eight (8) inches in length, or any bream of less than five (5) inches in length he shall immediately return the same into such water without unnecessarily injuring such fish; provided further that the owner of any private lake, tank or pond which has been stocked with fish from a State or Federal hatchery, is not exempt from this provision, except he be removing said fish to other waters for rearing or breeding purposes; and further provided, that the owner of any private lake, tank or pond that has been stocked with bass, crappie, white perch or bream purchased from a commercial hatchery, may take or catch said fish at his discretion and is exempt from this provision; and further provided that failure to return any bass, crappie, white perch or bream of less than the length set forth in this section, or the unnecessarily injuring of such fish shall be deemed an offense under this Act.

Waste

Sec. 8. It shall be unlawful for any person, or persons, knowingly to place, throw or deposit upon the banks or grounds within five hundred (500) feet of any of the waters described in Section One of this Act in the County named in Section One of this Act, any bass, crappie, white perch, bream, sunfish, drum, catfish, or other edible fish, and leave such fish to die without any intent upon the part of such person to eat such fish, or in like manner to leave any minnows without intent to use the same for bait. Any person found guilty of the violation of any provisions of this section shall be fined in any sum not less than \$2.00 nor more than \$25.00, and each fish so allowed to die shall constitute a separate offense.

Penalties

Sec. 9. Any person violating any of the provisions of Sections I, IV, V, VI, VII of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$5.00 nor more than \$50.00 for each violation of the law, and each fish caught, held in possession, sold or purchased, in violation of this Act shall be deemed a separate violation hereof and a separate offense, and the person guilty thereof may be prosecuted either in the county where the fish are caught, where he is found with them in his possession or where the fish are sold or bartered or offered for sale or barter or bought; provided that any person guilty of using a net or other device or trap for taking or catching fish as prohibited in Section Three of this Act, shall upon conviction thereof, be fined not less than \$10.00 nor more than \$100.00 upon each conviction and in addition said seine, net or other device or trap so used for taking or catching fish or attempting to take or catch fish, shall be forfeited to the State of Texas, and shall thereupon become the property of the State of Texas to be held, used and disposed of by the Fish and Game Commission of the State of Texas.

[Acts 1929, 41st Leg., 1st C.S., p. 41, ch. 12; Acts 1936, 44th Leg., 3rd C.S., p. 2031, ch. 491, § 1.]

**Art. 954. Fish Pound Nets in Gulf Waters**

It shall be unlawful for any person, firm or corporation to erect, set, operate or maintain any fish pound net in any waters of the Gulf of Mexico within three nautical miles from the coast line of this State. Any person violating any provision of this Article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

[Acts 1961, 57th Leg., 1st C.S., p. 195, ch. 56, § 1, eff. Aug. 26, 1961.]

**Art. 955. Sale of Fish Caught in Anderson and Other Counties**

If any person shall sell or offer for sale any bass, white perch, crappie, channel or catfish, caught, trapped or ensnared in the streams of the Counties of Anderson, Burnet, San Saba, Mills, Brown, McCulloch, Edwards, Coleman, Concho, Menard, Mason, Gillespie, Kimble, Sutton, Kinney, Uvalde, Real, Kerr, Comal, Val Verde, Bandera, Reeves, Ward, Loving, Pecos, Medina, Bexar, Hunt, Runnels, Rains, Williamson, Zavala, Dimmit, Lampasas, or Llano, State of Texas, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than Five (\$5.00) Dollars, nor more than Fifty (\$50.00) Dollars. No person shall take or catch any fish in the fresh water rivers, creeks, lakes, bayous, pools or lagoons in the Counties above named by any other means than by ordinary hook and line or trotline or artificial bait, and no person shall place in the fresh water rivers, creeks, lakes, bayous, pools or lagoons of the counties above mentioned, any seine, net or other device, or trap for taking or catching fish; provided, however, that persons may use a minnow seine which is not more than twenty feet in length for the purpose of catching minnows for bait; or a net, the meshes of which are not less than three inches for the purpose of catching carp and suckers in the Colorado River. In seining for bait as herein permitted, all fish and minnows more than three inches in length shall be returned to the waters at once while alive. No person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnows for bait. Any person violating any provisions of this Section shall be fined not less than Five (\$5.00) Dollars nor more than One Hundred (\$100.00) Dollars.

No person shall take from the fresh waters of any County mentioned more than thirty-five of such fish in any one day. Any person violating this provision of this Article shall be fined not less than Five (\$5.00) Dollars nor more than One Hundred (\$100.00) Dollars. The taking of such fish in excess to the number herein allowed shall be a separate offense.

No person shall knowingly place, throw or deposit upon the banks or grounds adjacent to any of the fresh waters, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in the Counties above named any catfish, perch, crappie, white perch, bass, trout, or

other edible fish, and leave such fish to die without any intention upon the part of such person either to eat such fish or use same for bait. Any person found guilty of the violation of this provision shall be fined not to exceed Twenty-five (\$25.00) Dollars. The allowing of each fish to die shall be a separate offense.

[1925 P.C.; Acts 1929, 41st Leg., p. 111, ch. 55; Acts 1929, 41st Leg., p. 533, ch. 257; Acts 1931, 42nd Leg., p. 764, ch. 304; Acts 1931, 42nd Leg., 2nd C.S., p. 20, ch. 11; Acts 1933, 43rd Leg., Spec.Laws, p. 16, ch. 16; Acts 1933, 43rd Leg., Spec.Laws, p. 113, ch. 86.]

**Art. 955a-1. Repealed by Acts 1930, 41st Leg., 4th C.S., p. 77, ch. 38, § 1****Art. 955a-2. Sale of Fish Taken from Hubbard Creek Lake**

Sec. 1. (a) Except as provided in Subsection (b) of this section, no person may

(1) sell or barter, or offer to sell or barter, any fish taken from Hubbard Creek Lake in Shackelford and Stephens counties; or

(2) take or catch, attempt to take or catch, or possess or transport any fish from Hubbard Creek Lake for the purpose of barter or sale.

(b) Subsection (a) of this section does not apply to a person

(1) catching, taking, possessing, transporting, bartering, or selling fish from Hubbard Creek Lake pursuant to a contract with the Parks and Wildlife Department for removal of rough fish under Chapter 422, Acts of the 51st Legislature, Regular Session, 1949, as now or later amended (Article 4050c, Vernon's Texas Civil Statutes); or

(2) catching, taking, or possessing not more than 200 minnows on any one day for use as bait in fishing the waters of Hubbard Creek Lake.

Sec. 2. A person who violates any provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$200; and the illegal possession or sale of each fish is a separate offense.

[Acts 1967, 60th Leg., p. 570, ch. 253, eff. Aug. 28, 1967.]

**Art. 955a-3. Importation, Possession, Sale or Release of Harmful Tropical Fish or Fish Eggs**

Sec. 1. (a) No person may, without first obtaining written permission from the executive director of the Parks and Wildlife Department, import into this state, possess, sell, or release any tropical fish or fish eggs which are harmful or potentially harmful to human or animal life, as determined by the Parks and Wildlife Department.

(b) The Parks and Wildlife Department shall

(1) determine which tropical fish are harmful or potentially harmful;

(2) publish a list containing the names of the fish; and

(3) promulgate rules necessary to carry out the provisions of this Act.

Sec. 2. A person who knowingly violates a provision of Section 1(a) of this Act, or a rule of the department promulgated under Section 1(b)(3), is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1967, 60th Leg., p. 678, ch. 282, eff. May 25, 1967.]

#### Art. 956. Mischief in Prohibited Waters

Whoever shall wilfully and with intent to injure the owner, take any boat, seine or net or other device for fishing into prohibited waters, or shall use said articles for the unlawful taking or catching of fish, so as to cause the destruction of same, shall be fined not less than ten nor more than two hundred dollars, and be confined in jail not less than thirty nor more than ninety days.

[1925 P.C.]

#### Art. 957. Season for Salt Water Terrapin

Whoever kills, takes or has in his possession any salt water terrapin at any time except during November, December, January and February shall be fined not less than fifty nor more than one hundred dollars.

[1925 P.C.]

#### Art. 958. Underweight Turtle or Terrapin

Whoever sells or ships any green turtle of less than twelve pounds in weight or terrapin of less than six inches in length of under shell shall be fined not less than ten nor more than two hundred dollars.

[1925 P.C.]

#### Art. 959. Buoy or Marker

Whoever shall deface, injure, or destroy or remove any buoy, marker or fence or any part thereof, used to designate or enclose a private oyster bed or a location where oysters have been deposited to be prepared for market, without the consent of the owner thereof, or any buoy, marker or sign placed or used by the Commissioner for the purpose of designating any waters closed against fishing or oyster taking, without the consent of said Commissioner, shall be fined not less than fifty nor more than two hundred dollars.

[1925 P.C.]

#### Art. 960. Public or Private Oyster Bed

All oyster beds shall be public or private; all not designated private shall be public. All natural oyster beds and oyster reefs of this State shall be deemed public and a natural oyster bed shall be declared to exist when as many as five barrels of oysters may be found within twenty-five hundred square feet of any position of said reef or bed and any lands covered by water containing less oysters than the above amount shall be subject to location at the discretion of the Commissioner, but this shall not

apply to a reef or bed that has been exhausted within a period of eight years.

[1925 P.C.]

#### Art. 961. Right to Private Oyster Bed

When any creek, bayou, lake or cove shall be included within the metes and bounds of any original grant or location of land in this State, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou or cove for gathering, planting, or sowing oysters within the metes and bounds of the official grant or patent. The Commissioner may require the owner of oysters produced in said water when offered for sale, to make an affidavit that such oysters were so produced. The failure of the person claiming that such oysters were produced on his private oyster bed or bottoms, to have and to show such affidavit to the Commissioner or one of his deputies, or to whoever he offers such oysters for sale, shall be presumptive that such oysters were taken from a public bed, and on prosecution for the same it shall devolve on the defendant to show that such oysters were taken from his private bed, or bottom of oysters.

[1925 P.C.]

#### Art. 962. Theft of Oysters

Whoever fraudulently takes the oysters placed on private reefs without the consent of the owner of the private reef or from beds or deposits made for the purpose of preparing oysters for market without the consent of the owner of the oysters who has deposited them to prepare them for market under the provisions of law, shall be confined in the penitentiary not less than one nor more than two years.

[1925 P.C.]

#### Art. 962a. Dredging of Oysters

Fee; Commercial Oyster Dredge License; Necessity; Exception; Expiration

Sec. 1. Before any person, firm, or corporation shall take or attempt to take oysters from the public waters of this State by means of a dredge, an oyster dredge license shall first be procured from the Texas Parks and Wildlife Department privileging him to do so. If the boat is otherwise licensed as a Commercial Bay or Bait Shrimp Boat, no dredge license is required. Oyster dredge licenses shall expire August 31st following the date of issuance.

Fee; Commercial Oyster Dredge License; Dredge Size

Sec. 2. The fee for a Commercial Oyster Dredge License shall be Twenty-Five Dollars (\$25) and shall permit the holder to use one dredge up to 36 inches in width.

Fee; Sports Oyster Dredge License; Dredge Size; Restriction

Sec. 3. The fee for a Sports Oyster Dredge License shall be \$5 and shall permit the holder to use or possess on board a boat one dredge not to exceed 14 inches in width. Oysters taken with a Sports Dredge License may not be sold, bartered, or exchanged.

## Open and Closed Seasons

Sec. 4. It shall be unlawful for any person to take or attempt to take oysters from any public beds or reefs from the first day of May through the last day of October except in that part of the Laguna Madre and abutting waters south of the Port Mansfield Channel or except by permit from the Parks and Wildlife Department.

## Hours for Harvest

Sec. 5. During the open season provided herein, it shall be lawful to take or attempt to take oysters from the public waters of the State only from sunrise to sunset.

## Closing and Opening of Oystering Areas; Notice

Sec. 6. When the Parks and Wildlife Commission has reason to believe that any oystering area is being overworked or damaged in any way or when the area is to be reseeded or restocked with oysters, the Commission may close or open the area to the taking of oysters, but before such closure the Commission shall give two weeks notice of such closing by posting notices in such fish and oyster houses as are in two towns nearest such area.

## Taking Oysters from Polluted Areas

Sec. 6A. There shall be no open season for taking oysters from any area that has been declared by the State Health Department to be polluted. However, the Parks and Wildlife Department may authorize by permit the taking of oysters from a polluted area for the purpose of transplanting to private oyster leases. Any person removing oysters from polluted waters in violation of this section shall place such oysters back on reefs as directed by the Executive Director of the Parks and Wildlife Department or his deputies.

## Possession Limits; Number and Size of Dredges

Sec. 7. It shall be unlawful for any person, firm, or corporation to have on board any boat, barge, float, or other vessel while in the public waters of this State, more than fifty (50) barrels of oysters in total cargo which shall be culled oysters of legal size. If a boat is pulling or towing another boat or boats, then such towing or towed boats combined shall not have aboard more than fifty (50) barrels of oysters, culled and of legal size. As used herein, a barrel is equivalent to three (3) bushels.

It shall be unlawful in the public waters of this State for any person to have on board any commercial fishing boat, barge, float, or other vessel more than one oyster dredge; said dredge shall not exceed 36 inches in width across the mouth and shall not have a capacity in excess of two bushels. If a boat is pulling or towing another boat or boats, then such towing and towed boats combined shall not have aboard more than one oyster dredge. The Parks and Wildlife Commission may authorize by permit the use of one or more dredges of any size and cargoes in excess of fifty (50) barrels in transplanting to or harvesting from private leases.

## Undersized Oysters; Polluted Areas

Sec. 8. It shall be unlawful for any person to possess any cargo of oysters which shall contain

more than five per cent oysters measuring between  $\frac{3}{4}$  inch and 3 inches from beak to bill or along an imaginary straight line through the long axis of the shell. It shall be unlawful for any person to fail, or refuse to cull any oysters between  $\frac{3}{4}$  inch and 3 inches as he may take from oyster beds or to fail to return said culled oysters immediately to the bed from which taken, or fail or refuse to obey the lawful order of any Parks and Wildlife Commission Law Enforcement officer while such officer is acting pursuant to this act. A cargo of undersized oysters shall be determined by taking at random, 5 per cent of the total cargo of oysters as a sample, of which not more than 5 per cent shall measure less than 3 inches along an imaginary straight line through the long axis of the shell. The Parks and Wildlife Department, or any of its Law Enforcement officers, are authorized to sell undersized oysters in the event that returning them to the bed from which they were taken is impractical. All oysters taken from a polluted area, designated by the State Health Department, shall be immediately returned to the bed from which they were taken. A person may possess not more than one barrel (3 bushels) of uncultured oysters per load separate and awaiting culling during the period he is fishing on the reef. The Parks and Wildlife Commission is authorized to permit the taking of oysters of less or greater size than 3 inches from any area it may designate, but it shall be unlawful to take any such oysters from areas other than those designated by such Commission.

## Repeals

Sec. 9. The following laws are hereby specifically repealed: Articles 963, 964, 966, 967, 968, 969, 971, and 973, Penal Code of Texas, 1925, and Article 4048, Revised Civil Statutes of Texas, 1925; Acts of the 48th Legislature, Regular Session, 1943, Chapter 102, as last amended by Acts of the 60th Legislature, Regular Session, 1967, Chapter 742; Acts of the 55th Legislature, Regular Session, 1957, Chapter 217, as last amended by Acts of the 60th Legislature, Regular Session, 1967, Chapter 31; Acts of the 46th Legislature, Regular Session, 1939, page 833, Special Laws; and any and all other laws in conflict with the provisions of this Act but to the extent of such conflict only.

## Severability

Sec. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

## Penalty; Violations as Separate Offenses

Sec. 11. Any person operating in violation of the provisions of this Act or failing to comply with the requirements of this Act is guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) for each offense. Each violation of this Act, or failure to comply with any provision of

this Act, is a separate offense and each day upon which such violation or failure to comply occurs is a separate offense.

[Acts 1971, 62nd Leg., p. 1666, ch. 471, eff. May 27, 1971; Acts 1973, 63rd Leg., p. 267, ch. 125, § 18, eff. Sept. 1, 1973; Acts 1973, 63rd Leg., p. 404, ch. 180, §§ 1, 2, eff. May 25, 1973.]

**Art. 962b. Licensing of Shellfish Culturists**

License Required

Sec. 1. The Parks and Wildlife Department is authorized and directed to issue numbered licenses to shellfish culturists operating a business on private lands. It shall be unlawful for any person, firm or corporation to engage in the business of shellfish culture as defined in this Act without first obtaining the required license.

Definitions

Sec. 2. As used in this Act:

(a) A "Shellfish culturist" is any person, firm or corporation engaged in the business of production, propagation, transportation, possession or sale of shellfish raised in private ponds or reservoirs in this state.

(b) "Shellfish" includes aquatic species of crustaceans and molluscs including oysters, clams, shrimp, prawns, crabs and crayfish of all varieties.

(c) "Private ponds" are defined as ponds, reservoirs, vats, or any structure capable of holding shellfish in confinement wholly within or upon the enclosed lands of an owner or lessor.

(d) "Owner" is defined as any person, partnership, corporation or firm of several persons licensed as shellfish culturists by the Parks and Wildlife Department.

(e) "Exotic shellfish" are shellfish transported into this state while alive for shellfish culture purposes from another state or foreign country. Shellfish taken from the high seas adjacent to the Texas Coast are not considered exotic.

License Fee; Term; Separate Premises; Bill of Lading

Sec. 3. Before any owner in this state shall engage in the business of shellfish culture in private ponds for the purpose of sale, barter, or exchange, a shellfish culture license shall first be procured from the Parks and Wildlife Department. The annual fee for a shellfish culture license shall be \$25, and the license shall be on a form provided by the Parks and Wildlife Department. Such license shall be valid from September 1 or issuance date, whichever is later, and shall expire August 31 following the date of issuance. A license shall be required for each separate premise on which shellfish culture is practiced. Vehicles transporting shellfish to or from such facility shall carry a bill of lading reflecting the species of shellfish, number, shellfish culturist's name, location, and license number, and the source and destination of the cargo.

Records Required; Inspection

Sec. 4. Each owner shall maintain records reflecting purchases, sales and shipments of shellfish and such records shall be open for inspection by designated personnel of the Parks and Wildlife Department.

Harvest and Sale of Shellfish

Sec. 5. Shellfish produced in private ponds by shellfish culturists may be harvested by any means at any time of the year, may be of any size, and, subject to appropriate health regulations, may be sold at any time of the year in any county of the state. The shellfish culturist may sell his product to any person, firm or corporation.

Exotic Shellfish Permit

Sec. 6. It shall be unlawful for any shellfish culturist to bring into the state or to possess, propagate, or transport any exotic shellfish without first obtaining a permit from the Parks and Wildlife Department.

Disease Free Exotic Shellfish

Sec. 7. The Parks and Wildlife Department is authorized to issue permits to shellfish culturists for transportation, possession, or propagation of exotic shellfish only when the applicant furnishes sufficient evidence to show that the exotic shellfish are free of disease.

Permits for Collection of Broodstock

Sec. 8. The Parks and Wildlife Department is authorized to issue permits to shellfish culturists or their authorized agents for the collection of reasonable quantities of broodstock in closed season, in closed waters, or at any size. Such permits shall list the species and number of shellfish to be taken, the method of taking, the period and area in which they are to be taken, the shellfish culturist's name, location and license number.

Repealer

Sec. 9. Any and all other laws or parts of laws in conflict with the provisions of this Act are hereby repealed but to the extent of such conflict only.

Severability

Sec. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Penalty

Sec. 11. Any person operating in violation of the provisions of this Act or failing to comply with the requirements of this Act is guilty of a misdemeanor and upon conviction shall be fined not less than \$25 nor more than \$200 for each offense. Each violation of this Act, or failure to comply with any provision of this Act, is a separate offense and each day upon which such violation or failure to comply occurs is a separate offense.

[Acts 1973, 63rd Leg., p. 405, ch. 181, eff. May 25, 1973.]

**Arts. 963, 964. Repealed by Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9, eff. May 27, 1971**

Article 963 was derived from Acts 1891, p. 157; Acts 1913, p. 269; Acts 1919, 2nd C.S., p. 207 and Acts 1923, p. 298, and related to licenses to dredge oysters.

Article 964 was derived from Acts 1913, p. 274 and Acts 1919, 2nd C.S., p. 207, and provided for closing of reefs against taking oysters.

See, now, art. 962a.

**Art. 965. Repealed by Acts 1965, 59th Leg., p. 1575, ch. 683, § 15, eff. Aug. 30, 1965**

Article 965 was derived from Acts 1919, 2nd C.S., c. 209, and related to oysters taken from insanitary reefs or beds.

See, now, Civil Statutes, art. 4050f.

**Arts. 966 to 969. Repealed by Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9, eff. May 27, 1971**

The repealed articles, relating to oyster offenses in closed season and the scattering of oyster culls, were derived from:

Acts 1891, p. 155.

Acts 1907, p. 238.

Acts 1913, p. 269, ch. 135.

Acts 1919, 2nd C.S., pp. 203, 206.

See, now, art. 962a.

**Art. 970. Sale of Oysters Taken for Planting**

No person gathering oysters for planting or depositing for preparations for market, on locations obtained from the State or on private property, shall sell, market or in any way dispose of oysters so gathered at the time of gathering, for any other purpose than planting or preparing for market, provided, this shall not be considered as meaning the right to dispose of a location or oyster bed. Any person offending against this article shall be fined not less than fifty nor more than two hundred dollars.

[1925 P.C.]

**Art. 971. Repealed by Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9, eff. May 27, 1971**

The repealed article, prohibiting the sale of young oysters, was derived from Acts 1919, 2nd C.S., p. 206.

See, now, art. 962a.

**Art. 972. Repealed by Acts 1965, 59th Leg., p. 1575, ch. 683, § 15, eff. Aug. 30, 1965**

The repealed article, penalizing use of unsanitary oyster receptacle, was derived from Acts 1919, 2nd C.S., p. 209.

See, now, Civil Statutes, art. 4050f.

**Art. 973. Repealed by Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9, eff. May 27, 1971**

The repealed article, prohibiting floating or bloating of oysters, was derived from Acts 1919, 2nd C.S., p. 209.

See, now, art. 962a.

**Art. 974. "Net" Defined**

Whenever a net mentioned in this chapter as a trammel, strike, gill, hoop, pound, purse or other kind of a net, the standard net of such variety or kind or the usual or ordinary kind of such net as manufactured and sold as in or to the trade is meant.

[1925 P.C.]

**Art. 975. License for Mussel or Clam**

Whoever takes from the public waters of this State for sale, any mussels, clams or naiaid or shells thereof without first obtaining a license from the Commissioner, shall be fined not less than ten nor more than one hundred dollars.

[1925 P.C.]

**Art. 976. Marl, Sand and Shell**

Whoever shall, for himself, or for or on behalf of or under the direction of another person, association of persons, corporate or otherwise, take or carry away any marl, sand or shells or mudshell or gravel placed under the management, control and protection of the Commissioner, or shall disturb any of said marl, sand, shells or mudshell or gravel or oyster beds or fishing waters or shall operate in or upon any of said places for any purpose other than that necessary or incident to navigation or dredging under State or Federal authority, without having first obtained a written permit from said Commissioner for the territory in which such operation is carried on, shall be fined not less than ten nor more than two hundred dollars. Each day's operation shall be a separate offense.

[1925 P.C.]

**Art. 976a. Removal of Sand, Marl or Gravel between Seawall and Water Edge, Penalty**

Sec. 1. Whoever shall take, remove or carry away sand, marl, shell, gravel, or any material of any nature or kind whatsoever from any land located between any seawall and the water's edge within this State for any purpose other than that necessary or incident to navigation or dredging under State or Federal authority, or shall take, remove or carry away sand, marl, shell, gravel, or any material of any nature or kind whatsoever from any beach or shore line within this State within three hundred (300) feet of the mean low tide line and within one-half (½) mile of the end of any seawall for any purpose other than that necessary or incident to navigation or dredging under State or Federal authority shall be guilty of a misdemeanor and fined not less than Five (\$5.00) Dollars nor more than Two Hundred (\$200.00) Dollars.

Sec. 2. If any section, clause, sentence, or other part of this Act shall for any reason be declared unconstitutional it shall not affect in any way the constitutionality of the remaining provisions hereof. [Acts 1935, 44th Leg., p. 230, ch. 93.]

**Art. 977. Charts as Evidence**

All United States Coastal Survey Charts covering the coast of Texas are admissible in any prosecution under this chapter.

[1925 P.C.]

**Art. 978. Witnesses Must Testify**

Any court, office or tribunal having jurisdiction of the offenses set forth in this chapter or any district or county attorney may subpoena persons and compel their attendance as witnesses to testify as to violations of any provision of this chapter. Anyone so summoned and examined shall not be liable to prosecution for any such violation about which he may testify; and a conviction of said offense may be had upon the unsupported evidence of an accomplice or participant.

[1925 P.C.]

**Art. 978a. Trespass on Hatchery or Reservation**

Any person entering and trespassing on the grounds of any State fish hatchery or on the grounds set apart by the State for the propagation and keeping of birds and animals, without the permission of the Commissioner or deputy in charge of such reservation, shall be fined not less than ten nor more than twenty-five dollars.

[1925 P.C.]

**Art. 978b. Protecting Fish and Game in Hatchery**

Whoever shall take, injure or kill any fish kept by the State in its hatcheries, or any bird or animal kept by the State on its reservation grounds or elsewhere for propagation or exhibition purposes, shall be fined not less than fifty nor more than two hundred dollars.

[1925 P.C.]

**Art. 978c. Screening Canal or Pipe**

Every person, firm or corporation using any means for the purpose of taking water from the fresh waters of the State, when directed to do so by the Commissioner, shall place screens over the entrance of the canal, pipe, or over whatever means are used for diverting the water, or over the mouth of the intake pipe, for the purpose of preventing fish from entering said pipe or canal. The size of and regulations for placing such screen and any other obstruction shall be designated by the Commissioner. Whoever fails to comply with this article after notification by the Commissioner to do so shall be fined not less than fifty nor more than two hundred dollars. Each day is a separate offense.

[1925 P.C.]

**Art. 978d. Closed Season for Green Turtle**

It shall be unlawful for any person to take or kill or have in his possession at any time before September 1, 1920,<sup>1</sup> any sea turtle known as the green turtle, and it shall be unlawful to destroy or take the eggs of such turtle and any person who shall take, kill or have in his possession within such five years, or shall destroy or take the eggs of such turtle, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than fifty (\$50.00) nor more than one hundred (\$100.00) dollars.

[1925 P.C.]

<sup>1</sup> So in enrolled bill. Should probably read "1930."

**Art. 978d-1. Taking or Killing Sea Turtles or Eggs**

Sec. 1. It shall be unlawful for any person to knowingly take, kill or disturb any sea turtle or any sea turtle eggs in or from the waters of the State of Texas.

Sec. 2. Any person violating this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than Ten Dollars (\$10) nor more than Two Hundred Dollars (\$200).

[Acts 1963, 58th Leg., p. 968, ch. 390.]

**Art. 978e. Closed Season on Bass and Crappie**

It shall be unlawful for any person, firm or corporation, or their agents, to buy or sell, or offer for sale, or offer to buy, or have in his or their possession for sale, or to carry, transport or ship for the purpose of sale, barter or exchange, any fresh water crappie or bass within the State of Texas.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum not exceeding one hundred dollars, and each sale or shipment or act in violation hereof shall constitute a separate offense.

[1925 P.C.]

**Saved from Repeal**

*Acts 1963, 58th Leg., p. 748, ch. 279, which, in section 1, adds article 978e-1 to the Penal Code, and which, in section 2, repeals article 933a, expressly saves this article from repeal.*

**Art. 978e-1. Sale of Imported Black Bass in El Paso County**

(a) The sale in El Paso County, Texas, of black bass imported from without the United States, which were caught in inland waters of a foreign country but not from international waters of the United States and such foreign country, shall be lawful, so long as the taking of these fish for sale is permitted in the country from which they are imported. No person shall sell or attempt to sell any such black bass in El Paso County, Texas, however, unless the fish bear a properly attached tag as provided herein.

(b) Any licensed custom house broker who desires to handle the importation of black bass for sale in El Paso County, Texas, shall notify the Texas Game and Fish Commission, and the Commission shall assign the broker a permanent record number. The Commission shall manufacture or cause to be manufactured, on request by a broker, any desired number of metal tags. The cost of manufacturing these tags shall be paid by the broker who requests them, and each tag shall bear the broker's permanent record number and a separate number to identify the tag. One of these tags shall be attached to the gill, dorsal fin or tail of each black bass to be sold in El Paso County, Texas.

(c) Any person who sells or attempts to sell a black bass in El Paso County, Texas, which does not bear a properly attached tag shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[Acts 1963, 58th Leg., p. 743, ch. 279, § 1.]

**Art. 978f. Game, Fish and Oyster Commission; Powers and Duties**

Office of Game, Fish and Oyster Commissioner Abolished

Sec. 1. The office of Game, Fish and Oyster Commissioner of the State of Texas is hereby abolished. There is hereby created the Game, Fish and Oyster Commission which shall have the authority,

powers, duties and functions heretofore vested in the Game, Fish and Oyster Commissioner, except where in conflict with this Act.

Commission Appointed

Sec. 2. Said Game, Fish and Oyster Commission shall consist of six members, one of whom shall be chairman. The Chairman and other members of the Commission shall be appointed by the Governor from different sections of the State, which appointment shall be with the advice and consent of the Senate, if in session, and if not in session, the Governor shall appoint such chairman and members and issue a commission to them as provided by law, and their appointment shall be submitted to the next Session of the Senate for their advice and consent in the manner that appointments to fill vacancies under the Constitution are submitted to the Senate. The chairman and one member of said Game, Fish and Oyster Commission shall be appointed for a term ending September 1, 1935. Two members shall be appointed for a term ending September 1, 1933, and two members shall be appointed for a term ending September 1, 1931, or until their successors are appointed and qualified. Thereafter, the Governor shall appoint such chairman and members for terms of six years. The chairman and each member of said Commission shall execute a bond payable to the State of Texas, in the sum of Five Thousand Dollars to be approved by the Governor and conditioned upon the faithful performance of his duties under the law. The premium on such bonds shall be paid by the State of Texas out of funds available to said Game, Fish and Oyster Commission under the law and appropriations made by the Legislature.

Meetings

Sec. 3. Said Game, Fish and Oyster Commission shall hold regularly quarterly meetings in January, April, July and October of each year on dates to be specified by the Commission and may hold such special meetings at such times and places as said Commission may deem necessary and proper. It shall require two members or the chairman and one member of said Commission to constitute a quorum.

Rules and Regulations

Sec. 4. Said Game, Fish and Oyster Commission is hereby authorized to make such rules and regulations for the conduct of its work and the work of the Game, Fish and Oyster Commission as may be deemed necessary, not inconsistent with the Constitution and laws of this State. Said Game, Fish and Oyster Commission shall keep a record of all proceedings and official acts.

Compensation

Sec. 5. The chairman and members of said Commission shall receive as compensation for their services their actual expenses in the performance of their duties. The expense of the chairman and members shall be itemized and sworn to by said chairman or member receiving the same and shall be paid out on warrants of the Comptroller drawn against any fund available for the use of said Game, Fish and Oyster Commission.

Executive Secretary and Assistant

Sec. 6. Said Game, Fish and Oyster Commission shall have power and authority to appoint an executive secretary who shall act as the chief executive officer under the direction of said Game, Fish and Oyster Commission. The Commission may perform its duties through said executive secretary and may delegate to him such executive duties as said Game, Fish and Oyster Commission shall deem proper. They shall also have power and authority to appoint an assistant executive secretary who, in the absence of the executive secretary, shall perform all the duties of the executive secretary and shall perform such other duties as may be prescribed by the Game, Fish and Oyster Commission or under its direction. Said executive secretary shall have authority to appoint such heads of divisions and such Game and Fish Wardens and other employees as in his discretion may be deemed necessary to carry out and enforce the laws of this State, which it is the duty of said Game, Fish and Oyster Commission to carry out, execute and administer, and to perform all other duties and services authorized and required to be performed by said Game, Fish and Oyster Commission, and shall have the authority, powers, duties and functions heretofore vested in Special Deputy Game, Fish and Oyster Commissioners and other employees of the Game, Fish and Oyster Commissioner. Said executive secretary and assistant executive secretary shall serve at the will of said Game, Fish and Oyster Commission. The division heads, Game and Fish Wardens and other employees shall serve at the will of the executive secretary.

Compensation of Secretary, Assistant and Division Heads

Sec. 7. The executive secretary and the assistant executive secretary shall each receive such compensation as may be fixed by the Legislature in each biennial appropriation bill, to be paid to them in twelve equal monthly installments, out of any funds available to, or appropriated for the use of the Game, Fish and Oyster Commission, together with all the necessary expenses in connection with their official duties. The compensation of all division heads, Game and Fish Wardens and other employees of the Game, Fish and Oyster Commission, herein provided for, shall be fixed by the Game, Fish and Oyster Commission; provided that the Legislature in each biennial appropriation bill shall fix the maximum compensation to be paid to such division heads, Game Warden and other employees.

Official Bonds

Sec. 8. The executive secretary and assistant executive secretary shall each enter into a good and sufficient bond in the sum of Ten Thousand Dollars payable to the State of Texas, to be approved by the Game, Fish and Oyster Commission conditioned upon the faithful performance of his duties under the law. The premium on such bonds shall be paid by the State out of funds available to the Game, Fish and Oyster Commission. The executive secretary and assistant executive secretary shall take the constitutional oath of office. Every division head, Game and Fish Warden and such other of the employees as

the Commission may designate shall execute a bond in the sum of One Thousand Dollars to be approved by the executive secretary of the Game, Fish and Oyster Commission, and payable to the State of Texas and conditioned upon the faithful performance of the duties of his office. The Game, Fish and Oyster Commission may require any employee who handles funds belonging to the Department to give a bond up to as high as Ten Thousand Dollars, conditioned upon the faithful performance of his duties under the law. The chairman nor the members of the Commission, the executive secretary nor assistant executive secretary shall be liable on their respective bonds for any act of any employee of the Department but on the other hand the bond of any such employee shall cover the individual acts of each.

Appropriation

Sec. 9. There is hereby appropriated out of the State Treasury all moneys collected or to be collected by the Game, Fish and Oyster Commissioner or said Game, Fish and Oyster Commission, under any laws of this State relating thereto, for the purpose of carrying out this act or performing any duties or services under any laws of this State.  
[Acts 1929, 41st Leg., p. 265, ch. 118.]

*The title of Acts 1951, c. 476 (adding art. 978f-3) recites the repeal of this article as one of the purposes of the Act, but the Act contains no specific repeal.*

*Game, Fish and Oyster Commission abolished and powers, duties and functions transferred to Game and Fish Commission, see art. 978f-3.*

*Change of name of Game and Fish Commission to Parks and Wildlife Department, see art. 978f-3a.*

**Art. 978f-1. Statistics as to Marine Products Taken; Penalty**

Sec. 1. The Game, Fish and Oyster Commission is hereby directed to gather statistical information on the harvest or catch of fish, shrimp, oysters and other edible forms of marine life of the Texas coast. The information shall set forth quantity, or the number of pounds of fish, shrimp, oysters or other marine products taken; from what waters, the kind of gear used, and the names of the various species of fishes taken. The Game, Fish and Oyster Commission shall prepare forms for reports which shall be furnished to handlers of marine products who shall make monthly reports to the Game, Fish and Oyster Commission at Austin, Texas, on said forms, not later than the 10th day of each month. Such handlers of marine products required to make this report are hereby designated as those dealers who buy or procure marine products from fishermen direct.

Sec. 2. Any person who buys or procures any marine products from any fisherman, and who fails or refuses to make any report required by this Act, or who wilfully makes an incorrect report, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten Dollars (\$10.00) nor more than Fifty Dollars (\$50.00).  
[Acts 1935, 44th Leg., p. 647, ch. 261.]

tion shall be fined in a sum not less than Ten Dollars (\$10.00) nor more than Fifty Dollars (\$50.00).  
[Acts 1935, 44th Leg., p. 647, ch. 261.]

**Art. 978f-2. Cooperative Agreements with United States to Protect Wildlife on National Forest Lands in San Augustine and Sabine Counties**

Sec. 1. The Game, Fish and Oyster Commission of Texas shall have the right and authority to enter into an agreement with the United States Government, or with the proper authority thereof, for the protection and management of the wildlife resources of the National Forest lands under fence within the State of Texas situated within the Counties of San Augustine and Sabine, and known as the Sabine National Forest, and for the re-stocking of such lands with desirable species of game animals, game birds and other animals and fish.

Sec. 2. The Game, Fish and Oyster Commission of Texas shall have authority to prohibit all hunting and fishing within or upon any or all lands named in Section 1 of this Act for such period of time as may be necessary to safeguard any species of wildlife found thereon; shall have authority from time to time to prescribe open seasons for hunting and/or fishing therein, to prescribe the number, kind and size of all game and non-game animals, fish and birds that may be taken therefrom or thereon, and to prescribe the conditions under which all birds, animals and fish may be taken within said area.

Sec. 3. Any person violating any of the provisions of this Act or who shall hunt or fish upon said lands at any time other than the times specified by the Game, Fish and Oyster Commission, shall, upon conviction therefor, be fined in a sum of not less than Twenty-five (\$25.00) Dollars nor more than One Hundred (\$100.00) Dollars.  
[Acts 1943, 48th Leg., p. 344, ch. 224.]

**Art. 978f-3. Game and Fish Commission**

*Game, Fish and Oyster Commission Abolished and Powers, Duties and Functions Transferred*

Sec. 1. The office of Game, Fish and Oyster Commission is hereby abolished. There is hereby created the Game and Fish Commission, which shall have the authority, powers, duties and functions heretofore vested in the Game, Fish and Oyster Commission, and the Game, Fish and Oyster Commissioner, except where in conflict with this Act.

Members of Commission

Sec. 2. Said Game and Fish Commission shall consist of nine members, one of whom shall be designated Chairman. The members of the Commission shall be appointed by the Governor from different sections of the State, which appointments shall be with the advice and consent of the Senate, if in session, and if not in session, the Governor shall appoint such members and issue a commission to them as provided by law, and their appointment shall be submitted to the next session of the Senate for their advice and consent in the manner that

appointments to fill vacancies under the Constitution are submitted to the Senate. The Chairman and all members of the Game, Fish and Oyster Commission shall continue to serve in their same capacities as Chairman and members of the Game and Fish Commission until their present terms of office expire, and until their successors are appointed and qualified. The Governor shall appoint three additional members of the Game and Fish Commission, one whose term shall expire September 1, 1953, one whose term shall expire September 1, 1955, and one whose term shall expire September 1, 1957, or until their successors are appointed and qualified. Thereafter the Governor shall appoint members for terms of six years. Each member of said Commission shall execute a bond payable to the State of Texas, in the sum of Five Thousand (\$5,000.00) Dollars, to be approved by the Governor and conditioned upon the faithful performance of his duties under the law. The premium on such bonds shall be paid by the State of Texas out of funds available to said Game and Fish Commission under the law and appropriations made by the Legislature.

Meetings; Quorum

Sec. 3. Said Game and Fish Commission shall hold regular quarterly meetings in January, April, July and October of each year on dates to be specified by the Commission and may hold such special meetings at such times and places as said Commission may deem necessary and proper. It shall require six members or the Chairman and five members to constitute a quorum.

Rules and Regulations; Chairman; Record

Sec. 4. Said Game and Fish Commission is hereby authorized to make such rules and regulations for the conduct of its work and the work of the Game and Fish Commission as may be deemed necessary, not inconsistent with the Constitution and laws of this State. After the expiration of the term of office of the Chairman provided for in Section 2 of this Act, the Game and Fish Commission shall, by two-thirds vote of its members, elect one member as Chairman, who shall serve under such rules as may be fixed by said Commission. Said Game and Fish Commission shall keep a record of all proceedings and official acts.

Expenses

Sec. 5. The Chairman and members of said Commission shall receive as compensation for their services their actual expenses in the performance of their duties. The expense of the Chairman and members shall be itemized and sworn to by said Chairman or member receiving the same, and shall be paid out on warrants of the Comptroller drawn against any funds available for the use of said Game and Fish Commission.

Executive Secretary, Assistant Executive Secretary and Other Personnel

Sec. 6. Said Game and Fish Commission shall have power and authority to appoint an executive secretary who shall act as the chief executive officer under the direction of said Game and Fish Commission. The Commission may perform its duties

through said executive secretary and may delegate to him such executive duties as said Game and Fish Commission shall deem proper. They shall also have power and authority to appoint an assistant executive secretary who, in the absence of the executive secretary, shall perform all the duties of the executive secretary and shall perform such other duties as may be prescribed by the Game and Fish Commission or under its direction. Said executive secretary shall have authority to appoint such heads of divisions and such game and fish wardens and other employees as in his discretion may be deemed necessary to carry out and enforce the laws of this State, which it is the duty of said Game and Fish Commission to carry out, execute and administer, and to perform all other duties and services authorized and required to be performed by said Game and Fish Commission. Said executive secretary and assistant executive secretary shall serve at the will of said Game and Fish Commission. The division heads, game and fish wardens and other employees shall serve at the will of the executive secretary.

Compensation of Personnel

Sec. 7. The executive secretary and the assistant executive secretary shall each receive such compensation as may be fixed by the Legislature in each biennial appropriation bill, to be paid to them in twelve equal monthly installments, out of any funds available to, or appropriated for the use of the Game and Fish Commission, together with all the necessary expenses in connection with their official duties. The compensation of all division heads, game and fish wardens and other employees of the Game and Fish Commission, herein provided for, shall be fixed by the Game and Fish Commission; provided that the Legislature in each biennial appropriation bill shall fix the maximum compensation to be paid to such division heads, game wardens and other employees.

Official Bonds and Oaths

Sec. 8. The executive secretary and assistant executive secretary shall each enter into a good and sufficient bond in the sum of Ten Thousand (\$10,000.00) Dollars payable to the State of Texas, to be approved by the Game and Fish Commission conditioned upon the faithful performance of his duties under the law. The premium on such bonds shall be paid by the State out of funds available to the Game and Fish Commission. The executive secretary and assistant executive secretary shall take the constitutional oath of office. Every division head, game and fish warden and such other of the employees as the Commission may designate shall execute a bond in the sum of One Thousand (\$1,000.00) Dollars to be approved by the executive secretary of the Game and Fish Commission, and payable to the State of Texas and conditioned upon the faithful performance of the duties of his office. The Game and Fish Commission may require any employee who handles funds belonging to the Department to give a bond up to as high as Ten Thousand (\$10,000.00) Dollars, conditioned upon the faithful performance of his

duties under the law. The Chairman nor the members of the Commission, the executive secretary nor assistant executive secretary shall be liable on their respective bonds for any act of the employee of the Department but on the other hand the bond of any such employee shall cover the individual acts of each.

Appropriation

Sec. 9. There is hereby appropriated all monies on deposit to the credit of the Special Game and Fish Fund, and all monies to be derived and placed to the credit of said fund for the purpose of carrying out all the duties and functions of the Game and Fish Commission as may be required under any laws of this State, or as heretofore required of the Game, Fish and Oyster Commission.  
[Acts 1951, 52nd Leg., p. 850, ch. 476.]

The title of Acts 1951, ch. 476, recites the repeal of art. 978f as one of the purposes of the act, but the act contains no specific repeal.

Change of Name

*The Game and Fish Commission has been reconstituted and the name changed to "Parks and Wildlife Department". See art. 978f-3a.*

Art. 978f-3a. Parks and Wildlife Department

Department Established; Parks and Wildlife Commission Appointment and Terms; Vacancies; Chairman and Vice Chairman; Meetings and Expenses

Sec. 1. (a) The Parks and Wildlife Department is established as an agency of the state. It is under the policy direction of the Parks and Wildlife Commission.

(b) The Commission consists of six members appointed by the Governor with the advice and consent of two-thirds of the Members of the Senate present and voting. If the Senate is not in session, the Governor shall appoint the members and issue a commission to them as provided by law, and their appointment shall be submitted to the next session of the Senate for their advice and consent in the manner that appointments to fill vacancies under the Constitution are submitted to the Senate. In case of a vacancy on the Commission, the Governor shall appoint a new member to fill the unexpired term of the vacating member.

(c) The members of the Commission hold office for staggered terms of six (6) years, with the terms of two (2) members expiring every two (2) years. Each member holds office until his successor is appointed and has qualified. The terms expire on January 31 of odd-numbered years.

(d) The Governor shall biennially designate one (1) of the six (6) members to serve as Chairman of the Commission for a term of two (2) years expiring on January 31 of the succeeding odd-numbered year. The Commission shall biennially elect a Vice Chairman from among its members for a term of two (2) years expiring on January 31 of the succeeding odd-numbered year. A vacancy in the office of Chairman or Vice Chairman shall be filled for the unexpired portion of the term by appointment or election as in the case of the original appointment or election.

(e) The Commission shall meet as often as it deems necessary, but shall meet at least once every quarter of the year. Four members constitute a quorum for transacting business.

(f) Members of the Commission shall be reimbursed for their actual expenses incurred in attending meetings and shall be paid a per diem as set in the General Appropriations Act.

Terms of Office of Members of Game and Fish Commission

Sec. 2. The term of office of the present members of the Game and Fish Commission shall expire with the effective date of this Act; provided, however, that this provision shall not preclude the Governor from appointing one (1) or more members to the Parks and Wildlife Commission provided for in Section 1 of this Act.

Executive Director; Appointment; Powers and Duties

Sec. 3. The Parks and Wildlife Commission shall have the power and authority to appoint an Executive Director who shall be the chief executive officer of the Parks and Wildlife Department and shall perform its administrative duties. Such Executive Director shall have authority to appoint such heads of divisions, game and fish wardens, park managers, and other employees as may be authorized by appropriations therefor and as may be deemed necessary for executing, administering and carrying out the duties and services authorized by law to be performed by the Parks and Wildlife Commission and the Parks and Wildlife Department. The Executive Director shall serve at the will of the Parks and Wildlife Commission. All other employees shall serve at the will of the Executive Director.

Abolition of State Parks Board

Sec. 4. The State Parks Board is hereby abolished and all powers, duties and authority heretofore vested in the State Parks Board are hereby transferred to the Parks and Wildlife Department provided for herein. The terms of office of the present members of the State Parks Board are hereby terminated and this provision shall not preclude the Governor from appointing one (1) or more members of the State Parks Board to the Parks and Wildlife Commission provided for in Section 1 of this Act.

Powers and Duties; Donations, Grants and Gifts

Sec. 5. The Parks and Wildlife Department provided for herein shall exercise and perform all powers and duties heretofore vested in the Game and Fish Commission prior to the effective date of this Act, and the State Parks Board prior to the effective date of this Act, and that portion of the program administered by the Parks and Wildlife Department which deals with the operation, maintenance, and improvement of State Parks shall be financed from the General Revenue Fund, the State Parks Fund, other funds as may be authorized by law, and such donations, grants, and gifts as may be received by said Department. No donations, grants or gifts accruing to the State of Texas or received by the Parks and Wildlife Department herein created, or now on hand in the presently constituted State Parks Department for the purpose of operating,

maintaining, improving or developing State Parks, shall be used for any other purpose than the operation, maintenance, or developing of State Parks.

Federal Aid; Wildlife and Fish Restoration Projects

Sec. 6. The State of Texas assents to the provisions of the Acts of the U. S. Congress entitled "An Act to provide that the United States shall aid the states in wildlife-restoration projects, and for other purposes," approved September 2, 1937 (Public Law No. 415, 75th Congress),<sup>1</sup> and "An Act to provide that the United States shall aid the states in fish-restoration management projects, and for other purposes," approved August 9, 1950 (Public Law No. 681, 81st Congress),<sup>2</sup> and any amendments thereto, and the Parks and Wildlife Commission is authorized and empowered to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration and cooperative fish-restoration projects, as defined in said Acts of Congress, in compliance with said Acts, with rules and regulations promulgated thereunder by the Secretary of the Interior, and with enactments of Texas Legislatures; and no funds accruing to the State of Texas from hunting license fees, fishing license fees, commercial fishing boat license fees, oyster license fees, net license fees, trawl license fees, seine license fees, or from any other fees collected by the former Texas Game and Fish Commission, or from any other funds received by the former Texas Game and Fish Commission including fines as a result of action taken by any court for a violation of any game or fish law; or receipts from the sale of shell, sand or gravel shall be diverted for any other purposes than for making necessary studies and management of the fish and game resources of this State and for the expansion and development of additional opportunities of hunting and fishing in State-owned land and waters for the benefit of the public wherever practicable and to embrace wherever feasible the principle of multiple use of our land and waters for better hunting and fishing opportunities. The special Game and Fish Fund shall be used for the purposes provided herein and for the purposes as now described by law and nothing shall be done to jeopardize or divert this Fund or any portion thereof including Federal aid as described in Section 6 of this Act.

[Acts 1963, 58th Leg., p. 104, ch. 58, eff. Aug. 23, 1963; Acts 1971, 62nd Leg., p. 2421, ch. 770, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> 16 U.S.C.A. §§ 669-669i.

<sup>2</sup> 16 U.S.C.A. §§ 777-777k.

Section 2 of the 1971 amendatory act provided: "This Act does not affect the members of the Commission serving on the effective date of this Act. For the initial appointments of the three additional members authorized by Section 1 of this Act, the Governor shall appoint one member for two years, one member for four years, and one member for six years. The Governor shall designate one of the six members chairman of the Commission."

#### Art. 978f-3b. Transfer of Confiscated Marine Equipment to College or University for Research Programs

The Game and Fish Commission of the State of Texas,<sup>1</sup> when requested by authorized representatives of units of The University of Texas System and

the Texas Agricultural and Mechanical College System, engaged in teaching and research related to marine science and oceanography, may transfer to such units of The University of Texas System and the Texas Agricultural and Mechanical College System or any other college or university located in Texas which is State supported fish nets, seines, motors, boats, and other marine equipment, which have been confiscated under the game and fish laws, to be used in carrying out the teaching and research programs within said institutions.

[Acts 1963, 58th Leg., p. 945, ch. 373, § 1, eff. Aug. 23, 1963.]

<sup>1</sup> Name changed to Parks and Wildlife Commission. See art. 978f-3a, § 1.

#### Art. 978f-3c. Program for Market Development for Seafoods

The Parks and Wildlife Department is hereby empowered, authorized and directed to develop, promote, administer and support, either by and through his own personnel or by contract with others, and either with only state funds or in conjunction with federal or private funds, a market promotion program to foster and expand the sale and consumption of seafoods by the public. Forty percent (40%) of the funds collected from Commercial Fisherman's License fees, twenty percent (20%) of Wholesale Fish Dealers' License fees and Wholesale Truck Dealers' Fish License fees, and fifty percent (50%) of Shrimp House Operators' License fees, shall be used by the said Department in establishing and carrying out the above program.

[Acts 1967, 60th Leg., p. 362, ch. 173, § 5, eff. Aug. 28, 1967.]

#### Art. 978f-3d. State System of Scientific Areas

Sec. 1. The Parks and Wildlife Commission, hereafter called the commission, is hereby authorized to promote and establish a state system of scientific areas for the purposes of education, scientific research, and/or preservation of flora or fauna of scientific or educational value.

Sec. 2. To the extent necessary to carry out the purposes of this Act, the commission shall have the following powers and authorities:

(a) To determine the acceptance or rejection of state scientific areas proposed for incorporation into a state system of scientific areas;

(b) To make and publish all rules and regulations necessary for the management and protection of such scientific areas;

(c) To cooperate and contract with any agencies, organizations, or individuals for purposes of this Act;

(d) To accept gifts, grants, devises, and bequests of money, securities, or property to be used in accordance with the tenor of such gift, grant, devise, or bequest;

(e) To formulate policies for the selection, acquisition, management, and protection of state scientific areas;

(f) To negotiate for and approve the dedication of state scientific areas as part of the system;

(g) To advocate research, investigations, interpretive programs, and publication and dissemination of information pertaining to state scientific areas and related areas of scientific value;

(h) To acquire interest in real property by purchase, and to hold and manage the same within the system.

Sec. 3. All departments, agencies, and instrumentalities of the state, including counties, municipalities, public corporations, districts, boards, commissions, universities and colleges are empowered and are urged to acquire, administer, and dedicate as state scientific areas within the system under the policies established by the commission for purposes of this Act. Nothing contained in this Act shall be construed as interfering with the purposes stated in the establishment of or pertaining to any state or local park, preserve, wildlife refuge, or other area or the proper management and development thereof except that any agency administering any area designated as a state scientific area under the system shall be responsible for preserving the natural character of the area in accordance with the policies established by the commission. Designation of an area as a state scientific area within the system or allowance by the commission of an intrusion, easement or taking therein shall not void or replace any protected status under law which the area would have were it not so designated.

Sec. 4. The Parks and Wildlife Commission shall not use any funds available to it for the acquisition of scientific areas unless the funds are specifically appropriated for the purposes of this Act.

[Acts 1967, 60th Leg., p. 1794, ch. 684, eff. June 17, 1967; Acts 1969, 61st Leg., p. 1574, ch. 479, § 1, eff. Sept. 1, 1969.]

Section 5 of the act of 1967 provided: "All laws general and special in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only."

**Art. 978f-3e. Transfer of Property from One Division to Another; Dedicated Funds**

The Parks and Wildlife Commission may transfer tangible property, other than money or real estate which is held for limited purposes, from one division of the Parks and Wildlife Department to another division. If, however, the property to be transferred was acquired with funds the use of which is limited by law or dedicated in any other manner, and the prospective use of the property is different from the use allowed by law, the department shall transfer from other available funds to the fund from which the property was acquired the value of the property at the time of the transfer.

[Acts 1973, 63rd Leg., p. 399, ch. 177, eff. May 25, 1973.]

**Art. 978f-4. Grazing Leases; Sale of Timber, Hay and Other Products**

Sec. 1. The Game and Fish Commission is hereby authorized to lease grazing rights on any lands ac-

quired by, and for the use of, the Game and Fish Commission. The Game and Fish Commission is further authorized to harvest and sell, or to sell in place, any timber, hay or other product grown on such lands when same is found to be in excess of wildlife management needs.

Sec. 2. Any sale or lease as provided for in Section 1 of this Act shall be made by the State Board of Control under the general provisions of law governing the sale of State property, provided that the Game and Fish Commission shall direct the quantity of products, or grazing lease, to be offered for sale.

Sec. 3. All revenues derived because of the provisions of this Act shall be deposited in the State Treasury, to the credit of the Special Game and Fish Fund.

[Acts 1953, 53rd Leg., p. 750, ch. 298.]

**Art. 978f-4a. Exchange of Lands**

Sec. 1. The Executive Director of the Parks and Wildlife Department, with approval of the Parks and Wildlife Commission, may execute a deed or deeds exchanging real property or an interest therein, either as the whole or as partial consideration for other real property or interest therein, to be used by the Department for a State park, historic site, scientific area or game management area.

Sec. 2. All State lands thus exchanged shall be for other lands adjoining the same park, historic site, scientific area or game management area, and shall contain no State improvements other than fences.

Sec. 3. The State shall receive a good and marketable title to all lands thus exchanged and the title to such lands received in exchange shall first be approved by the Attorney General's office.

Sec. 4. All tracts of land to be received in exchange shall be appraised and determined to be of equal value to the State lands exchanged, except that if the land or tracts of land to be received are determined by independent, competent appraisal to have a greater value than those State lands exchanged, the Department may use such funds as may be available to it for land acquisition as a partial consideration for the exchange.

Sec. 5. All transactions for exchange of lands by authority of this Act shall have the prior written approval of the Governor.

[Acts 1971, 62nd Leg., p. 1248, ch. 309, eff. May 24, 1971.]

**Art. 978f-5. Wildlife Management Areas; Powers of Commission to Manage; Regulation of Hunting and Fishing**

Management by Commission

Sec. 1. The Game and Fish Commission is hereby authorized to manage, along sound biological lines, such wildlife and/or fish species as may be found on any lands which it has acquired or which it may hereafter acquire for use as a wildlife management area.

## Hunting and Fishing; Authority to Prohibit or Regulate

Sec. 2. The Game and Fish Commission shall have authority to prohibit all hunting and fishing within or upon all lands named in Section 1 of this Act, for such period of time as may be necessary to safeguard any species of wildlife or fish found thereon; shall have authority from time to time, as sound biological management practices shall warrant, to prescribe open seasons for hunting and/or fishing therein, to prescribe the number, kind, sex and size of any wildlife and fish that may be taken therefrom or thereon, and to prescribe the means and methods for taking and the conditions under which any wildlife or fish species may be taken within such area.

## Special Permit to Hunt

Sec. 3. Any special permit that may be issued for the hunting of wildlife species on any lands described in Section 1 of this Act shall be made available to applicants in such way as to give all applicants an impartial opportunity to obtain such a permit to the extent of the total number issued. No person may receive a special permit for two (2) consecutive years unless all applications from persons who applied but did not receive a special permit in the preceding year are filled. The Parks and Wildlife Commission shall charge a fee for the issuance of permits issued under this Section. The Commission shall set the amount of the fee to cover the costs of issuance of the permit and to cover the costs of enforcing game laws and protecting hunters during hunting periods on wildlife management areas. The provisions of this Section shall not be construed to waive the hunting license requirements as provided by law, but shall be cumulative thereof.

## Prohibitions Enumerated

Sec. 4. It shall be unlawful for any person to take or attempt to take any wildlife or fish species from, or to possess any wildlife or fish species taken from, any area to which this Act applies at any time, or in any numbers, or by any means, or under any conditions except as permitted by the Game and Fish Commission under the provisions of this Act.

## Penalty

Sec. 5. Any person violating any of the provisions of this Act or who shall hunt or fish at any time other than the times specified by the Game and Fish Commission, shall, upon conviction thereof, be fined in a sum of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100). [Acts 1955, 54th Leg., p. 1184, ch. 463; Acts 1969, 61st Leg., p. 1021, ch. 332, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 793, ch. 354, § 1, eff. June 12, 1973.]

#### Art. 978f-5a. Wildlife Management Areas; Expenditure of Funds to Counties and School Districts in Lieu of Taxes

The Parks and Wildlife Department is hereby authorized and directed to expend funds to counties and school districts for assessments in lieu of property taxes on wildlife management areas purchased

from federal funds or grants authorized by Pittman-Robertson Act or Dingell-Johnson Act. It is the intent of this bill to encourage the development of wildlife management areas in the counties of the state; however, it is a matter of equity that the local units of government are entitled to funds assessed in lieu of property taxes for these wildlife management areas. No general revenue funds may be expended in lieu of taxes for wildlife management areas; however, special funds may be expended for this purpose provided reimbursement or matching from the federal government is available at a federal ratio of 2 to 1 or better. [Acts 1967, 60th Leg., p. 1823, ch. 702, eff. June 17, 1967.]

#### Art. 978f-5b. Fish Farms; Licenses

## Issuance; Necessity

Sec. 1. The Parks and Wildlife Department is authorized and directed to issue numbered licenses to fish farmers operating a business on private lands. It shall be unlawful for any person, firm, or corporation to engage in the business of fish farming as defined in this Act without first obtaining the required license.

## Definitions

## Sec. 2. Definitions:

(a) A "Fish Farmer" is any person, firm, or corporation engaged in the business of production, propagation, transportation, possession and sale of fish except fish propagated for bait purposes, raised in private ponds or reservoirs.

(b) "Private Ponds" are defined as ponds, reservoirs, vats, or any structure capable of holding fish in confinement wholly within or upon the enclosed lands of an owner or lessor.

(c) "Owner" is defined as any person, partnership, corporation or firm or several persons licensed as "Fish Farmers" by the Parks and Wildlife Department.

## Licenses; Fees; Term; Vehicles

Sec. 3. Before any owner in this state shall engage in the business of fish farming for the purpose of sale, barter, or exchange, a "Fish Farmer's" license shall first be procured from the Parks and Wildlife Department. The annual fee for a Fish Farmer's license or Fish Farm Vehicle license shall be \$5 and the license shall be on a form provided by the Parks and Wildlife Department. Such license shall be valid from September 1 or issuance date whichever is later and shall expire August 31 following the date of issuance. A "Fish Farm Vehicle license" shall be required for each vehicle transporting fish from Fish Farms for the purpose of sale from the vehicle except those vehicles owned and operated by a person holding a Fish Farmer's license. Vehicles transporting fish from Fish Farms when no sales are made from the vehicle shall carry a bill of lading reflecting the species of fish, number, Fish Farm owner's name, location, and license number of Fish Farm and the destination of the cargo, but said vehicle shall not be required to obtain a Fish Farm vehicle license. A person holding a Fish

Farmer's license, upon payment of \$1 each, may procure additional licenses for display purposes in or on additional premises or vehicles owned or operated by him.

Records

Sec. 4. Each person holding a Fish Farmer's license shall maintain records reflecting sales and shipments of fish and such records shall be open for inspection by designated personnel of the Parks and Wildlife Department.

Harvest and Sale

Sec. 5. Fish from "Fish Farms" may be harvested by any means, may be of any size, and may be sold at any time of the year, and in any county of the state.

Sales; Restrictions

Sec. 6. Bass and crappie propagated under the terms of this Act may be sold only for stocking purposes and shall not be sold for resale except to another licensed Fish Farm. Bass and crappie may not be sold for consumption by individuals, cafes and restaurants, or sale by Retail Fish Dealers, and Wholesale Dealers. All other fish propagated on "Fish Farms" may be sold for any purpose.

Federal Funds; Use

Sec. 6A. Grants of federal funds available for research and development of commercial fisheries may be used for individual fishery projects after approval by the Parks and Wildlife Department.

Repealer

Sec. 7. Chapter 630, 59th Legislature, Regular Session, 1965, is hereby repealed, all other laws and parts of laws in conflict herewith are repealed to the extent of conflict only.

Violations

Sec. 8. Any person, firm or corporation who fails to obtain the required license herein or who violates any provisions of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$200.

Deposit of Proceeds

Sec. 9. Proceeds for issuing licenses and any penalties assessed for violation of this Act shall be deposited in the State Treasury to the account of Special Game and Fish Fund No. 9.

[Acts 1969, 61st Leg., p. 884, ch. 298, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1290, ch. 332, §§ 2 to 5, eff. Sept. 1, 1971.]

**Art. 978f-5c. Department Employees as Peace Officers**

The Executive Director of the Parks and Wildlife Department, in order to insure the adequate enforcement of all laws in state parks and in state historical sites under the jurisdiction of the Parks and Wildlife Department, is authorized to commission as peace officers any of the employees provided for under the General Appropriation Bill; and when so commissioned, said employees are vested with all of the powers, privileges, and immunities of peace officers while on state parks or on state historical

sites or in fresh pursuit of those violating the law in such state parks or state historical sites.

[Acts 1969, 61st Leg., p. 1988, ch. 677, § 1, eff. Sept. 1, 1969.]

**Art. 978f-5d. Hunting in State Parks**

Sec. 1. Except as otherwise provided by Section 2 of this Act, it shall be unlawful for any person to kill, wound, shoot at or hunt any wild animals, wild birds, or wild fowl found within the boundaries of any State park, fort or historic site under jurisdiction of the Parks and Wildlife Department. Any person violating the provisions of this Act shall be fined not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00). Any peace officer, game warden or duly commissioned State park employee is authorized to arrest without warrant any person found committing a violation of this Act.

Sec. 2. The Parks and Wildlife Commission is authorized to direct the service or division of the Parks and Wildlife Department charged with the management of wildlife resources to manage the aquatic and wildlife resources found within the boundaries of all State parks, forts or historic sites, as well as in all such parks, forts or historic sites as may hereafterwards be acquired by the Department. The Commission may, from time to time as sound biological management practices warrant, prescribe an open season for hunting within State parks, forts or sites, where size, location and physical conditions permit and may prescribe a reasonable fee for such hunting. The Commission may prescribe the number, kind, sex and size of any wildlife that may be taken therefrom, as well as the means and methods for taking and the conditions under which any wildlife species may be taken. All proceeds derived by the Department shall be transmitted and deposited to the credit of the State Parks Fund established by Chapter 168, Acts of the 42nd Legislature, 1931, as amended by Chapter 431, Acts of the 47th Legislature, Regular Session, 1941.<sup>1</sup> The provisions of this section shall not be construed to waive the hunting license requirements as provided by law, but shall be cumulative thereof. No public hunting will be authorized in any event between the first day of March and the last day of October inclusively of any calendar year, nor shall the hunting of deer be authorized in any State park, the purposes and uses for which are primarily recreational.

[Acts 1971, 62nd Leg., p. 1651, ch. 465, eff. May 27, 1971; Acts 1973, 63rd Leg., p. 1635, ch. 594, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Civil Statutes, art. 6070a.

**Art. 978f-5e. Citation for Violation of Game, Fish or Park Law**

Sec. 1. A peace officer or game warden of this state or a political subdivision of this state who arrests a person for violation of a game, fish, or park law of this state or of a regulation of the Parks and Wildlife Commission may deliver to the alleged vio-

lator a written notice to appear within 15 days after the date of the alleged violation before the justice court having jurisdiction of the offense.

Sec. 2. On signing the written notice to appear and thereby promising to appear in accordance with the provisions of the written notice, the alleged violator shall be released.

Sec. 3. Failure to appear at the time specified in the written notice to appear is a misdemeanor punishable by a fine of not less than \$10 nor more than \$200, and a warrant for the arrest of the alleged violator may be issued.

[Acts 1973, 63rd Leg., p. 282, ch. 132, eff. Aug. 27, 1973.]

#### Art. 978f-5f. Deputy Game Wardens

Sec. 1. The Executive Director of the Parks and Wildlife Department may commission deputy game wardens to serve at the will of the Executive Director. The Parks and Wildlife Commission is authorized to promulgate all necessary rules and regulations to govern the qualifications, conduct and duties of such wardens when commissioned.

Sec. 2. A person commissioned under the provisions of Section 1 of this Act is authorized to enforce the laws of this state relating to hunting and fishing, and to the preservation and conservation of wildlife and marine animals. The Parks and Wildlife Department shall prescribe the geographical area in which a deputy game warden shall operate.

Sec. 3. Prior to entry upon duty and simultaneously with his appointment, a deputy game warden shall file an oath and bond in the amount of Two Thousand Dollars (\$2,000) payable to the Parks and Wildlife Department.

Sec. 4. Such deputy game wardens when commissioned, shall serve without compensation from the State of Texas, but the Parks and Wildlife Department is authorized to expend whatever funds necessary to support and maintain this responsibility.

[Acts 1973, 63rd Leg., p. 353, ch. 151, eff. May 23, 1973.]

#### Art. 978f-5g. Use of Firearms Near State Parks

Sec. 1. The Parks and Wildlife Commission may make regulations prohibiting the use of firearms or certain types of firearms on state property adjacent to state parks and within 200 yards of the boundary of the state park.

Sec. 2. The regulations of the commission under this Act are applicable only to state parks located within one mile of coastal waters of this state.

Sec. 3. Before making a regulation under this Act, the commission shall publish in a newspaper of general circulation in the county in which the regulation is to apply notice of the proposed regulation. The notice shall contain the text of the proposed regulation and shall give the date, time, and location of the hearing on the regulation. The commission shall hold a hearing on the proposed regulation and

shall hear persons who wish to speak for or against the regulation. The hearing may be held in Austin.

Sec. 4. A regulation made by the commission under this Act takes effect 30 days after final action by the commission.

Sec. 5. A person who violates any regulation of the commission made under this Act is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1973, 63rd Leg., p. 1281, ch. 474, eff. June 14, 1973.]

#### Art. 978f-6. Reciprocal Agreements; Fishing and Hunting on Waters Located upon Common Boundaries with Other States

Power and Authority of Commission to Negotiate; Reciprocal Application

Sec. 1. The Game and Fish Commission is hereby directed, authorized, and empowered to negotiate through its executive secretary with the authorized agents, commissions or boards of states having a common border with the State of Texas to provide for fishing and hunting migratory water fowl on lakes and rivers located upon a common boundary between Texas and such other states by sportsmen or sport and commercial fishermen who hold a fishing or hunting license issued by either state. Any agreement negotiated or entered into shall have reciprocal application upon fishermen and hunters licensed by said other states and shall apply to the waters of said lake or river located on boundary waters.

Non-residents; Fishing and Hunting Licenses; Exemptions;  
Purpose of Section

Sec. 2. Any non-resident who is at least seventeen (17) years of age and who is not over sixty-five (65) years of age who has in his immediate possession a valid fishing license or a valid hunting license issued to him by his home state shall not be required to secure a fishing license or a hunting license as provided for under the laws of this State, provided the state of his residence likewise recognizes such license issued by the State of Texas and exempts the holders thereof from securing such license from such foreign state. The purpose of this Section is to extend full reciprocity to citizens of other states comprising the United States of America which extend like privileges to citizens of the State of Texas. Such non-residents who qualify under this Act shall be subject to all of the laws of the State of Texas relating to the taking of the wildlife resources.

Proclamations Approving Agreements

Sec. 3. The Game and Fish Commission is hereby authorized and empowered to issue proclamations approving any agreements negotiated by its executive secretary under provisions pursuant to the Act. Said proclamation shall become effective thirty (30) days after the agreement has been lawfully accepted by the bordering state and said proclamation is issued by the Commission.

Rules and Regulations; Meetings of Commission; Quorum

Sec. 4. The Game and Fish Commission is hereby authorized and empowered to issue, from time to

time, rules and regulations in accordance with agreements with bordering states made pursuant to this Act for the conservation of fish and wildlife of this State or to carry out the provisions of agreements with bordering states made pursuant to this Act. Such rules and regulations shall be adopted by the quorum of said Commission, and only at any regular or special Commission meeting or meetings, of the date and time of which each Commissioner shall have been notified in writing by the executive secretary of said Commission (or his assistant in his absence), and such meetings for such purpose shall be held only in said Commission's office at Austin, Texas. Any person interested shall be entitled to be heard at such meetings; provided that six (6) members, or the Chairman and five (5) members of said Commission shall constitute a quorum; and provided further, that no rule, or regulation, shall be adopted at any regular or special meeting of the Commission unless and until a quorum is present.

Effective Dates and Duration of Proclamations, Rules and Regulations

Sec. 5. Proclamations, rules and regulations adopted by said Commission or issued by its executive secretary (or the assistant executive secretary in his absence), when authorized to do so by the Commission, shall become effective thirty (30) days after their adoption, and shall continue in full force and effect until they shall expire by their own terms or are revoked or amended by said Commission.

Filing Copies

Sec. 6. Immediately after its adoption, a copy of each rule or regulation adopted by said Commission shall be numbered and filed in its office in Austin, Texas, and a copy thereof shall be filed in the office of the Secretary of State, the office of each County Clerk and each County Attorney in the counties within which the rivers or lakes involved are located, the Secretary of State of all states which are a party to agreements covering said lakes and rivers, the Game and Fish Commission or the equivalent board, commission or agent of each state which is a party to an agreement involving said lakes and rivers, and a mimeographed copy shall be furnished to each employee of said Commission who performs duties in said counties in which the lakes or rivers are located.

Revocation and Disaffirmance of Agreements

Sec. 7. The Game and Fish Commission is hereby authorized and empowered to revoke and disaffirm any agreement made pursuant to this Act ninety (90) days after giving notice to the bordering states which are parties to any agreement so revoked and disaffirmed.

Violations; Penalties

Sec. 8. Any person violating any proclamation, rule or regulation of the Game and Fish Commission issued pursuant to this Act shall be guilty of a misdemeanor and upon conviction shall be fined any sum not less than Ten Dollars (\$10) nor more than Two Hundred Dollars (\$200). Each fresh-water fish or migratory water fowl taken or possessed in violation of any proclamation, rule or regulation issued

by the Commission shall constitute a separate offense.

[Acts 1959, 56th Leg., 2nd C.S., p. 106, ch. 17.]

Art. 978f-7. Reciprocal Agreements; Hunting and Fishing License Fees

The Parks and Wildlife Department may negotiate an agreement with any other state, under which the residents of the other state are extended the privilege of obtaining sports hunting and fishing licenses on payment of the same fees as those paid by residents of this State, in return for the other state's granting of the same privilege to the residents of this State.

[Acts 1965, 59th Leg., p. 995, ch. 481, eff. Aug. 30, 1965.]

Art. 978f-8. Reciprocal Agreements; Hunting and Fishing Privileges for Residents of Louisiana

Sec. 1. A resident of Louisiana may engage in lawful sport hunting and fishing in Jefferson, Orange and Shelby counties if he has purchased a valid license by the state of his residence and that his state grants a similar, reciprocal sport hunting and fishing privilege in the parishes adjacent to those counties listed in this section, to residents of Jefferson, Orange and Shelby counties of the State of Texas.

Sec. 2. A resident of Louisiana may engage in lawful sport fishing and hunting in any of the waters forming a boundary by the Sabine River and the Sabine Lake between his state and this state without a Texas license if he has a valid license issued by the state of his residence and that his state grants a similar reciprocal fishing and hunting privilege to residents of the State of Texas.

[Acts 1967, 60th Leg., p. 1173, ch. 524, eff. Aug. 28, 1967.]

Art. 978g. Repealed by Acts 1932, 42nd Leg., 3rd C.S., p. 93, ch. 29, § 1

Art. 978h. Repealed by Acts 1971, 62nd Leg., p. 44, ch. 22, § 1

Art. 978i. Repealed by Acts 1967, 60th Leg., p. 1967, ch. 730, § 15, eff. Sept. 1, 1967

Art. 978j. Local Game and Fish Laws

Uniform Wildlife Regulatory Act

Acts 1967, 60th Leg., p. 1959, ch. 730, *The Uniform Wildlife Regulatory Act, codified as article 978j-1, conferring upon the Parks and Wildlife Commission the power and duty of protecting and regulating the harvest of wildlife resources in various counties and repealing various acts of a similar nature, provides, inter alia, in section 18: "All game laws, General or Special, presently in force or enacted during the 60th Legislature, pertaining to the State of Texas or any county or counties therein, shall be in full force and effect until the Parks and Wildlife Commission shall, in accordance with this Act issue a proclamation, rule or regulation dealing with the subject matter of the county*

*affected by such presently existing game law."*

*See art. 978j-1, § 18.*

#### Anderson County

- Beaver—Acts 1949, 51st Leg., p. 499, ch. 273.
- Deer—Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1947, 50th Leg., p. 252, ch. 148; Acts 1949, 51st Leg., p. 499, ch. 273.
- Fish—Acts 1947, 50th Leg., p. 263, ch. 159.
- Fur-bearing animals—Acts 1933, 43rd Leg., Spec.Laws, p. 46, ch. 38; Acts 1933, 43rd Leg., 1st C.S., p. 83, ch. 28, as amended by Acts 1934, 43rd Leg., 4th C.S., p. 70, ch. 28.
- Seine or net fishing in Neches River—Acts 1967, 60th Leg., p. 340, ch. 164, saved from repeal, see art. 978j-1, § 15.
- Turkey—Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1949, 51st Leg., p. 499, ch. 273.
- Wildlife and fish—Acts 1955, 54th Leg., p. 1207, ch. 481, amended by Acts 1969, 61st Leg., p. 1021, ch. 332.
- Wildlife resources—Acts 1965, 59th Leg., p. 1451, ch. 638.

#### Andrews County

- Quail—Acts 1943, 48th Leg., p. 21, ch. 18, expired; Acts 1955, 54th Leg., p. 589, ch. 197, repealed by Acts 1957, 55th Leg., 2nd C.S., p. 156, ch. 2.
- Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

#### Angelina County

- Fish—Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1953, 53rd Leg., p. 926, ch. 386; Acts 1957, 55th Leg., p. 857, ch. 373; Acts 1961, 57th Leg., p. 1156, ch. 523.
- Fox—Acts 1937, 45th Leg., p. 89, ch. 53, expired; Acts 1939, 46th Leg., Spec.Laws, p. 756; Acts 1941, 47th Leg., p. 1303, ch. 578, expired; Acts 1963, 58th Leg., p. 999, ch. 410.
- Fur-bearing animals—Acts 1933, 43rd Leg., Spec.Laws, p. 101, ch. 77.
- Quail—Acts 1965, 59th Leg., p. 878, ch. 435.
- Squirrels—Acts 1933, 43rd Leg., Spec.Laws, p. 98, ch. 75; Acts 1939, 46th Leg., Spec.Laws, p. 755; Acts 1945, 49th Leg., p. 163, ch. 117; Acts 1953, 53rd Leg., p. 940, ch. 398, amended by Acts 1955, 54th Leg., p. 487, ch. 140; Acts 1957, 55th Leg., p. 856, ch. 372, § 1; Acts 1957, 55th Leg., 1st C.S., p. 4, ch. 4, § 1.
- Turkey—Acts 1941, 47th Leg., p. 548, ch. 344; Acts 1967, 60th Leg., p. 895, ch. 392, amended by Acts 1969, 61st Leg., p. 1745, ch. 577.

#### Angelina River

- Fishing—Acts 1963, 58th Leg., p. 139, ch. 82.

#### Aransas Bay

- Seine, net or trawl fishing—Acts 1937, 45th Leg., p. 372, ch. 182.

#### Aransas County

- Animals—Acts 1939, 46th Leg., p. 336, amended by Acts 1941, 47th Leg., p. 61, ch. 45.
- Birds—Acts 1939, 46th Leg., p. 336, amended by Acts 1941, 47th Leg., p. 61, ch. 45.
- Fish and shrimp—Acts 1943, 48th Leg., p. 563, ch. 334, repealed by Acts 1945, 49th Leg., p. 289, ch. 209; Acts 1945, 49th Leg., p. 431, ch. 273.
- Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.
- Oysters—Acts 1941, 47th Leg., p. 434, ch. 207; Acts 1943, 48th Leg., p. 177, ch. 102, repealed by Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9; Acts 1953, 53rd Leg., p. 367, ch. 92.
- Seine, net or trawl—Acts 1947, 50th Leg., p. 253, ch. 149.
- White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.
- Wildlife resources—Acts 1963, 58th Leg., p. 994, ch. 409, repealed by Acts 1965, 59th Leg., p. 354, ch. 169. For repeals see art. 978j-1, § 15.

#### Archer County

- Blue catfish—Acts 1935, 44th Leg., Spec.Laws, p. 1172, ch. 9.
- Channel catfish—Acts 1935, 44th Leg., Spec.Laws, p. 1172, ch. 9.
- Doves—Acts 1941, 47th Leg., p. 397, ch. 231.
- Quail—Acts 1933, 43rd Leg., Spec.Laws, p. 51, ch. 43, repealed by Acts 1935, 44th Leg., Spec.Laws, p. 1204, ch. 38, § 1.
- Wildlife resources—Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20; Acts 1959, 56th Leg., p. 228, ch. 134, amended by Acts 1959, 56th Leg., 1st C.S., p. 48, ch. 19; Acts 1961, 57th Leg., p. 271, ch. 147. For repeals see art. 978j-1, § 15.

#### Armstrong County

- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

#### Atascosa County

- Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402.
- Quail (County Commissioners Precinct No. 4)—Acts 1963, 58th Leg., p. 1010, ch. 418.
- White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

#### Austin County

- Fish—Acts 1955, 54th Leg., p. 225, ch. 59.
- Fox—Acts 1949, 51st Leg., p. 70, ch. 38.
- Minnows—Acts 1951, 52nd Leg., p. 457, ch. 283; Acts 1953, 53rd Leg., p. 527, ch. 191.
- Seines and nets—Acts 1951, 52nd Leg., p. 457, ch. 283; Acts 1959, 56th Leg., p. 49, ch. 20.

#### Austin County—Cont'd

- Squirrels—Acts 1953, 53rd Leg., p. 470, ch. 158.
- Turkey—Acts 1937, 45th Leg., p. 299, ch. 155; Acts 1955, 54th Leg., p. 881, ch. 336; Acts 1959, 56th Leg., p. 245, ch. 139; Acts 1961, 57th Leg., p. 765, ch. 355, repealed by Acts 1965, 59th Leg., p. 481, ch. 244. For repeals see art. 978j-1, § 15.
- White-tailed deer—Acts 1963, 58th Leg., p. 986, ch. 406, repealed by Acts 1965, 59th Leg., p. 1313, ch. 602.
- Wildlife resources—Acts 1959, 56th Leg., p. 728, ch. 134, amended by Acts 1959, 56th Leg., 1st C.S., p. 48, ch. 19; Acts 1967, 60th Leg., p. 587, ch. 265; see art. 978j-1, § 15.

#### Austin Lake

- Fishing—Acts 1951, 52nd Leg., p. 167, ch. 105.

#### Bailey County

- Doves—Acts 1954, 53rd Leg., 1st C.S., p. 72, ch. 33.
- Quail—Acts 1954, 53rd Leg., 1st C.S., p. 72, ch. 33.

#### Bandera County

- Bass—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Bream—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Catfish—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Crappie—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1206, ch. 41, amended by Acts 1937, 45th Leg., p. 670, ch. 334; Acts 1937, 45th Leg., p. 17, ch. 16.
- Fishing—Acts 1937, 45th Leg., 2nd C.S., p. 1987, ch. 62, amended by Acts 1939, 46th Leg., p. 809, repealed by Acts 1949, 51st Leg., p. 191, ch. 108, § 1.
- Fishing in Medina Lake—Acts 1943, 48th Leg., p. 203, ch. 123, repealed by Acts 1949, 51st Leg., p. 191, ch. 108, § 2; Acts 1949, 51st Leg., p. 742, ch. 401.
- Fresh water fish—Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Minnows—Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Perch—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Wildlife resources—Acts 1957, 55th Leg., p. 102, ch. 50, amended by Acts 1957, 55th Leg., 2nd C.S., p. 171, ch. 14; Acts 1961, 57th Leg., p. 722, ch. 340; Acts 1961, 57th Leg., p. 764, ch. 354; Acts 1963, 58th Leg., p. 417, ch. 141; Acts 1965, 59th Leg., p. 869, ch. 424; Acts 1965, 59th Leg., p. 1015, ch. 499, § 2. For repeals see art. 978j-1, § 15.

#### Bastrop County

- Deer—Acts 1937, 45th Leg., p. 386, ch. 191, expired; Acts 1939, 46th Leg., Spec.Laws, p. 757; Acts 1945, 49th Leg., p. 174, ch. 131; Acts 1961, 57th Leg., p. 168, ch. 87.
- Fishing—Acts 1954, 53rd Leg., 1st C.S., p. 66, ch. 27.
- Fox—Acts 1941, 47th Leg., p. 385, ch. 216, amended by Acts 1945, 49th Leg., p. 129, ch. 89.
- Minnows—Acts 1951, 52nd Leg., p. 787, ch. 437.
- Mourning doves—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.
- Quail—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.
- Sale of fish—Acts 1950, 51st Leg., 1st C.S., p. 107, ch. 39, repealed by Acts 1953, 53rd Leg., p. 552, ch. 200, § 1.
- Seine or net fishing—Acts 1933, 43rd Leg., 1st C.S., p. 141, ch. 45; Acts 1935, 44th Leg., Spec.Laws, p. 1203, ch. 37; Acts 1950, 51st Leg., 1st C.S., p. 107, ch. 39.
- Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 757.
- Wild turkey—Acts 1961, 57th Leg., p. 168, ch. 87.
- Wildlife resources—Acts 1967, 60th Leg., p. 1139, ch. 503; see art. 978j-1, § 15.

#### Baylor County

- Blue catfish—Acts 1935, 44th Leg., Spec.Laws, p. 1172, ch. 9.
- Channel catfish—Acts 1935, 44th Leg., Spec.Laws, p. 1172, ch. 9.
- Doves—Acts 1941, 47th Leg., p. 397, ch. 231.
- Minnows—Acts 1951, 52nd Leg., p. 82, ch. 52.
- Wildlife resources—Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

#### Bee County

- Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.
- White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.
- Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

#### Bell County

- Deer—Acts 1953, 53rd Leg., p. 938, ch. 396.
- Fox—Acts 1937, 45th Leg., p. 775, ch. 376, expired; Acts 1939, 46th Leg., Spec.Laws, p. 758.
- Minnows—Acts 1934, 43rd Leg., 2nd C.S., p. 76, ch. 27; Acts 1954, 53rd Leg., 1st C.S., p. 47, ch. 15.
- Seine or net fishing—Acts 1937, 45th Leg., p. 182, ch. 97, expired.
- Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, amended by Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Bexar County

Deer—Acts 1961, 57th Leg., p. 311, ch. 162.  
 Wildlife resources—Acts 1957, 55th Leg., p. 333, ch. 152, amended by Acts 1957, 55th Leg., 1st C.S., p. 78, ch. 28; Acts 1959, 56th Leg., p. 581, ch. 264; Acts 1961, 57th Leg., p. 320, ch. 170; Acts 1961, 57th Leg., 1st C.S., p. 177, ch. 48. For repeals see art. 978j-1, § 15.

## Big Wichita River

Fish—Acts 1953, 53rd Leg., p. 394, ch. 110.

## Blanco County

Bass—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
 Bream—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
 Catfish—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
 Crappie—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
 Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1206, ch. 41, amended by Acts 1937, 45th Leg., p. 670, ch. 334; Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1941, 47th Leg., p. 238, ch. 167; Acts 1941, 47th Leg., p. 268, ch. 182.  
 Fishing—Acts 1943, 48th Leg., p. 336, ch. 217.  
 Fox—Acts 1953, 53rd Leg., p. 472, ch. 160.  
 Fresh water fish—Acts 1939, 46th Leg., Spec.Laws, p. 806.  
 Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.  
 Hunting with bows and arrows—Acts 1965, 59th Leg., p. 872, ch. 428, saved from repeal, see art. 978j-1, § 15.  
 Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1939, 46th Leg., Spec.Laws, p. 806; Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1961, 57th Leg., p. 1088, ch. 488.  
 Perch—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
 Wildlife resources—Acts 1955, 54th Leg., p. 950, ch. 372; Acts 1961, 57th Leg., 1st C.S., p. 194, ch. 55; Acts 1963, 58th Leg., p. 417, ch. 141; Acts 1965, 59th Leg., p. 869, ch. 424. For repeals see art. 978j-1, § 15.

## Borden County

Deer—Acts 1941, 47th Leg., p. 60, ch. 43.  
 Firearms—Acts 1959, 56th Leg., p. 581, ch. 265, § 9. For laws saved from repeal, see art. 978j-1, § 15.  
 Fish—Acts 1959, 56th Leg., p. 581, ch. 265; Acts 1959, 56th Leg., p. 581, ch. 265, repealed by Acts 1969, 61st Leg., p. 1805, ch. 609, § 2. For laws saved from repeal, see art. 978j-1, § 15.  
 Mourning doves—Acts 1947, 50th Leg., p. 389, ch. 217.  
 Quail—Acts 1947, 50th Leg., p. 389, ch. 217; Acts 1953, 53rd Leg., p. 467, ch. 154; Acts 1957, 55th Leg., p. 172, ch. 79.  
 Wildlife resources—Acts 1961, 57th Leg., p. 205, ch. 106. For repeals see art. 978j-1, § 15.

## Bosque County

Bass—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31; Acts 1941, 47th Leg., p. 183, ch. 131.  
 Bream—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31; Acts 1941, 47th Leg., p. 183, ch. 131.  
 Buffalo fish—Acts 1941, 47th Leg., p. 183, ch. 131.  
 Carp—Acts 1941, 47th Leg., p. 183, ch. 131.  
 Catfish—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31; Acts 1941, 47th Leg., p. 183, ch. 131; Acts 1941, 47th Leg., p. 227, ch. 157.  
 Channel catfish—Acts 1939, 46th Leg., Spec.Laws, p. 792, repealed by Acts 1941, 47th Leg., p. 39, ch. 26.  
 Crappie—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31; Acts 1941, 47th Leg., p. 183, ch. 131.  
 Deer—Acts 1955, 54th Leg., p. 753, ch. 272.  
 Fishing—Acts 1953, 53rd Leg., p. 524, ch. 188.  
 Fox—Acts 1937, 45th Leg., p. 835, ch. 410, repealed by Acts 1943, 48th Leg., p. 364, ch. 242.  
 Fur-bearing animals—Acts 1937, 45th Leg., p. 835, ch. 410.  
 Gar—Acts 1941, 47th Leg., p. 183, ch. 131.  
 Goggle Eye—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31.  
 Minnows—Acts 1937, 45th Leg., p. 815, ch. 403; Acts 1941, 47th Leg., p. 134, ch. 104; Acts 1941, 47th Leg., p. 226, ch. 156; Acts 1949, 51st Leg., p. 404, ch. 215; Acts 1955, 54th Leg., p. 1200, ch. 474.  
 Opelousas catfish—Acts 1939, 46th Leg., Spec.Laws, p. 792, repealed by Acts 1941, 47th Leg., p. 39, ch. 26.  
 Perch—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31; Acts 1939, 46th Leg., Spec.Laws, p. 792, repealed by Acts 1941, 47th Leg., p. 39, ch. 26; Acts 1941, 47th Leg., p. 183, ch. 131; Acts 1941, 47th Leg., p. 227, ch. 157.  
 Seine or net fishing—Acts 1939, 46th Leg., Spec.Laws, p. 792, repealed by Acts 1941, 47th Leg., p. 39, ch. 26; Acts 1949, 51st Leg., p. 404, ch. 215.

## Bosque County—Cont'd

Shad—Acts 1941, 47th Leg., p. 183, ch. 131.  
 Suckers—Acts 1941, 47th Leg., p. 183, ch. 131.  
 Sunfish—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31.  
 Trout—Acts 1941, 47th Leg., p. 183, ch. 131.  
 Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, as amended Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.  
 Deer—Acts 1937, 45th Leg., p. 11, ch. 11; Acts 1941, 47th Leg., p. 191, ch. 137; Acts 1943, 48th Leg., p. 222, ch. 141; Acts 1951, 52nd Leg., p. 178, ch. 113; Acts 1954, 53rd Leg., 1st C.S., p. 96, ch. 45; Acts 1955, 54th Leg., p. 378, ch. 99; Acts 1965, 59th Leg., p. 768, ch. 359, amended by Acts 1967, 60th Leg., p. 773, ch. 325.  
 Fish—Acts 1937, 45th Leg., p. 782, ch. 382; Acts 1943, 48th Leg., p. 338, ch. 219.  
 Fox—Acts 1934, 43rd Leg., 3rd C.S., p. 74, ch. 35; Acts 1937, 45th Leg., p. 430, ch. 219.  
 Fur-bearing animals—Acts 1937, 45th Leg., p. 430, ch. 219.  
 Minnows—Acts 1943, 48th Leg., p. 338, ch. 219.  
 Quail—Acts 1967, 60th Leg., p. 564, ch. 252, §§ 1, 2; see art. 978j-1, § 15.  
 Squirrels—Acts 1949, 51st Leg., p. 362, ch. 185, repealed by Acts 1949, 51st Leg., p. 880, ch. 473, § 1; Acts 1949, 51st Leg., p. 880, ch. 473, § 1a.  
 Turkey—Acts 1937, 45th Leg., p. 11, ch. 11; Acts 1941, 47th Leg., p. 191, ch. 137; Acts 1943, 48th Leg., p. 222, ch. 141; Acts 1947, 50th Leg., p. 424, ch. 231.  
 Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, amended by Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20; Acts 1961, 57th Leg., 1st C.S., p. 173, ch. 44; Acts 1963, 58th Leg., p. 881, ch. 336, amended by Acts 1965, 59th Leg., p. 768, ch. 359, and Acts 1967, 60th Leg., p. 773, ch. 325, repealed by Acts 1973, 63rd Leg., p. 715, ch. 308, § 2; Acts 1967, 60th Leg., p. 564, ch. 252, § 3.

## Brazoria County

Alligators—Acts 1967, 60th Leg., p. 1163, ch. 517, § 1. Repeal, see art. 978j-3, § 5.  
 Fish—Acts 1965, 59th Leg., p. 1436, ch. 630, repealed by Acts 1969, 61st Leg., p. 884, ch. 298, § 7.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Turkey—Acts 1941, 47th Leg., p. 517, ch. 313, repealed in part by Acts 1967, 60th Leg., p. 895, ch. 392, § 3.  
 Turkey—Acts 1941, 47th Leg., p. 517, ch. 313.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wild turkey—Acts 1957, 55th Leg., p. 863, ch. 379.

## Brazos County

Deer—Acts 1937, 45th Leg., p. 386, ch. 191, expired; Acts 1939, 46th Leg., Spec.Laws, p. 759; Acts 1941, 47th Leg., p. 425, ch. 254.  
 Doves—Acts 1934, 43rd Leg., p. 26, ch. 11.  
 Fox—Acts 1941, 47th Leg., p. 412, ch. 241.  
 Mourning doves—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
 Quail—Acts 1934, 43rd Leg., 2nd C.S., p. 26, ch. 11; Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
 Squirrels—Acts 1935, 44th Leg., Spec.Laws, p. 1186, ch. 22.  
 Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 759; Acts 1941, 47th Leg., p. 425, ch. 254.  
 Wildlife resources—Acts 1959, 56th Leg., p. 210, ch. 121, amended by acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Brewster County

Badger—Acts 1936, 44th Leg., 3rd C.S., p. 2028, ch. 488.  
 Bear—Acts 1936, 44th Leg., 3rd C.S., p. 2028, ch. 488.  
 Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.  
 Javelina—Acts 1936, 44th Leg., 3rd C.S., p. 2028, ch. 488.  
 Raccoon—Acts 1936, 44th Leg., 3rd C.S., p. 2028, ch. 488.  
 Rock Squirrels—Acts 1936, 44th Leg., 3rd C.S., p. 2028, ch. 488.

## Briscoe County

Deer—Acts 1941, 47th Leg., p. 60, ch. 43.  
 Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Brooks County

Collared peccary—Acts 1963, 58th Leg., p. 14, ch. 12.  
 Javelina—Acts 1963, 58th Leg., p. 14, ch. 12.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Quail—Acts 1959, 56th Leg., p. 588, ch. 272.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

## Brown County

Deer—Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1937, 45th Leg., p. 11, ch. 11; Acts 1941, 47th Leg., p. 414, ch. 243.

## Brown County—Cont'd

- Fish—Acts 1941, 47th Leg., p. 1414, ch. 647.  
 Minnows—Acts 1941, 47th Leg., p. 1414, ch. 647, amended by Acts 1943, 48th Leg., p. 24, ch. 21, § 1.  
 Mule or blacktail deer—Acts 1945, 49th Leg., p. 674, ch. 1.  
 Turkey—Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1937, 45th Leg., p. 11, ch. 11.  
 Wildlife resources—Acts 1959, 56th Leg., p. 548, ch. 246. For repeals see art. 978j-1, § 15.

## Buchanan Lake

- Fishing—Acts 1951, 52nd Leg., p. 167, ch. 105, amended by Acts 1959, 56th Leg., p. 554, ch. 248.

## Burleson County

- Deer—Acts 1937, 45th Leg., p. 386, ch. 191, expired; Acts 1941, 47th Leg., p. 559, ch. 352, amended by Acts 1943, 48th Leg., p. 335, ch. 214; Acts 1955, 54th Leg., p. 1202, ch. 477.  
 Fox—Acts 1934, 43rd Leg., 3rd C.S., p. 100, ch. 49; Acts 1941, 47th Leg., p. 385, ch. 216, amended by Acts 1945, 49th Leg., p. 129, ch. 89; Acts 1947, 50th Leg., p. 265, ch. 161.  
 Mink—Acts 1941, 47th Leg., p. 520, ch. 316.  
 Minnows—Acts 1959, 56th Leg., p. 244, ch. 138.  
 Mourning doves—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
 Quail—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
 Raccoons—Acts 1941, 47th Leg., p. 520, ch. 316.  
 Turkey—Acts 1941, 47th Leg., p. 559, ch. 352; Acts 1955, 54th Leg., p. 881, ch. 336.  
 Wildlife resources—Acts 1961, 57th Leg., p. 499, ch. 241; Acts 1965, 59th Leg., p. 1446, ch. 636. For repeals see art. 978j-1, § 15.

## Burnet County

- Black Bass—Acts 1939, 46th Leg., Spec.Laws, p. 793.  
 Catfish—Acts 1933, 43rd Leg., Spec.Laws, p. 47, ch. 40; Acts 1937, 45th Leg., p. 844, ch. 414; Acts 1939, 46th Leg., Spec.Laws, p. 793.  
 Crappie—Acts 1939, 46th Leg., Spec.Laws, p. 793.  
 Fish—Acts 1941, 47th Leg., p. 668, ch. 410.  
 Hunting with bows and arrows—Acts 1965, 59th Leg., p. 872, ch. 428, saved from repeal, see art. 978j-1, § 15.  
 Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1943, 48th Leg., p. 323, ch. 207; Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1961, 57th Leg., p. 1088, ch. 488; Acts 1963, 58th Leg., p. 952, ch. 377.  
 White Bass—Acts 1939, 46th Leg., Spec.Laws, p. 793.  
 White Perch—Acts 1939, 46th Leg., Spec.Laws, p. 793.  
 Wildlife resources—Acts 1961, 57th Leg., p. 81, ch. 47. For repeals see art. 978j-1, § 15.

## Caddo Lake

- Aquatic plants—Acts 1963, 58th Leg., p. 741, ch. 277.  
 Bass—Acts 1933, 43rd Leg., Spec.Laws, p. 15, ch. 14.  
 Coypu (Nutria)—Acts 1951, 52nd Leg., p. 152, ch. 91.  
 Crappie—Acts 1933, 43rd Leg., Spec.Laws, p. 15, ch. 14.  
 Fish—Acts 1955, 54th Leg., p. 1156, ch. 439, § 2, repealed by Acts 1971, 62nd Leg., p. 1697, ch. 490, § 1; Acts 1957, 55th Leg., p. 18, ch. 13.  
 Fishing—Acts 1945, 49th Leg., p. 169, ch. 125.

## Caldwell County

- Turkey—Acts 1961, 57th Leg., p. 426, ch. 207.  
 Wildlife resources—Acts 1967, 60th Leg., p. 149, ch. 78; see art. 978j-1, § 15.

## Calhoun County

- Deer—Acts 1943, 48th Leg., p. 335, ch. 214.  
 Fish—Acts 1955, 54th Leg., p. 858, ch. 321. For laws saved from repeal, see art. 978j-1, § 15.  
 Fishing in certain waters—Acts 1957, 55th Leg., p. 400, ch. 197; Acts 1961, 57th Leg., p. 1020, ch. 447, saved from repeal see art. 978j-1, § 15.  
 Flounders—Acts 1939, 46th Leg., Spec.Laws, p. 816.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Oysters—Acts 1937, 45th Leg., 1st C.S., p. 1823, ch. 43, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 816, § 3; Acts 1943, 48th Leg., p. 177, ch. 102, repealed by Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9; Acts 1953, 53rd Leg., p. 367, ch. 92, amended by Acts 1967, 60th Leg., p. 2009, ch. 742, repealed by Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9. See art. 978j-1, § 15.  
 Seine and net fishing—Acts 1937, 45th Leg., p. 8, ch. 8, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 816, § 3.  
 Shrimp—Acts 1933, 43rd Leg., 1st C.S., p. 162, ch. 59; Acts 1939, 46th Leg., Spec.Laws, p. 816.  
 Spear or light fishing—Acts 1939, 46th Leg., Spec.Laws, p. 816.  
 Turkey—Acts 1943, 48th Leg., p. 335, ch. 214.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wildlife resources—Acts 1965, 59th Leg., p. 1235, ch. 566; Acts 1967, 60th Leg., p. 149, ch. 78. For repeals and laws saved from repeal see art. 978j-1, § 15.

## Callahan County

- Firearms—Acts 1951, 52nd Leg., p. 74, ch. 46.  
 Fish—Acts 1951, 52nd Leg., p. 74, ch. 46.  
 Minnows—Acts 1951, 52nd Leg., p. 74, ch. 46.  
 Quail—Acts 1937, 45th Leg., p. 709, ch. 358, expired; Acts 1951, 52nd Leg., p. 116, ch. 71.

## Callahan County—Cont'd

- Wildlife resources—Acts 1967, 60th Leg., p. 985, ch. 429; see art. 978j-1, § 15.

## Callo Del Oso

- Seine, net or trawl fishing—Acts 1937, 45th Leg., p. 372, ch. 182.

## Cameron County

- Buck Deer—Acts 1947, 50th Leg., p. 273, ch. 167, repealed by Acts 1949, 51st Leg., p. 236, ch. 133, § 1.  
 Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.  
 Fish—Acts 1961, 57th Leg., p. 1093, ch. 491.  
 Fishing—Acts 1953, 53rd Leg., p. 412, ch. 119; Acts 1957, 55th Leg., p. 48, ch. 25; Acts 1963, 58th Leg., p. 7, ch. 5.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Seines and nets—Acts 1949, 51st Leg., p. 549, ch. 302; Acts 1951, 52nd Leg., p. 267, ch. 155, repealed by Acts 1957, 55th Leg., p. 48, ch. 25, § 2.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wildlife resources—Acts 1963, 58th Leg., p. 757, ch. 287; Acts 1967, 60th Leg., p. 521, ch. 225. For repeals and laws saved from repeal see art. 978j-1, § 15.

## Camp County

- Deer—Acts 1961, 57th Leg., p. 85, ch. 48; Acts 1965, 59th Leg., p. 1285, ch. 589, amended by Acts 1971, 62nd Leg., p. 2450, ch. 790, § 2.  
 Fox—Acts 1935, 44th Leg., 2nd C.S., p. 1750, ch. 457.  
 Quail—Acts 1939, 46th Leg., Spec.Laws, p. 760, amended Acts 1945, 49th Leg., p. 177, ch. 136; Acts 1951, 52nd Leg., p. 112, ch. 67; Acts 1961, 57th Leg., p. 137, ch. 71, § 1.  
 Squirrels—Acts 1961, 57th Leg., p. 85, ch. 49, amended by Acts 1967, 60th Leg., p. 571, ch. 259.

## Carson County

- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Cass County

- Deer—Acts 1937, 45th Leg., p. 11, ch. 11; Acts 1943, 48th Leg., p. 222, ch. 141; Acts 1951, 52nd Leg., p. 178, ch. 113; Acts 1954, 53rd Leg., 1st C.S., p. 96, ch. 45; Acts 1965, 59th Leg., p. 454, ch. 231; Acts 1969, 61st Leg., p. 169, ch. 67.  
 Fish—Acts 1969, 61st Leg., p. 168, ch. 66.  
 Fox—Acts 1937, 45th Leg., p. 430, ch. 219; Acts 1941, 47th Leg., p. 865, ch. 539.  
 Fur-bearing animals—Acts 1937, 45th Leg., p. 430, ch. 219.  
 Quail—Acts 1965, 59th Leg., p. 852, ch. 412; Acts 1969, 61st Leg., p. 169, ch. 68.  
 Squirrels—Acts 1949, 51st Leg., p. 362, ch. 185, repealed by Acts 1949, 51st Leg., p. 880, ch. 473, § 1; Acts 1949, 51st Leg., p. 880, ch. 473, § 1a.  
 Turkey—Acts 1943, 48th Leg., p. 222, ch. 141.

## Castro County

- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Cedar Creek Reservoir

- Fish—Acts 1965, 59th Leg., p. 450, ch. 228, saved from repeal in part, see art. 978j-1, § 15.

## Chambers County

- Alligators—Acts 1957, 55th Leg., p. 375, ch. 179; Acts 1961, 57th Leg., p. 268, ch. 144; Acts 1963, 58th Leg., p. 127, ch. 74; Acts 1965, 59th Leg., p. 858, ch. 418; Acts 1969, 61st Leg., p. 1788, ch. 599. For repeals see art. 978j-3, § 5.  
 Catfish—see Trinity River, post.  
 Deer—Acts 1957, 55th Leg., p. 375, ch. 178; Acts 1961, 57th Leg., p. 268, ch. 143; Acts 1965, 59th Leg., p. 1284, ch. 588; Acts 1969, 61st Leg., p. 1788, ch. 598.  
 Firearms—Acts 1971, 62nd Leg., p. 3035, ch. 999.  
 Firearms, bows and arrows—Acts 1971, 62nd Leg., p. 841, ch. 97.  
 Fish—Acts 1969, 61st Leg., p. 1760, ch. 585.  
 Fish and Shrimp—Acts 1957, 55th Leg., p. 1394, ch. 480.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Net fishing—Acts 1959, 56th Leg., 2nd C.S., p. 108, ch. 18, amended by Acts 1971, 62nd Leg., p. 842, ch. 98.  
 Oysters—Acts 1953, 53rd Leg., p. 367, ch. 92, Acts 1957, 55th Leg., p. 445, ch. 217, and Acts 1967, 60th Leg., p. 56, ch. 31, repealed by Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9.  
 Quail—Acts 1969, 61st Leg., p. 1761, ch. 586.  
 Squirrels—Acts 1969, 61st Leg., p. 1761, ch. 587.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

## Cherokee County

- Deer—Acts 1967, 60th Leg., p. 932, ch. 409, amended by Acts 1969, 61st Leg., p. 1876, ch. 629; Acts 1971, 62nd Leg., p. 1330, ch. 353; Acts 1973, 63rd Leg., p. 858, ch. 390.  
 Fish—Acts 1947, 50th Leg., p. 100, ch. 69.  
 Fishing—Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1963, 58th Leg., p. 139, ch. 82.  
 Fur-bearing animals—Acts 1933, 43rd Leg., Spec.Laws, p. 46, ch. 38; Acts 1935, 44th Leg., Spec.Laws, p. 1183, ch. 19; Acts 1949, 51st Leg., p. 951, ch. 521.  
 Hunting with dogs—Acts 1967, 60th Leg., p. 932, ch. 410.  
 Mourning doves—Acts 1937, 45th Leg., p. 173, ch. 89.

## Cherokee County—Cont'd

- Quail—Acts 1941, 47th Leg., p. 1311, ch. 586, repealed by Acts 1967, 60th Leg., p. 341, ch. 165, § 3; Acts 1967, 60th Leg., p. 341, ch. 165, § 1, 2, amended by Acts 1973, 63rd Leg., p. 1389, ch. 537.
- Seine or net fishing—Acts 1933, 43rd Leg., Spec.Laws, p. 45, ch. 37; Acts 1933, 43rd Leg., Spec.Laws, p. 45, ch. 37, repealed by Acts 1967, 60th Leg., p. 340, ch. 164, saved from repeal, see art. 978j-1, § 15.
- Squirrels—Acts 1935, 44th Leg., Spec.Laws, p. 1193, ch. 29; Acts 1941, 47th Leg., p. 522, ch. 318; Acts 1945, 49th Leg., p. 163, ch. 117; Acts 1945, 49th Leg., p. 227, ch. 170; Acts 1949, 51st Leg., p. 810, ch. 434.
- Turkey—Acts 1957, 55th Leg., p. 365, ch. 170; Acts 1967, 60th Leg., p. 895, ch. 392, amended by Acts 1969, 61st Leg., p. 1745, ch. 577.

## Childress County

- Deer—Acts 1937, 45th Leg., p. 41, ch. 30; Acts 1941, 47th Leg., p. 60, ch. 43.
- Doves—Acts 1941, 47th Leg., p. 397, ch. 231.
- Minnows—Acts 1957, 55th Leg., 2nd C.S., p. 175, ch. 18.
- Turkey—Acts 1937, 45th Leg., p. 41, ch. 30.

## Clay County

- Doves—Acts 1941, 47th Leg., p. 397, ch. 231.
- Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, as amended Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, as amended Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Cochran County

- Quail—Acts 1955, 54th Leg., p. 845, ch. 312.

## Coke County

- Carp—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.
- Catfish—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.
- Deer—Acts 1949, 51st Leg., p. 73, ch. 40; Acts 1953, 53rd Leg., p. 103, ch. 69.
- Fish—Acts 1953, 53rd Leg., p. 377, ch. 101.
- Frogs—Acts 1953, 53rd Leg., p. 377, ch. 101.
- Gar—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.
- Minnows—Acts 1941, 47th Leg., p. 1300, ch. 575, expired; Acts 1953, 53rd Leg., p. 377, ch. 101.
- Quail—Acts 1949, 51st Leg., p. 73, ch. 40; Acts 1953, 53rd Leg., p. 103, ch. 69.
- Suckers—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.
- Turkey—Acts 1949, 41st Leg., p. 73, ch. 40; Acts 1953, 53rd Leg., p. 103, ch. 69.
- Wildlife resources—Acts 1963, 58th Leg., p. 417, ch. 141. For repeals see art. 978j-1, § 15.

## Coleman County

- Deer—Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1937, 45th Leg., p. 11, ch. 11.
- Fish—Acts 1945, 49th Leg., p. 672, ch. 370.
- Mule or blacktail deer—Acts 1945, 49th Leg., p. 674, ch. 372.
- Squirrels—Acts 1933, 43rd Leg., 1st C.S., p. 227, ch. 86.
- Turkey—Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1937, 45th Leg., p. 11, ch. 11.
- Wildlife resources—Acts 1965, 59th Leg., p. 331, ch. 156. For repeals see art. 978j-1, § 15.

## Collin County

- Fish—Acts 1955, 54th Leg., p. 54, ch. 41; Acts 1969, 61st Leg., p. 267, ch. 106.
- Fish and minnows—Acts 1955, 54th Leg., p. 570, ch. 186.
- Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.
- Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1164, ch. 1, repealed by Acts 1941, 47th Leg., p. 52, ch. 35, § 1; Acts 1953, 53rd Leg., p. 466, ch. 152.
- Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.
- Pollution of Lake Lavon—Acts 1957, 55th Leg., p. 119, ch. 55, § 1.
- Quail—Acts 1955, 54th Leg., p. 736, ch. 265; Acts 1969, 61st Leg., p. 163, ch. 62.
- White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

## Collingsworth County

- Antelope—Acts 1941, 47th Leg., p. 683, ch. 426.
- Deer—Acts 1941, 47th Leg., p. 683, ch. 426.
- Turkey—Acts 1941, 47th Leg., p. 683, ch. 426.

## Colorado County

- Fur-bearing animals—Acts 1937, 45th Leg., p. 261, ch. 137, repealed by Acts 1937, 45th Leg., 2nd C.S., p. 1922, ch. 39, § 1.
- Turkey—Acts 1941, 47th Leg., p. 83, ch. 68; Acts 1953, 53rd Leg., p. 470, ch. 157; Acts 1957, 55th Leg., p. 365, ch. 170; Acts 1959, 56th Leg., p. 245, ch. 139; Acts 1961, 57th Leg., p. 169, ch. 88.
- Wildlife resources—Acts 1961, 57th Leg., 1st C.S., p. 23, ch. 7. For repeals see art. 978j-1, § 15.

## Colorado River

- Fishing—Acts 1951, 52nd Leg., p. 167, ch. 105.
- Minnows—Acts 1951, 52nd Leg., p. 804, ch. 447, amended by Acts 1955, 54th Leg., p. 1127, ch. 422.

## Comal County

- Chachalaca—Acts 1939, 46th Leg., Spec.Laws, p. 761.
- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1189, ch. 25 and Acts 1955, 54th Leg., p. 13, ch. 11, repealed by Acts 1967, 60th Leg., p. 144, ch. 74, § 2; see art. 978j-1, § 15.

## Comal County—Cont'd

- Fox—Acts 1953, 53rd Leg., p. 472, ch. 160.
- Mexican Pheasant—Acts 1939, 46th Leg., Spec.Laws, p. 761.
- Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1164, ch. 1, repealed by Acts 1941, 47th Leg., p. 52, ch. 35, § 1; Acts 1955, 54th Leg., p. 13, ch. 11.
- Predatory animals—Acts 1937, 45th Leg., p. 6, ch. 6.
- Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 761; Acts 1947, 50th Leg., p. 25, ch. 17, § 1, 2; Acts 1955, 54th Leg., p. 15, ch. 12.
- Wildcats—Acts 1937, 45th Leg., p. 6, ch. 6.
- Wildlife resources—Acts 1957, 55th Leg., p. 562, ch. 265; Acts 1959, 56th Leg., p. 276, ch. 156; Acts 1961, 57th Leg., p. 368, ch. 185; Acts 1967, 60th Leg., p. 144, ch. 74; see art. 978j-1, § 15.
- Wolves—Acts 1937, 45th Leg., p. 6, ch. 6.

## Comanche County

- Blue quail—Acts 1939, 46th Leg., Spec.Laws, p. 762, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 762, § 1.
- Bobwhite—Acts 1939, 46th Leg., Spec.Laws, p. 762, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 762, § 1.
- Fish—Acts 1969, 61st Leg., p. 2139, ch. 743.
- Fishing—Acts 1945, 49th Leg., p. 231, ch. 175; Acts 1947, 50th Leg., p. 262, ch. 158, repealed by Acts 1949, 51st Leg., p. 211, ch. 117, § 2.
- Minnows—Acts 1951, 52nd Leg., p. 611, ch. 362.
- Pheasant—Acts 1939, 46th Leg., Spec.Laws, p. 762, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 762, § 1.
- Quail—Acts 1939, 46th Leg., Spec.Laws, p. 763.
- Wildlife resources—Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Concho County

- Minnows—Acts 1941, 47th Leg., p. 438, ch. 271.

## Connie Hagar Wildlife Sanctuary—Rockport

- Change of name—Acts 1967, 60th Leg., p. 55, ch. 30, § 1.

## Cooke County

- Deer—Acts 1961, 57th Leg., p. 53, ch. 36.
- Doves—Acts 1941, 47th Leg., p. 397, ch. 231.
- Fish—Acts 1937, 45th Leg., p. 782, ch. 382; Acts 1953, 53rd Leg., p. 939, ch. 397, repealed by Acts 1954, 53rd Leg., 1st C.S., p. 85, ch. 37, § 4; Acts 1954, 53rd Leg., 1st C.S., p. 85, ch. 37.
- Minnows—Acts 1945, 49th Leg., p. 176, ch. 135.
- Pheasant—Acts 1937, 45th Leg., p. 659, ch. 327, expired.
- Seine or net fishing—Acts 1933, 43rd Leg., Spec.Laws, p. 116, ch. 89.
- Wildlife resources—Acts 1965, 59th Leg., p. 331, ch. 156. For repeals see art. 978j-1, § 15.

## Copano Bay

- Oysters—Acts 1939, 46th Leg., Spec.Laws, p. 833, repealed by Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9.

## Corpus Christi Bay

- Seine, net or trawl fishing—Acts 1937, 45th Leg., p. 372, ch. 182.

## Coryell County

- Bass—Acts 1937, 45th Leg., p. 815, ch. 403.
- Buffalo fish—Acts 1937, 45th Leg., p. 815, ch. 403; Acts 1939, 46th Leg., Spec.Laws, p. 796, amended by Acts 1943, 48th Leg., p. 269, ch. 168.
- Carp—Acts 1937, 45th Leg., p. 815, ch. 403; Acts 1939, 46th Leg., Spec.Laws, p. 796, amended by Acts 1943, 48th Leg., p. 269, ch. 168.
- Catfish—Acts 1937, 45th Leg., p. 815, ch. 403; Acts 1939, 46th Leg., Spec.Laws, p. 796, amended by Acts 1943, 48th Leg., p. 269, ch. 168.
- Crappie—Acts 1937, 45th Leg., p. 815, ch. 403.
- Deer—Acts 1937, 45th Leg., p. 386, ch. 191, expired; Acts 1939, 46th Leg., Spec.Laws, p. 785, amended by Acts 1939, 46th Leg., Spec.Laws, p. 786, § 1; Acts 1953, 53rd Leg., p. 938, ch. 396.
- Gar—Acts 1937, 45th Leg., p. 815, ch. 403; Acts 1939, 46th Leg., Spec.Laws, p. 796, amended by Acts 1943, 48th Leg., p. 269, ch. 168.
- Minnows—Acts 1937, 45th Leg., p. 815, ch. 403, amended by Acts 1941, 47th Leg., p. 134, ch. 104; Acts 1955, 54th Leg., p. 1200, ch. 47.
- Seine or net fishing—Acts 1939, 46th Leg., Spec.Laws, p. 796, amended by Acts 1943, 48th Leg., p. 269, ch. 168.
- Shad—Acts 1937, 45th Leg., p. 815, ch. 403; Acts 1939, 46th Leg., Spec.Laws, p. 796, amended by Acts 1943, 48th Leg., p. 269, ch. 168.
- Suckers—Acts 1937, 45th Leg., p. 815, ch. 403; Acts 1939, 46th Leg., Spec.Laws, p. 796, amended by Acts 1943, 48th Leg., p. 269, ch. 168.
- Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 785, amended by Acts 1939, 46th Leg., Spec.Laws, p. 786, § 1.
- White perch—Acts 1937, 45th Leg., p. 815, ch. 403.
- Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, as amended Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, as amended Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Cottle County

- Deer—Acts 1941, 47th Leg., p. 60, ch. 43.
- Doves—Acts 1941, 47th Leg., p. 397, ch. 231.

## Counties of 15,149 to 15,300 population

- Fur-bearing animals—Acts 1939, 46th Leg., Spec.Laws, p. 842, repealed by Acts 1941, 47th Leg., p. 57, ch. 39, § 1.

## Counties of 34,600 to 34,700 population

Fur-bearing animals—Acts 1939, 46th Leg., Spec.Laws, p. 791, expired.

## Crockett County

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.

Wildlife resources—Acts 1957, 55th Leg., p. 102, ch. 50; Acts 1961, 57th Leg., p. 722, ch. 340; Acts 1961, 57th Leg., p. 764, ch. 354; Acts 1963, 58th Leg., p. 417, ch. 141; Acts 1965, 59th Leg., p. 869, ch. 424; Acts 1965, 59th Leg., p. 1015, ch. 499, § 2. For repeals see art. 978j-1, § 15.

## Crosby County

Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Culberson County

Deer—Acts 1941, 47th Leg., p. 728, ch. 457, expired.

Doves—Acts 1941, 47th Leg., p. 728, ch. 457, expired.

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.

Quail—Acts 1941, 47th Leg., p. 728, ch. 457, expired.

## Dallam County

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Dallas County

Bass—Acts 1936, 44th Leg., 3rd C.S., p. 2026, ch. 486.

Bream—Acts 1936, 44th Leg., 3rd C.S., p. 2026, ch. 486.

Catfish—Acts 1936, 44th Leg., 3rd C.S., p. 2026, ch. 486.

Crappie—Acts 1936, 44th Leg., 3rd C.S., p. 2026, ch. 486.

Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

Goggle-eye—Acts 1936, 44th Leg., 3rd C.S., p. 2026, ch. 486.

Green perch—Acts 1936, 44th Leg., 3rd C.S., p. 2026, ch. 486.

Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

Seine or net fishing—Acts 1936, 44th Leg., 3rd C.S., p. 2026, ch. 486.

Sunfish—Acts 1936, 44th Leg., 3rd C.S., p. 2026, ch. 486.

White perch—Acts 1936, 44th Leg., 3rd C.S., p. 2026, ch. 486.

White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

## Dawson County

Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Deaf Smith County

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Delta County

Buffalo Fish—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34; Acts 1941, 47th Leg., p. 1322, ch. 595.

Catfish—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34; Acts 1941, 47th Leg., p. 1322, ch. 595.

Deer—Acts 1947, 50th Leg., p. 159, ch. 97; Acts 1951, 52nd Leg., p. 608, ch. 360; Acts 1953, 53rd Leg., p. 555, ch. 204; Acts 1955, 54th Leg., p. 372, ch. 91; Acts 1959, 56th Leg., p. 584, ch. 267; Acts 1961, 57th Leg., p. 271, ch. 146; Acts 1962, 57th Leg., 3rd C.S., p. 204, ch. 79.

Drum—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34; Acts 1941, 47th Leg., p. 1322, ch. 595.

Fox—Acts 1934, 43rd Leg., 3rd C.S., p. 74, ch. 35.

Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

Perch—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, as amended Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34; Acts 1941, 47th Leg., p. 1322, ch. 595.

Quail—Acts 1941, 47th Leg., p. 605, ch. 373; Acts 1949, 51st Leg., p. 505, ch. 277; Acts 1969, 61st Leg., p. 707, ch. 247.

Squirrels—Acts 1947, 50th Leg., p. 161, ch. 100; Acts 1949, 51st Leg., p. 10, ch. 10.

Turkey—Acts 1947, 50th Leg., p. 159, ch. 97; Acts 1951, 52nd Leg., p. 608, ch. 360; Acts 1953, 53rd Leg., p. 555, ch. 204; Acts 1955, 54th Leg., p. 372, ch. 91.

White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

## Denton County

Fox—Acts 1937, 45th Leg., p. 451, ch. 228; Acts 1945, 49th Leg., p. 173, ch. 130.

Fur-bearing animals—Acts 1945, 49th Leg., p. 162, ch. 116.

Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

Sand bass—Acts 1939, 46th Leg., Spec.Laws, p. 798.

Squirrels—Acts 1945, 49th Leg., p. 173, ch. 129.

White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

Wildlife resources—Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## DeWitt County

Bass—Acts 1939, 46th Leg., Spec.Laws, p. 799.

Catfish—Acts 1939, 46th Leg., Spec.Laws, p. 799.

Crappie—Acts 1939, 46th Leg., Spec.Laws, p. 799, ch. 49, repealed by Acts 1965, 59th Leg., p. 428, ch. 214.

Foxes—Acts 1941, 47th Leg., p. 90, ch. 74.

Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402.

Perch—Acts 1939, 46th Leg., Spec.Laws, p. 799.

Turkey—Acts 1959, 56th Leg., p. 245, ch. 140.

White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

Wildlife resources—Acts 1963, 58th Leg., p. 948, ch. 376. For repeals see art. 978j-1, § 15.

## Dickens County

Deer—Acts 1941, 47th Leg., p. 60, ch. 43.

Quail—Acts 1957, 55th Leg., p. 829, ch. 357, repealed by Acts 1959, 56th Leg., p. 233, ch. 136.

## Dimmit County

Fish—Acts 1939, 46th Leg., Spec.Laws, p. 810, amended by Acts 1941, 47th Leg., p. 524, ch. 320.

Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402, amended by Acts 1937, 45th Leg., p. 859, ch. 424; Acts 1937, 45th Leg., p. 870, ch. 428.

White winged doves—Acts 1937, 45th Leg., p. 813, ch. 402, amended by Acts 1937, 45th Leg., p. 859, ch. 424.

Wildlife resources—Acts 1957, 55th Leg., p. 393, ch. 194; Acts 1959, 56th Leg., p. 589, ch. 273; Acts 1961, 57th Leg., p. 186, ch. 99.

## Donley County

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Duval County

Deer—Acts 1941, 47th Leg., p. 419, ch. 249; Acts 1947, 50th Leg., p. 441, ch. 247; Acts 1953, 53rd Leg., p. 961, ch. 405, repealed by Acts 1957, 55th Leg., p. 858, ch. 375, § 3; Acts 1957, 55th Leg., p. 858, ch. 375, §§ 1, 2; Acts 1963, 58th Leg., p. 154, ch. 94.

Doves—Acts 1963, 58th Leg., p. 154, ch. 94.

Javelina—Acts 1963, 58th Leg., p. 154, ch. 94.

Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.

Quail—Acts 1941, 47th Leg., p. 419, ch. 249; Acts 1947, 50th Leg., p. 441, ch. 247; Acts 1963, 58th Leg., p. 154, ch. 94.

White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

Wildlife resources—Acts 1967, 60th Leg., p. 521, ch. 225; see art. 978j-1, § 15.

## Eastland County

Buck—Acts 1947, 50th Leg., p. 160, ch. 98.

Deer—Acts 1947, 50th Leg., p. 160, ch. 98; Acts 1953, 53rd Leg., p. 472, ch. 161; Acts 1962, 57th Leg., 3rd C.S., p. 21, ch. 8.

Doe—Acts 1947, 50th Leg., p. 160, ch. 98.

Fawn—Acts 1947, 50th Leg., p. 160, ch. 98.

Turkey—Acts 1947, 50th Leg., p. 160, ch. 98; Acts 1953, 53rd Leg., p. 472, ch. 161.

Wildlife resources—Acts 1965, 59th Leg., p. 864, ch. 422. For repeals see art. 978j-1, § 15.

## Edwards County

Bass—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806, ch. 56, amended by Acts 1971, 62nd Leg., p. 1310, ch. 345.

Bream—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806, ch. 56, amended by Acts 1971, 62nd Leg., p. 1310, ch. 345.

Catfish—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Crappie—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806, ch. 56, amended by Acts 1971, 62nd Leg., p. 1310, ch. 345.

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1206, ch. 41, amended by Acts 1937, 45th Leg., p. 670, ch. 334; Acts 1937, 45th Leg., p. 17, ch. 16.

Fresh water fish—Acts 1939, 46th Leg., Spec.Laws, p. 806, ch. 56, amended by Acts 1971, 62nd Leg., p. 1310, ch. 345.

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 806, ch. 56, amended by Acts 1971, 62nd Leg., p. 1310, ch. 345; Acts 1943, 48th Leg., p. 218, ch. 137.

Minnows—Acts 1939, 46th Leg., Spec.Laws, p. 806.

Perch—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806, ch. 56, amended by Acts 1971, 62nd Leg., p. 1310, ch. 345.

Wildlife resources—Acts 1957, 55th Leg., p. 102, ch. 50, amended by Acts 1957, 55th Leg., 2nd C.S., p. 171, ch. 14; Acts 1961, 57th Leg., p. 722, ch. 340; Acts 1961, 57th Leg., p. 764, ch. 354; Acts 1963, 58th Leg., p. 417, ch. 141; Acts 1965, 59th Leg., p. 869, ch. 424; Acts 1965, 59th Leg., p. 1015, ch. 499, § 2. For repeals see art. 978j-1, § 15.

## El Paso County

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.

## Ellis County

- Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.  
 Minnows—Acts 1961, 57th Leg., p. 1088, ch. 488.  
 Mourning doves—Acts 1939, 46th Leg., Spec.Laws, p. 764.  
 Pheasants—Acts 1955, 54th Leg., p. 373, ch. 92; Acts 1959, 56th Leg., p. 562, ch. 253.  
 Wildlife resources—Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Erath County

- Bass—Acts 1939, 46th Leg., Spec.Laws, p. 800.  
 Buck—Acts 1947, 50th Leg., p. 160, ch. 98.  
 Crappie—Acts 1939, 46th Leg., Spec.Laws, p. 800.  
 Deer—Acts 1933, 43rd Leg., 1st C.S., p. 264, ch. 92; Acts 1939, 46th Leg., Spec.Laws, p. 785, amended by Acts 1939, 46th Leg., Spec.Laws, p. 786, § 1, amended by Acts 1943, 48th Leg., p. 222, ch. 141; Acts 1945, 49th Leg., p. 161, ch. 115; Acts 1947, 50th Leg., p. 160, ch. 98.  
 Doe—Acts 1947, 50th Leg., p. 160, ch. 98.  
 Fawn—Acts 1947, 50th Leg., p. 160, ch. 98.  
 Fish—Acts 1939, 46th Leg., Spec.Laws, p. 801, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 800, § 3.  
 Fishing—Acts 1947, 50th Leg., p. 727, ch. 362.  
 Fox—Acts 1939, 46th Leg., Spec.Laws, p. 765, § 1; Acts 1943, 48th Leg., p. 99, ch. 70.  
 Minnows—Acts 1939, 46th Leg., Spec.Laws, p. 801, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 800, § 3; Acts 1955, 54th Leg., p. 1200, ch. 474.  
 Pheasant—Acts 1933, 43rd Leg., 1st C.S., p. 264, ch. 92.  
 Quail—Acts 1939, 46th Leg., Spec.Laws, p. 766.  
 Turkey—Acts 1933, 43rd Leg., 1st C.S., p. 264, ch. 92; Acts 1939, 46th Leg., Spec.Laws, p. 785, amended by Acts 1939, 46th Leg., Spec.Laws, p. 786, § 1; Acts 1947, 50th Leg., p. 160, ch. 98.  
 Wildlife resources—Acts 1951, 52nd Leg., p. 210, ch. 125, amended by Acts 1955, 54th Leg., p. 1248, ch. 499; Acts 1953, 53rd Leg., p. 371, ch. 97; Acts 1955, 54th Leg., p. 1248, ch. 499; Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Falls County

- Bass—Acts 1937, 45th Leg., p. 1338, ch. 496.  
 Calling devices for hunting—Acts 1957, 55th Leg., p. 160, ch. 70, amended by Acts 1971, 62nd Leg., p. 2366, ch. 728. For laws saved from repeal, see art. 978j-1, § 15.  
 Catfish—Acts 1937, 45th Leg., p. 1338, ch. 496.  
 Crappie—Acts 1937, 45th Leg., p. 1338, ch. 496.  
 Fox—Acts 1934, 43rd Leg., 3rd C.S., p. 100, ch. 49, amended by Acts 1939, Spec.Laws, p. 767, § 1; Acts 1969, 61st Leg., p. 1921, ch. 640, amended by Acts 1971, 62nd Leg., p. 940, ch. 151.  
 Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1202, ch. 36.  
 Perch—Acts 1937, 45th Leg., p. 1338, ch. 496.  
 Quail—Special Act of 1931, 42nd Leg., 1st C.S., ch. 16, repealed by Acts 1933, 43rd Leg., Spec.Laws, p. 54, ch. 46.  
 Wildlife resources—Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeal see art. 978j-1, § 15.

## Fannin County

- Deer—Acts 1937, 45th Leg., 2nd C.S., p. 1991, ch. 64, amended by Acts 1941, 47th Leg., p. 672, ch. 414; Acts 1941, 47th Leg., p. 191, ch. 137; Acts 1949, 51st Leg., p. 722, ch. 386.  
 Doves—Acts 1941, 47th Leg., p. 397, ch. 231.  
 Fish—Acts 1937, 45th Leg., p. 782, ch. 382.  
 Fox—Acts 1937, 45th Leg., p. 483, ch. 245; Acts 1945, 49th Leg., p. 163, ch. 118.  
 Turkey—Acts 1937, 45th Leg., 2nd C.S., p. 1991, ch. 64, amended by Acts 1941, 47th Leg., p. 672, ch. 414; Acts 1941, 47th Leg., p. 191, ch. 137; Acts 1943, 48th Leg., p. 222, ch. 141.  
 Wildlife resources—Acts 1951, 52nd Leg., p. 210, ch. 125, amended by Acts 1963, 58th Leg., p. 733, ch. 271; Acts 1953, 53rd Leg., p. 371, ch. 97; Acts 1955, 54th Leg., p. 1248, ch. 499; Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20; Acts 1965, 59th Leg., p. 906, ch. 445.

## Fayette County

- Bullfrogs—Acts 1943, 48th Leg., p. 28, ch. 25, repealed by Acts 1951, 52nd Leg., p. 462, ch. 291.  
 Deer—Acts 1943, 48th Leg., p. 335, ch. 214.  
 Fish—Acts 1943, 48th Leg., p. 36, ch. 33, repealed by Acts 1951, 52nd Leg., p. 463, ch. 292.  
 Fishing—Acts 1951, 52nd Leg., p. 801, ch. 443; Acts 1953, 53rd Leg., p. 50, ch. 40.  
 Minnows—Acts 1951, 52nd Leg., p. 463, ch. 293.  
 Mourning doves—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
 Quail—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
 Squirrels—Acts 1951, 52nd Leg., p. 460, ch. 288.  
 Turkey—Acts 1943, 48th Leg., p. 335, ch. 214.

## Fayette County—Cont'd

- Wild deer or pheasants—Acts 1951, 52nd Leg., p. 802, ch. 444.  
 Wildlife resources—Acts 1967, 60th Leg., p. 1139, ch. 503; see art. 978j-1, § 15.

## Fish passes—Acts 1939, 46th Leg., Spec.Laws, p. 839.

## Fisher County

- Wildlife resources—Acts 1965, 59th Leg., p. 785, ch. 374; Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Floyd County

- Deer—Acts 1941, 47th Leg., p. 60, ch. 43.

## Foard County

- Doves—Acts 1941, 47th Leg., p. 397, ch. 231.  
 Fishing—Acts 1967, 60th Leg., p. 864, ch. 370; see art. 978j-1, § 15.  
 Hunting—Acts 1969, 61st Leg., p. 620, ch. 215, §§ 2-5.  
 Minnows—Acts 1949, 51st Leg., p. 355, ch. 179; Acts 1967, 60th Leg., p. 863, ch. 369; see art. 978j-1, § 15.  
 Wild deer—Acts 1951, 52nd Leg., p. 25, ch. 18; Acts 1959, 56th Leg., p. 486, ch. 216.

## Fort Bend County

- Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wild turkey—Acts 1951, 52nd Leg., p. 780, ch. 432; Acts 1957, 55th Leg., p. 863, ch. 379.

## Franklin County

- Buffalo Fish—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34; Acts 1941, 47th Leg., p. 1322, ch. 595.  
 Catfish—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34; Acts 1941, 47th Leg., p. 1322, ch. 595.  
 Deer—Acts 1947, 50th Leg., p. 159, ch. 97; Acts 1951, 52nd Leg., p. 608, ch. 360; Acts 1953, 53rd Leg., p. 555, ch. 204; Acts 1955, 54th Leg., p. 372, ch. 91; Acts 1959, 56th Leg., p. 584, ch. 267; Acts 1961, 57th Leg., p. 271, ch. 146; Acts 1962, 57th Leg., 3rd C.S., p. 204, ch. 79.  
 Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.  
 Drum—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34; Acts 1941, 47th Leg., p. 1322, ch. 595.  
 Fox—Acts 1934, 43rd Leg., 3rd C.S., p. 74, ch. 35.  
 Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Perch—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34; Acts 1941, 47th Leg., p. 1322, ch. 595.  
 Quail—Acts 1941, 47th Leg., p. 605, ch. 373; Acts 1949, 51st Leg., p. 505, ch. 277.  
 Squirrels—Acts 1947, 50th Leg., p. 161, ch. 100; Acts 1949, 51st Leg., p. 10, ch. 10.  
 Turkey—Acts 1947, 50th Leg., p. 159, ch. 97; Acts 1951, 52nd Leg., p. 608, ch. 360; Acts 1953, 53rd Leg., p. 555, ch. 204; Acts 1955, 54th Leg., p. 372, ch. 91.  
 White winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Wildlife resources—Acts 1967, 60th Leg., p. 299, ch. 142; see art. 978j-1, § 15.

## Freestone County

- Deer—Acts 1947, 50th Leg., p. 394, ch. 222.  
 Fishing—Acts 1949, 51st Leg., p. 207, ch. 113.  
 Fox—Acts 1934, 43rd Leg., 2nd C.S., p. 123, ch. 141; Acts 1945, 49th Leg., p. 302, ch. 218.  
 Turkey—Acts 1947, 50th Leg., p. 394, ch. 222; Acts 1953, 53rd Leg., p. 555, ch. 203.  
 Wildlife resources—Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Frio County

- Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Pheasants—Acts 1955, 54th Leg., p. 894, ch. 345.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wildlife resources—Acts 1961, 57th Leg., p. 65, ch. 40. For repeals see art. 978j-1, § 15.

## Gaines County

- Quail—Acts 1939, 46th Leg., Spec.Laws, p. 769, ch. 15.  
 Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Galveston Bay

- Fishing and shrimping—Acts 1957, 55th Leg., p. 1394, ch. 480.

## Galveston County

- Alligators—Acts 1967, 60th Leg., p. 1163, ch. 517, § 1. Repeal, see art. 978j-3, § 5.  
 Deer—Acts 1939, 46th Leg., Spec.Laws, p. 769, ch. 16.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.

## Galveston County—Cont'd

- Oysters—Acts 1953, 53rd Leg., p. 367, ch. 92, Acts 1957, 55th Leg., p. 445, ch. 217, and Acts 1967, 60th Leg., p. 56, ch. 31, repealed by Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9.  
White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
Wild deer—Acts 1955, 54th Leg., p. 527, ch. 160.

## Garza County

- Deer—Acts 1941, 47th Leg., p. 60, ch. 43.  
Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1; Acts 1945, 49th Leg., p. 120, ch. 82.  
Quail—Acts 1937, 45th Leg., p. 141, ch. 74, expired. Acts 1945, 49th Leg., p. 120, ch. 82; Acts 1953, 53rd Leg., p. 467, ch. 153.  
Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Gillespie County

- Bass—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
Bream—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
Catfish—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
Crappie—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1206, ch. 41, amended by Acts 1937, 45th Leg., p. 670, ch. 334; Acts 1937, 45th Leg., p. 17, ch. 16.  
Fresh water fish—Acts 1939, 46th Leg., Spec.Laws, p. 806.  
Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.  
Hunting with bows and arrows—Acts 1965, 59th Leg., p. 872, ch. 428, saved from repeal, see art. 978j-1, § 15.  
Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, as amended Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1939, 46th Leg., Spec.Laws, p. 806; Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1961, 57th Leg., p. 1088, ch. 488.  
Perch—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
Wildlife resources—Acts 1953, 53rd Leg., p. 414, ch. 120, amended by Acts 1954, 53rd Leg., 1st C.S., p. 24, ch. 10; Acts 1955, 54th Leg., p. 15, ch. 13; Acts 1955, 54th Leg., p. 950, ch. 372; Acts 1957, 55th Leg., p. 102, ch. 50; Acts 1957, 55th Leg., 2nd C.S., p. 171, ch. 14; Acts 1961, 57th Leg., p. 109, ch. 59; Acts 1961, 57th Leg., p. 722, ch. 340; Acts 1965, 59th Leg., p. 869, ch. 424; Acts 1965, 59th Leg., p. 1015, ch. 499, § 2. For repeals see art. 978j-1, § 15.

## Glasscock County

- Deer—Acts 1941, 47th Leg., p. 1298, ch. 573, expired.  
Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Goliad County

- Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
Wildlife resources—Acts 1963, 58th Leg., p. 686, ch. 252. For repeals see art. 978j-1, § 15.

## Gonzales County

- Bass—Acts 1934, 43rd Leg., 4th C.S., p. 41, ch. 12; Acts 1937, 45th Leg., p. 110, ch. 63, § 1, amended by Acts 1939, 46th Leg., Spec.Laws, p. 802, ch. 52.  
Bream—Acts 1934, 43rd Leg., 4th C.S., p. 41, ch. 12; Acts 1937, 45th Leg., p. 110, ch. 63, § 1, amended by Acts 1939, 46th Leg., Spec.Laws, p. 802, ch. 52.  
Calico bass—Acts 1934, 43rd Leg., 4th C.S., p. 41, ch. 12; Acts 1937, 45th Leg., p. 110, ch. 63, § 1, amended by Acts 1939, 46th Leg., Spec.Laws, p. 802, ch. 52.  
Catfish—Acts 1937, 45th Leg., p. 110, ch. 63, § 1, amended by Acts 1939, 46th Leg., Spec.Laws, p. 802, ch. 52.  
Crappie—Acts 1934, 43rd Leg., 4th C.S., p. 41, ch. 12; Acts 1937, 45th Leg., p. 110, ch. 63, § 1, amended by Acts 1939, 46th Leg., Spec.Laws, p. 802, ch. 52.  
Fish—Acts 1971, 62nd Leg., p. 1900, ch. 566.  
Perch—Acts 1937, 45th Leg., p. 110, ch. 63, § 1, amended by Acts 1939, 46th Leg., Spec.Laws, p. 802, ch. 52.  
Seines or nets—Acts 1951, 52nd Leg., p. 81, ch. 51.  
White perch—Acts 1934, 43rd Leg., 4th C.S., p. 41, ch. 12.  
Wildlife resources—Acts 1963, 58th Leg., p. 948, ch. 376. For repeals see art. 978j-1, § 15.

## Gray County

- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Grayson County

- Buffalo fish—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34.  
Catfish—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34.  
Deer—Acts 1961, 57th Leg., p. 53, ch. 36.  
Doves—Acts 1941, 47th Leg., p. 397, ch. 231.  
Drum—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34.

## Grayson County—Cont'd

- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1180, ch. 16; Acts 1937, 45th Leg., p. 782, ch. 382; Acts 1953, 53rd Leg., p. 939, ch. 397, repealed by Acts 1954, 53rd Leg., 1st C.S., p. 85, ch. 37, § 4; Acts 1954, 53rd Leg., 1st C.S., p. 85, ch. 37.  
Minnows—Acts 1945, 49th Leg., p. 176, ch. 135.  
Perch—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34.  
Pheasant—Acts 1937, 45th Leg., p. 659, ch. 327, expired.  
Quail—Acts 1969, 61st Leg., p. 163, ch. 62.

## Gregg County

- Buck deer—Acts 1951, 52nd Leg., p. 1195, ch. 493; Acts 1961, 57th Leg., p. 715, ch. 338; Acts 1965, 59th Leg., p. 1255, ch. 576; Acts 1967, 60th Leg., p. 935, ch. 413; see art. 978j-1, § 15.  
Fur-bearing animals—Acts 1939, 46th Leg., Spec.Laws, p. 771.  
Mink—Acts 1957, 55th Leg., p. 795, ch. 330.

## Grimes County

- Deer—Acts 1937, 45th Leg., p. 386, ch. 191, expired; Acts 1939, 46th Leg., Spec.Laws, p. 759; Acts 1941, 47th Leg., p. 425, ch. 254.  
Mourning doves—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29; Acts 1937, 45th Leg., p. 848, ch. 418.  
Quail—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
Squirrels—Acts 1935, 44th Leg., Spec.Laws, p. 1186, ch. 22.  
Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 759; Acts 1941, 47th Leg., p. 425, ch. 254; Acts 1945, 49th Leg., p. 175, ch. 134.  
Wildlife resources—Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Guadalupe County

- Bass—Acts 1935, 44th Leg., Spec.Laws, p. 1207, ch. 42.  
Catfish—Acts 1935, 44th Leg., Spec.Laws, p. 1207, ch. 42.  
Crappie—Acts 1935, 44th Leg., Spec.Laws, p. 1207, ch. 42.  
Fox—Acts 1947, 50th Leg., p. 34, ch. 27, § 1; Acts 1953, 53rd Leg., p. 472, ch. 160.  
Mink—Acts 1937, 45th Leg., p. 109, ch. 61, expired; Acts 1941, 47th Leg., p. 520, ch. 316.  
Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1207, ch. 42; Acts 1949, 51st Leg., p. 8, ch. 8.  
Perch—Acts 1935, 44th Leg., Spec.Laws, p. 1207, ch. 42.  
Quail—Acts 1939, 46th Leg., Spec.Laws, p. 770.  
Raccoons—Acts 1937, 45th Leg., p. 109, ch. 61, expired; Acts 1941, 47th Leg., p. 520, ch. 316, amended by Acts 1943, 48th Leg., p. 294, ch. 189, expired.  
Turkey—Acts 1939, 4th Leg., Spec.Laws, p. 773; Acts 1943, 48th Leg., p. 5, ch. 5; Acts 1947, 50th Leg., p. 25, ch. 17, §§ 1, 2; Acts 1961, 57th Leg., p. 11, ch. 6.  
Wildlife resources—Acts 1963, 58th Leg., p. 948, ch. 376. For repeals see art. 978j-1, § 15.

## Gulf Coast Zone

- Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402, amended by Acts 1937, 45th Leg., p. 859, ch. 424; Acts 1937, 45th Leg., p. 870, ch. 428.  
White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402, amended by Acts 1937, 45th Leg., p. 859, ch. 424.

## Hall County

- Deer—Acts 1941, 47th Leg., p. 60, ch. 43.  
Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Hamilton County

- Bass—Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, repealed by Acts 1941, 47th Leg., p. 559, ch. 353.  
Bream—Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, repealed by Acts 1941, 47th Leg., p. 559, ch. 353.  
Buffalo fish—Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, repealed by Acts 1941, 47th Leg., p. 559, ch. 353; Acts 1939, 46th Leg., Spec.Laws, p. 815.  
Carp—Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, repealed by Acts 1941, 47th Leg., p. 559, ch. 353; Acts 1939, 46th Leg., Spec.Laws, p. 815.  
Catfish—Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, repealed by Acts 1941, 47th Leg., p. 559, ch. 353; Acts 1945, 49th Leg., p. 166, ch. 121.  
Crappie—Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, repealed by Acts 1941, 47th Leg., p. 559, ch. 353.  
Deer—Acts 1939, 46th Leg., Spec.Laws, p. 785, amended by Acts 1939, 46th Leg., Spec.Laws, p. 786, § 1.  
Fish—Acts 1941, 47th Leg., p. 559, ch. 353.  
Gar—Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, repealed by Acts 1941, 47th Leg., p. 559, ch. 353.  
Minnows—Acts 1939, 46th Leg., Spec.Laws, p. 815; Acts 1941, 47th Leg., p. 559, ch. 353, § 8, amended by Acts 1955, 54th Leg., p. 1123, ch. 417, repealed by Acts 1959, 56th Leg., p. 485, ch. 214; Acts 1955, 54th Leg., p. 1200, ch. 474.  
Perch—Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, repealed by Acts 1941, 47th Leg., p. 559, ch. 353.  
Seine or net fishing—Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47; Acts 1937, 45th Leg., p. 650, ch. 320, repealed by Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, § 5, which was repealed by Acts 1941, 47th Leg., p. 559, ch. 353; Acts 1939, 46th Leg., Spec.Laws, p. 815.  
Shad—Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, repealed by Acts 1941, 47th Leg., p. 559, ch. 353; Acts 1939, 46th Leg., Spec.Laws, p. 815.

## Hamilton County—Cont'd

- Sucker—Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, repealed by Acts 1941, 47th Leg., p. 559, ch. 353; Acts 1939, 46th Leg., Spec. Laws, p. 815.
- Trout—Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, repealed by Acts 1941, 47th Leg., p. 559, ch. 353.
- Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 785, amended by Acts 1939, 46th Leg., Spec.Laws, p. 786, § 1.
- White perch—Acts 1937, 45th Leg., 1st C.S., p. 1815, ch. 35, repealed by Acts 1941, 47th Leg., p. 559, ch. 353.
- Wildlife resources—Acts 1959, 56th Leg., p. 210, ch. 121, as amended Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Hansford County

- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Hardeman County

- Doves—Acts 1941, 47th Leg., p. 397, ch. 231.
- Hunting on private lands—Acts 1947, 50th Leg., p. 520, ch. 306.
- Minnows—Acts 1949, 51st Leg., p. 355, ch. 179.
- Quail—Acts 1967, 60th Leg., p. 910, ch. 399; see art. 978j-1, § 15.
- Wild deer—Acts 1951, 52nd Leg., p. 25, ch. 18; Acts 1959, 56th Leg., p. 486, ch. 216.

## Hardin County

- Bear—Acts 1941, 47th Leg., p. 441, ch. 275.
- Deer—Acts 1936, 44th Leg., 3rd C.S., p. 2023, ch. 483; Acts 1943, 48th Leg., p. 118, ch. 88; Acts 1943, 48th Leg., p. 210, ch. 129, amended by Acts 1945, 49th Leg., p. 223, ch. 166; Acts 1943, 48th Leg., p. 456, ch. 304; Acts 1947, 50th Leg., p. 222, ch. 127; Acts 1955, 54th Leg., p. 1150, ch. 434.
- Fox—Acts 1941, 47th Leg., p. 440, ch. 274; Acts 1947, 50th Leg., p. 222, ch. 127; Acts 1971, 62nd Leg., p. 940, ch. 151.
- Hunting with dogs—Acts 1963, 58th Leg., p. 1347, ch. 510, amended by Acts 1965, 59th Leg., p. 1500, ch. 651. For laws saved from repeal, see art. 978j-1, § 15.
- Squirrel—Acts 1933, 43rd Leg., Spec.Laws, p. 72, ch. 57; Acts 1941, 47th Leg., p. 436, ch. 269; Acts 1945, 49th Leg., p. 163, ch. 117.
- Turkey—Acts 1941, 47th Leg., p. 441, ch. 275; Acts 1947, 50th Leg., p. 222, ch. 127.
- Wildlife resources—Acts 1957, 55th Leg., p. 378, ch. 181, amended by Acts 1959, 56th Leg., p. 421, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20; Acts 1967, 60th Leg., p. 865, ch. 372; see art. 978j-1, § 15.

## Harris County

- Fish and shrimp—Acts 1957, 55th Leg., p. 1394, ch. 480.
- Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.
- White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.
- Wildlife resources—Acts 1967, 60th Leg., p. 1199, ch. 536; see art. 978j-1, § 15.

## Harrison County

- Alligators—Acts 1943, 48th Leg., p. 269, ch. 167.
- Animals—Acts 1939, 46th Leg., Spec.Laws, p. 829.
- Bass—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1941, 47th Leg., p. 93, ch. 77; Acts 1941, 47th Leg., p. 95, ch. 78, §§ 1 to 4, § 2, 3, repealed by Acts 1971, 62nd Leg., p. 1304, ch. 343; Acts 1949, 51st Leg., p. 241, ch. 136.
- Bowfin—Acts 1937, 45th Leg., 1st C.S., p. 1830, ch. 48.
- Bream—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1; Acts 1941, 47th Leg., p. 95, ch. 78, §§ 1 to 4, § 2, 3, repealed by Acts 1971, 62nd Leg., p. 1304, ch. 343.
- Buck deer—Acts 1951, 52nd Leg., p. 1195, ch. 493; Acts 1961, 57th Leg., p. 715, ch. 338; Acts 1965, 59th Leg., p. 1255, ch. 576; Acts 1967, 60th Leg., p. 935, ch. 413, saved from repeal in part, see art. 978j-1, § 15; Acts 1969, 61st Leg., p. 795, ch. 269.
- Buffalo fish—Acts 1937, 45th Leg., 1st C.S., p. 1830, ch. 48.
- Catfish—Acts 1937, 45th Leg., 1st C.S., p. 1830, ch. 48.
- Coypu (Nutria)—Acts 1951, 52nd Leg., p. 152, ch. 91, repealed Acts 1963, 58th Leg., p. 751, ch. 285.
- Crappie—Acts 1937, 45th Leg., p. 19, ch. 17; Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1; Acts 1941, 47th Leg., p. 93, ch. 77; Acts 1941, 47th Leg., p. 95, ch. 78, §§ 1 to 4, § 2, 3, repealed by Acts 1971, 62nd Leg., p. 1304, ch. 343.
- Deer—Acts 1937, 45th Leg., p. 11, ch. 11; Acts 1943, 48th Leg., p. 295, ch. 190, amended by Acts 1945, 49th Leg., p. 80, ch. 56; Acts 1949, 51st Leg., p. 242, ch. 137; Acts 1967, 60th Leg., p. 1241, ch. 564; Acts 1969, 61st Leg., p. 708, ch. 248.
- Ducks—Acts 1941, 47th Leg., p. 154, ch. 115.
- Fish—Acts 1939, 46th Leg., Spec.Laws, p. 829.
- Fishing—Acts 1945, 49th Leg., p. 169, ch. 125.
- Fowl—Acts 1939, 46th Leg., Spec.Laws, p. 829.
- Fur-bearing animals—Acts 1937, 45th Leg., p. 498, ch. 249, expired; Acts 1939, 46th Leg., Spec.Laws, p. 771; Acts 1941, 47th Leg., p. 531, ch. 326; Acts 1945, 49th Leg., p. 160, ch. 113.
- Game fish—Acts 1939, 46th Leg., Spec.Laws, p. 795, amended by Acts 1941, 47th Leg., p. 155, ch. 116.
- Gar fish—Acts 1937, 45th Leg., 1st C.S., p. 1830, ch. 48.
- Geese—Acts 1941, 47th Leg., p. 154, ch. 115.
- Goggle-eye—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1; Acts 1941, 47th Leg., p. 95, ch. 78, §§ 1 to 4, § 2, 3, repealed by Acts 1971, 62nd Leg., p. 1304, ch. 343.

## Harrison County—Cont'd

- Grindle—Acts 1937, 45th Leg., 1st C.S., p. 1830, ch. 48.
- Large-mouth black bass—Acts 1937, 45th Leg., p. 19, ch. 17; Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1.
- Perch—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1941, 47th Leg., p. 93, ch. 77; Acts 1941, 47th Leg., p. 95, ch. 78, §§ 1 to 4, § 2, 3, repealed by Acts 1971, 62nd Leg., p. 1304, ch. 343.
- Quail—Acts 1933, 43rd Leg., Spec.Laws, p. 62, ch. 51, repealed by Acts 1934, 43rd Leg., 2nd C.S., p. 71, ch. 23, § 1.
- Seine or net—Acts 1947, 50th Leg., p. 466, ch. 267; Acts 1949, 51st Leg., p. 240, ch. 135.
- Shad—Acts 1937, 45th Leg., 1st C.S., p. 1830, ch. 48.
- Small-mouth black bass—Acts 1937, 45th Leg., p. 19, ch. 17; Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1.
- Squirrels—Acts 1945, 49th Leg., p. 160, ch. 113; Acts 1949, 51st Leg., p. 362, ch. 185, repealed by Acts 1949, 51st Leg., p. 880, ch. 473, § 1; Acts 1949, 51st Leg., p. 880, ch. 473, § 1a.
- Striped Bass—Acts 1939, 46th Leg., Spec.Laws, p. 795.
- Turkey—Acts 1937, 45th Leg., p. 11, ch. 11; Acts 1955, 54th Leg., p. 734, ch. 263.
- Water fowl—Acts 1941, 47th Leg., p. 154, ch. 115.
- White bass—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1.
- White perch—Acts 1937, 45th Leg., p. 19, ch. 17; Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1.
- Wildlife resources—Acts 1961, 57th Leg., p. 1123, ch. 510. For repeals see art. 978j-1, § 15.
- Yellow bass—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1.

## Hartley County

- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Haskell County

- Deer—Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1941, 47th Leg., p. 58, ch. 41, repealed by Acts 1941, 47th Leg., p. 1305, ch. 580, § 3; Acts 1941, 47th Leg., p. 1305, ch. 580, expired; Acts 1947, 50th Leg., p. 537, ch. 317.
- Doves—Acts 1937, 45th Leg., p. 21, ch. 19, repealed by Acts 1937, 45th Leg., 2nd C.S., p. 1946, ch. 45, § 1; Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.
- Fish—Acts 1955, 54th Leg., p. 538, ch. 167.
- Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.
- Minnows—Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1961, 57th Leg., p. 1088, ch. 488.
- Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.
- Quail—Acts 1937, 45th Leg., p. 21, ch. 19, repealed by Acts 1937, 45th Leg., 2nd C.S., p. 1946, ch. 45, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1945, ch. 44, expired.
- Turkey—Acts 1941, 47th Leg., p. 58, ch. 41, repealed by Acts 1941, 47th Leg., p. 1305, ch. 580, § 3; Acts 1941, 47th Leg., p. 1305, ch. 580; Acts 1947, 50th Leg., p. 537, ch. 317; Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired.
- White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.
- Wildlife resources—Acts 1967, 60th Leg., p. 207, ch. 119; see art. 978j-1, § 15.

## Hays County

- Fox—Acts 1953, 53rd Leg., p. 472, ch. 160.
- Minnows—Acts 1950, 51st Leg., 1st C.S., p. 119, ch. 47.
- Wildlife resources—Acts 1961, 57th Leg., 1st C.S., p. 194, ch. 55; Acts 1963, 58th Leg., p. 417, ch. 141. For repeals see art. 978j-1, § 15.

## Hemphill County

- Deer—Acts 1941, 47th Leg., p. 188, ch. 135; Acts 1947, 50th Leg., p. 262, ch. 157.
- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.
- Quail—Acts 1936, 44th Leg., 3rd C.S., p. 2035, ch. 493; Acts 1967, 60th Leg., p. 933, ch. 411, saved from repeal, see art. 978j-1, § 15; repealed by Acts 1969, 61st Leg., p. 1108, ch. 358, § 1.
- Turkey—Acts 1941, 47th Leg., p. 188, ch. 135; Acts 1947, 50th Leg., p. 262, ch. 157.

## Henderson County

- Beaver—Acts 1949, 51st Leg., p. 499, ch. 273.
- Deer—Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1949, 51st Leg., p. 499, ch. 273.
- Fish—Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34.
- Fishing—Acts 1949, 51st Leg., p. 207, ch. 113.
- Fox—Acts 1934, 43rd Leg., 3rd C.S., p. 100, ch. 49, amended by Acts 1939, Spec.Laws, p. 767, § 1; Acts 1947, 50th Leg., p. 153, ch. 90.
- Mink—Acts 1955, 54th Leg., p. 368, ch. 86.
- Protected animals—Acts 1937, 45th Leg., p. 157, ch. 83.
- Protected birds—Acts 1937, 45th Leg., p. 157, ch. 83.
- Quail—Acts 1937, 45th Leg., p. 213, ch. 114; Acts 1941, 47th Leg., p. 363, ch. 202.
- Turkeys—Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1949, 51st Leg., p. 499, ch. 273.
- Wildlife resources—Acts 1965, 59th Leg., p. 450, ch. 228. For repeals see art. 978j-1, § 15.

## Hidalgo County

- Buck Deer—Acts 1947, 50th Leg., p. 273, ch. 167, repealed by Acts 1949, 51st Leg., p. 236, ch. 133, § 1.  
 Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Pheasants—Acts 1955, 54th Leg., p. 863, ch. 327; Acts 1963, 58th Leg., p. 768, ch. 295. For laws saved from repeal, see art. 978j-1, § 15.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wildlife resources—Acts 1963, 58th Leg., p. 757, ch. 287; Acts 1967, 60th Leg., p. 521, ch. 225; see art. 978j-1, § 15.

## Hill County

- Fishing—Acts 1953, 53rd Leg., p. 524, ch. 188.  
 Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1943, 48th Leg., p. 323, ch. 207; Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1961, 57th Leg., p. 1088, ch. 488.  
 Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, amended by Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Hockley County

- Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Hood County

- Bass—Acts 1939, 46th Leg., Spec.Laws, p. 800.  
 Crappie—Acts 1939, 46th Leg., Spec.Laws, p. 800.  
 Deer—Acts 1939, 46th Leg., Spec.Laws, p. 785, amended by Acts 1939, 46th Leg., Spec.Laws, p. 786, § 1.  
 Fish—Acts 1939, 46th Leg., Spec.Laws, p. 801, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 800, § 3.  
 Fishing—Acts 1947, 50th Leg., p. 727, ch. 362; Acts 1951, 52nd Leg., p. 83, ch. 53.  
 Fox—Acts 1939, 46th Leg., Spec.Laws, p. 765, § 1.  
 Minnows—Acts 1939, 46th Leg., Spec.Laws, p. 801, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 800, § 3; Acts 1951, 52nd Leg., p. 83, ch. 53.  
 Quail—Acts 1939, 46th Leg., Spec.Laws, p. 766.  
 Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 785, amended by Acts 1939, 46th Leg., Spec.Laws, p. 786, § 1.  
 Wildlife resources—Acts 1951, 52nd Leg., p. 210, ch. 125, amended by Acts 1955, 54th Leg., p. 1248, ch. 499; Acts 1953, 53rd Leg., p. 371, ch. 97; Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Hopkins County

- Buffalo Fish—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34; Acts 1941, 47th Leg., p. 1322, ch. 595.  
 Catfish—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34; Acts 1941, 47th Leg., p. 1322, ch. 595.  
 Deer—Acts 1947, 50th Leg., p. 159, ch. 97; Acts 1951, 52nd Leg., p. 608, ch. 360; Acts 1953, 53rd Leg., p. 555, ch. 204; Acts 1955, 54th Leg., p. 372, ch. 91; Acts 1959, 56th Leg., p. 584, ch. 267; Acts 1961, 57th Leg., p. 271, ch. 146; Acts 1962, 57th Leg., 3rd C.S., p. 204, ch. 79.  
 Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.  
 Drum—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34; Acts 1941, 47th Leg., p. 1322, ch. 595.  
 Fox—Acts 1934, 43rd Leg., 3rd C.S., p. 74, ch. 35; Acts 1941, 47th Leg., p. 414, ch. 244.  
 Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Perch—Acts 1931, 42nd Leg., Spec.Laws, p. 157, ch. 69, amended by Acts 1933, 43rd Leg., Spec.Laws, p. 42, ch. 34; Acts 1941, 47th Leg., p. 1322, ch. 595.  
 Quail—Acts 1941, 47th Leg., p. 605, ch. 373; Acts 1949, 51st Leg., p. 505, ch. 277; Acts 1969, 61st Leg., p. 707, ch. 247.  
 Squirrels—Acts 1947, 50th Leg., p. 161, ch. 100; Acts 1949, 51st Leg., p. 10, ch. 10.  
 Turkey—Acts 1947, 50th Leg., p. 159, ch. 97; Acts 1951, 52nd Leg., p. 608, ch. 360; Acts 1953, 53rd Leg., p. 555, ch. 204; Acts 1955, 54th Leg., p. 372, ch. 91.  
 White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

## Houston County

- Deer—Acts 1967, 60th Leg., p. 931, ch. 408, saved from repeal, see art. 978j-1, § 15.  
 Fish—Acts 1951, 52nd Leg., p. 73, ch. 45; Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1953, 53rd Leg., p. 926, ch. 386; Acts 1961, 57th Leg., p. 1062, ch. 474; Acts 1963, 58th Leg., p. 139, ch. 82; Acts 1971, 62nd Leg., p. 1641, ch. 457.  
 Fox—Acts 1941, 47th Leg., p. 739, ch. 460.  
 Fur-bearing animals—Acts 1934, 43rd Leg., 2nd C.S., p. 75, ch. 26.  
 Squirrels—Acts 1969, 61st Leg., p. 1903, ch. 637.

## Houston County—Cont'd

- Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 773.  
 Wildlife resources—Acts 1961, 57th Leg., 1st C.S., p. 173, ch. 44. For repeals see art. 978j-1, § 15.

## Howard County

- Deer—Acts 1961, 57th Leg., p. 1117, ch. 505.  
 Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Hudspeth County

- Deer—Acts 1941, 47th Leg., p. 151, ch. 112, expired.  
 Doves—Acts 1941, 47th Leg., p. 728, ch. 457, expired.  
 Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.  
 Quail—Acts 1941, 47th Leg., p. 728, ch. 457, expired.

## Hunt County

- Fox—Acts 1937, 45th Leg., p. 451, ch. 228.  
 Fresh water fish—Acts 1937, 45th Leg., p. 780, ch. 380.  
 Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Mink—Acts 1957, 55th Leg., p. 203, ch. 91.  
 Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Quail—Acts 1949, 51st Leg., p. 263, ch. 141; Acts 1957, 55th Leg., p. 187, ch. 85.  
 White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Wildlife resources—Acts 1963, 58th Leg., p. 733, ch. 271, as amended by Acts 1965, 59th Leg., p. 450, ch. 228, § 2. For repeals see art. 978j-1, § 15.

## Hutchinson County

- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Ingleside Cove Wildlife Sanctuary

- Hunting and fishing—Acts 1971, 62nd Leg., p. 1969, ch. 607.

## Irion County

- Carp—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.  
 Catfish—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.  
 Deer—Acts 1941, 47th Leg., p. 1298, ch. 573, expired.  
 Gar—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.  
 Minnows—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.  
 Squirrel—Acts 1932, 42nd Leg., 3rd C.S., p. 13, ch. 12, amended by Acts 1933, 43rd Leg., 1st C.S., p. 269, ch. 96, § 1; Acts 1943, 48th Leg., p. 30, ch. 27, § 1.  
 Suckers—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.  
 Wildlife resources—Acts 1965, 59th Leg., p. 350, ch. 166; Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Jack County

- Chucker quail—Acts 1939, 46th Leg., Spec.Laws, p. 789, ch. 40.  
 Deer—Acts 1939, 46th Leg., Spec.Laws, p. 789, ch. 40; Acts 1949, 51st Leg., p. 11, ch. 12.  
 Fox—Acts 1939, 46th Leg., Spec.Laws, p. 790, expired.  
 Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45; Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1945, 49th Leg., p. 169, ch. 48.  
 Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Net fishing—Acts 1939, 46th Leg., Spec.Laws, p. 821.  
 Squirrel—Acts 1932, 42nd Leg., 3rd C.S., p. 13, ch. 12, amended by Acts 1933, 43rd Leg., 1st C.S., p. 269, ch. 96, § 1; Acts 1943, 48th Leg., p. 30, ch. 27, § 1.  
 Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 789, ch. 40; Acts 1949, 51st Leg., p. 723, ch. 387.  
 White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Wildlife resources—Acts 1951, 52nd Leg., p. 210, ch. 125, as amended Acts 1955, 54th Leg., p. 1248, ch. 499; Acts 1953, 53rd Leg., p. 371, ch. 97; Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, as amended Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Jackson County

- Deer—Acts 1936, 44th Leg., 3rd C.S., p. 2029, ch. 489.  
 Fishing in certain waters—Acts 1957, 55th Leg., p. 400, ch. 197; Acts 1961, 57th Leg., p. 1020, ch. 447. For laws saved from repeal in part, see art. 978j-1, § 15.  
 Flounders—Acts 1939, 46th Leg., Spec.Laws, p. 816.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Oysters—Acts 1937, 45th Leg., 1st C.S., p. 1823, ch. 43, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 816, § 3.  
 Seine and net fishing—Acts 1937, 45th Leg., p. 8, ch. 8, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 816, § 3.  
 Shrimp—Acts 1939, 46th Leg., Spec.Laws, p. 816.  
 Spear or light fishing—Acts 1939, 46th Leg., Spec.Laws, p. 816.  
 Squirrels—Acts 1953, 53rd Leg., p. 471, ch. 159.  
 Turkey—Acts 1941, 47th Leg., p. 83, ch. 68; Acts 1953, 53rd Leg., p. 470, ch. 157.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wildlife resources—Acts 1965, 59th Leg., p. 1024, ch. 508; Acts 1967, 60th Leg., p. 879, ch. 382; see art. 978j-1, § 15.

Jasper County

Buck deer—Acts 1947, 50th Leg., p. 92, ch. 63; Acts 1955, 54th Leg., p. 890, ch. 341.  
 Deer—Acts 1935, 44th Leg., Spec.Laws, p. 1178, ch. 14; Acts 1949, 51st Leg., p. 188, ch. 104; Acts 1953, 53rd Leg., p. 781, ch. 311; Acts 1957, 55th Leg., p. 826, ch. 353, repealed by Acts 1961, 57th Leg., p. 524, ch. 250, § 2.  
 Dove and quail—Acts 1957, 55th Leg., p. 826, ch. 354.  
 Fox—Acts 1935, 44th Leg., 2nd C.S., p. 1749, ch. 456; Acts 1941, 47th Leg., p. 1303, ch. 578, expired; Acts 1947, 50th Leg., p. 161, ch. 99; Acts 1971, 62nd Leg., p. 940, ch. 151.  
 Fur-bearing animals—Acts 1933, 43rd Leg., 1st C.S., p. 83, ch. 28, amended by Acts 1934, 43rd Leg., 4th C.S., p. 70, ch. 28.  
 Hunting with dogs—Acts 1961, 58th Leg., p. 1347, ch. 510, amended by Acts 1965, 59th Leg., p. 1500, ch. 651. For laws saved from repeal in part, see art. 978j-1, § 15.  
 Minnows—Acts 1943, 48th Leg., p. 339, ch. 220, repealed by Acts 1953, 53rd Leg., p. 783, ch. 313.  
 Seine or net fishing—Acts 1955, 54th Leg., p. 891, ch. 347.  
 Squirrels—Acts 1932, 42nd Leg., 3rd C.S., p. 13, ch. 12, amended by Acts 1933, 43rd Leg., 1st C.S., p. 269, ch. 96, § 1; Acts 1943, 48th Leg., p. 30, ch. 27, § 1; Acts 1945, 49th Leg., p. 163, ch. 117; Acts 1947, 50th Leg., p. 64, ch. 49; Acts 1949, 51st Leg., p. 505, ch. 278; Acts 1953, 53rd Leg., p. 781, ch. 312; Acts 1957, 55th Leg., p. 825, ch. 352, repealed by Acts 1961, p. 524, ch. 250, § 2.  
 Turkey—Acts 1941, 47th Leg., p. 234, ch. 164.  
 Wildlife resources—Acts 1957, 55th Leg., 2nd C.S., p. 176, ch. 19, amended by Acts 1967, 60th Leg., p. 865, ch. 372; see art. 978j-1, § 15.

Jefferson County

Alligators—Acts 1959, 56th Leg., p. 477, ch. 206, repealed by Acts 1969, 61st Leg., p. 1957, ch. 657, § 5 (see, now, art. 978j-3).  
 Fish—Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1953, 53rd Leg., p. 926, ch. 386.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Shrimp—Acts 1961, 57th Leg., 1st C.S., p. 176, ch. 47; Acts 1963, 58th Leg., p. 894, ch. 339. For laws saved from repeal see art. 978j-1, § 15.  
 Squirrels—Acts 1945, 49th Leg., p. 163, ch. 117.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wildlife resources—Acts 1957, 55th Leg., p. 378, ch. 181, amended by Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

Jim Hogg County

Deer—Acts 1965, 59th Leg., p. 1278, ch. 586.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Quail—Acts 1961, 57th Leg., p. 771, ch. 358.  
 Turkeys—Acts 1955, 54th Leg., p. 863, ch. 326.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

Jim Wells County

Animals—Acts 1941, 47th Leg., p. 393, ch. 225, § 1a, added by Acts 1941, 47th Leg., p. 844, ch. 520.  
 Birds—Acts 1941, 47th Leg., p. 393, ch. 225, § 1a, added by Acts 1941, 47th Leg., p. 844, ch. 520.  
 Fish—Acts 1937, 45th Leg., p. 23, ch. 21; Acts 1937, 45th Leg., p. 841, ch. 412.  
 Fowl—Acts 1941, 47th Leg., p. 393, ch. 225, § 1a, added by Acts 1941, 47th Leg., p. 844, ch. 520.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Quail—Acts 1959, 56th Leg., 3rd C.S., p. 394, ch. 15.  
 Seine or net fishing—Acts 1937, 45th Leg., p. 23, ch. 21; Acts 1937, 45th Leg., p. 841, ch. 412.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wildlife resources—Acts 1963, 58th Leg., p. 757, ch. 287; Acts 1967, 60th Leg., p. 521, ch. 225; see art. 978j-1, § 15.

Johnson County

Deer—Acts 1939, 46th Leg., Spec.Laws, p. 785, amended by Acts 1939, 46th Leg., Spec.Laws, p. 786, § 1.  
 Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.  
 Fishing—Acts 1953, 53rd Leg., p. 524, ch. 188.  
 Fur-bearing animals—Acts 1933, 43rd Leg., Spec.Laws, p. 140, ch. 101, amended by Acts 1933, 43rd Leg., 1st C.S., p. 156, ch. 54; Acts 1934, 43rd Leg., 3rd C.S., p. 99, ch. 48, § 1.  
 Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Minnows—Acts 1937, 45th Leg., p. 815, ch. 403, amended by Acts 1941, 47th Leg., p. 134, ch. 104.  
 Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Quail—Special Act of 1931, 42nd Leg., 1st C.S., ch. 16, repealed by Acts 1933, 43rd Leg., Spec.Laws, p. 54, ch. 46; Acts 1953, 53rd Leg., p. 554, ch. 200.  
 Squirrels—Acts 1955, 54th Leg., p. 1202, ch. 476.  
 Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 785, amended by Acts 1939, 46th Leg., Spec.Laws, p. 786, § 1.  
 White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, amended by Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

Jones County

Bass—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1; Acts 1941, 47th Leg., p. 864, ch. 538.  
 Bream—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1; Acts 1941, 47th Leg., p. 864, ch. 538.  
 Buck—Acts 1947, 50th Leg., p. 160, ch. 98.  
 Buffalo fish—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.  
 Carp—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.  
 Catfish—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1; Acts 1941, 47th Leg., p. 864, ch. 538.  
 Commercial fishing—Acts 1939, 46th Leg., Spec.Laws, p. 802, ch. 53.  
 Crappie—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1; Acts 1941, 47th Leg., p. 864, ch. 538.  
 Deer—Acts 1947, 50th Leg., p. 160, ch. 98; Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired.  
 Doe—Acts 1947, 50th Leg., p. 160, ch. 98.  
 Drum—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.  
 Fawn—Acts 1947, 50th Leg., p. 160, ch. 98.  
 Fish—Acts 1941, 47th Leg., p. 864, ch. 538.  
 Gars—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.  
 Goggle-eyed perch—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.  
 Minnows—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1; Acts 1941, 47th Leg., p. 864, ch. 538; Acts 1947, 50th Leg., p. 157, ch. 94.  
 Perch—Acts 1941, 47th Leg., p. 864, ch. 538.  
 Seine or net fishing—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.  
 Suckers—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.  
 Sunfish—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.  
 Turkey—Acts 1947, 50th Leg., p. 160, ch. 98; Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired.  
 White perch—Acts 1941, 47th Leg., p. 864, ch. 538.  
 Wildlife resources—Acts 1965, 59th Leg., p. 331, ch. 156. For repeals see art. 978j-1, § 15.

Karnes County

Collared peccary—Acts 1963, 58th Leg., p. 14, ch. 12.  
 Javelina—Acts 1963, 58th Leg., p. 14, ch. 12.  
 Minnows—Acts 1955, 54th Leg., p. 862, ch. 325.  
 Wildlife resources—Acts 1967, 60th Leg., p. 1197, ch. 533; see art. 978j-1, § 15.

Kaufman County

Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1; Acts 1953, 53rd Leg., p. 379, ch. 102.  
 Fish—Acts 1939, 46th Leg., Spec.Laws, p. 822, amended by Acts 1945, 49th Leg., p. 87, ch. 62.  
 Fishing—Acts 1947, 50th Leg., p. 1030, ch. 443.  
 Fox—Acts 1945, 49th Leg., p. 302, ch. 218.  
 Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73; Acts 1947, 50th Leg., p. 1029, ch. 442.  
 Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Partridges—Acts 1953, 53rd Leg., p. 379, ch. 102.  
 Pheasants—Acts 1953, 53rd Leg., p. 379, ch. 102; Acts 1955, 54th Leg., p. 29, ch. 21.  
 Quail—Acts 1939, 46th Leg., Spec.Laws, p. 787; Acts 1953, 53rd Leg., p. 379, ch. 102.  
 Squirrels—Acts 1933, 43rd Leg., Spec.Laws, p. 73, ch. 58; Acts 1933, 43rd Leg., Spec.Laws, p. 102, ch. 78.  
 White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

Kendall County

Bass—Acts 1933, 43rd Leg., Spec.Laws, p. 75, ch. 60; Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
 Bream—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
 Catfish—Acts 1933, 43rd Leg., Spec.Laws, p. 75, ch. 60; Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
 Crappie—Acts 1933, 43rd Leg., Spec.Laws, p. 75, ch. 60; Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.  
 Deer—Acts 1961, 57th Leg., p. 311, ch. 162; Acts 1965, 59th Leg., p. 871, ch. 426.  
 Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1206, ch. 41, amended by Acts 1937, 45th Leg., p. 670, ch. 334; Acts 1937, 45th Leg., p. 17, ch. 16.  
 Fishing—Acts 1943, 48th Leg., p. 205, ch. 124.  
 Fox—Acts 1953, 53rd Leg., p. 472, ch. 160.  
 Fresh water fish—Acts 1939, 46th Leg., Spec.Laws, p. 806.  
 Hunting and fishing—Acts 1939, 46th Leg., Spec.Laws, p. 836, amended by Acts 1943, 48th Leg., p. 218, ch. 137.  
 Hunting with bows and arrows—Acts 1965, 59th Leg., p. 872, ch. 428. For laws saved from repeal, see art. 978j-1, § 15.  
 Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1937, 45th

## Kendall County—Cont'd

Leg., p. 873, ch. 429; Acts 1939, 46th Leg., Spec.Laws, p. 806; Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1961, 57th Leg., p. 1088, ch. 488.

Perch—Acts 1933, 43rd Leg., Spec.Laws, p. 75, ch. 60; Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Wildlife resources—Acts 1961, 57th Leg., p. 766, ch. 356; Acts 1967, 60th Leg., p. 1220, ch. 552; amended by Acts 1971, 62nd Leg., p. 1188, ch. 287.

## Kenedy County

Collared peccary or javelina—Acts 1945, 49th Leg., p. 81, ch. 57, repealed by Acts 1954, 53rd Leg., 1st C.S., p. 99, ch. 48, § 5; Acts 1954, 53rd Leg., 1st C.S., p. 99, ch. 48, repealed by Acts 1959, 56th Leg., p. 568, ch. 260, § 5; Acts 1959, 56th Leg., p. 568, ch. 260, §§ 1-4; Acts 1961, 57th Leg., p. 770, ch. 357.

Deer—Acts 1945, 49th Leg., p. 81, ch. 57, repealed by Acts 1954, 53rd Leg., 1st C.S., p. 99, ch. 48, § 5; Acts 1954, 53rd Leg., 1st C.S., p. 99, ch. 48, repealed by Acts 1959, 56th Leg., p. 568, ch. 260, § 5; Acts 1959, 56th Leg., p. 568, ch. 260, §§ 1-4; Acts 1961, 57th Leg., p. 770, ch. 357.

Fish—Acts 1959, 56th Leg., p. 599, ch. 277; Acts 1961, 57th Leg., p. 1093, ch. 491.

Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.

Quail—Acts 1947, 50th Leg., p. 437, ch. 243.

Shrimp—Acts 1959, 56th Leg., p. 599, ch. 277.

Turkeys—Acts 1945, 49th Leg., p. 81, ch. 57, repealed by Acts 1954, 53rd Leg., 1st C.S., p. 99, ch. 48, § 5; Acts 1954, 53rd Leg., 1st C.S., p. 99, ch. 48, repealed by Acts 1959, 56th Leg., p. 568, ch. 260, § 5; Acts 1959, 56th Leg., p. 568, ch. 260, §§ 1-4; Acts 1961, 57th Leg., p. 770, ch. 357.

White winged doves—Acts 1937, 45th Leg., p. 813, ch. 402.

## Kent County

Deer—Acts 1941, 47th Leg., p. 60, ch. 43.

Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.

Quail—Acts 1947, 50th Leg., p. 965, ch. 419.

## Kerr County

Bass—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 805; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Bream—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Catfish—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 805; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Collared peccary or javelina—Acts 1959, 56th Leg., 2nd C.S., p. 158, ch. 38.

Crappie—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 805; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1206, ch. 41, amended by Acts 1937, 45th Leg., p. 670, ch. 334; Acts 1937, 45th Leg., p. 17, ch. 16.

Fresh water fish—Acts 1939, 46th Leg., Spec.Laws, p. 806.

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.

Minnnows—Acts 1939, 46th Leg., Spec.Laws, p. 806.

Perch—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 805; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Wildlife resources—Acts 1953, 53rd Leg., p. 414, ch. 120, amended by Acts 1954, 53rd Leg., 1st C.S., p. 24, ch. 10; Acts 1955, 54th Leg., p. 15, ch. 13; Acts 1955, 54th Leg., p. 950, ch. 372; Acts 1957, 55th Leg., p. 102, ch. 50; Acts 1957, 55th Leg., 2nd C.S., p. 171, ch. 14; Acts 1961, 57th Leg., p. 722, ch. 340; Acts 1961, 57th Leg., p. 764, ch. 354; Acts 1963, 58th Leg., p. 417, ch. 141; Acts 1965, 59th Leg., p. 869, ch. 424; Acts 1965, 59th Leg., p. 1015, ch. 499, § 2. For repeals see art. 978j-1, § 15.

Wild turkey—Acts 1959, 56th Leg., 2nd C.S., p. 143, ch. 27.

## Kimble County

Bass—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 807.

Bream—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 807.

Catfish—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 807.

Crappie—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 807.

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1206, ch. 41, amended by Acts 1937, 45th Leg., p. 670, ch. 334; Acts 1937, 45th Leg., p. 17, ch. 16.

Fishing and minnows—Acts 1955, 54th Leg., p. 502, ch. 144.

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.

Minnnows—Acts 1939, 46th Leg., Spec.Laws, p. 807.

Perch—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 807.

Seine or net fishing—Acts 1939, 46th Leg., Spec.Laws, p. 807.

Wildlife resources—Acts 1962, 57th Leg., 3rd C.S., p. 20, ch. 7.

## King County

Doves—Acts 1941, 47th Leg., p. 397, ch. 231.

Minnnows—Acts 1951, 52nd Leg., p. 314, ch. 191.

Wild deer—Acts 1951, 52nd Leg., p. 25, ch. 18.

## Kinney County

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.

Squirrels—Acts 1936, 44th Leg., 3rd C.S., p. 2028, ch. 487.

Wildlife resources—Acts 1963, 58th Leg., p. 417, ch. 141. For repeals see art. 978j-1, § 15.

## Kleberg County

Collared peccary—Acts 1965, 59th Leg., p. 1227, ch. 562.

Fish—Acts 1959, 56th Leg., p. 599, ch. 277.

Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.

Quail—Acts 1947, 50th Leg., p. 437, ch. 243.

Seine, net or trawl fishing—Acts 1937, 45th Leg., p. 372, ch. 182.

Shrimp—Acts 1959, 56th Leg., p. 599, ch. 277.

White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

## Knox County

Doves—Acts 1941, 47th Leg., p. 397, ch. 231.

Minnnows—Acts 1951, 52nd Leg., p. 314, ch. 191.

Wild deer—Acts 1951, 52nd Leg., p. 25, ch. 18.

Wildlife resources—Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Laguna Madre

Fish in waters within Cameron, Kenedy and Willacy Counties, size—Acts 1955, 54th Leg., p. 363, ch. 80. For laws saved from repeal in part, see art. 978j-1, § 15.

Seine, net or trawl fishing—Acts 1937, 45th Leg., p. 372, ch. 182.

## Laguna Madre County

Fish, aquatic life and marine animals—Acts 1963, 58th Leg., p. 757, ch. 287.

## Lake Houston

Seine, net or trawl fishing—Acts 1962, 57th Leg., 3rd C.S., p. 160, ch. 55.

## Lake Kickapoo

Fish—Acts 1953, 53rd Leg., p. 394, ch. 110.

## Lake Tawakoni

Fish—Acts 1965, 59th Leg., p. 450, ch. 228, §§ 1, 3, 4. For laws saved from repeal, see art. 978j-1, § 15.

## Lake Waco

Minnnows—Acts 1947, 50th Leg., p. 447, ch. 250.

Trotline fishing—Acts 1945, 49th Leg., p. 48, ch. 31.

Trotline fishing—Acts 1939, 46th Leg., Spec.Laws, p. 822.

## Lamar County

Beaver—Acts 1957, 55th Leg., p. 387, ch. 189.

Deer—Acts 1941, 47th Leg., p. 191, ch. 137; Acts 1945, 49th Leg., p. 169, ch. 124; Acts 1949, 51st Leg., p. 722, ch. 386, amended by Acts 1959, 56th Leg., p. 484, ch. 213; Acts 1955, 54th Leg., p. 376, ch. 97.

Fish—Acts 1937, 45th Leg., p. 782, ch. 382.

Fox—Acts 1937, 45th Leg., p. 483, ch. 245; Acts 1943, 48th Leg., p. 201, ch. 120; Acts 1945, 49th Leg., p. 175, ch. 133.

Mourning doves—Acts 1941, 47th Leg., p. 62, ch. 46.

Seine or net fishing—Acts 1933, 43rd Leg., Spec.Laws, p. 44, ch. 36.

Squirrels—Acts 1955, 54th Leg., p. 377, ch. 98; Acts 1957, 55th Leg., p. 385, ch. 187, amended by Acts 1959, 56th Leg., p. 344, ch. 166; Acts 1961, 57th Leg., p. 588, ch. 280, § 2.

Turkey—Acts 1941, 47th Leg., p. 191, ch. 137; Acts 1945, 49th Leg., p. 169, ch. 124; Acts 1947, 50th Leg., p. 424, ch. 231; Acts 1957, 55th Leg., p. 386, ch. 188; Acts 1961, 57th Leg., p. 588, ch. 280, § 1.

Wildlife resources—Acts 1967, 60th Leg., p. 299, ch. 142; see art. 978j-1, § 15.

## Lamb County

Quail—Acts 1967, 60th Leg., p. 847, ch. 356, § 1; see art. 978j-1, § 15. Repealed by Acts 1969, 61st Leg., p. 1143, ch. 369, § 3.

## Lampasas County

Catfish—Acts 1939, 46th Leg., Spec.Laws, p. 793.

Crappie—Acts 1939, 46th Leg., Spec.Laws, p. 793.

Black bass—Acts 1939, 46th Leg., Spec.Laws, p. 793.

Minnnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1963, 58th Leg., p. 952, ch. 377.

White bass—Acts 1939, 46th Leg., Spec.Laws, p. 793.

White perch—Acts 1939, 46th Leg., Spec.Laws, p. 793.

Wildlife resources—Acts 1967, 60th Leg., p. 129, ch. 67; see art. 978j-1, § 15.

## La Salle County

Axis deer (County Commissioners Precinct No. 3)—Acts 1963, 58th Leg., p. 1012, ch. 420.

Buck deer—Acts 1949, 51st Leg., p. 339, ch. 167; Acts 1954, 53rd Leg., 1st C.S., p. 56, ch. 20, amended by Acts 1965, 59th Leg., p. 875, ch. 431.

Collared peccary or javelina—Acts 1959, 56th Leg., p. 593, ch. 274.

Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402.

Pheasants—Acts 1955, 54th Leg., p. 894, ch. 345.

## La Salle County—Cont'd

Quail—Acts 1949, 51st Leg., p. 339, ch. 167; Acts 1954, 53rd Leg., 1st C.S., p. 56, ch. 20, amended by Acts 1965, 59th Leg., p. 875, ch. 481.

Turkey—Acts 1949, 51st Leg., p. 339, ch. 167; Acts 1954, 53rd Leg., 1st C.S., p. 56, ch. 20, amended by Acts 1965, 59th Leg., p. 875, ch. 431.

White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

## Lavaca County

Deer—Acts 1939, 46th Leg., Spec.Laws, p. 772, ch. 19; Acts 1955, 54th Leg., p. 786, ch. 284, repealed by Acts 1965, 59th Leg., p. 1454, ch. 642.

Squirrels—Acts 1951, 52nd Leg., p. 154, ch. 93.

Turkey—Acts 1941, 47th Leg., p. 83, ch. 68; Acts 1953, 53rd Leg., p. 470, ch. 157, repealed by Acts 1955, 54th Leg., p. 786, ch. 284, p. 16, repealed by Acts 1965, 59th Leg., p. 1454, ch. 642; Acts 1955, 54th Leg., p. 786, ch. 284.

## Lavon Lake

Boats and water skis—Acts 1959, 56th Leg., p. 1096, ch. 498.

Crappies—Acts 1967, 60th Leg., p. 1003, ch. 433.

Firearms—Acts 1959, 56th Leg., p. 1096, ch. 498.

Game and fish—Acts 1959, 56th Leg., p. 1096, ch. 498.

## Lee County

Chukars—Acts 1963, 58th Leg., p. 749, ch. 282.

Deer—Acts 1937, 45th Leg., p. 386, ch. 191, expired. Acts 1943, 48th Leg., p. 335, ch. 214; Acts 1957, 55th Leg., 1st C.S., p. 5, ch. 5, expired.

Fox—Acts 1941, 47th Leg., p. 385, ch. 216; Acts 1947, 50th Leg., p. 265, ch. 161.

Mink—Acts 1941, 47th Leg., p. 520, ch. 316.

Mourning doves—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.

Pheasants—Acts 1963, 58th Leg., p. 749, ch. 282.

Quail—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 20.

Raccoons—Acts 1941, 47th Leg., p. 520, ch. 316.

Squirrels—Acts 1935, 44th Leg., Spec.Laws, p. 1172, ch. 8, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 772, ch. 20, § 1.

Turkey—Acts 1943, 48th Leg., p. 335, ch. 214; Acts 1955, 54th Leg., p. 881, ch. 336.

Wildlife resources—Acts 1965, 59th Leg., p. 1446, ch. 636. For repeals see art. 978j-1, § 15.

## Leon County

Deer—Acts 1937, 45th Leg., p. 386, ch. 191, expired; Acts 1971, 62nd Leg., p. 2434, ch. 781.

Fish—Acts 1971, 62nd Leg., p. 843, ch. 99.

Fox—Acts 1934, 43rd Leg., 3rd C.S., p. 100, ch. 49, amended by Acts 1939, Spec.Laws, p. 767, § 1; Acts 1945, 49th Leg., p. 156, ch. 107; Acts 1969, 61st Leg., p. 1921, ch. 640, amended by Acts 1971, 62nd Leg., p. 940, ch. 151.

Mourning doves—Acts 1937, 45th Leg., p. 848, ch. 418.

Quail—Acts 1967, 60th Leg., p. 541, ch. 236, amended by Acts 1969, 61st Leg., p. 712, ch. 252.

Squirrels—Acts 1935, 44th Leg., Spec.Laws, p. 1186, ch. 22.

Turkey—Acts 1941, 47th Leg., p. 517, ch. 313, repealed in part by Acts 1967, 60th Leg., p. 895, ch. 392, § 3. Acts 1971, 62nd Leg., p. 2434, ch. 781.

## Liberty County

Alligators—Acts 1959, 56th Leg., p. 477, ch. 206. Repeal, see art. 978j-3, § 5.

Bear—Acts 1941, 47th Leg., p. 441, ch. 276.

Deer—Acts 1936, 44th Leg., 3rd C.S., p. 2023, ch. 483; Acts 1941, 47th Leg., p. 441, ch. 276; Acts 1943, 48th Leg., p. 210, ch. 129, amended by Acts 1945, 49th Leg., p. 223, ch. 166.

Deer—Acts 1965, 59th Leg., p. 1253, ch. 574, § 1, repealed by Acts 1971, 62nd Leg., p. 924, ch. 137. For laws saved from repeal, see art. 978j-1, § 15.

Firearms—Acts 1971, 62nd Leg., p. 3035, ch. 999.

Firearms, bows and arrows—Acts 1971, 62nd Leg., p. 841, ch. 97.

Fox—Acts 1941, 47th Leg., p. 440, ch. 274; Acts 1971, 62nd Leg., p. 940, ch. 151.

Squirrels—Acts 1933, 43rd Leg., Spec.Laws, p. 72, ch. 57; Acts 1941, 47th Leg., p. 436, ch. 269; Acts 1945, 49th Leg., p. 163, ch. 117.

Turkey—Acts 1941, 47th Leg., p. 441, ch. 276.

Wildlife resources—Acts 1959, 56th Leg., p. 595, ch. 276. For repeals see art. 978j-1, § 15.

## Limestone County

Calling devices for hunting—Acts 1957, 55th Leg., p. 160, ch. 70, amended by Acts 1971, 62nd Leg., p. 2366, ch. 728. For laws saved from repeal, see art. 978j-1, § 15.

Deer—Acts 1949, 51st Leg., p. 12, ch. 13.

Fox—Acts 1934, 43rd Leg., 3rd C.S., p. 100, ch. 49, amended by Acts 1939, Spec.Laws, p. 767, § 1; Acts 1949, 51st Leg., p. 13, ch. 14, § 1, repealed all local or special laws in so far as they govern the taking or trapping of fox in Limestone County and provided that the general laws governing taking, trapping and sale of wild fox should thereafter apply.

Mourning doves—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.

Quail—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.

Squirrels—Acts 1965, 59th Leg., p. 874, ch. 429, saved from repeal, see art. 978j-1, § 15.

## Limestone County—Cont'd

Wildlife resources—Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Lipscomb County

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

Quail—Acts 1936, 44th Leg., 3rd C.S., p. 2035, ch. 493.

## Live Oak County

Animals—Acts 1941, 47th Leg., p. 393, ch. 225.

Birds—Acts 1941, 47th Leg., p. 393, ch. 225.

Deer—Acts 1941, 47th Leg., p. 430, ch. 261; Acts 1953, 53rd Leg., p. 474, ch. 163; Acts 1954, 53rd Leg., 1st C.S., p. 56, ch. 21.

Fish—Acts 1937, 45th Leg., p. 23, ch. 21; Acts 1937, 45th Leg., p. 841, ch. 412.

Fowl—Acts 1941, 47th Leg., p. 393, ch. 225.

Javelina—Acts 1941, 47th Leg., p. 430, ch. 261; Acts 1951, 52nd Leg., p. 461, ch. 289.

Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402.

Quail—Acts 1941, 47th Leg., p. 430, ch. 261; Acts 1953, 53rd Leg., p. 474, ch. 163; Acts 1954, 53rd Leg., 1st C.S., p. 56, ch. 21.

Seine or net fishing—Acts 1937, 45th Leg., p. 23, ch. 21; Acts 1937, 45th Leg., p. 841, ch. 412.

Turkey—Acts 1941, 47th Leg., p. 430, ch. 261; Acts 1953, 53rd Leg., p. 474, ch. 163; Acts 1954, 53rd Leg., 1st C.S., p. 56, ch. 21.

White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

Wildlife resources—Acts 1963, 58th Leg., p. 686, ch. 252. For repeals see art. 978j-1, § 15.

## Llano County

Bass—Acts 1937, 45th Leg., p. 17, ch. 16.

Black bass—Acts 1939, 46th Leg., Spec.Laws, p. 793.

Bream—Acts 1937, 45th Leg., p. 17, ch. 16.

Catfish—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 793.

Crappie—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 793.

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1206, ch. 41, amended by Acts 1937, 45th Leg., p. 670, ch. 334; Acts 1937, 45th Leg., p. 17, ch. 16.

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1943, 48th Leg., p. 218, ch. 137.

Hunting with bows and arrows—Acts 1965, 59th Leg., p. 872, ch. 428, saved from repeal, see art. 978j-1, § 15.

Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1961, 57th Leg., p. 1088, ch. 488; Acts 1963, 58th Leg., p. 952, ch. 377.

Perch—Acts 1937, 45th Leg., p. 17, ch. 16.

White bass—Acts 1939, 46th Leg., Spec.Laws, p. 793.

White perch—Acts 1939, 46th Leg., Spec.Laws, p. 793.

Wildlife resources—Acts 1954, 53rd Leg., 1st C.S., p. 24, ch. 10, amended by Acts 1955, 54th Leg., p. 15, ch. 13; Acts 1955, 54th Leg., p. 950, ch. 372; Acts 1957, 55th Leg., p. 102, ch. 50; Acts 1957, 55th Leg., 2nd C.S., p. 171, ch. 14; Acts 1961, 57th Leg., p. 722, ch. 340; Acts 1961, 57th Leg., p. 764, ch. 354; Acts 1961, 57th Leg., 1st C.S., p. 174, ch. 45; Acts 1963, 58th Leg., p. 417, ch. 141; Acts 1965, 59th Leg., p. 869, ch. 424; Acts 1965, 59th Leg., p. 1015, ch. 499, § 2. For repeals see art. 978j-1, § 15.

## Lubbock County

Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Lynn County

Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.

Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## McCulloch County

Hunting with bows and arrows—Acts 1965, 59th Leg., p. 872, ch. 428, saved from repeal, see art. 978j-1, § 15.

Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1961, 57th Leg., p. 1088, ch. 488.

Quail—Acts 1939, 46th Leg., Spec.Laws, p. 774.

Wildlife resources—Acts 1961, 57th Leg., p. 105, ch. 58.

## McLennan County

Bass—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31; Acts 1941, 47th Leg., p. 669, ch. 411.

Bream—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31; Acts 1941, 47th Leg., p. 669, ch. 411.

Catfish—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31; Acts 1941, 47th Leg., p. 669, ch. 411.

Crappie—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31; Acts 1941, 47th Leg., p. 669, ch. 411.

## McLennan County—Cont'd

- Deer—Acts 1949, 51st Leg., p. 444, ch. 237; Acts 1955, 54th Leg., p. 364, ch. 81.
- Fish—Acts 1945, 49th Leg., p. 109, ch. 76.
- Fox—Acts 1934, 43rd Leg., 3rd C.S., p. 100, ch. 49, amended by Acts 1939, Spec.Laws, p. 767, § 1; Acts 1945, 49th Leg., p. 312, ch. 226.
- Gars—Acts 1943, 48th Leg., p. 199, ch. 117.
- Goggle Eye—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31; Acts 1941, 47th Leg., p. 669, ch. 411.
- Minnows—Acts 1947, 50th Leg., p. 440, ch. 246; Acts 1947, 50th Leg., p. 447, ch. 250; Acts 1949, 51st Leg., p. 443, ch. 236, § 1.
- Net—Acts 1949, 51st Leg., p. 443, ch. 236, § 2.
- Perch—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31; Acts 1941, 47th Leg., p. 669, ch. 411.
- Shad—Acts 1941, 47th Leg., p. 669, ch. 411.
- Sunfish—Acts 1931, 42nd Leg., 2nd C.S., p. 49, ch. 28, amended by Acts 1935, 44th Leg., Spec.Laws, p. 1212, ch. 47, § 3; Acts 1941, 47th Leg., p. 42, ch. 31; Acts 1941, 47th Leg., p. 669, ch. 411.
- Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, amended by Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## McMullen County

- Collared peccary or javelina—Acts 1959, 56th Leg., p. 593, ch. 274.
- Deer—Acts 1949, 51st Leg., p. 15, ch. 17; Acts 1949, 51st Leg., p. 360, ch. 183, amended by Acts 1959, 56th Leg., p. 594, ch. 275; Acts 1961, 57th Leg., p. 115, ch. 62.
- Doves—Acts 1949, 51st Leg., p. 360, ch. 183, amended by Acts 1959, 56th Leg., p. 594, ch. 275; Acts 1961, 57th Leg., p. 115, ch. 62.
- Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402.
- Quail—Acts 1949, 51st Leg., p. 15, ch. 17; Acts 1949, 51st Leg., p. 360, ch. 183, amended by Acts 1959, 56th Leg., p. 594, ch. 275; Acts 1961, 57th Leg., p. 115, ch. 62.
- Turkeys—Acts 1949, 51st Leg., p. 15, ch. 17; Acts 1949, 51st Leg., p. 360, ch. 183, amended by Acts 1959, 56th Leg., p. 594, ch. 275; Acts 1961, 57th Leg., p. 115, ch. 62.
- White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

## Madison County

- Deer—Acts 1937, 45th Leg., p. 386, ch. 191, expired.
- Fox—Acts 1934, 43rd Leg., 3rd C.S., p. 100, ch. 49, amended by Acts 1939, Spec.Laws, p. 767, § 1; Acts 1945, 49th Leg., p. 156, ch. 107.
- Mourning doves—Acts 1937, 45th Leg., p. 848, ch. 418.
- Squirrels—Acts 1935, 44th Leg., Spec.Laws, p. 1186, ch. 22.
- Turkeys—Acts 1939, 46th Leg., Spec.Laws, p. 773.
- Wildlife resources—Acts 1963, 58th Leg., p. 948, ch. 376. For repeals see art. 978j-1, § 15.

## Marion County

- Alligator—Acts 1951, 52nd Leg., p. 154, ch. 94, repealed by Acts 1969, 61st Leg., p. 1957, ch. 657, § 5 (see, now, art. 978j-3).
- Animals—Acts 1939, 46th Leg., Spec.Laws, p. 829.
- Bass—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1941, 47th Leg., p. 93, ch. 77; Acts 1941, 47th Leg., p. 95, ch. 78, §§ 1 to 4, §§ 2, 3, repealed by Acts 1971, 62nd Leg., p. 1304, ch. 343; Acts 1949, 51st Leg., p. 241, ch. 136.
- Bowfin—Acts 1937, 45th Leg., 1st C.S., p. 1830, ch. 48.
- Bream—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1; Acts 1941, 47th Leg., p. 95, ch. 78, §§ 1 to 4, §§ 2, 3, repealed by Acts 1971, 62nd Leg., p. 1304, ch. 343.
- Buffalo fish—Acts 1937, 45th Leg., 1st C.S., p. 1830, ch. 48.
- Catfish—Acts 1937, 45th Leg., 1st C.S., p. 1830, ch. 48.
- Coypu (Nutria)—Acts 1951, 52nd Leg., p. 152, ch. 91, repealed by Acts 1963, 58th Leg., p. 751, ch. 285.
- Crappie—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1; Acts 1941, 47th Leg., p. 93, ch. 77; Acts 1937, 45th Leg., p. 19, ch. 17; Acts 1941, 47th Leg., p. 95, ch. 78, §§ 1 to 4, §§ 2, 3, repealed by Acts 1971, 62nd Leg., p. 1304, ch. 343; Acts 1971, 62nd Leg., p. 1697, ch. 490.
- Deer—Acts 1937, 45th Leg., p. 11, ch. 11; Acts 1943, 48th Leg., p. 222, ch. 141; Acts 1943, 48th Leg., p. 295, ch. 190, amended by Acts 1945, 49th Leg., p. 80, ch. 56; Acts 1949, 51st Leg., p. 212, ch. 137; Acts 1951, 52nd Leg., p. 178, ch. 113; Acts 1954, 53rd Leg., 1st C.S., p. 96, ch. 45; Acts 1955, 54th Leg., p. 378, ch. 99; Acts 1963, 58th Leg., p. 840, ch. 320; Acts 1971, 62nd Leg., p. 1174, ch. 277.
- Ducks—Acts 1941, 47th Leg., p. 154, ch. 115.
- Fish—Acts 1939, 46th Leg., Spec.Laws, p. 829.
- Fowl—Acts 1939, 46th Leg., Spec.Laws, p. 829.
- Fox—Acts 1937, 45th Leg., p. 430, ch. 219; Acts 1943, 48th Leg., p. 283, ch. 178.
- Fur-bearing animals—Acts 1937, 45th Leg., p. 430, ch. 219.
- Game fish—Acts 1939, 46th Leg., Spec.Laws, p. 795, amended by Acts 1941, 47th Leg., p. 155, ch. 116.
- Gar fish—Acts 1937, 45th Leg., 1st C.S., p. 1830, ch. 48.
- Geese—Acts 1941, 47th Leg., p. 154, ch. 115.
- Goggle-eye—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1; Acts 1941, 47th Leg., p. 95, ch. 78, §§ 1 to 4, §§ 2, 3, repealed by Acts 1971, 62nd Leg., p. 1304, ch. 343.
- Grindle—Acts 1937, 45th Leg., 1st C.S., p. 1830, ch. 48.

## Marion County—Cont'd

- Large-mouth black bass—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1; Acts 1937, 45th Leg., p. 19, ch. 17.
- Perch—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1941, 47th Leg., p. 93, ch. 77; Acts 1941, 47th Leg., p. 95, ch. 78, §§ 1 to 4, §§ 2, 3, repealed by Acts 1971, 62nd Leg., p. 1304, ch. 343.
- Quail—Acts 1965, 59th Leg., p. 852, ch. 412; Acts 1969, 61st Leg., p. 169, ch. 68.
- Seine or net—Acts 1947, 50th Leg., p. 466, ch. 267; Acts 1949, 51st Leg., p. 240, ch. 135.
- Shad—Acts 1937, 45th Leg., 1st C.S., p. 1830, ch. 48.
- Small-mouth black bass—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1; Acts 1937, 45th Leg., p. 19, ch. 17.
- Squirrels—Acts 1949, 51st Leg., p. 362, ch. 185, repealed by Acts 1949, 51st Leg., p. 880, ch. 473, § 1; Acts 1949, 51st Leg., p. 880, ch. 473, § 1a; Acts 1951, 52nd Leg., p. 178, ch. 113.
- Striped bass—Acts 1939, 46th Leg., Spec.Laws, p. 795.
- Turkey—Acts 1937, 45th Leg., p. 11, ch. 11; Acts 1943, 48th Leg., p. 222, ch. 141.
- Water fowl—Acts 1941, 47th Leg., p. 154, ch. 115.
- White bass—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1.
- White perch—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1; Acts 1937, 45th Leg., p. 19, ch. 17.
- Yellow bass—Acts 1937, 45th Leg., p. 496, ch. 248, amended by Acts 1937, 45th Leg., 1st C.S., p. 1828, ch. 46, § 1.

## Martin County

- Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Mason County

- Bass—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Bream—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Catfish—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Crappie—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1206, ch. 41, amended by Acts 1937, 45th Leg., p. 670, ch. 334; Acts 1937, 45th Leg., p. 17, ch. 16.
- Fresh water fish—Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.
- Hunting with bows and arrows—Acts 1965, 59th Leg., p. 872, ch. 428, saved from repeal, see art. 978j-1, § 15.
- Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1939, 46th Leg., Spec.Laws, p. 806; Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1961, 57th Leg., p. 1088, ch. 488.
- Perch—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.
- Wildlife resources—Acts 1953, 53rd Leg., p. 414, ch. 120, amended by Acts 1954, 53rd Leg., 1st C.S., p. 24, ch. 10; Acts 1955, 54th Leg., p. 15, ch. 13; Acts 1955, 54th Leg., p. 950, ch. 372; Acts 1957, 55th Leg., p. 102, ch. 50; Acts 1957, 55th Leg., 2nd C.S., p. 171, ch. 14; Acts 1961, 57th Leg., p. 722, ch. 340; Acts 1961, 57th Leg., p. 764, ch. 354; Acts 1961, 57th Leg., 1st C.S., p. 194, ch. 55; Acts 1963, 58th Leg., p. 417, ch. 141; Acts 1965, 59th Leg., p. 869, ch. 424; Acts 1965, 59th Leg., p. 1015, ch. 499, § 2. For repeals see art. 978j-1, § 15.

## Matagorda County

- Alligators—Acts 1963, 58th Leg., p. 978, ch. 401, as amended Acts 1967, 60th Leg., p. 1163, ch. 517, § 2. Repeal, see art. 978j-3, § 5.
- Flounders—Acts 1939, 46th Leg., Spec.Laws, p. 816.
- Hunting with dogs—Acts 1963, 58th Leg., p. 1347, ch. 510, amended by Acts 1965, 59th Leg., p. 1500, ch. 651. For laws saved from repeal, see art. 978j-1, § 15.
- Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.
- Oysters—Acts 1935, 44th Leg., Spec.Laws, p. 1214, ch. 49, repealed by Acts 1963, 58th Leg., p. 977, ch. 400; Acts 1937, 45th Leg., 1st C.S., p. 1823, ch. 43, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 816, § 3; Acts 1943, 48th Leg., p. 177, ch. 102, repealed by Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9; Acts 1953, 53rd Leg., p. 369, ch. 92.
- Seine and net fishing—Acts 1937, 45th Leg., p. 8, ch. 8, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 816, § 3.
- Shrimp—Acts 1939, 46th Leg., Spec.Laws, p. 816; Acts 1965, 60th Leg., p. 1024, ch. 508, saved from repeal in part, see art. 978j-1, § 15.
- Spear or light fishing—Acts 1939, 46th Leg., Spec.Laws, p. 816.
- Wild turkey—Acts 1957, 55th Leg., p. 863, ch. 379.
- White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.
- Wildlife resources—Acts 1961, 57th Leg., p. 738, ch. 345; Acts 1965, 59th Leg., p. 1024, ch. 508; Acts 1967, 60th Leg., p. 879, ch. 382; see art. 978j-1, § 15.

## Maverick County

- Buck deer—Acts 1954, 53rd Leg., 1st C.S., p. 57, ch. 22, amended by Acts 1959, 56th Leg., p. 99, ch. 50; Acts 1962, 57th Leg., 3rd C.S., p. 183, ch. 69.

## Maverick County—Cont'd

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6.  
Wildlife resources—Acts 1967, 60th Leg., p. 905, ch. 395; see art. 978j-1, § 15.

## Medina County

Fishing—Acts 1937, 45th Leg., 2nd C.S., p. 1987, ch. 62, amended by Acts 1939, 46th Leg., Spec.Laws, p. 809, repealed by Acts 1949, 51st Leg., p. 191, ch. 108, § 1.  
Fishing on Medina Lake—Acts 1943, 48th Leg., p. 203, ch. 123, repealed by Acts 1949, 51st Leg., p. 191, ch. 108, § 2; Acts 1949, 51st Leg., p. 742, ch. 401.  
Hunting and fishing—Acts 1939, 46th Leg., Spec.Laws, p. 836, amended by Acts 1943, 48th Leg., p. 218, ch. 137.  
Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402, amended by Acts 1937, 45th Leg., p. 859, ch. 424; Acts 1937, 45th Leg., p. 870, ch. 428.  
White winged doves—Acts 1937, 45th Leg., p. 813, ch. 402, amended by Acts 1937, 45th Leg., p. 859, ch. 424.  
Wildlife resources—Acts 1955, 54th Leg., p. 15, ch. 13; Acts 1955, 54th Leg., p. 950, ch. 372; Acts 1957, 55th Leg., p. 102, ch. 50; Acts 1957, 55th Leg., 2nd C.S., p. 171, ch. 14; Acts 1961, 57th Leg., p. 722, ch. 340; Acts 1961, 57th Leg., p. 764, ch. 354; Acts 1963, 58th Leg., p. 417, ch. 141; Acts 1965, 59th Leg., p. 869, ch. 424; Acts 1965, 59th Leg., p. 1015, ch. 499, § 2. For repeals see art. 978j-1, § 15.

## Menard County

Bass—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806, amended by Acts 1941, 47th Leg., p. 231, ch. 161.  
Bream—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806, amended by Acts 1941, 47th Leg., p. 231, ch. 161.  
Catfish—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806, amended by Acts 1941, 47th Leg., p. 231, ch. 161.  
Crappie—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806, amended by Acts 1941, 47th Leg., p. 231, ch. 161.  
Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1206, ch. 41, amended by Acts 1937, 45th Leg., p. 670, ch. 334; Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806, amended by Acts 1941, 47th Leg., p. 231, ch. 161.  
Fishing and minnows—Acts 1955, 54th Leg., p. 502, ch. 144.  
Fresh water fish—Acts 1939, 46th Leg., Spec.Laws, p. 806.  
Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.  
Minnows—Acts 1939, 46th Leg., Spec.Laws, p. 806, amended by Acts 1941, 47th Leg., p. 231, ch. 161.  
Perch—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806, amended by Acts 1941, 47th Leg., p. 231, ch. 161.  
Wildlife resources—Acts 1961, 57th Leg., p. 1182, ch. 534; Acts 1963, 58th Leg., p. 417, ch. 141. For repeals see art. 978j-1, § 15.

## Midland County

Wildlife resources—Acts 1963, 58th Leg., p. 948, ch. 376. For repeals see art. 978j-1, § 15.

## Milam County

Fox—Acts 1945, 49th Leg., p. 302, ch. 218.  
Mourning doves—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
Quail—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
Seines or net fishing—Acts 1949, 51st Leg., p. 352, ch. 175, amended by Acts 1955, 54th Leg., p. 896, ch. 347.  
Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, amended by Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Mills County

Deer—Acts 1937, 45th Leg., p. 11, ch. 11.  
Fishing—Acts 1953, 53rd Leg., p. 556, ch. 205.  
Turkey—Acts 1937, 45th Leg., p. 11, ch. 11.  
Wildlife resources—Acts 1962, 57th Leg., 3rd C.S., p. 198, ch. 76. For repeals see art. 978j-1, § 15.

## Mitchell County

Fishing—Acts 1951, 52nd Leg., p. 350, ch. 220.  
Trotlines—Acts 1951, 52nd Leg., p. 153, ch. 92.  
Wildlife resources—Acts 1961, 57th Leg., p. 516, ch. 245. For repeals see art. 978j-1, § 15.

## Montague County

Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
Quail—Acts 1937, 45th Leg., p. 147, ch. 78.  
White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, amended by Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Montgomery County

Bass—Acts 1941, 47th Leg., p. 750, ch. 469.  
Buck—Acts 1945, 49th Leg., p. 175, ch. 134.  
Catfish—Acts 1941, 47th Leg., p. 750, ch. 469.  
Coyotes—Acts 1937, 45th Leg., p. 800, ch. 392.  
Crappie—Acts 1941, 47th Leg., p. 750, ch. 469.  
Deer—Acts 1935, 44th Leg., Spec.Laws, p. 1167, ch. 4; Acts 1939, 46th Leg., Spec.Laws, p. 759; Acts 1941, 47th Leg., p. 425, ch. 254; Acts 1945, 49th Leg., p. 175, ch. 134.  
Doe—Acts 1945, 49th Leg., p. 175, ch. 134.  
Fawn—Acts 1945, 49th Leg., p. 175, ch. 134.  
Fish—Acts 1941, 47th Leg., p. 750, ch. 469.  
Fur-bearing animals—Acts 1935, 44th Leg., Spec.Laws, p. 1184, ch. 20, repealed by Laws 1937, 45th Leg., p. 740, ch. 365.  
Minnows—Acts 1949, 51st Leg., p. 684, ch. 356.  
Mourning doves—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
Perch—Acts 1941, 47th Leg., p. 750, ch. 469.  
Predatory animals—Acts 1937, 45th Leg., p. 800, ch. 392.  
Predatory fowl—Acts 1937, 45th Leg., p. 800, ch. 392.  
Quail—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
Seine or net fishing—Acts 1935, 44th Leg., Spec.Laws, p. 1209, ch. 44.  
Squirrels—Acts 1937, 45th Leg., 2nd C.S., p. 1990, ch. 63, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 775, ch. 23, § 1; Acts 1957, 55th Leg., p. 859, ch. 376.  
Turkeys—Acts 1939, 46th Leg., Spec.Laws, p. 759; Acts 1941, 47th Leg., p. 425, ch. 254.  
Wildcats—Acts 1937, 45th Leg., p. 800, ch. 392.  
Wildlife resources—Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.  
Wolves—Acts 1937, 45th Leg., p. 800, ch. 392.

## Moore County

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Morris County

Black bass—Acts 1933, 43rd Leg., Spec.Laws, p. 14, ch. 13.  
Buck deer—Acts 1963, 58th Leg., p. 418, ch. 142, repealed by Acts 1965, 59th Leg., p. 453, ch. 230, § 6.  
Coypu (Nutria)—Acts 1959, 56th Leg., p. 125, ch. 72, § 1, amended by Acts 1963, 58th Leg., p. 751, ch. 285.  
Crappie—Acts 1933, 43rd Leg., Spec.Laws, p. 14, ch. 13.  
Daingerfield Lake—Acts 1945, 49th Leg., p. 120, ch. 83.  
Deer—Acts 1953, 53rd Leg., p. 380, ch. 103; Acts 1959, 56th Leg., p. 119, ch. 66; Acts 1961, 57th Leg., p. 85, ch. 48; Acts 1965, 59th Leg., p. 453, ch. 230, amended by Acts 1967, 60th Leg., p. 571, ch. 259.  
Fox—Acts 1939, 46th Leg., Spec.Laws, p. 789, §§ 1, 2.  
Quail—Acts 1965, 59th Leg., p. 852, ch. 412; Acts 1969, 61st Leg., p. 169, ch. 68.  
Seine or net fishing—Acts 1933, 43rd Leg., Spec.Laws, p. 14, ch. 13; Acts 1963, 58th Leg., p. 735, ch. 273.  
Seines or nets—Acts 1959, 56th Leg., ch. 65, p. 118, §§ 1, 2.  
Squirrels—Acts 1959, 56th Leg., ch. 67, p. 119, §§ 1, 2; Acts 1961, 57th Leg., p. 85, ch. 49, amended by Acts 1967, 60th Leg., p. 571, ch. 259.

## Motley County

Deer—Acts 1941, 47th Leg., p. 60, ch. 43.

## Nacogdoches County

Bass—Acts 1933, 43rd Leg., Spec.Laws, p. 10, ch. 8.  
Crappie—Acts 1933, 43rd Leg., Spec.Laws, p. 10, ch. 8.  
Deer—Acts 1949, 51st Leg., p. 721, ch. 384, repealed by Acts 1955, 54th Leg., p. 1157, ch. 440, § 2, re-enacted by Acts 1957, 55th Leg., p. 366, ch. 171, § 2, repealed by Acts 1973, 63rd Leg., p. 14, ch. 11, § 2.  
Fish—Acts 1961, 57th Leg., p. 1156, ch. 523.  
Fishing—Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1963, 58th Leg., p. 139, ch. 82.  
Fox—Acts 1937, 45th Leg., p. 775, ch. 376, expired; Acts 1939, 46th Leg., Spec.Laws, p. 775, ch. 24; Acts 1941, 47th Leg., p. 739, ch. 460; Acts 1969, 61st Leg., p. 1921, ch. 640, amended by Acts 1971, 62nd Leg., p. 940, ch. 151.  
Fur-bearing animals—Acts 1933, 43rd Leg., Spec.Laws, p. 101, ch. 77; Acts 1945, 49th Leg., p. 162, ch. 116.  
Quail—Acts 1967, 60th Leg., p. 1132, ch. 501.  
Seine or net fishing—Acts 1933, 43rd Leg., Spec.Laws, p. 10, ch. 8.  
Squirrels—Acts 1934, 43rd Leg., 3rd C.S., p. 13, ch. 7, § 1, amended by Acts 1939, 46th Leg., Spec.Laws, p. 776, § 1; Acts 1941, 47th Leg., p. 522, ch. 318; Acts 1945, 49th Leg., p. 163, ch. 117; Acts 1955, 54th Leg., p. 497, ch. 142, amended by Acts 1957, 55th Leg., p. 367, ch. 172; Acts 1961, 57th Leg., 1st C.S., p. 134, ch. 30.  
Turkey—Acts 1957, 55th Leg., p. 365, ch. 170; Acts 1967, 60th Leg., p. 895, ch. 392, amended by Acts 1969, 61st Leg., p. 1745, ch. 577.

## Navarro County

Deer—Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1949, 51st Leg., p. 715, ch. 378, expired.  
Fishing—Acts 1951, 52nd Leg., p. 469, ch. 297.  
Fox—Acts 1933, 43rd Leg., Spec.Laws, p. 140, ch. 101, amended by Acts 1933, 43rd Leg., 1st C.S., p. 156, ch. 54; Acts 1934, 43rd Leg., 3rd C.S., p. 99, ch. 48, § 1; Acts 1937, 45th Leg., p. 394, ch. 196, § 1; Acts 1939, 46th Leg., Spec.Laws, p. 777, § 1.

## Navarro County—Cont'd

Turkey—Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired.  
Wildlife resources—Acts 1967, 60th Leg., p. 364, ch. 175; see art. 978j-1, § 15.

## Navigation Districts

Seine, net or trotline fishing—Acts 1937, 45th Leg., p. 300, ch. 156.

## Newton County

Buck deer—Acts 1947, 50th Leg., p. 92, ch. 63; Acts 1955, 54th Leg., p. 890, ch. 341.

Deer—Acts 1935, 44th Leg., Spec.Laws, p. 1178, ch. 14; Acts 1949, 51st Leg., p. 188, ch. 104; Acts 1953, 53rd Leg., p. 781, ch. 311; Acts 1957, 55th Leg., p. 826, ch. 353; Acts 1957, 55th Leg., p. 826, ch. 353, repealed by Acts 1961, 57th Leg., p. 524, ch. 250, § 2.

Dove and quail—Acts 1957, 55th Leg., p. 826, ch. 354.  
Fox—Acts 1935, 44th Leg., 2nd C.S., p. 1749, ch. 456, repealed by Acts 1937, 45th Leg., p. 599, ch. 300, § 1; Acts 1941, 47th Leg., p. 1303, ch. 578, expired; Acts 1947, 50th Leg., p. 161, ch. 99; Acts 1971, 62nd Leg., p. 940, ch. 151.

Fur-bearing animals—Acts 1933, 43rd Leg., 1st C.S., p. 83, ch. 28, amended by Acts 1934, 43rd Leg., 4th C.S., p. 70, ch. 28.

Hunting with dogs—Acts 1963, 58th Leg., p. 1347, ch. 510, amended by Acts 1965, 59th Leg., p. 1500, ch. 651. For laws saved from repeal in part see art. 978j-1, § 15.

Minnows—Acts 1943, 48th Leg., p. 339, ch. 220, repealed by Acts 1953, 53rd Leg., p. 783, ch. 313.

Squirrels—Acts 1932, 42nd Leg., 3rd C.S., p. 13, ch. 12, amended by Acts 1933, 43rd Leg., 1st C.S., p. 269, ch. 96, § 1; Acts 1943, 48th Leg., p. 36, ch. 27, § 1; Acts 1945, 49th Leg., p. 163, ch. 117; Acts 1947, 50th Leg., p. 64, ch. 49; Acts 1949, 51st Leg., p. 505, ch. 278; Acts 1953, 53rd Leg., p. 781, ch. 312; Acts 1957, 55th Leg., p. 825, ch. 352, repealed by Acts 1961, 57th Leg., p. 524, ch. 250, § 2.

Turkey—Acts 1941, 47th Leg., p. 234, ch. 164.

Wildlife resources—Acts 1957, 55th Leg., 2nd C.S., p. 176, ch. 19, amended by Acts 1967, 60th Leg., p. 865, ch. 372; see art. 978j-1, § 15.

## 9th Senatorial District

Turkey—Acts 1941, 47th Leg., p. 40, ch. 28.

## Nolan County

Bass—Acts 1941, 47th Leg., p. 81, ch. 66.

Bream—Acts 1941, 47th Leg., p. 81, ch. 66.

Catfish—Acts 1941, 47th Leg., p. 81, ch. 66.

Crappie—Acts 1941, 47th Leg., p. 81, ch. 66.

Deer—Acts 1949, 51st Leg., p. 16, ch. 19; Acts 1951, 52nd Leg., p. 117, ch. 72; Acts 1955, 54th Leg., p. 366, ch. 84.

Perch—Acts 1941, 47th Leg., p. 81, ch. 66.

Turkey—Acts 1949, 51st Leg., p. 16, ch. 19; Acts 1951, 52nd Leg., p. 117, ch. 72; Acts 1955, 54th Leg., p. 366, ch. 84.

Wildlife resources—Acts 1957, 55th Leg., 1st C.S., p. 106, ch. 40. For repeals see art. 978j-1, § 15.

## North White Wing Zone

Mourning doves—Acts 1937, 45th Leg., p. 870, ch. 428.

White winged doves—Acts 1937, 45th Leg., p. 870, ch. 428.

## North Zone

Chachalacas—Acts 1935, 44th Leg., p. 383, ch. 144.

Mexican pheasants—Acts 1935, 44th Leg., p. 383, ch. 144.

Mourning doves—Acts 1935, 44th Leg., p. 383, ch. 144; Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.

Quail—Acts 1935, 44th Leg., p. 383, ch. 144.

White winged doves—Acts 1935, 44th Leg., p. 383, ch. 144; Acts 1937, 45th Leg., p. 813, ch. 402.

## Nueces County

Animals—Acts 1941, 47th Leg., p. 393, ch. 225, § 1a, added by Acts 1941, 47th Leg., p. 844, ch. 520.

Birds—Acts 1941, 47th Leg., p. 393, ch. 225, § 1a, added by Acts 1941, 47th Leg., p. 844, ch. 520.

Fish—Acts 1937, 45th Leg., p. 841, ch. 412; Acts 1941, 47th Leg., p. 406, ch. 236.

Fowl—Acts 1941, 47th Leg., p. 393, ch. 225, § 1a, added by Acts 1941, 47th Leg., p. 844, ch. 520.

Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.

Oysters—Acts 1943, 48th Leg., p. 177, ch. 102; Acts 1953, 53rd Leg., p. 367, ch. 92.

Seine, net or trawl fishing—Acts 1937, 45th Leg., p. 372, ch. 182; Acts 1937, 45th Leg., p. 841, ch. 412; Acts 1965, 59th Leg., p. 842, ch. 404; Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9.

Shrimp—Acts 1941, 47th Leg., p. 406, ch. 236.

Shrimp trawl—Acts 1957, 55th Leg., p. 200, ch. 88, repealed by Acts 1959, 56th Leg., p. 407, ch. 187, § 15(g).

White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

## Ochiltree County

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Oldham County

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Orange County

Alligators—Acts 1962, 57th Leg., 3rd C.S., p. 182, ch. 68. Repeal, see art. 978j-3, § 5.

## Orange County—Cont'd

Deer—Acts 1943, 48th Leg., p. 210, ch. 129, amended by Acts 1945, 48th Leg., p. 223, ch. 166.

Fish—Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1953, 53rd Leg., p. 926, ch. 386.

Hunting with dogs—Acts 1963, 58th Leg., p. 1347, ch. 510, as amended Acts 1965, 59th Leg., p. 1500, ch. 651. For laws saved from repeal in part see art. 978j-1, § 15.

Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.

Shrimp—Acts 1963, 58th Leg., p. 894, ch. 339, saved from repeal, see art. 978j-1, § 15.

Squirrels—Acts 1945, 49th Leg., p. 163, ch. 117.

White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

Wild deer—Acts 1955, 54th Leg., p. 527, ch. 160.

Wildlife resources—Acts 1957, 55th Leg., p. 378, ch. 181, amended by Acts 1959, 56th Leg., p. 210, ch. 121; Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20; Acts 1967, 60th Leg., p. 865, ch. 372; see art. 978j-1, § 15.

## Oso Creek

Seine, net or trawl fishing—Acts 1937, 45th Leg., p. 372, ch. 182.

## Palo Pinto County

Buck—Acts 1947, 50th Leg., p. 160, ch. 98.

Deer—Acts 1939, 46th Leg., Spec.Laws, p. 778; Acts 1941, 47th Leg., p. 60, ch. 44; Acts 1947, 50th Leg., p. 160, ch. 98.

Doe—Acts 1947, 50th Leg., p. 160, ch. 98.

Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.

Fawn—Acts 1947, 50th Leg., p. 160, ch. 98.

Fish—Acts 1941, 47th Leg., p. 839, ch. 515; Acts 1941, 47th Leg., p. 1306, ch. 582.

Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47, repealed by Acts 1945, 49th Leg., p. 69, ch. 48, § 4; Acts 1943, 48th Leg., p. 323, ch. 207; Acts 1945, 49th Leg., p. 69, ch. 48.

Squirrels—Acts 1933, 43rd Leg., 1st C.S., p. 227, ch. 86.

Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 778; Acts 1941, 47th Leg., p. 60, ch. 44; Acts 1947, 50th Leg., p. 160, ch. 98; Acts 1949, 51st Leg., p. 430, ch. 229.

Wildlife resources—Acts 1951, 52nd Leg., p. 210, ch. 125, amended by Acts 1955, 54th Leg., p. 1248, ch. 499; Acts 1953, 53rd Leg., p. 371, ch. 97; Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Panola County

Buck deer—Acts 1951, 52nd Leg., p. 1195, ch. 493. For laws saved from repeal in part, see art. 978j-1, § 15.

Deer—Acts 1943, 48th Leg., p. 295, ch. 190, amended by Acts 1945, 49th Leg., p. 80, ch. 56; Acts 1945, 49th Leg., p. 159, ch. 112; Acts 1947, 50th Leg., p. 207, ch. 118; Acts 1949, 51st Leg., p. 188, ch. 104; Acts 1955, 54th Leg., p. 376, ch. 96, amended by Acts 1959, 56th Leg., p. 568, ch. 259. For repeals, see art. 978j-1, § 15.

Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.

Fishing—Acts 1955, 54th Leg., p. 375, ch. 95.

Fox—Acts 1947, 50th Leg., p. 166, ch. 103.

Fur-bearing animals—Acts 1939, 46th Leg., Spec.Laws, p. 779, § 3; Acts 1941, 47th Leg., p. 51, ch. 34.

Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1164, ch. 1, repealed by Acts 1941, 47th Leg., p. 52, ch. 35, § 1; Acts 1947, 50th Leg., p. 159, ch. 96; repealed by Acts 1949, 51st Leg., p. 742, ch. 400.

Quail—Acts 1933, 43rd Leg., Spec.Laws, p. 62, ch. 51, repealed by Acts 1934, 43rd Leg., 2nd C.S., p. 71, ch. 23, § 1; Acts 1939, 46th Leg., Spec.Laws, p. 766.

Squirrels—Acts 1949, 51st Leg., p. 362, ch. 185; Acts 1951, 52nd Leg., p. 218, ch. 130; Acts 1955, 54th Leg., p. 484, ch. 137.

Turkey—Acts 1955, 54th Leg., p. 734, ch. 263.

Wildlife resources—Acts 1965, 59th Leg., p. 1286, ch. 590; Acts 1967, 60th Leg., p. 564, ch. 252; Acts 1967, 60th Leg., p. 1199, ch. 536, § 1-A; Acts 1967, 60th Leg., p. 2006, ch. 740. For repeals and laws saved from repeal, see art. 978j-1, § 15.

## Parker County

Deer—Acts 1939, 46th Leg., Spec.Laws, p. 780; Acts 1949, 51st Leg., p. 714, ch. 377, expired.

Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.

Fox—Acts 1939, 46th Leg., Spec.Laws, p. 781.

Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1961, 57th Leg., p. 1088, ch. 488.

Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

Quail—Acts 1949, 51st Leg., p. 714, ch. 377, expired.

Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 780.

White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, amended by Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Parks

Acts 1941, 47th Leg., p. 726, ch. 454, repealed by Acts 1971, 62nd Leg., p. 1652, ch. 465, § 3.

## Parmer County

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Polk County

Deer—Acts 1937, 45th Leg., p. 386, ch. 191, expired; Acts 1937, 45th Leg., 2nd C.S., p. 1991, ch. 64; Acts 1949, 51st Leg., p. 930, ch. 504.

Hunting with dogs—Acts 1963, 58th Leg., p. 1347, ch. 510, amended by Acts 1965, 59th Leg., p. 1500, ch. 651. For laws saved from repeal see art. 978j-1, § 15.

Minnows—Acts 1943, 48th Leg., p. 202, ch. 121; Acts 1961, 57th Leg., p. 1155, ch. 522.

Squirrels—Acts 1943, 48th Leg., p. 203, ch. 122; Acts 1945, 49th Leg., p. 161, ch. 114; Acts 1945, 49th Leg., p. 163, ch. 117.

Turkey—Acts 1937, 45th Leg., 2nd C.S., p. 1991, ch. 64.

Wildlife resources—Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Potter County

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Rains County

Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.

Fox—Acts 1937, 45th Leg., p. 451, ch. 228.

Fresh water fish—Acts 1937, 45th Leg., p. 780, ch. 380; Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1955, 54th Leg., p. 365, ch. 82, amended by Acts 1959, 56th Leg., p. 547, ch. 245, repealed by Acts 1965, 59th Leg., p. 450, ch. 228, § 5.

Quail—Acts 1947, 50th Leg., p. 68, ch. 51; Acts 1957, 55th Leg., 2nd C.S., p. 186, ch. 24.

## Randall County

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Reagan County

Deer—Acts 1941, 47th Leg., p. 1298, ch. 573, expired.

Wildlife resources—Acts 1963, 58th Leg., p. 417, ch. 141. For repeals see art. 978j-1, § 15.

## Real County

Bass—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Bream—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Catfish—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Crappie—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1206, ch. 41, amended by Acts 1937, 45th Leg., p. 670, ch. 334; Acts 1937, 45th Leg., p. 17, ch. 16.

Fresh water fish—Acts 1939, 46th Leg., Spec.Laws, p. 806.

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.

Minnows—Acts 1939, 46th Leg., Spec.Laws, p. 806.

Perch—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Wildlife resources—Acts 1963, 58th Leg., p. 417, ch. 141. For repeals see art. 978j-1, § 15.

## Red River County

Beaver—Acts 1951, 52nd Leg., p. 206, ch. 120.

Deer—Acts 1939, 46th Leg., Spec.Laws, p. 782; Acts 1941, 47th Leg., p. 191, ch. 137; Acts 1945, 49th Leg., p. 169, ch. 124; Acts 1949, 51st Leg., p. 722, ch. 386.

Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.

Fish—Acts 1937, 45th Leg., p. 782, ch. 382; Acts 1943, 48th Leg., p. 338, ch. 219.

Fox—Acts 1937, 45th Leg., p. 483, ch. 245.

Mink—Acts 1941, 47th Leg., p. 233, ch. 163; Acts 1945, 49th Leg., p. 196, ch. 149.

Minnows—Acts 1943, 48th Leg., p. 338, ch. 219.

Mourning doves—Acts 1941, 47th Leg., p. 62, ch. 46.

Raccoon—Acts 1941, 47th Leg., p. 233, ch. 163; Acts 1943, 48th Leg., p. 216, ch. 135, repealed by Acts 1945, 49th Leg., p. 196, ch. 149.

Seine or net fishing—Acts 1933, 43rd Leg., 1st C.S., p. 142, ch. 47, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 824, § 1.

Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 782; Acts 1941, 47th Leg., p. 191, ch. 137; Acts 1945, 49th Leg., p. 169, ch. 124; Acts 1947, 50th Leg., p. 424, ch. 231; Acts 1951, 52nd Leg., p. 206, ch. 120.

Wildlife resources—Acts 1953, 53rd Leg., p. 371, ch. 97; Acts 1955, 54th Leg., p. 1248, ch. 499; Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20; Acts 1963,

## Red River County—Cont'd

58th Leg., p. 596, ch. 217; Acts 1963, 58th Leg., p. 733, ch. 271, amended by Acts 1965, 59th Leg., p. 450, ch. 228, § 2; Acts 1965, 59th Leg., p. 577, ch. 292; Acts 1967, 60th Leg., p. 299, ch. 142; see art. 978j-1, § 15.

## Redfish Bay

Seine, net or trawl fishing—Acts 1937, 45th Leg., p. 372, ch. 182.

## Refugio County

Alligators—Acts 1963, 58th Leg., p. 686, ch. 252, § 15, saved from repeal, see art. 978j-1, § 15. Repeal, see art. 978j-3, § 5.

Fish—Acts 1955, 54th Leg., p. 858, ch. 321. For laws saved from repeal in part, see art. 978j-1, § 15.

Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.

Quail—Acts 1961, 57th Leg., p. 314, ch. 166.

Seine, net or trawl—Acts 1947, 50th Leg., p. 253, ch. 149.

White wing doves—Acts 1937, 45th Leg., p. 813, ch. 403.

## Roberts County

Deer—Acts 1941, 47th Leg., p. 188, ch. 135; Acts 1947, 50th Leg., p. 262, ch. 157.

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

Quail—Acts 1941, 47th Leg., p. 679, ch. 422, repealed by Acts 1943, 48th Leg., p. 197, ch. 114.

Turkey—Acts 1941, 47th Leg., p. 188, ch. 135; Acts 1947, 50th Leg., p. 262, ch. 157.

## Robertson County

Deer—Acts 1935, 44th Leg., Spec.Laws, p. 1187, ch. 23; Acts 1937, 45th Leg., p. 386, ch. 191, expired.

Fox—Acts 1941, 47th Leg., p. 426, ch. 255; Acts 1947, 50th Leg., p. 745, ch. 368; Acts 1949, 51st Leg., p. 13, ch. 15.

Fur-bearing animals—Acts 1941, 47th Leg., p. 426, ch. 255.

Minnows—Acts 1949, 51st Leg., p. 1110, ch. 568.

Mourning doves—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.

Quail—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.

Squirrels—Acts 1935, 44th Leg., Spec.Laws, p. 1186, ch. 22.

Turkey—Acts 1935, 44th Leg., Spec.Laws, p. 1187, ch. 23; Acts 1941, 47th Leg., p. 517, ch. 313.

Wildlife resources—Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Rockport Wildlife Sanctuary

Animals—Acts 1939, 46th Leg., p. 336.

Birds—Acts 1939, 46th Leg., p. 336.

Boundaries—Acts 1965, 59th Leg., p. 1293, ch. 596.

Change of name—Acts 1967, 60th Leg., p. 55, ch. 30, § 1.

## Rockwall County

Fish—Acts 1955, 54th Leg., p. 649, ch. 225.

Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

Minnows—Acts 1952, 53rd Leg., p. 466, ch. 152.

Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.

## Roy Inks Lake

Fishing—Acts 1951, 52nd Leg., p. 167, ch. 105.

## Runnels County

Fishing in New Lake Winters—Acts 1955, 54th Leg., p. 371, ch. 90, amended by Acts 1959, 56th Leg., p. 478, ch. 207.

Minnows—Acts 1959, 56th Leg., p. 479, ch. 208.

## Rusk County

Buck deer—Acts 1951, 52nd Leg., p. 1195, ch. 493; Acts 1961, 57th Leg., p. 715, ch. 338; Acts 1965, 59th Leg., p. 1255, ch. 576; Acts 1967, 60th Leg., p. 935, ch. 413. For laws saved from repeal in part, see art. 978j-1, § 15.

Deer—Acts 1950, 51st Leg., 1st C.S., p. 106, ch. 38.

Fish—Acts 1961, 57th Leg., p. 1062, ch. 474.

Fishing—Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1953, 53rd Leg., p. 926, ch. 386; Acts 1963, 58th Leg., p. 139, ch. 82.

Javelina—Acts 1950, 51st Leg., 1st C.S., p. 106, ch. 38.

Mink—Acts 1957, 55th Leg., p. 795, ch. 330.

Mourning doves—Acts 1937, 45th Leg., p. 848, ch. 418.

Quail—Acts 1933, 43rd Leg., Spec.Laws, p. 62, ch. 51, repealed by Acts 1934, 43rd Leg., 2nd C.S., p. 71, ch. 23, § 1.

Squirrels—Acts 1959, 56th Leg., p. 185, ch. 103, §§ 1, 2.

Wildlife resources—Acts 1965, 59th Leg., p. 1286, ch. 590; Acts 1967, 60th Leg., p. 564, ch. 252; Acts 1967, 60th Leg., p. 935, ch. 413; Acts 1967, 60th Leg., p. 1199, ch. 536, § 1-A; see art. 978j-1, § 15.

## Sabine County

Bobcats—Acts 1933, 43rd Leg., Spec.Laws, p. 149, ch. 106, amended by Acts 1941, 47th Leg., p. 1299, ch. 574.

Buck—Acts 1945, 49th Leg., p. 164, ch. 119.

Buck deer—Acts 1947, 50th Leg., p. 92, ch. 63.

Catamounts—Acts 1933, 43rd Leg., Spec.Laws, p. 149, ch. 106, amended by Acts 1941, 47th Leg., p. 1299, ch. 574.

Deer—Acts 1933, 43rd Leg., Spec.Laws, p. 12, ch. 10, § 1, amended by Acts 1937, 45th Leg., 1st C.S., p. 1819, ch. 39, § 1, expired. Acts

## Sabine County—Cont'd

1939, 46th Leg., Spec.Laws, p. 783; Acts 1943, 48th Leg., p. 199, ch. 118; Acts 1945, 49th Leg., p. 164, ch. 119; Acts 1949, 51st Leg., p. 188, ch. 104; Acts 1953, 53rd Leg., p. 966, ch. 409, amended by Acts 1955, 54th Leg., p. 1157, ch. 440, § 3; Acts 1957, 55th Leg., p. 366, ch. 171; Acts 1959, 56th Leg., p. 1097, ch. 499; Acts 1961, 57th Leg., 1st C.S., p. 134, ch. 30; Acts 1965, 59th Leg., p. 1482, ch. 646, repealed by Acts 1971, 62nd Leg., p. 950, ch. 160, § 3.

Doe—Acts 1945, 49th Leg., p. 164, ch. 119.

Fawn—Acts 1945, 49th Leg., p. 164, ch. 119.

Fish—Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1957, 55th Leg., p. 800, ch. 335; Acts 1963, 58th Leg., p. 139, ch. 82.

Fox—Acts 1947, 50th Leg., p. 166, ch. 103; Acts 1969, 61st Leg., p. 1921, ch. 640, amended by Acts 1971, 62nd Leg., p. 940, ch. 151.

Game birds and animals—Acts 1963, 58th Leg., p. 744, ch. 280.

Opossums—Acts 1933, 43rd Leg., Spec.Laws, p. 149, ch. 106, amended by Acts 1941, 47th Leg., p. 1209, ch. 574.

Seine fishing—Acts 1939, 46th Leg., Spec.Laws, p. 825.

Squirrels—Acts 1933, 43rd Leg., Spec.Laws, p. 11, ch. 9; Acts 1937, 45th Leg., p. 844, ch. 415; Acts 1943, 48th Leg., p. 199, ch. 118; Acts 1945, 49th Leg., p. 163, ch. 117; Acts 1947, 50th Leg., p. 64, ch. 49; Acts 1949, 51st Leg., p. 505, ch. 278, repealed by Acts 1955, 54th Leg., p. 497, ch. 142; Acts 1957, 55th Leg., p. 367, ch. 172.

Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 783; Acts 1955, 54th Leg., p. 734, ch. 263; Acts 1967, 60th Leg., p. 895, ch. 392, amended by Acts 1969, 61st Leg., p. 1745, ch. 577.

## Sabine River

Rough fish—Acts 1967, 60th Leg., p. 1128, ch. 497.

## Sam Rayburn Reservoir

Fishing—Acts 1967, 60th Leg., p. 1130, ch. 500; see art. 978j-1, § 15.

## San Augustine County

Bobcats—Acts 1933, 43rd Leg., Spec.Laws, p. 149, ch. 106, amended by Acts 1941, 47th Leg., p. 1299, ch. 574.

Buck—Acts 1945, 49th Leg., p. 164, ch. 119.

Buck deer—Acts 1947, 50th Leg., p. 92, ch. 63.

Catamounts—Acts 1933, 43rd Leg., Spec.Laws, p. 149, ch. 106, amended by Acts 1941, 47th Leg., p. 1299, ch. 574.

Deer—Acts 1933, 43rd Leg., Spec.Laws, p. 12, ch. 10, § 1, amended by Acts 1937, 45th Leg., 1st C.S., p. 1819, ch. 39, § 1, expired. Acts 1939, 46th Leg., Spec.Laws, p. 783; Acts 1943, 48th Leg., p. 199, ch. 118; Acts 1945, 49th Leg., p. 164, ch. 119; Acts 1949, 51st Leg., p. 188, ch. 104; Acts 1953, 53rd Leg., p. 966, ch. 409, amended by Acts 1955, 54th Leg., p. 1157, ch. 440, § 3; Acts 1957, 55th Leg., p. 366, ch. 171; Acts 1961, 57th Leg., 1st C.S., p. 134, ch. 30; Acts 1965, 59th Leg., p. 1482, ch. 646, repealed by Acts 1971, 62nd Leg., p. 950, ch. 160, § 3; Acts 1971, 62nd Leg., p. 1855, ch. 543, § 2.

Doe—Acts 1945, 49th Leg., p. 164, ch. 119.

Fawn—Acts 1945, 49th Leg., p. 164, ch. 119.

Fish—Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1961, 57th Leg., p. 1156, ch. 523.

Fox—Acts 1947, 50th Leg., p. 166, ch. 103; Acts 1969, 61st Leg., p. 1921, ch. 640, amended by Acts 1971, 62nd Leg., p. 940, ch. 151.

Opossums—Acts 1933, 43rd Leg., Spec.Laws, p. 149, ch. 106, amended by Acts 1941, 47th Leg., p. 1299, ch. 574.

Quail—Acts 1967, 60th Leg., p. 1132, ch. 501.

Squirrels—Acts 1933, 43rd Leg., Spec.Laws, p. 11, ch. 9; Acts 1937, 45th Leg., p. 844, ch. 415; Acts 1943, 48th Leg., p. 199, ch. 118; Acts 1945, 49th Leg., p. 163, ch. 117; Acts 1947, 50th Leg., p. 64, ch. 49; Acts 1949, 51st Leg., p. 505, ch. 278, repealed Acts 1955, 54th Leg., p. 497, ch. 142, amended by Acts 1957, 55th Leg., p. 367, ch. 172; Acts 1961, 57th Leg., 1st C.S., p. 134, ch. 30, § 2; and Acts 1971, 62nd Leg., p. 1856, ch. 544, § 1.

Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 783; Acts 1955, 54th Leg., p. 734, ch. 263.

## San Jacinto County

Deer—Acts 1937, 45th Leg., 2nd C.S., p. 1919, ch. 36; Acts 1941, 47th Leg., p. 425, ch. 254; Acts 1949, 51st Leg., p. 929, ch. 503, expired.

Fox—Acts 1943, 48th Leg., p. 259, ch. 159.

Hunting with dogs—Acts 1963, 58th Leg., p. 1347, ch. 510, amended by Acts 1965, 59th Leg., p. 1500, ch. 651. For laws saved from repeal in part, see art. 978j-1, § 15.

Mourning doves—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.

Quail—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.

Squirrels—Acts 1935, 44th Leg., Spec.Laws, p. 1186, ch. 22; Acts 1957, 55th Leg., p. 381, ch. 184.

Turkey—Acts 1941, 47th Leg., p. 425, ch. 254.

## San Patricio County

Animals—Acts 1941, 47th Leg., p. 393, ch. 225.

Birds—Acts 1941, 47th Leg., p. 393, ch. 225.

Fish—Acts 1937, 45th Leg., p. 23, ch. 21; Acts 1937, 45th Leg., p. 841, ch. 412.

Fowl—Acts 1941, 47th Leg., p. 393, ch. 225, amended by Acts 1959, 56th Leg., 1st C.S., p. 37, ch. 14.

Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.

Quail—Acts 1961, 57th Leg., p. 314, ch. 166.

Seine, net or trawl—Acts 1947, 50th Leg., p. 253, ch. 149.

Seine or net fishing—Acts 1937, 45th Leg., p. 23, ch. 21; Acts 1937, 45th Leg., p. 841, ch. 412.

## San Patricio County—Cont'd

White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

Wildlife resources—Acts 1963, 58th Leg., p. 991, ch. 408. For repeals see art. 978j-1, § 15.

## San Saba County

Antlerless deer—Acts 1961, 57th Leg., p. 375, ch. 189, repealed by Acts 1963, 58th Leg., p. 1013, ch. 421, § 12.

Black bass—Acts 1939, 46th Leg., Spec.Laws, p. 793.

Catfish—Acts 1939, 46th Leg., Spec.Laws, p. 793.

Crappie—Acts 1939, 46th Leg., Spec.Laws, p. 793.

Deer—Acts 1963, 58th Leg., p. 1013, ch. 421. For repeals see art. 978j-1, § 15.

Fish—Acts 1947, 50th Leg., p. 31, ch. 23, § 1, 2.

Fishing—Acts 1953, 53rd Leg., p. 556, ch. 205.

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6.

Hunting with bows and arrows—Acts 1965, 59th Leg., p. 872, ch. 428, saved from repeal, see art. 978j-1, § 15.

Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1961, 57th Leg., p. 1088, ch. 488; Acts 1963, 58th Leg., p. 952, ch. 377.

Quail—Acts 1939, 46th Leg., Spec.Laws, p. 774.

White bass—Acts 1939, 46th Leg., Spec.Laws, p. 793.

White perch—Acts 1939, 46th Leg., Spec.Laws, p. 793.

## Schleicher County

Deer—Acts 1941, 47th Leg., p. 548, ch. 343, repealed by Acts 1945, 49th Leg., p. 159, ch. 111.

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.

Turkey—Acts 1941, 47th Leg., p. 548, ch. 343, repealed by Acts 1945, 49th Leg., p. 159, ch. 111.

Wildlife resources—Acts 1962, 57th Leg., 3rd C.S., p. 20, ch. 7.

## Scurry County

Deer—Acts 1941, 47th Leg., p. 60, ch. 43.

Firearms—Acts 1959, 56th Leg., p. 581, ch. 265, § 9, repealed by Acts 1969, 61st Leg., p. 1805, ch. 609, § 2. For laws saved from repeal in part, see art. 978j-1, § 15.

Fish—Acts 1959, 56th Leg., p. 581, ch. 265, repealed by Acts 1969, 61st Leg., p. 1805, ch. 609, § 2. For laws saved from repeal in part, see art. 978j-1, § 15.

Mourning doves—Acts 1943, 48th Leg., p. 185, ch. 105.

Quail—Acts 1943, 48th Leg., p. 185, ch. 105; Acts 1957, 55th Leg., p. 172, ch. 78, repealed by Acts 1959, 56th Leg., 2nd C.S., p. 148, ch. 32.

## 2nd-7th Senatorial Districts

Turkey—Acts 1941, 47th Leg., p. 517, ch. 313, repealed in part Acts 1967, 60th Leg., p. 895, ch. 392, § 3.

## Shackelford County

Bass—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Bream—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Buck—Acts 1947, 50th Leg., p. 160, ch. 98.

Buffalo fish—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Carp—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Catfish—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Commercial fishing—Acts 1939, 46th Leg., Spec.Laws, p. 802, ch. 53.

Crappie—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Deer—Acts 1937, 45th Leg., p. 41, ch. 30; Acts 1941, 47th Leg., p. 58, ch. 41, repealed by Acts 1941, 47th Leg., p. 1305, ch. 580, § 3; Acts 1941, 47th Leg., p. 1305, ch. 580, expired; Acts 1947, 50th Leg., p. 160, ch. 98; Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1953, 53rd Leg., p. 474, ch. 164; Acts 1959, 56th Leg., p. 198, ch. 111.

Doe—Acts 1947, 50th Leg., p. 160, ch. 98.

Drum—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Fawn—Acts 1947, 50th Leg., p. 160, ch. 98.

Gars—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Goggle-eyed perch—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Minnows—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Seine or net fishing—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Suckers—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Sunfish—Acts 1937, 45th Leg., p. 435, ch. 223, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 803, § 1.

Turkey—Acts 1937, 45th Leg., p. 41, ch. 30; Acts 1941, 47th Leg., p. 58, ch. 41, repealed by Acts 1941, 47th Leg., p. 1305, ch. 580, § 3; Acts 1941, 47th Leg., p. 1305, ch. 580; Acts 1947, 50th Leg., p. 160, ch. 98; Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1953, 53rd Leg., p. 474, ch. 164; Acts 1959, 56th Leg., p. 198, ch. 111.

## Shackelford County—Cont'd

Wildlife resources—Acts 1965, 59th Leg., p. 860, ch. 421. For repeals see art. 978j-1, § 15.

## Shebly County

Buck deer—Acts 1951, 52nd Leg., p. 1195, ch. 493; Acts 1961, 57th Leg., p. 715, ch. 338; Acts 1965, 59th Leg., p. 1255, ch. 576; Acts 1967, 60th Leg., p. 935, ch. 413. For laws saved from repeal in part, see art. 978j-1, § 15.

Deer—Acts 1941, 47th Leg., p. 1418, ch. 651; Acts 1949, 51st Leg., p. 188, ch. 104.

Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.

Fox—Acts 1947, 50th Leg., p. 166, ch. 103; Acts 1949, 51st Leg., p. 527, ch. 289; Acts 1963, 58th Leg., p. 51, ch. 33; Acts 1969, 61st Leg., p. 1921, ch. 640, amended by Acts 1971, 62nd Leg., p. 940, ch. 151.

Fur-bearing animals—Acts 1939, 46th Leg., Spec.Laws, p. 784, ch. 34, repealed by Acts 1945, 49th Leg., p. 172, ch. 128; Acts 1949, 51st Leg., p. 964, ch. 531.

Mink—Acts 1936, 44th Leg., 3rd C.S., p. 2030, ch. 490.

Opossum—Acts 1936, 44th Leg., 3rd C.S., p. 2030, ch. 490.

Quail—Acts 1936, 44th Leg., 3rd C.S., p. 2030, ch. 490; Acts 1937, 45th Leg., p. 211, ch. 112, amended by Acts 1967, 60th Leg., p. 1132, ch. 501.

Raccoons—Acts 1936, 44th Leg., 3rd C.S., p. 2030, ch. 490.

Squirrels—Acts 1936, 44th Leg., 3rd C.S., p. 2030, ch. 490; Acts 1937, 45th Leg., p. 211, ch. 112; Acts 1939, 46th Leg., Spec.Laws, p. 784, ch. 33; Acts 1945, 49th Leg., p. 163, ch. 117, repealed by Acts 1971, 62nd Leg., p. 1856, ch. 544, § 2.

Turkey—Acts 1955, 54th Leg., p. 734, ch. 263.

## Sherman County

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Smith County

Deer—Acts 1963, 58th Leg., p. 1010, ch. 417, amended by Acts 1967, 60th Leg., p. 1129, ch. 498.

Fish—Acts 1949, 51st Leg., p. 838, ch. 455, expired; Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1963, 58th Leg., p. 139, ch. 82.

Fox—Acts 1937, 45th Leg., p. 483, ch. 245.

Game birds—Acts 1947, 50th Leg., p. 1029, ch. 442.

Mourning doves—Acts 1933, 43rd Leg., Spec.Laws, p. 48, ch. 41.

Pheasant—Acts 1937, 45th Leg., p. 659, ch. 327, expired; Acts 1953, 53rd Leg., p. 964, ch. 407.

Quail—Acts 1939, 46th Leg., Spec.Laws, p. 787.

Squirrel—Acts 1963, 58th Leg., p. 1010, ch. 417.

## Somervell County

Deer—Acts 1939, 46th Leg., Spec.Laws, p. 785, amended by Acts 1939, 46th Leg., Spec.Laws, p. 786, § 1; Acts 1955, 54th Leg., p. 753, ch. 272.

Fishing—Acts 1953, 53rd Leg., p. 524, ch. 188.

Minnows—Acts 1937, 45th Leg., p. 815, ch. 403, amended by Acts 1941, 47th Leg., p. 134, ch. 104; Acts 1951, 52nd Leg., p. 641, ch. 375, repealed by Acts 1957, 55th Leg., p. 390, ch. 191, § 4; Acts 1957, 55th Leg., p. 390, ch. 191, §§ 1-3.

Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 785, amended by Acts 1939, 46th Leg., Spec.Laws, p. 786, § 1.

Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, amended by Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121; Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Somerville Reservoir

Wildlife resources—Acts 1965, 59th Leg., p. 1446, ch. 636. For repeals see art. 978j-1, § 15.

## South Zone

Chachalacas—Acts 1935, 44th Leg., p. 383, ch. 144.

Mexican pheasants—Acts 1935, 44th Leg., p. 383, ch. 144.

Mourning doves—Acts 1935, 44th Leg., p. 383, ch. 144; Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.

Quail—Acts 1935, 44th Leg., p. 383, ch. 144.

White winged doves—Acts 1935, 44th Leg., p. 383, ch. 144; Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.

## Starr County

Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.

Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.

White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

Wildlife resources—Acts 1963, 58th Leg., p. 757, ch. 287; Acts 1967, 60th Leg., p. 521, ch. 225; see art. 978j-1, § 15.

## Stephens County

Buck—Acts 1947, 50th Leg., p. 160, ch. 98.

Deer—Acts 1941, 47th Leg., p. 60, ch. 44; Acts 1947, 50th Leg., p. 160, ch. 98.

Doe—Acts 1947, 50th Leg., p. 160, ch. 98.

Fawn—Acts 1947, 50th Leg., p. 160, ch. 98.

Fish—Acts 1941, 47th Leg., p. 1306, ch. 582.

Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47, repealed by Acts 1945, 49th Leg., p. 69, ch. 48, § 4. Acts 1943, 48th Leg., p. 323, ch. 207; Acts 1945, 49th Leg., p. 69, ch. 48.

## Stephens County—Cont'd

Turkey—Acts 1941, 47th Leg., p. 60, ch. 44; Acts 1947, 50th Leg., p. 160, ch. 98; Acts 1949, 51st Leg., p. 430, ch. 229.

Wildlife resources—Acts 1951, 52nd Leg., p. 210, ch. 125, amended by Acts 1953, 53rd Leg., p. 371, ch. 97; Acts 1955, 54th Leg., p. 1248, ch. 499; Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121; Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Sterling County

Carp—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.

Catfish—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.

Deer—Acts 1941, 47th Leg., p. 1300, ch. 573, expired.

Gar—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.

Minnows—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.

Squirrel—Acts 1932, 42nd Leg., 3rd C.S., p. 13, ch. 12, amended by Acts 1933, 43rd Leg., 1st C.S., p. 269, ch. 96, § 1; Acts 1943, 48th Leg., p. 30, ch. 27, § 1.

Suckers—Acts 1941, 47th Leg., p. 1300, ch. 575, expired.

Wildlife resources—Acts 1965, 59th Leg., p. 350, ch. 166; Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Stonewall County

Deer—Acts 1941, 47th Leg., p. 60, ch. 43.

Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.

Wildlife resources—Acts 1965, 59th Leg., p. 890, ch. 393. For repeals see art. 978j-1, § 15.

## Sutton County

Bass—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Bream—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Catfish—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Crappie—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1206, ch. 41, amended by Acts 1937, 45th Leg., p. 670, ch. 334; Acts 1937, 45th Leg., p. 17, ch. 16.

Fresh water fish—Acts 1939, 46th Leg., Spec.Laws, p. 806.

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.

Minnows—Acts 1939, 46th Leg., Spec.Laws, p. 806.

Perch—Acts 1937, 45th Leg., p. 17, ch. 16; Acts 1939, 46th Leg., Spec.Laws, p. 806.

Squirrels—Acts 1941, 47th Leg., p. 234, ch. 165.

Wildlife resources—Acts 1955, 54th Leg., p. 15, ch. 13; Acts 1955, 54th Leg., p. 950, ch. 372; Acts 1957, 55th Leg., p. 102, ch. 50; Acts 1957, 55th Leg., 2nd C.S., p. 171, ch. 14; Acts 1961, 57th Leg., p. 722, ch. 340; Acts 1961, 57th Leg., p. 764, ch. 354; Acts 1963, 58th Leg., p. 417, ch. 141; Acts 1965, 59th Leg., p. 869, ch. 424; Acts 1965, 59th Leg., p. 1015, ch. 499, § 2. For repeals see art. 978j-1, § 15.

## Swisher County

Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.

## Tarrant County

Animals—Acts 1959, 56th Leg., p. 19, ch. 12. For repeals see art. 978j-1, § 15.

Birds—Acts 1959, 56th Leg., p. 19, ch. 12. For repeals see art. 978j-1, § 15.

Fish—Acts 1941, 47th Leg., p. 367, ch. 205, amended by Acts 1943, 48th Leg., p. 78, ch. 62; Acts 1959, 56th Leg., p. 19, ch. 12. For repeals see art. 978j-1, § 15.

Fur-bearing animals—Acts 1959, 56th Leg., p. 19, ch. 12. For repeals see art. 978j-1, § 15.

## Taylor County

Bass—Acts 1941, 47th Leg., p. 864, ch. 538.

Bream—Acts 1941, 47th Leg., p. 864, ch. 538.

Catfish—Acts 1941, 47th Leg., p. 864, ch. 538.

Crappie—Acts 1941, 47th Leg., p. 864, ch. 538.

Deer—Acts 1939, 46th Leg., Spec.Laws, p. 788; Acts 1947, 50th Leg., p. 393, ch. 221; Acts 1949, 51st Leg., p. 335, ch. 164.

Fish—Acts 1941, 47th Leg., p. 864, ch. 538; Acts 1955, 54th Leg., p. 559, ch. 178.

Minnows—Acts 1941, 47th Leg., p. 864, ch. 538; Acts 1947, 50th Leg., p. 157, ch. 94.

Perch—Acts 1941, 47th Leg., p. 864, ch. 538.

Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 788; Acts 1949, 51st Leg., p. 335, ch. 164.

White perch—Acts 1941, 47th Leg., p. 864, ch. 538.

Wildlife resources—Acts 1959, 56th Leg., p. 600, ch. 278. For repeals see art. 978j-1, § 15.

## Terrell County

Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.

## Terry County

Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.

## Terry County—Cont'd

- Prairie chickens—Acts 1945, 49th Leg., p. 121, ch. 84.  
 Quail—Acts 1939, 46th Leg., Spec.Laws, p. 769, ch. 15; Acts 1945, 49th Leg., p. 121, ch. 84.  
 Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Texarkana Lake

- Boats and firearms—Acts 1957, 55th Leg., 1st C.S., p. 3, ch. 3.

## Texoma Lake

- Fish—Acts 1953, 53rd Leg., p. 939, ch. 397.

## 13th-17th Senatorial Districts

- Turkey—Acts 1941, 47th Leg., p. 517, ch. 313.

## Throckmorton County

- Deer—Acts 1937, 45th Leg., p. 41, ch. 30; Acts 1941, 47th Leg., p. 58, ch. 41, repealed by Acts 1941, 47th Leg., p. 1305, ch. 580, § 3; Acts 1941, 47th Leg., p. 1305, ch. 580, expired; Acts 1947, 50th Leg., p. 537, ch. 317; Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1953, 53rd Leg., p. 932, ch. 391; Acts 1957, 55th Leg., p. 201, ch. 89; Acts 1959, 56th Leg., p. 197, ch. 110; Acts 1961, 57th Leg., p. 314, ch. 165.  
 Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.  
 Turkey—Acts 1937, 45th Leg., p. 41, ch. 30; Acts 1941, 47th Leg., p. 58, ch. 41, repealed by Acts 1941, 47th Leg., p. 1305, ch. 580, § 3; Acts 1941, 47th Leg., p. 1305, ch. 580; Acts 1947, 50th Leg., p. 537, ch. 317; Acts 1933, 43rd Leg., Spec.Laws, p. 25, ch. 20, expired; Acts 1953, 53rd Leg., p. 932, ch. 391; Acts 1957, 55th Leg., p. 201, ch. 89; Acts 1959, 56th Leg., p. 197, ch. 110; Acts 1961, 57th Leg., p. 314, ch. 165.  
 Wildlife resources—Acts 1965, 59th Leg., p. 331, ch. 156. For repeals see art. 978j-1, § 15.

## Titus County

- Black bass—Acts 1933, 43rd Leg., Spec.Laws, p. 14, ch. 13.  
 Crappie—Acts 1933, 43rd Leg., Spec.Laws, p. 14, ch. 13.  
 Fox—Acts 1939, 46th Leg., Spec.Laws, p. 789, § 1, 2.  
 Seine or net fishing—Acts 1933, 43rd Leg., Spec.Laws, p. 14, ch. 13.  
 Wildlife resources—Acts 1953, 53rd Leg., p. 371, ch. 97; Acts 1955, 54th Leg., p. 1248, ch. 499; Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121; Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Tom Green County

- Carp—Acts 1941, 47th Leg., p. 830, ch. 512, expired.  
 Catfish—Acts 1941, 47th Leg., p. 830, ch. 512, expired.  
 Deer—Acts 1941, 47th Leg., p. 1298, ch. 573, expired.  
 Fish—Acts 1941, 47th Leg., p. 830, ch. 512, expired; Acts 1945, 49th Leg., p. 165, ch. 120; Acts 1953, 53rd Leg., p. 105, ch. 71.  
 Gar—Acts 1941, 47th Leg., p. 830, ch. 512, expired.  
 Minnows—Acts 1941, 47th Leg., p. 830, ch. 512, expired; Acts 1945, 49th Leg., p. 165, ch. 120.  
 Squirrel—Acts 1932, 42nd Leg., 3rd C.S., p. 13, ch. 12, amended by Acts 1933, 43rd Leg., 1st C.S., p. 269, ch. 96, § 1; Acts 1943, 48th Leg., p. 30, ch. 27, § 1.  
 Suckers—Acts 1941, 47th Leg., p. 830, ch. 512, expired.  
 Wildlife resources—Acts 1967, 60th Leg., p. 144, ch. 74; see art. 978j-1, § 15.

## Travis County

- Bass—Acts 1937, 45th Leg., p. 842, ch. 413; Acts 1941, 47th Leg., p. 538, ch. 333.  
 Black bass—Acts 1937, 45th Leg., p. 842, ch. 413; Acts 1939, 46th Leg., Spec.Laws, p. 793; Acts 1941, 47th Leg., p. 538, ch. 333.  
 Bream—Acts 1941, 47th Leg., p. 538, ch. 333.  
 Catfish—Acts 1937, 45th Leg., p. 842, ch. 413; Acts 1939, 46th Leg., Spec.Laws, p. 793; Acts 1941, 47th Leg., p. 538, ch. 333.  
 Crappie—Acts 1937, 45th Leg., p. 842, ch. 413; Acts 1939, 46th Leg., Spec.Laws, p. 793; Acts 1941, 47th Leg., p. 538, ch. 333.  
 Deer—Acts 1962, 57th Leg., 3rd C.S., p. 197, ch. 75.  
 Fish—Acts 1941, 47th Leg., p. 538, ch. 333; Acts 1943, 48th Leg., p. 5, ch. 5.  
 Fresh-water drum—Acts 1937, 45th Leg., p. 842, ch. 413.  
 Gaspergou—Acts 1937, 45th Leg., p. 842, ch. 413; Acts 1941, 47th Leg., p. 538, ch. 333.  
 Hunting with bows and arrows—Acts 1965, 59th Leg., p. 872, ch. 428, saved from repeal, see art. 978j-1, § 15.  
 Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45, amended by Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47, amended by Acts 1943, 48th Leg., p. 323, ch. 207; Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1939, 46th Leg., Spec.Laws, p. 811, ch. 61; Acts 1941, 47th Leg., p. 538, ch. 333.  
 Pheasants—Acts 1955, 54th Leg., p. 1151, ch. 435.  
 Rough fish—Acts 1951, 52nd Leg., p. 382, ch. 244.  
 White bass—Acts 1937, 45th Leg., p. 842, ch. 413; Acts 1939, 46th Leg., Spec.Laws, p. 793; Acts 1941, 47th Leg., p. 538, ch. 333.  
 White perch—Acts 1937, 45th Leg., p. 842, ch. 413; Acts 1939, 46th Leg., Spec.Laws, p. 793.  
 Wildlife resources—Acts 1965, 59th Leg., p. 1015, ch. 499. For repeals see art. 978j-1, § 15.

## Travis Lake

- Fishing—Acts 1951, 52nd Leg., p. 167, ch. 105.

## Trinity Bay

- Fishing and shrimping—Acts 1957, 55th Leg., p. 1394, ch. 480.

## Trinity County

- Deer—Acts 1951, 52nd Leg., p. 606, ch. 357.  
 Hunting with dogs—Acts 1963, 58th Leg., p. 1347, ch. 510, amended by Acts 1965, 59th Leg., p. 1500, ch. 651. For laws saved from repeal in part, see art. 978j-1, § 15.  
 Minnows—Acts 1943, 48th Leg., p. 202, ch. 121; Acts 1961, 57th Leg., p. 1155, ch. 522.  
 Squirrels—Acts 1943, 48th Leg., p. 203, ch. 122; Acts 1945, 49th Leg., p. 161, ch. 114; Acts 1945, 49th Leg., p. 163, ch. 117; Acts 1957, 55th Leg., p. 856, ch. 372, § 2; Acts 1957, 55th Leg., 1st C.S., p. 4, ch. 4, § 2.  
 Wildlife resources—Acts 1961, 57th Leg., p. 1151, ch. 521. For repeals see art. 978j-1, § 15.

## Trinity River

- Catfish, taking in Chambers County—Acts 1959, 56th Leg., 2nd C.S., p. 108, ch. 18, amended by Acts 1971, 62nd Leg., p. 842, ch. 98.

## Tyler County

- Buck deer—Acts 1947, 50th Leg., p. 92, ch. 63; Acts 1955, 54th Leg., p. 890, ch. 341.  
 Deer—Acts 1949, 51st Leg., p. 624, ch. 333; Acts 1953, 53rd Leg., p. 783, ch. 314; Acts 1957, 55th Leg., p. 826, ch. 353, repealed by Acts 1961, 57th Leg., p. 524, ch. 250, § 2. For repeals see art. 978j-1, § 15.  
 Dove and quail—Acts 1957, 55th Leg., p. 826, ch. 354.  
 Fish—Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1953, 53rd Leg., p. 783, ch. 314.  
 Fox—Acts 1937, 45th Leg., p. 89, ch. 53, expired; Acts 1939, 46th Leg., Spec.Laws, p. 756; Acts 1941, 47th Leg., p. 1303, ch. 578, expired; Acts 1971, 62nd Leg., p. 940, ch. 151.  
 Hunting with dogs—Acts 1963, 58th Leg., p. 1347, ch. 651, as amended Acts 1965, 59th Leg., p. 1500, ch. 651. For laws saved from repeal in part, see art. 978j-1, § 15.  
 Seine or net fishing—Acts 1955, 54th Leg., p. 891, ch. 342.  
 Squirrels—Acts 1933, 43rd Leg., Spec.Laws, p. 98, ch. 75; Acts 1934, 43rd Leg., 3rd C.S., p. 107, ch. 55; Acts 1945, 49th Leg., p. 163, ch. 117; Acts 1947, 50th Leg., p. 64, ch. 49; Acts 1949, 51st Leg., p. 505, ch. 278, repealed by Acts 1953, 53rd Leg., p. 783, ch. 314, § 4; Acts 1953, 53rd Leg., p. 783, ch. 314, § 2; Acts 1957, 55th Leg., p. 825, ch. 352, repealed by Acts 1961, 57th Leg., p. 524, ch. 250. For repeals see art. 978j-1, § 15.  
 Turkey—Acts 1941, 47th Leg., p. 548, ch. 344.  
 Wildlife resources—Acts 1957, 55th Leg., 2nd C.S., p. 176, ch. 19; Acts 1961, 57th Leg., p. 524, ch. 250, § 1; Acts 1967, 60th Leg., p. 865, ch. 372; see art. 978j-1, § 15.

## Upshur County

- Deer—Acts 1941, 47th Leg., p. 1413, ch. 645; Acts 1953, 53rd Leg., p. 936, ch. 393, amended by Acts 1955, 54th Leg., p. 885, ch. 338; Acts 1957, 55th Leg., p. 796, ch. 331; Acts 1959, 56th Leg., p. 584, ch. 267.  
 Deer—Acts 1961, 57th Leg., p. 779, ch. 362; Acts 1965, 59th Leg., p. 1285, ch. 589, amended by Acts 1971, 62nd Leg., p. 2450, ch. 790, § 2.  
 Fox—Acts 1933, 43rd Leg., Spec.Laws, p. 87, ch. 66; Acts 1933, 43rd Leg., 1st C.S., p. 138, ch. 42, amended by Acts 1945, 49th Leg., p. 168, ch. 123.  
 Mink—Acts 1957, 55th Leg., p. 795, ch. 330.  
 Quail—Acts 1949, 51st Leg., p. 506, ch. 279; Acts 1951, 52nd Leg., p. 277, ch. 160; Acts 1953, 53rd Leg., p. 1053, ch. 437; Acts 1971, 62nd Leg., p. 2450, ch. 790, § 4.  
 Squirrels—Acts 1959, 56th Leg., p. 583, ch. 266; Acts 1961, 57th Leg., p. 778, ch. 361.  
 Turkey—Acts 1941, 47th Leg., p. 1413, ch. 645; Acts 1967, 60th Leg., p. 895, ch. 392, amended by Acts 1969, 61st Leg., p. 1745, ch. 577.

## Uvalde County

- Fish—Acts 1939, 46th Leg., Spec.Laws, p. 810, amended by Acts 1941, 47th Leg., p. 524, ch. 320.  
 Fishing—Acts 1943, 48th Leg., p. 480, ch. 320.  
 Minnows—Acts 1939, 46th Leg., Spec.Laws, p. 810.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402, amended by Acts 1937, 45th Leg., p. 859, ch. 424; Acts 1937, 45th Leg., p. 870, ch. 428.  
 White winged doves—Acts 1937, 45th Leg., p. 813, ch. 402, amended by Acts 1937, 45th Leg., p. 859, ch. 424.  
 Wildlife resources—Acts 1961, 57th Leg., p. 186, ch. 99.

## Val Verde County

- Beaver—Acts 1935, 44th Leg., Spec.Laws, p. 1204, ch. 39.  
 Black bass—Acts 1941, 47th Leg., p. 682, ch. 425.  
 Buck deer—Acts 1954, 53rd Leg., 1st C.S., p. 57, ch. 22; Acts 1962, 57th Leg., 3rd C.S., p. 183, ch. 69.  
 Catfish—Acts 1941, 47th Leg., p. 682, ch. 425.  
 Crappie—Acts 1941, 47th Leg., p. 682, ch. 425.  
 Fish—Acts 1947, 50th Leg., p. 962, ch. 416; Acts 1963, 58th Leg., p. 23, ch. 17.  
 Fishing—Acts 1941, 47th Leg., p. 682, ch. 425.  
 Fresh-water drum—Acts 1941, 47th Leg., p. 682, ch. 425.  
 Gaspergou—Acts 1941, 47th Leg., p. 682, ch. 425.  
 Hunting and fishing—Acts 1937, 45th Leg., p. 1332, ch. 494, amended by Acts 1939, 46th Leg., Spec.Laws, p. 841, § 1, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 836, § 6, amended by Acts 1943, 48th Leg., p. 218, ch. 137.

## Val Verde County—Cont'd

- Minnows—Acts 1941, 47th Leg., p. 682, ch. 425.  
 White bass—Acts 1941, 47th Leg., p. 682, ch. 425.  
 Wildlife resources—Acts 1963, 58th Leg., p. 417, ch. 141. For repeals see art. 978j-1, § 15.

## Van Zandt County

- Animals—Acts 1937, 45th Leg., 2nd C.S., p. 1967, ch. 55.  
 Birds—Acts 1937, 45th Leg., 2nd C.S., p. 1967, ch. 55.  
 Bobwhite—Acts 1937, 45th Leg., p. 3, ch. 3, expired.  
 Deer—Acts 1969, 61st Leg., p. 879, ch. 293.  
 Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.  
 Fresh water fish—Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34; Acts 1955, 54th Leg., p. 365, ch. 82, amended by Acts 1959, 56th Leg., p. 547, ch. 245, repealed by Acts 1965, 59th Leg., p. 450, ch. 228, § 5.  
 Mink—Acts 1955, 54th Leg., p. 368, ch. 86.  
 Quail—Acts 1937, 45th Leg., p. 3, ch. 3, expired; Acts 1941, 47th Leg., p. 431, ch. 263; Acts 1947, 50th Leg., p. 158, ch. 95, amended by Acts 1971, 62nd Leg., p. 1961, ch. 602.

## Victoria County

- Fish—Acts 1955, 54th Leg., p. 858, ch. 321. For laws saved from repeal, see art. 978j-1, § 15.  
 Fishing in certain waters—Acts 1957, 55th Leg., p. 400, ch. 197; Acts 1961, 57th Leg., p. 1020, ch. 447. For laws saved from repeal, see art. 978j-1, § 15.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Quail—Acts 1961, 57th Leg., p. 314, ch. 166, amended by Acts 1971, 62nd Leg., p. 2491, ch. 813.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wildlife resources—Acts 1965, 59th Leg., p. 1235, ch. 566. For repeals see art. 978j-1, § 15.

## Vingt et Un Islands

- Fowl—Acts 1937, 45th Leg., p. 214, ch. 115.

## Walker County

- Deer—Acts 1937, 45th Leg., p. 41, ch. 30; Acts 1941, 47th Leg., p. 425, ch. 254.  
 Fox—Acts 1943, 48th Leg., p. 259, ch. 158; Acts 1971, 62nd Leg., p. 940, ch. 151.  
 Minnows—Acts 1939, 46th Leg., Spec.Laws, p. 811, ch. 60; Acts 1951, 52nd Leg., p. 457, ch. 283; Acts 1951, 52nd Leg., p. 800, ch. 442.  
 Seines and nets—Acts 1951, 52nd Leg., p. 457, ch. 283.  
 Turkey—Acts 1937, 45th Leg., p. 41, ch. 30; Acts 1941, 47th Leg., p. 425, ch. 254; Acts 1943, 48th Leg., p. 335, ch. 214.  
 Wildlife resources—Acts 1961, 57th Leg., p. 1094, ch. 492. For repeals see art. 978j-1, § 15.

## Waller County

- Pheasants—Acts 1953, 53rd Leg., p. 473, ch. 162.

## Washington County

- Deer—Acts 1943, 48th Leg., p. 335, ch. 214; Acts 1955, 54th Leg., p. 1195, ch. 470; Acts 1967, 60th Leg., p. 586, ch. 263, § 1.  
 Fox—Acts 1941, 47th Leg., p. 385, ch. 216, amended by Acts 1945, 49th Leg., p. 129, ch. 89.  
 Mink—Acts 1937, 45th Leg., p. 109, ch. 61, expired; Acts 1941, 47th Leg., p. 520, ch. 316.  
 Minnows—Acts 1949, 51st Leg., p. 938, ch. 511.  
 Mourning doves—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
 Quail—Acts 1935, 44th Leg., Spec.Laws, p. 1165, ch. 2, amended by Acts 1937, 45th Leg., p. 40, ch. 29.  
 Raccoons—Acts 1937, 45th Leg., p. 109, ch. 61, expired; Acts 1941, 47th Leg., p. 520, ch. 316.  
 Squirrels—Acts 1935, 44th Leg., Spec.Laws, p. 1194, ch. 31.  
 Turkey—Acts 1955, 54th Leg., p. 881, ch. 336.  
 Wildlife resources—Acts 1959, 56th Leg., p. 228, ch. 134, amended by Acts 1959, 56th Leg., 1st C.S., p. 48, ch. 19; Acts 1961, 57th Leg., p. 271, ch. 147; Acts 1965, 59th Leg., p. 1446, ch. 636. For repeals see art. 978j-1, § 15.

## Webb County

- Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wildlife resources—Acts 1961, 57th Leg., p. 774, ch. 360. For repeals see art. 978j-1, § 15.

## Wharton County

- Alligators—Acts 1967, 60th Leg., p. 1163, ch. 517, § 1. Repeal, see art. 978j-3, § 5.  
 Deer—Acts 1936, 44th Leg., 3rd C.S., p. 2029, ch. 489.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Squirrels—Acts 1937, 45th Leg., p. 582, ch. 291.  
 Turkey—Acts 1941, 47th Leg., p. 83, ch. 68; Acts 1953, 53rd Leg., p. 470, ch. 157.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wildlife resources—Acts 1965, 59th Leg., p. 848, ch. 411. For repeals see art. 978j-1, § 15.

## Wheeler County

- Fish—Acts 1935, 44th Leg., Spec.Laws, p. 1213, ch. 48, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 797, § 1.  
 Quail—Acts 1969, 61st Leg., p. 365, ch. 135.

## Wichita County

- Animals—Acts 1933, 43rd Leg., Spec.Laws, p. 74, ch. 59, amended by Acts 1941, 47th Leg., p. 143, ch. 109.  
 Blue catfish—Acts 1935, 44th Leg., Spec.Laws, p. 1172, ch. 9.  
 Channel catfish—Acts 1935, 44th Leg., Spec.Laws, p. 1172, ch. 9.  
 Doves—Acts 1941, 47th Leg., p. 397, ch. 231.  
 Ducks—Acts 1933, 43rd Leg., Spec.Laws, p. 74, ch. 59, amended by Acts 1941, 47th Leg., p. 143, ch. 109.  
 Fowl—Acts 1933, 43rd Leg., Spec.Laws, p. 73, ch. 59, amended by Acts 1941, 47th Leg., p. 143, ch. 109.  
 Geese—Acts 1933, 43rd Leg., Spec.Laws, p. 74, ch. 59, amended by Acts 1941, 47th Leg., p. 143, ch. 109.  
 Minnows—Acts 1955, 54th Leg., p. 366, ch. 83.  
 Wildlife resources—Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Wilbarger County

- Doves—Acts 1941, 47th Leg., p. 397, ch. 231.  
 Hunting on private lands—Acts 1947, 50th Leg., p. 520, ch. 306.  
 Minnows—Acts 1951, 52nd Leg., p. 806, ch. 450.  
 Wild deer—Acts 1951, 52nd Leg., p. 25, ch. 18.  
 Wildlife resources—Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Willacy County

- Buck deer—Acts 1947, 50th Leg., p. 273, ch. 167; repealed by Acts 1949, 51st Leg., p. 236, ch. 133, § 1.  
 Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.  
 Fish—Acts 1961, 57th Leg., p. 1093, ch. 491.  
 Fish and shrimp, devices for catching—Acts 1957, 55th Leg., p. 47, ch. 24; Acts 1959, 56th Leg., p. 552, ch. 247, amended by Acts 1963, 58th Leg., p. 765, ch. 292; Acts 1965, 59th Leg., p. 856, ch. 416.  
 Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.  
 Seine, net or trawl fishing—Acts 1933, 43rd Leg., Spec.Laws, p. 36, ch. 29.  
 White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.  
 Wildlife resources—Acts 1965, 59th Leg., p. 815, ch. 395. For repeals see art. 978j-1, § 15.

## Williamson County

- Deer—Acts 1941, 47th Leg., p. 374, ch. 211; Acts 1947, 50th Leg., p. 261, ch. 156; Acts 1949, 51st Leg., p. 933, ch. 506; Acts 1953, 53rd Leg., p. 469, ch. 156.  
 Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, p. 45, amended by Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1943, 48th Leg., p. 323, ch. 207; Acts 1937, 45th Leg., p. 873, ch. 429; Acts 1939, 46th Leg., Spec.Laws, p. 811, ch. 61; Acts 1947, 50th Leg., p. 400, ch. 227; Acts 1961, 57th Leg., p. 1088, ch. 488.  
 Turkey—Acts 1941, 47th Leg., p. 374, ch. 211; Acts 1947, 50th Leg., p. 261, ch. 156; Acts 1953, 53rd Leg., p. 469, ch. 156.  
 Wildlife resources—Acts 1959, 56th Leg., p. 210, ch. 121, amended by Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20; Acts 1959, 56th Leg., p. 228, ch. 134, amended by Acts 1959, 56th Leg., 1st C.S., p. 48, ch. 19; Acts 1961, 57th Leg., p. 271, ch. 147. For repeals see art. 978j-1, § 15.

## Wilson County

- Turkey—Acts 1963, 58th Leg., p. 1011, ch. 419.  
 Wildlife resources—Acts 1967, 60th Leg., p. 1197, ch. 533; see art. 978j-1, § 15.

## Wise County

- Fish—Acts 1941, 47th Leg., p. 367, ch. 205, amended by Acts 1943, 48th Leg., p. 78, ch. 62; Acts 1943, 48th Leg., p. 562, ch. 333; Acts 1951, 52nd Leg., p. 27, ch. 21.  
 Game birds—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1164, ch. 1, repealed by Acts 1941, 47th Leg., p. 52, ch. 35; Acts 1949, 51st Leg., p. 424, ch. 225; Acts 1951, 52nd Leg., p. 27, ch. 21.  
 Mourning doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Seine or net fishing—Acts 1939, 46th Leg., Spec.Laws, p. 813; Acts 1947, 50th Leg., p. 245, ch. 141.  
 White-winged doves—Acts 1937, 45th Leg., 2nd C.S., p. 2006, ch. 73.  
 Wildlife resources—Acts 1955, 54th Leg., p. 1248, ch. 499, amended by Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1959, 56th Leg., p. 210, ch. 121; Acts 1959, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Wood County

- Bass—Acts 1937, 45th Leg., p. 604, ch. 304, § 5, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 814, § 1.  
 Bream—Acts 1965, 59th Leg., p. 878, ch. 436.  
 Bullfrogs—Acts 1967, 60th Leg., p. 894, ch. 390, repealed by Acts 1969, 61st Leg., p. 1764, ch. 590, § 1.  
 Crappie or white perch—Acts 1965, 59th Leg., p. 1290, ch. 593.  
 Deer—Acts 1937, 45th Leg., p. 604, ch. 304, § 4, expired; Acts 1953, 53rd Leg., p. 936, ch. 393, amended by Acts 1955, 54th Leg., p. 885, ch. 338; Acts 1957, 55th Leg., p. 796, ch. 331; Acts 1959,

## Wood County—Cont'd

- 56th Leg., p. 584, ch. 267; Acts 1961, 57th Leg., p. 779, ch. 362; Acts 1965, 59th Leg., p. 1285, ch. 589, repealed as to Wood County by Acts 1969, 61st Leg., p. 1763, ch. 589, § 6; Acts 1969, 61st Leg., p. 1763, ch. 589, § 1 et seq.
- Fish—Acts 1949, 51st Leg., p. 838, ch. 455, expired.
- Fishing—Acts 1963, 58th Leg., p. 139, ch. 82.
- Fox—Acts 1937, 45th Leg., p. 604, ch. 304, § 3, expired; Acts 1941, 47th Leg., p. 414, ch. 244.
- Fresh water fish—Acts 1951, 52nd Leg., p. 469, ch. 297; Acts 1953, 53rd Leg., p. 42, ch. 34.
- Fur-bearing animals—Acts 1937, 45th Leg., p. 604, ch. 304, § 6, expired.
- Mink—Acts 1957, 55th Leg., p. 795, ch. 330.
- Mourning doves—Acts 1933, 43rd Leg., Spec.Laws, p. 48, ch. 41; Acts 1937, 45th Leg., p. 604, ch. 304.
- Quail—Acts 1937, 45th Leg., p. 604, ch. 304; Acts 1949, 51st Leg., p. 812, ch. 436; Acts 1951, 52nd Leg., p. 458, ch. 285; Acts 1965, 59th Leg., p. 624, ch. 308; Acts 1967, 60th Leg., p. 894, ch. 391; Acts 1969, 61st Leg., p. 1762, ch. 588; Acts 1971, 62nd Leg., p. 2450, ch. 790, § 3.
- Rough fish—Acts 1955, 54th Leg., p. 573, ch. 189; Acts 1965, 59th Leg., p. 878, ch. 436.
- Seine or net fishing—Acts 1937, 45th Leg., p. 604, ch. 304, § 5, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 814, § 1; Acts 1963, 58th Leg., p. 824, ch. 314, amended by Acts 1965, 59th Leg., p. 878, ch. 436.
- Squirrels—Acts 1931, 42nd Leg., p. 211, ch. 102, § 4, repealed by Acts 1959, 56th Leg., p. 583, ch. 266; Acts 1961, 57th Leg., p. 778, ch. 361.
- Sunfish—Acts 1965, 59th Leg., p. 878, ch. 436.
- Turkey—Acts 1937, 45th Leg., p. 604, ch. 304, § 4, expired; Acts 1967, 60th Leg., p. 895, ch. 392, amended by Acts 1969, 61st Leg., p. 1745, ch. 577.
- White perch—Acts 1937, 45th Leg., p. 604, ch. 304, § 5, repealed by Acts 1939, 46th Leg., Spec.Laws, p. 814, § 1.
- Wild pheasants—Acts 1957, 55th Leg., p. 819, ch. 349.

## Yoakum County

- Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.
- Quail—Acts 1939, 46th Leg., Spec.Laws, p. 769, ch. 15.
- Wildlife resources—Acts 1965, 59th Leg., p. 809, ch. 393. For repeals see art. 978j-1, § 15.

## Young County

- Chucker quail—Acts 1939, 46th Leg., Spec.Laws, p. 789, ch. 40.
- Deer—Acts 1939, 46th Leg., Spec.Laws, p. 789, ch. 40.
- Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.
- Fish—Acts 1941, 47th Leg., p. 1306, ch. 582.
- Fox—Acts 1939, 46th Leg., Spec.Laws, p. 790, expired.
- Minnows—Acts 1935, 44th Leg., Spec.Laws, p. 1210, ch. 45; Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47; Acts 1945, 49th Leg., p. 69, ch. 48.
- Squirrel—Acts 1932, 42nd Leg., 3rd C.S., p. 13, ch. 12, amended by Acts 1933, 43rd Leg., 1st C.S., p. 269, ch. 96, § 1; Acts 1943, 48th Leg., p. 30, ch. 27, § 1.
- Turkey—Acts 1939, 46th Leg., Spec.Laws, p. 789, ch. 40.
- Wildlife resources—Acts 1951, 52nd Leg., p. 210, ch. 125, amended by Acts 1953, 53rd Leg., p. 371, ch. 97; Acts 1955, 54th Leg., p. 1248, ch. 499; Acts 1957, 55th Leg., p. 238, ch. 115; Acts 1957, 55th Leg., p. 378, ch. 181; Acts 1957, 56th Leg., 3rd C.S., p. 384, ch. 9; Acts 1959, 56th Leg., p. 210, ch. 121; Acts 1959, 56th Leg., 3rd C.S., p. 431, ch. 20. For repeals see art. 978j-1, § 15.

## Zapata County

- Deer—Acts 1950, 51st Leg., 1st C.S., p. 106, ch. 38; Acts 1949, 51st Leg., p. 535, ch. 297.
- Doves—Acts 1941, 47th Leg., p. 397, ch. 231, amended by Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.
- Javelina—Acts 1950, 51st Leg., 1st C.S., p. 106, ch. 38.
- Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402; Acts 1937, 45th Leg., p. 870, ch. 428.
- Quail—Acts 1965, 59th Leg., p. 876, ch. 432.
- White wing doves—Acts 1937, 45th Leg., p. 813, ch. 402.

## Zavala County

- Buffalo—Acts 1939, 46th Leg., Spec.Laws, p. 826.
- Carp—Acts 1939, 46th Leg., Spec.Laws, p. 826.
- Fish—Acts 1939, 46th Leg., Spec.Laws, p. 810, amended by Acts 1941, 47th Leg., p. 524, ch. 320.
- Garfish—Acts 1939, 46th Leg., Spec.Laws, p. 826.
- Minnows—Acts 1939, 46th Leg., Spec.Laws, p. 810, amended by Acts 1941, 47th Leg., p. 524, ch. 320; Acts 1961, 57th Leg., p. 1039, ch. 459.
- Mourning doves—Acts 1937, 45th Leg., p. 813, ch. 402, amended by Acts 1937, 45th Leg., p. 859, ch. 424; Acts 1937, 45th Leg., p. 870, ch. 428.
- Seine or net fishing—Acts 1939, 46th Leg., Spec.Laws, p. 826.
- Suckers—Acts 1939, 46th Leg., Spec.Laws, p. 826.
- Turtles—Acts 1939, 46th Leg., Spec.Laws, p. 826.
- White winged doves—Acts 1937, 45th Leg., p. 813, ch. 402, amended by Acts 1937, 45th Leg., p. 859, ch. 424.
- Wildlife resources—Acts 1957, 55th Leg., p. 393, ch. 194; Acts 1959, 56th Leg., p. 589, ch. 273; Acts 1961, 57th Leg., p. 186, ch. 99. For repeals see art. 978j-1, § 15.

## Art. 978j-1. Uniform Wildlife Regulatory Act

Title; Application of Act

Sec. 1. This Act shall be referred to for all purposes as "The Uniform Wildlife Regulatory Act." This Act shall apply only to Anderson, Andrews, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Denton, DeWitt, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Fort Bend, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kent, Kerr, Kimble, Kinney, Knox, Lamar, Lamb, Lampasas, Lavaca, Lee, Liberty, Limestone, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Madison, Martin, Mason, Matagorda, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Motley, McCulloch, McLennan, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Randall, Reagan, Real, Red River, Reeves, Roberts, Robertson, Runnels, Rusk, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stone-wall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upton, Uvalde, Val Verde, Victoria, Walker, Waller, Ward, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Wood, Yoakum, Young, Zapata, and Zavala Counties; and to all of the water area of Lake Tawakoni located within Rains, Van Zandt, and Kaufman Counties; and to all of the water area of the Joe B. Hogsett Reservoir known as the Cedar Creek Reservoir, located within Henderson and Kaufman Counties; and to the land and water area of the Somerville Reservoir located in Burleson, Lee and Washington Counties; and to that portion of Lake Texoma in Cooke and Grayson Counties; and to all of the water area of the Sam Rayburn Reservoir in Angelina, Nacogdoches, Sabine, and San Augustine Counties; and to all the water area of Toledo Bend Reservoir in Sabine and Shelby Counties; and to all of the water area of Lake Palestine located in Anderson, Smith, Cherokee, and Henderson Counties; and to all the water area of Falcon Reservoir located in Zapata County; and to all of the water area of Lake Ray Hubbard located in Rockwall County and Collin County; and to all of the land described in Section 1, Chapter 646, Acts of the 59th Legislature, Regular

Session, 1965; and to all of the water area of Lake Livingston located in Polk, San Jacinto, Trinity, and Walker Counties.

Application to Coastal Waters

Sec. 1A. (a) Except as provided in Subsection (b) of this section, this Act applies to all coastal waters in this state with respect to fish, aquatic life, and marine animals.

(b) Subsection (a) of this section does not apply to shrimp and oysters or to Harris, Galveston, Chambers, and Victoria Counties.

Prohibition on Hunting, Taking, Killing or Possessing Game and Fish; Powers and Duties of Parks and Wildlife Commission

Sec. 2. Subject to the limitations provided in Section 3, it shall be unlawful, except as provided in this Act, for any person to hunt, take, kill or possess, or attempt to take or kill any game bird or game animals in these counties of the State of Texas at any time; or to take, kill, trap or possess, or attempt to take, kill or trap any fur-bearing animal in the counties to which this Act applies, at any time; or to take or attempt to take any fish or other aquatic life or marine animals by any means or method in these counties of this state at any time. In order to better conserve an ample supply of the wildlife resources in the counties to which this Act applies to the end that the most reasonable and equitable privileges may be enjoyed by the people of said counties and their posterity in their ownership and in the taking of such resources, it is deemed for the public welfare that this Legislature should provide a law adaptable to changing conditions and emergencies which threaten depletion or waste of the wildlife resources in said counties. The Parks and Wildlife Commission is therefore granted the authority, power and duty to provide by proclamation, rule or regulation, from time to time, periods of time when it shall be lawful to take a portion of the wildlife resources in said counties or in any portion of any of said counties when its investigations and findings of fact disclose that there is an ample supply of such wildlife resources that a portion thereof may be taken which will not threaten depletion or waste of such supply. It shall also, by proclamation, rule or regulation, from time to time, provide the means and the method and the place and the manner in which such wildlife resources may be lawfully taken, provided, however, that it shall be unlawful for any person to hunt, take, kill or possess, or attempt to hunt, take or kill any game bird or game animal in any county or in any portion of any county at any time; or to take, kill, trap or possess, or attempt to take, kill, or trap any fur-bearing animal in any county or in any portion of any county at any time; or to take or attempt to take any fish by any means or method in any county or in any portion of any county at any time; unless the owner of the land or the water, or his duly authorized agent shall give consent thereto.

Definitions

Sec. 3.

a. "Depletion" as used in this Act shall be construed to mean reduction of a species below immedi-

ate recuperative potentials by any deleterious cause or causes.

b. "Waste" as used in this Act shall be construed to mean supply of a species or sex thereof sufficient that a seasonal harvest thereof will aid in the reestablishment of normal numbers of such species.

c. For the purpose of this Act, the wildlife resources of the State of Texas are defined to be all the game birds and game animals, fur-bearing animals of all kinds, alligators, fish and other aquatic life and marine animals of all kinds; provided, however that the following limitations apply in the counties herein mentioned:

(1) In Aransas, Jefferson, Matagorda, and Orange Counties shrimp are not included in the term "wildlife resources."

(2) In Austin and Waller Counties, only deer, quail, and turkeys are included in the term "wildlife resources."

(3) In Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves and Terrell Counties fish are not included in the term "wildlife resources."

(4) In Burleson County fish are not included in the term "wildlife resources," except in the Somerville Reservoir.

(5) In Duval County antlerless deer are not included in the term "wildlife resources."

(6) In Calhoun, Harris and Victoria Counties salt water species of marine life are not included in the term "wildlife resources."

(7) In Goliad County, only wild deer, wild turkey, wild quail and alligators, are included in the term "wildlife resources."

(8) In Jasper, Newton and Tyler Counties, fox are not included in the term "wildlife resources."

(9) In San Patricio and Victoria Counties, quail are not included in the term "wildlife resources."

(10) [Deleted by Acts 1969, 61st Leg., p. 1110, ch. 360, § 1. See note at end of article.]

(11) In the Sam Rayburn Reservoir in Angelina, Nacogdoches, Sabine, and San Augustine Counties, only fresh water fish are included in the term "wildlife resources."

(12) In that part of Toledo Bend Reservoir in Sabine and Shelby Counties only fish are included in the term "wildlife resources."

*Another paragraph (12) was added by Acts 1969, 61st Leg., p. 1618, ch. 499, § 2. See paragraph (12), post.*

(12) In the Falcon Reservoir in Zapata County, only fresh-water fish are included in the term "wildlife resources."

*Another paragraph (12) was added by Acts 1969, 61st Leg., p. 1109, ch. 359, § 2. See paragraph (12), ante.*

(13) In Smith County only quail and deer are included in the term "wildlife resources."

(14) In Bexar County, wild axis deer not individually owned are included in the term "wildlife resources."

d. For the purposes of this Act the following limitations apply within the Counties named in this subsection.

(1) In Aransas County this Act does not apply to the part of San Antonio Bay lying within the northeast part of Aransas County, nor to the Aransas River where it forms the boundary with Refugio County, nor to Copano Creek where it forms the boundary with Calhoun County.

(2) In Cameron County this Act applies to the waters of the Laguna Madre and its abutting waters but does not apply to the waters of the Gulf of Mexico.

Research Investigations and Studies of Reduction or Increase in Supply of Wildlife Resources; Open Seasons

Sec. 4. It shall be the duty of the Parks and Wildlife Department to conduct, from time to time, or continuously, scientific research investigations and studies of the supply, economic value, environment, breeding habits and, so far as possible, the sex ratio of the different species of wildlife resources as well as the factors affecting their increase or decrease, particularly with reference to hunting, trapping, fishing, disease, infestation, predation, agricultural pressure, over-population, and any and all other factors that enter into a reduction or an increase in the supply of such wildlife resources of this state. Pursuant to and based upon such studies, said Commission shall enter its findings of fact with respect thereto, and if, in the opinion of the Commission, an open season or period of time may be safely provided for any of the wildlife resources of said county, said Commission is authorized and directed from time to time to provide an open season or period of time when such wildlife resources may be taken. The proclamation, rule or regulation issued by the Commission shall be specific as to the quantity, species, sex, insofar as possible, age or size that may be taken. Such proclamation, rule or regulation shall provide the method and/or means that may be resorted to as well as the area, county or portion of the county where such wildlife resources may be taken. In order to prevent depletion or waste of the wildlife resources of said State of Texas, the Parks and Wildlife Commission shall have authority from time to time by proclamation, rule or regulation to conserve the wildlife resources of said county by an open season or period of time when it shall be lawful to take a portion of such wildlife resources from said county or portion of said county of the State of Texas.

Preventing Depletion; Declaring State of Emergency

Sec. 5. When said Commission finds from its investigations herein provided for that danger of depletion, as defined in this Act, of any species of fish, game bird, game animal or fur-bearing animal exists

in any portion of said counties, it shall be the duty of the said Commission to revoke or modify or otherwise amend its order or orders so as to deter or prevent contribution to depletion of such species by the taking thereof. When said Commission finds that danger of waste, as defined in this Act, of any of such species of fish, game bird, game animal or fur-bearing animal, or sex thereof, exists in all or any portion of said counties the Commission may issue or amend or revoke or modify such of its rules and regulations as will afford to all of the people of this state the most equitable and reasonable privileges in the pursuit, taking or killing of such species or sex thereof in said area. When the Commission finds that danger of depletion exists in any area by virtue of an emergency condition, the Commission may declare a state of emergency as to such species in said area, and its orders, rules and regulations issued under such state of emergency shall take effect and be in full force immediately upon issuance thereof.

Hunting Antlerless Deer, Antelope and Elk; Proclamation, Rule or Regulation; Agreement of Landowner

Sec. 6. The Parks and Wildlife Commission's proclamation, rule or regulation permitting the hunting or taking of antlerless deer, antelope and elk should not be effective as to any tract of land upon which antlerless deer, antelope or elk are to be taken until the owner or person in charge of that specific tract of land upon which antlerless deer, antelope or elk are to be taken shall have agreed in writing to the removal by hunting of such antlerless deer, antelope or elk from the tract under supervision, and regulation of the Commission; and to the number of antlerless deer, antelope and elk to be removed therefrom. Antlerless and/or doe deer, antelope or elk hunting permits may be issued by the landowner, or by the person in charge of the land, to hunters to take antlerless deer, antelope or elk only upon the particular tract covered by the landowner's agreement. For the purposes of this Section, the Parks and Wildlife Commission may, when the conditions warrant, permit the taking of antlerless deer, antelope or elk without the requirement of an antlerless and/or doe deer, antelope or elk hunting permit, but in such cases the Commission's proclamation shall be specific as to the counties or portions of counties in which antlerless deer, antelope or elk may be taken without the special hunting permit. In areas not covered by the above provision, no person shall hunt or kill any antlerless deer, antelope or elk without first having procured an antlerless deer, antelope or elk permit issued by the Parks and Wildlife Department. Such permit shall be issued in such form and under such rules as may be prescribed by the Parks and Wildlife Commission, but no permit shall be issued later than ten (10) days before the opening date of the hunting season. No person may sell or trade a permit authorized by this Section for anything of value.

Public Hearing on Proposed Rule, Regulation or Order; Notice

Sec. 7. There shall be a public hearing held in the county to be affected by any proposed rule,

regulation or order dealing with hunting or fishing as provided for in this Act before such proposed rule, regulation or order is adopted by the Commission. Notice of this public hearing must be given in a newspaper published in such county at least ten (10) days prior to the date of the hearing. If no newspaper is published in the county, notice of such hearing must be given in a newspaper published in an adjoining county, which is widely circulated in the county in which the proposed rule, regulation or order is to be in effect. The hearing may be conducted by a designated employee of the Parks and Wildlife Department, or by any member of the Commission, provided it is not necessary for the Commission or some member of the Commission to be present at the said hearing.

Adoption of Orders, Proclamations, Rules and Regulations; Quorum

Sec. 8. Orders, proclamations, rules and regulations proposed under the provisions of this Act shall be adopted by a quorum of the Commission at any regular or special Commission meeting or meetings, the date and time to be designated by the Commission and such meeting or meetings for such purpose shall only be held in the Commission's office in Austin, Texas. For the purpose of the provisions of this Act any person interested shall be entitled to be heard at such meetings, and to introduce evidence as to imminence of waste or depletion, as defined in this Act. Two (2) members, or the chairman and one (1) member of said Commission shall constitute a quorum. No order, rule or regulation, general or local, shall be adopted at any regular or special meeting of the Commission unless a quorum is present.

Effective Date of Orders, Rules and Regulations; Expiration; Revocation or Modification

Sec. 9. Orders, rules and regulations adopted by the Commission shall become effective at a time fixed by the Commission but not earlier than fifteen (15) days after their adoption, except in the case of emergency as provided in this Act, and shall continue in full force and effect until they shall expire by their own terms, or are revoked, modified or amended by said Commission.

Filing Copies of Orders, Rules and Regulations

Sec. 10. Immediately after its adoption, a copy of each order, rule or regulation adopted by said Commission shall be numbered and filed in its office in Austin, Texas; and a copy thereof shall be filed in the office of the Secretary of State, and the office of the county clerk and the county attorney in the county affected by the order, rule or regulation and a mimeographed copy shall be furnished to each employee of the Parks and Wildlife Department.

Construing Particular Regulatory Powers of Commission

Sec. 11. The particular regulatory powers herein granted to said Commission shall not be construed to limit other and general powers conferred upon it by law.

Review of Orders; Actions to Test Validity of Orders, Rules and Regulations

Sec. 12. The Parks and Wildlife Commission is hereby expressly given the power and authority to

review its own orders and to modify, amend or revise the same as it shall find the facts to warrant. Any action that may be filed to test the validity of any proclamation, order, rule or regulation of the Commission, passed pursuant to and under the provisions of this Act, must be brought in Travis County. Such suit shall be advanced by trial and determined as quickly as possible. In all such trials the burden of proof shall be upon the party complaining of such order, proclamation, rule or regulation to show it is invalid.

Special Provisions

Sec. 13. a. The Commission's regulations relating to Lake Towakoni shall be uniform for the entire lake.

b. In Bandera, Coke, Crockett, Dimmit, Edwards, Frio, Grayson, Hays, Kerr, Kimble, Kinney, Lampasas, Medina, Menard, Reagan, Real, Robertson, San Saba, Schleicher, Sutton, Uvalde, Val Verde, and Zavala counties, and in Lamb County with regard to quail season only, orders, rules and regulations adopted in accordance with Section 8 of this Act shall not be effective as provided in Section 9 unless and until they have been approved by the Commissioners Court of each of such counties. The Commissioners Court in each county named in this subsection shall approve or disapprove the Commission's rule, regulation or order or part of order, at its next regular meeting occurring more than five (5) days after adoption by the Commission and notification of the counties cited herein. If approved, the rule, regulation or order becomes effective at the time specified in the proclamation by the Commission. If disapproved, for any of the above named counties, no public hearing on a similar proposal for the county may be held for a period of six (6) months unless a majority of said Commissioners Court certifies to the Commission that there has been some material change in the surrounding circumstances which necessitates the holding of a public hearing within the six month period. If the Commissioners Court disapproves the rules, regulations or orders, or parts of orders promulgated by the Commission, then the taking of the wildlife resources of the county is regulated by rules of prior year until such time as the Commissioners Court approves rules, regulations, or orders subsequently promulgated by the Commission.

c. Notwithstanding the powers and duties herein vested in the Parks and Wildlife Commission, there is hereby established in Aransas County a net-free zone in which it shall be unlawful to set or drag any kind of net or seine except a minnow seine not exceeding twenty (20) feet in length for taking bait. Such net-free zone shall be all of Little Bay and the water area of Aransas Bay within one-half (1/2) mile of the following line: From Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the

town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island. Such net-free zone shall additionally include that part of Copano Bay within one thousand (1,000) feet of the causeway between Lamar Peninsula and Live Oak Peninsula. Any person using a net or seine (except a minnow seine not exceeding twenty (20) feet in length for taking bait only) in said net-free zone shall be punished as herein provided for a violation of this Act.

d. No person may place or set a trotline or crab trap in the net-free zone in Aransas County.

e. The Commission shall make reasonable rules to regulate the use of trotlines and crab traps in the waters outside the net-free zone in Aransas County, in order to provide for the safety of persons engaged in fishing, boating, and other water sports. The rules may provide for spacing and marking of trotlines and crab traps and for seizure of abandoned trotlines and crab traps. The rules shall be made and promulgated in the same manner as other rules are made and promulgated under this Act.

f. In Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves, and Terrell Counties any open seasons or harvest limits proclaimed by the Commission for the wildlife resources listed below shall be subject to the following limitations:

(1) Black bear. Any open season shall be within the period November 1st to December 31st, and no person shall be permitted to kill or possess more than one black bear during any one season.

(2) Wild gray or cat and fox squirrels. Any open season shall be within the period of May 1st to December 31st; bag limit not to exceed ten (10) to be taken or killed by any person in one day nor to exceed twenty (20) in possession by any person at any time.

(3) Wild turkeys. Any open season shall be within the period November 1st to December 31st, and no person shall be permitted to kill or possess more than three (3) wild turkeys during any one open season.

(4) Wild mourning doves. Any open season shall be within the period September 1st to January 15th. A bag limit may be provided of not to exceed fifteen (15) mourning doves to be killed in any one day, nor more than thirty (30) to be possessed by any person at one time.

(5) Chachalaca. Any open season shall not be longer than ten (10) days within the period December 1st to December 31st, and no person shall be permitted to kill more than five (5) chachalaca in any one day or to possess more than one days kill at any time.

(6) Rails and gallinules. Any open season shall be within the period September 1st to October 31st, and no person shall be permitted to kill more than fifteen (15) rails or more than fifteen (15) gallinules or an aggregate of more

than fifteen (15) of both rails and gallinules in any one day or to possess at any time more than two days kill of such birds.

(7) Wild plover. Any open season shall be within the period September 1st to October 31st, and no person shall be permitted to kill more than twelve (12) plover in any one day or to have more than one days kill in his possession at any time.

(8) Prairie chicken. Any open season shall be not longer than ten (10) successive days within the period September 1st to October 31st. No person shall be permitted to kill more than ten (10) prairie chicken during any open season or to have in his possession at any time more than ten (10) prairie chicken.

(9) Fur-bearing animals—beaver, otter, fox, opossum, raccoon, mink, polecat or skunk, badger, muskrat, civet cat or ringtail. Any open season to permit trapping or the taking of pelts and sale of same of any of the fur-bearing animals named in this Section of this Act shall be within the period of December 1st and March 1st.

g. In Dimmit, Uvalde and Zavala Counties, the Commission shall endeavor to maintain a deer herd of productive excellence and breeding stock that will assure harvest of buck deer of the size and quality for which this area is noted. And when its investigations and findings of fact disclose that there is danger of losing this type of deer from excessive population or serious depletion of breeding stock or other controllable factors, they shall, by proclamation, rule or regulation, prescribe the length of season and/or determine proper harvest of buck or doe deer and/or prescribe type and size of legal buck deer to be harvested to adjust for this depletion of quality and to maintain and recover this standard of excellence.

h. In Lampasas County the regulatory authority herein granted to the Commission shall extend to and include regulation of the nature and extent of the records to be kept and maintained by every bailee for hire accepting deer for processing and/or for storage; provided that no rule, regulation or order may be promulgated by the Commission in respect of any such processing or storage business, or the conduct thereof, or the records to be kept and maintained in reference to the processing and/or storage of deer by any such person, firm or corporation in Lampasas County, Texas, that is more onerous on any such business, or that may otherwise conflict with any of the provisions hereof that are hereby adopted for application to any and all such matters in Lampasas County, Texas, from and after the opening day of the 1967 deer season. Each such bailee for hire shall enter in his usual and customary books of account, or in a simple journal if no other records are maintained by said bailee, in the ordinary course of his business, the name and address of each bailor and the date of each bailment of such deer, as well as the name and address of the person

removing such deer from storage, if same has not been processed by such bailee, and the date of such removal. Such record shall be retained for a period of at least four (4) calendar months after entry thereof. With respect to every deer delivered to such bailee for processing, said bailee shall also, at the time of processing, remove and retain for a period of four (4) calendar months following the bailment all hunting license tags, if any, that are attached to the carcass of the deer at the time same was delivered to such bailee. Authorized representatives of the Commission may, during ordinary business hours and without undue interference with the business of the bailee inspect deer held for storage by any such bailee, as well as all hunting license tags held by such bailee. Upon the request of an authorized representative of the Commission, made within four (4) months after the date of any such bailment, and the delivery of a proper receipt therefor, any such bailee shall deliver to such authorized representative any of the hunting license tags held by the bailee as aforesaid that may be requested by such authorized representative of the Commission, and such bailee shall, without any liability to any person, firm or corporation furnish the name and address of any person delivering a deer to bailee for storage only, and the date thereof, as well as the name and address of the person removing same from storage and the date thereof if and when requested by an authorized representative of the Commission within four (4) months after the date of any such bailment for storage only, all without incurring any liability to any person, firm or corporation by reason of such storage and/or the disclosure of such information as authorized above. All such records and hunting license tags remaining in the hands of the bailee after expiration of four (4) calendar months following the date of the bailment may be destroyed by such bailee.

i. Except as provided in this Section, in Panola County it is lawful during the open season to use dogs for the purpose of hunting and trailing buck deer as defined by General Law. The Commission may prohibit or regulate hunting deer with dogs on any tract of 10,000 or more contiguous acres of land in Panola County which is owned by one or more persons and which is designated as a preserve for restocking deer under the federal and state laws and the rules, regulations, and proclamations of the Parks and Wildlife Commission and the United States Department of Interior.

j. In Foard County a seine or net of any kind or length may be used for taking minnows for bait purposes only.

k. In Hardeman County the quail open season shall be from December 1 through January 31, both dates inclusive.

l. [Blank].

m. [Blank].

n. In Trinity County the open season for deer shall be November 16 through December 31, both

dates inclusive, and it shall be illegal to take spike deer at any time.

o. For the tract of land described by Section 1, Chapter 646, Acts of the 59th Legislature, Regular Session, 1965, the Commission shall:

(1) provide a special archery season for the taking of deer of either sex from October 1 to and including October 31 of each year;

(2) it shall be lawful to take, hunt or kill javelina at any time using bow and arrow of legal specifications; provided, however, that it shall be unlawful to use crossbow at any time, and, further be it provided that it shall be lawful to use firearms for the taking of javelina during and concurrent with the deer season as set by the Commission;

(3) require a special hunting license for non-residents for the taking of deer and javelina by bow and arrow during the special archery season and provide that the license fee is Five Dollars (\$5) and that the license is valid for five days only; and

(4) it shall be lawful to take, hunt or kill deer of either sex during the lawful open season as set by the Commission.

*Another subsection o was added by Acts 1971, 62nd Leg., p. 1411, ch. 389, § 1. See subsection o, post.*

o. In Collingsworth County the quail open season shall be from December 1 through January 31, both dates inclusive.

*Another subsection o was added by Acts 1971, 62nd Leg., p. 950, ch. 160, § 2. See subsection o, ante.*

p. In Kimble County doe deer may be taken by longbow and arrow during the open season for buck deer.

q. The rules and regulations and the conditions and limitations relating to the taking of wild axis deer not individually owned in Bexar County shall be the same as those in effect for the taking of other deer. No person may hunt or take these axis deer in Bexar County except in compliance with the provisions of Chapter 370, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 895c, Vernon's Texas Penal Code), and no extra deer tags may be issued for these axis deer. Any properly issued deer tag may be used for tagging a wild axis deer not individually owned in Bexar County under the same conditions and limitations, including the limitation on the sex of the deer, as are applicable for other deer.

Violations; Penalties

Sec. 14. Any person who shall violate any provision of this Act, or any person who shall violate any proclamation, order, rule or regulation issued by the Parks and Wildlife Commission under the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be fined a sum not less than Twenty-five Dollars (\$25) nor more

than Two Hundred Dollars (\$200). Each game bird, game animal, fur-bearing animal, or fish taken or possessed in violation of this Act or of any proclamation, order, rule or regulation issued by said Parks and Wildlife Commission shall constitute a separate offense.

Violations Concerning Hunting by Use of Artificial Lights; Penalties

Sec. 14A. Any person who violates any proclamation, order, rule, or regulation of the Commission concerning hunting by the use of artificial lights in Hardin, Jasper, Newton, Orange or Tyler Counties is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200), or by imprisonment in the county jail for not less than 3 days nor more than 90 days, or by both.

Repealer

Sec. 15. It being the intent of the Legislature in this Act to "codify" all previous Acts of the Legislature of a similar nature into a single Act and thereby reduce the bulk of such legislation and to produce a greater degree of uniformity, the following Acts are hereby specifically repealed: Chapter 23, Acts of the 42nd Legislature, Second Called Session, 1931, codified as Article 4026a, Vernon's Civil Statutes and Article 978i, Vernon's Penal Code; Chapter 25, Special Laws, Acts of the 44th Legislature, Regular Session, 1935; Chapters 209 and 213, Acts of the 48th Legislature, Regular Session, 1943; Chapter 25, Acts of the 49th Legislature, Regular Session, 1945; Chapter 36, Acts of the First Called Session of the 51st Legislature, 1950; Chapter 125, Acts of the 52nd Legislature, Regular Session, 1951; Chapters 11, 96, and 499, Acts of the 54th Legislature, Regular Session, 1955; Chapters 50, 115, and 181, Acts of the 55th Legislature, Regular Session, 1957; Chapter 40, Acts of the 55th Legislature, First Called Session, 1957; Chapter 19, Acts of the 55th Legislature, Second Called Session, 1957; Chapters 12, 109, 121, 125, 246, 276, and 278, Acts of the 56th Legislature, Regular Session, 1959; Chapters 9 and 20, Acts of the 56th Legislature, Third Called Session, 1959; Chapters 40, 47, 59, 86, 99, 106, 176, 241, 245, 250, 340, 354, 360, 492, 510, 521 and 534, Acts of the 57th Legislature, Regular Session, 1961; Chapters 7, 44, 48, and 55, Acts of the 57th Legislature, First Called Session, 1961; Chapter 76, Acts of the 57th Legislature, Third Called Session, 1962; Chapters 18, 141, 252, 271, 287, 376, 408, and 421, Acts of the 58th Legislature, Regular Session, 1963, except that Sec. 15 of Chapter 252 protecting alligators in Refugio County is not repealed; and Chapters 156, 166, 169, 228, 244, 374, 393, 395, 411, 421, 422, 424, 499, 508, 566, 574, 590, and 636, Acts of the 59th Legislature, Regular Session, 1965, except that Section 4 of Chapter 228 regulating sale of fish from Lake Towakoni is not repealed; provided further that: (a) Sections 15A, and 14(a), 16 and 20 of Chapter 508 relating to shrimping and penalty in Matagorda County shall not be repealed but shall remain in full force and effect; and, (b) that Chapter 428, Acts of the 59th Legislature, Regular Session, 1965, shall not

be affected or repealed; and, (c) in Calhoun and Victoria Counties, Chapter 321, Acts of the 54th Legislature, Regular Session, 1955; Chapter 197, Acts of the 55th Legislature, Regular Session, 1957; Chapter 447, Acts of the 57th Legislature, Regular Session, 1961; and Chapter 230, Acts of the 58th Legislature, Regular Session, 1963, and any other laws relating to netting for fish in Calhoun or Victoria Counties shall not be altered or affected; and (d) in Cameron County, Chapter 80, Acts of the 54th Legislature, Regular Session, 1955 and Chapter 187, Acts of the 56th Legislature, Regular Session, 1959 commonly known as the Texas Shrimp Conservation Act insofar as it relates to any shrimping activities in outside waters of the Gulf of Mexico, shall not be repealed, altered or affected; and (e) in Colorado County the provisions of Article 888, Penal Code of Texas, 1925, shall not be affected; and (f) in Webb County, Articles 901, 902, and 924a of the Penal Code of the State of Texas shall not be affected; and (g) in Bowie County the provisions of Chapter 336, Acts of the 58th Legislature, Regular Session, 1963, as amended, shall not be repealed; and (h) in Falls and Limestone Counties the provisions of Chapter 70, Acts of the 55th Legislature, Regular Session, 1957, shall not be repealed; and, (i) in Hardin, Jasper, Newton, Orange, Polk and Tyler Counties the provisions of Chapter 510, Acts of the 58th Legislature, Regular Session, 1963, are not repealed; and (j) in Harrison and Rusk Counties the provisions of Chapter 493, Acts of the 52nd Legislature, Regular Session, 1951, as amended, are not repealed; and (k) in Hidalgo County the provisions of Chapter 327, Acts of the 54th Legislature, Regular Session, 1955, as amended, are not repealed; and (l) in Liberty County, the provisions of Chapter 574, Acts of the 59th Legislature, Regular Session, 1965, are not repealed; and (m) in Limestone County the provisions of Chapter 429, Acts of the 59th Legislature, Regular Session, 1965, are not repealed; and (n) in Jefferson and Orange Counties the provisions of Chapter 339, Acts of the 58th Legislature, Regular Session, 1963, are not repealed; and (o) in Rusk County the provisions of Chapter 415, Acts of the 59th Legislature, Regular Session, 1965, shall not be repealed. Sections 1 and 3 of House Bill 50, Sections 1, 2 and 4 of House Bill 289, all of House Bill 429, Sections 2 and 3 of House Bill 944, all of House Bills 1261, 1274, and 1335, which bills of the present session would affect counties concerned in this Act are hereby specifically saved from repeal. However it is the intent of the Legislature to incorporate within this Act applicable provisions of the following bills of the 60th Legislature: House Bills 4, 50, 277, 289, 432, 500, 519, 522, 529, 560, 583, 590, 597, 645, 679, 725, 817, 912, 918, 944, 962, 964, 983, 1001, 1053, 1311, 1327, and Senate Bill 555. Any and all laws, general and special, and not specifically saved from repeal in this section, but in conflict with the provisions of this Act are repealed to the extent of such conflict only. In the event any county now regulated by this Act is hereafter removed by any Act of the Legislature, the general game laws of this state

in effect at the time of such removal shall apply to such county.

Severability

Sec. 16. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any Section, word, clause, sentence, or part of this Act may be declared unconstitutional shall in no event affect any other Section, word, clause, sentence, or part thereof. It is further declared to be the intention of the Legislature to have passed each sentence, Section, clause, or part of this Act irrespective of the fact that any other Section, sentence, clause or part thereof may be declared invalid.

Effective Date

Sec. 17. This Act shall become effective on the 1st day of September 1967.

Promulgation of Orders, Rules and Regulations; Existing Laws and Proclamations

Sec. 18. The Parks and Wildlife Commission may thereafter within a reasonable period promulgate its proclamations, rules, regulations and orders for the purpose and under the provisions of this Act. Until such rules, regulations, orders and proclamations of the Parks and Wildlife Commission are adopted in accordance with the provisions of this Act, all General and Special Laws and existing proclamations relating to the taking of any of the wildlife resources within this state or county shall remain in full force and effect. All game laws, General and Special, presently in force or enacted during the 62nd Legislature, pertaining to the State of Texas or any county or counties therein, shall be in full force and effect until the Parks and Wildlife Commission shall, in accordance with this Act issue a proclamation, rule or regulation dealing with the subject matter of the county affected by such presently existing game law.

[Acts 1967, 60th Leg., p. 1959, ch. 730, eff. Sept. 1, 1967; Acts 1969, 61st Leg., p. 380, ch. 141, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 251, ch. 98, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 620, ch. 215, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 709, ch. 249, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 900, ch. 301, § 1, eff. May 22, 1969; Acts 1969, 61st Leg., p. 1109, ch. 359, §§ 1, 2, eff. May 27, 1969; Acts 1969, 61st Leg., p. 1110, ch. 360, §§ 1, 2, eff. May 27, 1969; Acts 1969, 61st Leg., p. 1143, ch. 369, §§ 1, 2, eff. May 29, 1969; Acts 1969, 61st Leg., p. 1497, ch. 448, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1565, ch. 474, § 1, eff. June 10, 1969; Acts 1969, 61st Leg., p. 1618, ch. 499, §§ 1, 2, 2A, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1668, ch. 531, § 1, eff. June 10, 1969; Acts 1969, 61st Leg., p. 1717, ch. 566, § 1, eff. June 10, 1969; Acts 1969, 61st Leg., p. 1732, ch. 570, §§ 1, 1A, eff. June 10, 1969; Acts 1969, 61st Leg., p. 1805, ch. 609, § 1, eff. June 10, 1969; Acts 1971, 62nd Leg., p. 717, ch. 79, §§ 1, 2, eff. April 26, 1971; Acts 1971, 62nd Leg., p. 721, ch. 82, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 924, ch. 138, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 949, ch. 160, §§ 1, 2, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 999, ch. 187, § 1, eff. May 13, 1971; Acts 1971, 62nd Leg., p. 1042, ch. 209, § 1, eff. May 13, 1971; Acts 1971, 62nd Leg., p. 1287, ch. 329, § 1, eff.

May 24, 1971; Acts 1971, 62nd Leg., p. 1299, ch. 340, §§ 1, 2, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1411, ch. 389, § 1, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 1559, ch. 420, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1658, ch. 468, §§ 1, 2, eff. May 27, 1971; Acts 1971, 62nd Leg., p. 2607, ch. 854, §§ 1, 2, eff. June 9, 1971; Acts 1973, 63rd Leg., p. 13, ch. 11, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 55, ch. 37, §§ 1, 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 56, ch. 39, §§ 1, 2, eff. April 12, 1973; Acts 1973, 63rd Leg., p. 204, ch. 90, § 1, eff. May 15, 1973; Acts 1973, 63rd Leg., p. 365, ch. 162, § 1, eff. May 23, 1973; Acts 1973, 63rd Leg., p. 515, ch. 220, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 701, ch. 297, § 1, eff. June 11, 1973; Acts 1973, 63rd Leg., p. 715, ch. 308, § 1, eff. June 11, 1973.]

Art. 978j-2. Fish Farm; Taking Fish without Consent of Owner

Sec. 1. It shall be unlawful for any person, other than the owner or operator thereof, to fish or to take any fish from any fish farm, except with the consent of the owner or operator thereof.

Sec. 2. Any person violating Section 1 hereof, shall upon conviction thereof, be guilty of a misdemeanor and subject to a fine of not less than \$25 nor more than \$200. Any person violating Section 1 of this Act, who shall take fish of a value in excess of \$200 from any such fish farm shall upon conviction thereof, be guilty of a felony and punished by imprisonment in the state penitentiary for a term of not more than 10 years.

[Acts 1969, 61st Leg., p. 769, ch. 260, eff. May 21, 1969.]

Art. 978j-3. Protection of Alligators

Sec. 1. No person may take, catch, kill, buy, or sell, or attempt to take, catch, kill, buy, or sell, alligators or alligator hides, or may possess an alligator or its hide, in this state, except that nothing in this law shall prohibit the possession of such alligator hide in the form of a final processed and manufactured product.

Sec. 2. This Act does not prohibit the taking and possession of alligators or hides as provided by Article 913, Penal Code of Texas, 1925.

Sec. 3. Any person who shall have in his possession or control any live alligators or hides at the effective date of this Act shall have until January 1, 1970 to legally dispose of the same.

Sec. 4. A person who violates this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$200.

Sec. 5. Chapter 94, Acts of the 52nd Legislature, 1951; Chapter 206, Acts of the 56th Legislature, Regular Session, 1959; Chapter 144, Acts of the 57th Legislature, Regular Session, 1961, as amended by Chapter 418, Acts of the 59th Legislature, Regular Session, 1965; Chapter 68, Acts of the 57th Legislature, 3rd Called Session, 1962; Chapter 401, Acts of the 58th Legislature, 1963, as amended by Chapter 517, Acts of the 60th Legislature, Regular Session,

1967; and Section 15, Chapter 252, Acts of the 58th Legislature, 1963, are repealed.<sup>1</sup>

[Acts 1969, 61st Leg., p. 1957, ch. 657, eff. Sept. 1, 1969.]

<sup>1</sup> Article 978j notes.

### Art. 978k. Propagating or Holding in Captivity Game Animals for Sale

#### License Required; Fee

Sec. 1. Any person, firm or corporation, before engaging in the business of propagating any of the game animals of this State for the purpose of sale, barter, exchange or offering for sale, barter or exchange, or before placing in captivity any game animal for such purpose, shall obtain from the Parks and Wildlife Department at Austin, Texas, a game breeder's license upon payment of the sum of Five Dollars (\$5.00), and which license shall be valid until August 31st, following date of issuance, and any person, firm or corporation holding such license is hereby defined as a game breeder.

#### Privileges under License

Sec. 2. A game breeder's license shall entitle the holder to engage in the business of game breeding in the immediate locality for which such license was issued, and such license shall entitle the holder to only those privileges which are hereby specified. To hold in captivity only for the purpose of propagation or sale and to sell, under regulations herein provided, wild deer of all species, wild antelope, elk, black bear, collared peccary, and wild squirrels of all varieties.

#### State Game Laws and Regulations Applicable

Sec. 3. Except in so far as specified privileges are conferred by this Act, all game animals held under a game breeder's license shall remain under the full force of any or all laws or regulations of this State pertaining to wild game animals in order that these necessary police regulations for the preservation of native game species may be enforced to the benefit of this State.

#### Captivity Defined

Sec. 4. For the purpose of this Act "captivity" is defined as an enclosure suitable for retaining, and that will retain at all times under reasonable and ordinary circumstances the animal so enclosed, and will prevent the entry into the said enclosure of any other animal. Any single enclosure for wild deer of all species, wild antelope, elk, black bear, and collared peccary shall not exceed three hundred twenty (320) acres.

#### Inspection of Enclosures

Sec. 5. Each pen, coop or enclosure of any kind in which any game animal is held shall be subject to inspection by any Game Management Officer at any time and no warrant shall be required therefor.

#### Serial Number of Breeder and Tags

Sec. 6. To each person, firm or corporation obtaining a game breeder's license there shall be issued

by the Parks and Wildlife Department, at the time of first issuance of license to such breeder, a serial number, which shall remain the number of said game breeder whenever he may hold a game breeder's license. A suitable metal tag, bearing the serial number of the game breeder holding same, shall be attached to and remain attached to an ear of each antelope or deer held or sold by a game breeder.

#### Conditions for Sale and Purchase

Sec. 7. It shall be unlawful for any game breeder to sell, barter or exchange or offer for sale, barter or exchange any game animal, except when same is alive and in a healthy condition. And it shall be unlawful for any person to purchase in this State or to accept from any person any live game animal that has been held in this State, except from a licensed game breeder and when such animal bears a tag as herein required to be placed on game animals by game breeders, except when same is delivered by a common carrier from outside this State. No game animal shall be purchased or received by any person in this State except for the purpose of liberation for stocking purposes, or for the purpose of holding same for propagation purposes, and with the understanding that all such game and increase therefrom shall remain under the full force of all the necessary police regulations of this State pertaining to wild game, and that such game may be held in captivity for such propagation purposes in this State only after permit has been obtained from the Parks and Wildlife Department. Provided that nothing contained in this Act shall prohibit the holding, taking or receiving of game animals for scientific or zoological purposes, under permit issued by the Parks and Wildlife Department under the provisions of Article 913, Penal Code, 1925.

Sec. 8. Repealed by Acts 1973, 63rd Leg., p. 1178, ch. 430, § 3, eff. Sept. 1, 1973.

#### Sale of Wild Deer and Antelope and Collared Peccary in Open Season

Sec. 9. It shall be unlawful for any game breeder to sell in this state, or ship to any person in this state or for any citizen of this state to purchase from any game breeder any wild deer, wild antelope, and collared peccary during any open season for taking such game animals or for a period of ten (10) days before and after such open season.

#### Carrier Regulations

Sec. 10. Any common carrier is hereby authorized to accept for shipment any of the game animals named in this Act, from any licensed game breeder, but it shall be unlawful for any agent of a common carrier to accept for shipment any live game animal other than from a licensed game breeder; or for any person other than a licensed game breeder or his authorized agent to ship or transport any live animal, except when permit for such shipment or transportation has been granted by the Parks and Wildlife Department or one of its agents authorized to grant such permit.

Exception for Parks and Wildlife Department

Sec. 11. Provided that nothing contained in this Act shall prohibit the Parks and Wildlife Department, or any agent of such Department, acting upon its authority, from taking, possessing, holding, transporting or propagating any of the game animals of this State for public purposes.

Sec. 11a. Repealed by Acts 1973, 63rd Leg., p. 1178, ch. 430, § 3, eff. Sept. 1, 1973.

Records and Reports of Licensees

Sec. 12. Each person, firm or corporation holding a game breeder's license in a suitably bound book shall keep a written record which shall show the number of each kind of game animal on hand at time license was issued and source from which they were obtained; the number of each kind of game animals on hand at any time after license is obtained and number of each kind and source of any animals received and date of receiving; the name and address of any and all persons to whom shipments or deliveries are made and number of each kind shipped or delivered to each such person and date of shipment and/or delivery. Each such report shall be for the period of time from date of license until September 1st following such date. Copy of such record, with affidavit made before a Notary Public or other officer qualified to administer oath, that same is true and correct, shall be filed in the office of the Parks and Wildlife Department at Austin, Texas, before another game breeder's license shall be issued to a person, firm or corporation who has heretofore held such a license.

Sec. 13. Repealed by Acts 1973, 63rd Leg., p. 1178, ch. 430, § 3, eff. Sept. 1, 1973.

Repeals

Sec. 14. All laws or parts of laws in conflict with this Act are hereby repealed and Senate Bill 36, 3rd Called Session, 42nd Legislature, is specifically repealed.

Penalty

Sec. 15. Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00), and each animal sold or purchased or held in violation of this Act shall constitute a separate offense, and any game breeder convicted, under any provision of this Act, shall automatically forfeit his license and shall not be entitled to engage in the business of game breeding for a period of one year following date of conviction. [Acts 1933, 43rd Leg., p. 212, ch. 96; Acts 1957, 55th Leg., p. 260, ch. 121, § 1; Acts 1963, 58th Leg., p. 928, ch. 358, § 1, eff. Aug. 23, 1963; Acts 1973, 63rd Leg., p. 260, ch. 125, § 6, eff. Sept. 1, 1973; Acts 1973, 63rd Leg., p. 1176, ch. 430, § 2, eff. Sept. 1, 1973.]

**Art. 978k-1. Propagating or Holding in Captivity Game Birds for Sale**

License Required

Sec. 1. No person, firm, or corporation may engage in the business of propagating game birds for

the purpose of sale without first acquiring the proper license authorized to be issued under this Act.

Issuance of License

Sec. 2. (a) The Parks and Wildlife Department shall issue the licenses authorized by this Act, and may designate agents for their issuance.

(b) The license shall be on a form provided by the Department.

(c) A license issued is valid for one year from the date of its issuance.

(d) Each license issued shall be numbered.

Classes of License; Fees

Sec. 3. (a) A Class 1 Commercial Game Bird Breeder's License entitles the holder to engage in the business of propagating game birds for sale or holding game birds in captivity for sale. The fee for a Class 1 Commercial Game Bird Breeder's License is Fifty Dollars (\$50).

(b) A Class 2 Commercial Game Bird Breeder's License entitles the holder to engage in the business of propagating game birds for sale or holding game birds in captivity for sale, except that the holder of a Class 2 Commercial Game Bird Breeder's License may not possess more than one thousand (1,000) game birds during any calendar year. The fee for a Class 2 Commercial Game Bird Breeder's License is Five Dollars (\$5).

Enclosures for Retaining Game Birds

Sec. 4. (a) In this Act, "captivity" means the keeping of game birds in an enclosure or pen.

(b) No holder of a license under this Act may retain game birds, other than a migratory bird or water fowl, in an enclosure larger than forty (40) acres.

(c) No holder of a license under this Act may retain migratory birds or water fowl in an enclosure larger than three hundred and twenty (320) acres.

Inspection of Facilities and Enclosures

Sec. 5. Game management officers of the Parks and Wildlife Department may inspect the facilities and enclosures of a holder of a permit under this Act at any time during normal business hours without a warrant.

Serial Number; Metal Banding

Sec. 6. (a) The Parks and Wildlife Department shall issue to holders of Commercial Game Bird Breeder's Licenses a serial number, which shall remain the number of said game breeder whenever he may hold a game breeder's license.

(b) A holder of a Class 2 Commercial Game Bird Breeder's License shall obtain suitable metal bands bearing his serial number and shall band all game birds in his possession and shall keep the birds banded. A failure to band a game bird or to keep a game bird banded by a holder of a Class 2 Commercial Game Bird Breeder's License is a violation of this Act.

Carcasses Marked with Rubber Stamp

Sec. 7. (a) Any Commercial Game Breeder offering for sale the carcass of any pen raised game bird

shall keep and maintain a rubber stamp which shall have written thereon the serial number of the Commercial Game Breeder.

(b) Before the carcass of a dead pen raised game bird is sold, the holder of the Commercial Game Bird Breeder's License shall plainly stamp and mark each such carcass sold or offered to be sold with said rubber stamp.

(c) No person may knowingly purchase the carcass of a game bird in this State unless the bird is marked with a stamp showing the number of a licensee under this Act.

Method of Killing

Sec. 8. The carcass of a pen raised game bird to be offered for sale must be killed otherwise than by shooting.

Sale and Purchase of Live Birds

Sec. 9. (a) No commercial game bird breeder may sell a live game bird unless the bird is in a healthy condition.

(b) No person in this State may purchase a live game bird except from a commercial game bird breeder. This subsection does not prohibit the purchasing of game birds delivered by common carrier from out of the State.

Exceptions to Act

Sec. 10. (a) Regardless of other provisions of this Act, a person may purchase live pheasant from a commercial game bird breeder for any purpose.

(b) A commercial game bird breeder may slaughter game birds for his personal consumption at any time.

(c) This Act does not apply to a person holding a valid license issued under Article 913, Penal Code of Texas, 1925, as amended.

(d) Regardless of other provisions of this Act, any person owning or operating any restaurant, hotel, boarding house, club, or other business where food is sold for consumption, may sell game birds for consumption on the premises of the business.

Records and Reports of Licensees

Sec. 11. (a) Each commercial game bird breeder shall maintain records showing the numbers of game birds acquired, propagated, sold, and disposed of in any other manner. Said records shall be submitted on forms provided by the Parks and Wildlife Department and shall contain any other information required by the Department.

(b) During August of each year, but before August 31, a commercial game bird breeder shall send to the Department a report showing the total number of game birds in the possession of the breeder during the previous year and accounting for the acquisition and disposition of each game bird.

(c) The failure to keep the records required by Subsection (a) of this section or to make the report as required by Subsection (b) of this section is a violation of this Act.

Penalty

Sec. 12. Any person who violates any provision of this Act is guilty of a misdemeanor and on conviction is punishable by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

Federal Law

Sec. 13. This Act does not authorize any act prohibited by federal law without a permit issued by the United States and the issuance of any federal permit does not authorize acts in violation of this Act unless otherwise provided by federal law.

[Acts 1957, 55th Leg., p. 255, ch. 119; Acts 1973, 63rd Leg., p. 267, ch. 125, § 19, eff. Sept. 1, 1973; Acts 1973, 63rd Leg., p. 1174, ch. 430, § 1, eff. Sept. 1, 1973.]

Art. 978I. Sale of Certain Fish in San Saba and Other Counties

Sec. 1. It shall be unlawful for any person, firm, or corporation or their agent, to barter or sell or offer for barter or sale, or to buy any bass, crappie, perch, catfish, or any other fish taken from the fresh waters in the Counties of San Saba, Gillespie, Kerr, Comal, Llano, Mason, Kimble, Edwards, Sutton and Real.

Sec. 2. It shall be unlawful for any person to take from the fresh waters of the above named counties any of the fish above enumerated by any means or device other than by ordinary pole and line or throw line equipped with not more than two hooks, provided, however, that it shall be lawful to fish with a dowagiac, or other artificial bait equipped with more than two hooks, and provided further that a person may use a minnow seine which is not more than twenty (20) feet in length for the purpose of catching minnows for bait. No person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnows for bait.

Sec. 3. It shall be unlawful for any person to catch, take or have in his possession any catfish less than twelve (12) inches in length; any crappie or white perch less than seven (7) inches in length and any bass less than eleven (11) inches in length.

Sec. 4. It shall be unlawful for any person in the above named counties to catch or have in his possession in any one day more than ten (10) fish of any one kind or variety, except perch, and it shall be unlawful to catch or have in his possession more than twenty (20) perch in any one day, and it shall be unlawful to catch or have in his possession more than sixty (60) perch in any one week, and it shall be unlawful to catch or have in his possession more than thirty (30) of any one variety, with the exception of perch in any one week. The taking of any such fish in excess of the number herein allowed, shall be a separate offense.

Any person found guilty of the violation of any provisions of this Act shall be fined not less than Five Dollars (\$5.00) nor more than One Hundred Dollars (\$100.00).

Sec. 5. All laws or parts of laws in conflict herewith are hereby expressly repealed.

[Acts 1933, 43rd Leg., Spec.Laws, p. 77, ch. 61.]

**Art. 978I-1. Sale of Fresh Water Fish Taken from Counties West of Pecos River**

Sec. 1. From and after the passage of this Act, it shall be illegal for any person to sell or offer for sale any fresh water fish caught or trapped in any manner from or in any of the fresh waters located in any county in this State, lying and being situated west of the Pecos River.

Sec. 2. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars.

[Acts 1939, 46th Leg., Spec.Laws, p. 840.]

**Art. 978I-2. Repealed by Acts 1967, 60th Leg., p. 1967, ch. 730, § 15, eff. Sept. 1, 1967**

**Art. 978I-3. Repealed by Acts 1967, 60th Leg., p. 1967, ch. 730, § 15, eff. Sept. 1, 1967**

**Art. 978I-4. Repealed by Acts 1967, 60th Leg., p. 1967, ch. 730, § 15, eff. Sept. 1, 1967**

**Art. 978I-5. Lake Texoma Fishing Licenses**

Application of Law

Sec. 1. This Act shall apply only to that portion of the State of Texas which is inundated by the waters impounded by a dam across the channel of the Red River, known as Denison Dam, situated near the City of Denison, Texas, which impoundment is commonly known as Lake Texoma, and shall apply to any other portion of that area of land acquired or that hereafter may be acquired by the United States Government for the operation of said reservoir.

Unlawful to Fish Without License

Sec. 2. It shall be unlawful for any person to fish, or to attempt to take or catch fish, from the waters described in Section 1 of this Act without first having procured for himself and having in his possession and on his person a currently valid fishing license, as hereinafter provided.

Kinds and Duration of Licenses

Sec. 3. There is hereby created a license to be known as the Lake Texoma Fishing License. Such license shall be valid from date of issuance until the following December 31st. There is hereby created a license to be known as the Lake Texoma Ten-day Fishing License, which shall be valid for only ten consecutive days, including the date of issuance. A Lake Texoma Fishing License or a Lake Texoma Ten-day Fishing License shall be required of all persons who fish in the waters within the boundaries of the area described in Section 1 of this Act. Provided, however, that such license shall not be required of residents of Texas when such residents are engaged in fishing within the territorial boundaries of this State.

Fees

Sec. 4. The fee for a Lake Texoma Fishing License shall be Two Dollars and Fifty Cents (\$2.50); Fifteen Cents (15¢) of this amount may be retained by the issuing officer as his fee for issuing same. The fee for a Lake Texoma Ten-day Fishing License shall be One Dollar and Twenty-five Cents (\$1.25); Fifteen Cents (15¢) of which may be retained by the issuing officer as his fee for issuing same. The remainder of the fees so collected, for either a Lake Texoma Fishing License or a Lake Texoma Ten-day Fishing License shall be remitted to the Game, Fish and Oyster Commission, at its office in Austin, Texas, not later than the 10th day of the month following date of issuance, and shall be deposited by said Commission in the State Treasury to the credit of the Special Game and Fish Fund.

Form and Contents of License

Sec. 5. Each Lake Texoma Fishing License or Lake Texoma Ten-day Fishing License shall be upon the form prescribed by the Game, Fish and Oyster Commission, and shall bear the name and address of the licensee, his personal description, date of issuance, and such other information as may be deemed necessary for the proper enforcement of this Act.

Accounting and Division of Fees

Sec. 6. The Game, Fish and Oyster Commission is hereby empowered and directed to keep separate and strict accounting of the revenue derived from collections for Lake Texoma Fishing License and Lake Texoma Ten-day Fishing License for annual division between the States of Texas and Oklahoma, said division to be on a basis of the proportionate area of the Lake's surface lying within the territorial jurisdiction of the respective states. The Comptroller of Public Accounts is hereby directed to pay over to the State of Oklahoma seventy (70%) percent of the funds collected under the provisions of this Act, said payment to be made on February 1 of each year, from all funds so collected during the twelve-month period ending December 31 of the previous year.

Reciprocal Legislation by Oklahoma

Sec. 7. Provisions of this Act shall not become effective unless and until the State of Oklahoma shall make provision for sale of a Lake Texoma Fishing License and a Lake Texoma Ten-day Fishing License under the same relative conditions set out above and to provide for payment by the State of Oklahoma to the State of Texas not less than thirty (30%) percent of all monies collected by the State of Oklahoma for herein prescribed special licenses to be in effect on Lake Texoma, said licenses to be sold in the State of Oklahoma to be parallel in all provisions established as in effect in the State of Texas.

Violations

Sec. 8. Any person violating any provision of this Act shall, upon conviction, be fined in a sum of not less than Twenty-five (\$25.00) Dollars nor more than One Hundred (\$100.00) Dollars; and the net

amounts of fines so collected shall be remitted to the Game, Fish and Oyster Commission and shall be deposited in the Special Game and Fish Fund, and may be used for all of the purposes provided for by law for the use of said fund.

Effective at Direction of Commission

Sec. 9. This Act shall become effective at the direction of the Texas Game, Fish and Oyster Commission and only after said Commission is satisfied that companion Acts of the Legislatures of the States of Texas and Oklahoma are not in conflict in any provisions and that provision has been made for reciprocal payments between the two States of all funds collected under provisions of the Acts on the basis of seventy (70%) percent to the State of Oklahoma and thirty (30%) percent to the State of Texas. [Acts 1949, 51st Leg., p. 471, ch. 255; Acts 1951, 52nd Leg., p. 382, ch. 245, § 1.]

#### Art. 978I-6. Lake Texoma; Rough Fish

Sec. 1. It shall be lawful for any person to take or catch suckers, buffalo, carp, shad or gar in the waters of Lake Texoma in Cooke and Grayson Counties (being those waters impounded by a dam across the channel of Red River near Denison, Texas) with a seine or net the meshes of which shall not be less than one and one-half inches square; provided, however, that any fish other than those above enumerated caught by the above mentioned methods shall be immediately released in the waters from which caught.

Sec. 2. It shall be unlawful for any person to have in possession any bass, crappie, or white perch, catfish, perch or bream at the time such person has in possession any of the above named rough fish taken by the methods permitted in this Act; or to have in possession any bass, crappie, or white perch, catfish, perch or bream caught while using a one and one-half inch mesh seine or net for the purpose of taking suckers, buffalo, carp, shad or gar.

Sec. 3. It shall hereafter be lawful to sell or buy any sucker, buffalo, carp, shad or gar taken from the herein mentioned waters.

Sec. 4. Any person who shall violate any provision of Section 2 of this act shall be deemed guilty of a misdemeanor and upon conviction therefor shall be fined in a sum not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars. [Acts 1949, 51st Leg., p. 911, ch. 489.]

Art. 978I-7. Repealed by Acts 1967, 60th Leg., p. 1967, ch. 730, § 15, eff. Sept. 1, 1967

#### Art. 978I-8. Lower Colorado River Authority; Hunting; Archery or Rifle Ranges

(a) Except as provided in this Section, it shall be unlawful for a person to carry, transport, shoot, discharge, or hunt with a bow, crossbow, slingshot, gun, firearms or any other type of weapon in, on, over, across or upon the lands of the Lower Colorado River Authority, an agency of the State of Texas.

(b) The Board of Directors of the Lower Colorado River Authority may lease land owned by the authority to be used exclusively for an archery range or rifle range and operated by the lessee on a nonprofit basis, provided that no hunting shall be allowed on any of such ranges.

(c) On lands owned by the authority and leased to or used with the consent of the authority by the Boy Scouts or Girl Scouts of America or other organized nonprofit public service groups or organizations, persons who are members of such groups or organizations may carry, transport, shoot, or discharge any bow, crossbow, or firearm on or over the land only for target practice or instructional purposes, but not for hunting, and only on ranges, designated by the Lower Colorado River Authority and only under the supervision of a qualified instructor duly registered and approved by the Lower Colorado River Authority.

(d) The Lower Colorado River Authority shall maintain in its Austin office a current listing of approved and registered instructors and a map indicating designated ranges available upon request to enforcement officers and county attorneys.

[Acts 1963, 58th Leg., p. 1145, ch. 443, § 1, eff. Aug. 23, 1963; Acts 1969, 61st Leg., p. 162, ch. 61, § 1, eff. April 3, 1969.]

Art. 978m. Repealed by Acts 1945, 49th Leg., p. 289, ch. 209, § 1

#### Art. 978n. Game Management Unit for Benefit of Texas Bighorn Mountain Sheep

Fenced Game Management Area; Policy; Purpose

Sec. 1. The Texas Bighorn Mountain Sheep (*Ovis canadensis texiana*) is making its last stand in the Sierra Diablo Mountains of Culberson and Hudspeth Counties. Unless the State makes every reasonable endeavor to preserve this majestic form of wildlife by affording it freedom from the encroachment of domestic livestock and predators, they will have perished. The loss of mountain sheep as part of the native fauna of this State would rob future generations of their rightful heritage to the symbols of the natural wildness of this State. In order to protect this interesting animal it is necessary that a fenced game management area be set aside. All lands to be included within such area shall be in Culberson and Hudspeth Counties. It is hereby declared the policy of the State of Texas to do everything within the bounds of sound economy to perpetuate the Texas species of the Rocky Mountain Bighorn Sheep. The purpose of this bill is to give the Game, Fish and Oyster Commission the authority to purchase not to exceed twelve (12) sections of privately owned land and to purchase not to exceed eight (8) sections of public school lands in Culberson and Hudspeth Counties.

Gifts

Sec. 2. The Game, Fish and Oyster Commission of the State of Texas is hereby authorized to accept gifts of land in Culberson or Hudspeth Counties or money to be deposited in the Special Game Fund and to be used for the purpose of a game management

unit in Culberson and Hudspeth Counties for the special benefit of the Texas Bighorn Mountain Sheep.

Purchase of School Lands

Sec. 3. The Game, Fish and Oyster Commission of the State of Texas is hereby authorized to purchase, and the school land board of the State of Texas is authorized to sell, with the reservation of all minerals to the school fund, to be managed by said school land board, at a price not to exceed One Dollar (\$1) per acre, the surface rights in and to not more than eight (8) sections of public school lands located in Culberson and Hudspeth Counties, in the following blocks:

Blocks 65 and 66, T. & P. Ry. Co. land;

Blocks 42½, 43, 54½, Public School Lands; said lands to be paid for by the Game, Fish and Oyster Commission out of the Special Game Fund.

Acquisition of Other Lands

Sec. 4. The Game, Fish and Oyster Commission shall have the right to acquire by purchase other lands in Culberson and Hudspeth Counties, Texas, that may be deemed necessary for the operation of a game management unit primarily for the protection of Bighorn Mountain Sheep. Upon approval of the title by the Attorney General of this State, said Game, Fish and Oyster Commission is hereby authorized to pay for such land so purchased out of the Special Game Fund.

Power to Appropriate Land

Sec. 5. The State of Texas, through said Game, Fish and Oyster Commission, shall have the right, power, and authority to enter upon, condemn, and appropriate not more than twelve (12) sections of land in Culberson and Hudspeth Counties of any person or corporation for the above mentioned purposes.

Condemnation Proceedings; Payment of Damages

Sec. 6. The manner and method of such condemnation, easement, and payment of damages therefor shall be the same as is now provided by law in the case of railroads. Condemnation suits brought under this Act shall be brought in the name of the State of Texas by the Attorney General at the request of the Game, Fish and Oyster Commission in Travis County, Texas. All costs in such proceedings shall be paid by the State or by the person against whom such proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in such proceedings shall be paid by the State of Texas, by warrant drawn on the Comptroller against the Special Game Fund in the State Treasury.

Partial Invalidity

Sec. 7. If any section, sentence, clause, or part of this Act shall, for any reason, be held to be invalid by any Court of competent jurisdiction, such decision shall not affect the remaining portions of this Act and it is hereby declared to be the intention of the Legislature to have passed each sentence, section,

clause, or part thereof, irrespective of the fact that any other sentence, section, clause, or part thereof may be declared invalid.

Expenditures

Sec. 8. All expenditures provided for under this Act shall be made from the Special Game Fund of the Game, Fish and Oyster Commission which expenditure shall not exceed Twenty Thousand Dollars (\$20,000) in any one year, and three-fourths (¾) of which shall be reimbursed out of any Federal Aid in Wildlife Restoration funds available to this State. Said funds are hereby appropriated out of the Special Game Fund for the purposes heretofore stated. [Acts 1945, 49th Leg., p. 310, ch. 225.]

**Art. 978n-1. Repealed by Acts 1967, 60th Leg., p. 1967, ch. 730, § 15, eff. Sept. 1, 1967**

**Art. 978n-2. Pen Raised Quail**

Propagation and Sale Authorized

Sec. 1. Any person, firm or corporation may engage in the business of propagating pen raised quail for commercial purposes by complying with the provisions of this law, and may thereafter sell the carcass of such pen raised quail for any purpose, including sale for food.

Definition

Sec. 1a. A pen raised quail is a quail that has been hatched from an egg laid by a quail confined in a pen or coop and has itself been wholly raised in a pen or coop.

License

Sec. 2. A Commercial Quail Breeder's License must first be obtained from the Texas Game and Fish Commission. Said license may be obtained only during the month of July of each year and is to be valid for one year from the date of purchase and upon payment of Twenty-five (\$25.00) Dollars for each of said licenses. Each Commercial Quail Breeder's License must be numbered by the Texas Game and Fish Commission.

Rubber Stamp

Sec. 3. The holder of each Commercial Quail Breeder's License must keep and maintain a rubber stamp which shall have written thereon the number of the Commercial Quail Breeder's License issued to him by the Texas Game and Fish Commission and in addition the following: Texas Game and Fish Commission—Commercial Quail Breeder's License.

Stamping and Marking Carcasses; Manner of Killing

Sec. 4. Before the carcass of a dead pen raised quail is sold, the holder of the Commercial Breeder's License shall plainly stamp and mark each such carcass sold or offered to be sold with said rubber stamp. Any sale or purchase of the carcass of a pen raised quail not so stamped and marked shall be a violation of this law. All pen raised quail to be offered for sale must be killed otherwise than by shooting. The carcass of any quail that shows that it has been killed by shooting shall be prima facie evidence that such quail was not raised in accordance with this law; and the fact that such quail has

been stamped and marked in accordance with this law shall not alter this presumption.

Sale by Hotel, Restaurant, Boarding House or Club

Sec. 5. The keeper of a hotel, restaurant, boarding house or club may sell pen raised quail for food to be consumed on the premises, and shall not be required to hold a license therefor.

Violations; Punishment

Sec. 6. Any person, firm or corporation that violates any provision of this law shall be guilty of a misdemeanor and shall be fined not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars for each offense.

[Acts 1953, 53rd Leg., p. 689, ch. 264.]

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**Art. 1.01. Short Title**

This Act shall be known, and may be cited, as the "Code of Criminal Procedure".  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 1.02. Effective Date**

This Code shall take effect and be in force on and after January 1, 1966. The procedure herein prescribed shall govern all criminal proceedings instituted after the effective date of this Act and all proceedings pending upon the effective date hereof insofar as are applicable.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 1.03. Objects of this Code**

This Code is intended to embrace rules applicable to the prevention and prosecution of offenses against the laws of this State, and to make the rules of procedure in respect to the prevention and punishment of offenses intelligible to the officers who are to act under them, and to all persons whose rights are to be affected by them. It seeks:

1. To adopt measures for preventing the commission of crime;
2. To exclude the offender from all hope of escape;
3. To insure a trial with as little delay as is consistent with the ends of justice;
4. To bring to the investigation of each offense on the trial all the evidence tending to produce conviction or acquittal;
5. To insure a fair and impartial trial; and
6. The certain execution of the sentence of the law when declared.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 1.04. Due course of law**

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 1.05. Rights of accused**

In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself, or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. No person shall be held to answer for a felony unless on indictment of a grand jury.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 1.06. Searches and seizures**

The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches. No warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 1.07. Right to bail**

All prisoners shall be bailable unless for capital offenses when the proof is evident. This provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 1.08. Habeas Corpus**

The writ of habeas corpus is a writ of right and shall never be suspended.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 1.09. Cruelty forbidden**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 1.10. Jeopardy**

No person for the same offense shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 1.11. Acquittal a bar**

An acquittal of the defendant exempts him from a second trial or a second prosecution for the same offense, however irregular the proceedings may have been; but if the defendant shall have been acquitted upon trial in a court having no jurisdiction of the offense, he may be prosecuted again in a court having jurisdiction.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 1.12. Right to jury**

The right of trial by jury shall remain inviolate.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 1.13. Waiver of trial by jury**

The defendant in a criminal prosecution for any offense classified as a felony less than capital shall have the right, upon entering a plea, to waive the right of trial by jury, conditioned, however, that such waiver must be made in person by the defendant in writing in open court with the consent and approval of the court, and the attorney representing the State. The consent and approval by the court shall be entered of record on the minutes of the court, and the consent and approval of the attorney representing the State shall be in writing, signed by

him, and filed in the papers of the cause before the defendant enters his plea. Before a defendant who has no attorney can agree to waive the jury, the court must appoint an attorney to represent him. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 1.14. Waiver of rights

The defendant in a criminal prosecution for any offense may waive any rights secured him by law except the right of trial by jury in a capital felony case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1733, ch. 959, § 1, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1127, ch. 426, art. 3, § 5, eff. June 14, 1973.]

Acts 1967, 60th Leg., p. 1752, ch. 659 amended various articles of the Code of Criminal Procedure, 1965, and repealed Penal Code, Art. 82; sections 41 and 42 of the 1967 act provided:

"Sec. 41. Saving Clause. Any confession admissible at the time it was made shall be admissible at any trial subsequent to the effective date of this Act. The provisions of this Act shall not affect the admissibility of confessions made prior to the effective date of the Act.

"Sec. 42. Severability Clause. If any provision, section or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision, section or clause, and to this end the provisions of this Act are declared to be severable."

#### Art. 1.141. Waiver of indictment for noncapital felony

A person represented by legal counsel may in open court or by written instrument voluntarily waive the right to be accused by indictment of any offense other than a capital felony. On waiver as provided in this article, the accused shall be charged by information.

[Acts 1971, 62nd Leg., p. 1148, ch. 260, § 1, eff. May 19, 1971.]

#### Art. 1.15. Jury in felony

No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded, unless in felony cases less than capital, the defendant, upon entering a plea, has in open court in person waived his right of trial by jury in writing in accordance with Articles 1.13 and 1.14; provided, however, that it shall be necessary for the state to introduce evidence into the record showing the guilt of the defendant and said evidence shall be accepted by the court as the basis for its judgment and in no event shall a person charged be convicted upon his plea without sufficient evidence to support the same. The evidence may be stipulated if the defendant in such case consents in writing, in open court, to waive the appearance, confrontation, and cross-examination of witnesses, and further consents either to an oral stipulation of the evidence and testimony or to the introduction of testimony by affidavits, written statements of witnesses, and any other documentary evidence in support of the judgment of the court. Such waiver and consent must be approved by the court in writing, and be filed in the file of the papers of the cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1733, ch. 659, § 2, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 3028, ch. 996, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 1127, ch. 426, art. 3, § 5, eff. June 14, 1973.]

#### Art. 1.16. Liberty of speech and press

Every person shall be at liberty to speak, write or publish his opinion on any subject, being liable for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers investigating the conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. In all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 1.17. Religious belief

No person shall be disqualified to give evidence in any court of this State on account of his religious opinions, or for the want of any religious belief; but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 1.18. Outlawry and transportation

No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 1.19. Corruption of blood, etc.

No conviction shall work corruption of blood or forfeiture of estate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 1.20. Conviction of treason

No person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 1.21. Privilege of legislators

Senators and Representatives shall, except in cases of treason, felony or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the Legislature is convened.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 1.22. Privilege of voters

Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 1.23. Dignity of State

All judges of the Supreme Court, Court of Criminal Appeals and District Courts, shall, by virtue of their offices, be conservators of the peace through-

out the State. The style of all writs and process shall be "The State of Texas". All prosecutions shall be carried on in the name and by authority of "The State of Texas", and conclude, "against the peace and dignity of the State".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 1.24. Public trial

The proceedings and trials in all courts shall be public.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 1.25. Confronted by witnesses

The defendant, upon a trial, shall be confronted with the witnesses, except in certain cases provided for in this Code where depositions have been taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 1.26. Construction of this Code

The provisions of this Code shall be liberally construed, so as to attain the objects intended by the Legislature: The prevention, suppression and punishment of crime.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 1.27. Common law governs

If this Code fails to provide a rule of procedure in any particular state of case which may arise, the rules of the common law shall be applied and govern.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER TWO. GENERAL DUTIES OF OFFICERS

Art.

- 2.01. Duties of district attorneys.
- 2.02. Duties of county attorneys.
- 2.03. Neglect of duty.
- 2.04. Shall draw complaints.
- 2.05. When complaint is made.
- 2.06. May administer oaths.
- 2.07. Attorney pro tem.
- 2.08. Disqualified.
- 2.09. Who are magistrates.
- 2.10. Duty of magistrates.
- 2.11. Examining court.
- 2.12. Who are peace officers.
- 2.13. Duties and powers.
- 2.14. May summon aid.
- 2.15. Person refusing to aid.
- 2.16. Neglecting to execute process.
- 2.17. Conservator of the peace.
- 2.18. Custody of prisoners.
- 2.19. Report as to prisoners.
- 2.20. Deputy.
- 2.21. Duty of clerks.
- 2.22. Power of deputy clerks.
- 2.23. Report to Attorney General.
- 2.24. Repealed.

#### Art. 2.01. Duties of district attorneys

Each district attorney shall represent the State in all criminal cases in the district courts of his district, except in cases where he has been, before his election, employed adversely. When any criminal proceeding is had before an examining court in his district or before a judge upon habeas corpus, and he

is notified of the same, and is at the time within his district, he shall represent the State therein, unless prevented by other official duties. It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done. They shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 2.02. Duties of county attorneys

The county attorney shall attend the terms of court in his county below the grade of district court, and shall represent the State in all criminal cases under examination or prosecution in said county; and in the absence of the district attorney he shall represent the State alone and, when requested, shall aid the district attorney in the prosecution of any case in behalf of the State in the district court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 2.03. Neglect of duty

(a) It shall be the duty of the attorney representing the State to present by information to the court having jurisdiction, any officer for neglect or failure of any duty enjoined upon such officer, when such neglect or failure can be presented by information, whenever it shall come to the knowledge of said attorney that there has been a neglect or failure of duty upon the part of said officer; and he shall bring to the notice of the grand jury any act of violation of law or neglect or failure of duty upon the part of any officer, when such violation, neglect or failure is not presented by information, and whenever the same may come to his knowledge.

(b) It is the duty of the trial court, the attorney representing the accused, the attorney representing the state and all peace officers to so conduct themselves as to insure a fair trial for both the state and the defendant, not impair the presumption of innocence, and at the same time afford the public the benefits of a free press.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1733, ch. 659, § 3, eff. Aug. 28, 1967.]

#### Art. 2.04. Shall draw complaints

Upon complaint being made before a district or county attorney that an offense has been committed in his district or county, he shall reduce the complaint to writing and cause the same to be signed and sworn to by the complainant, and it shall be duly attested by said attorney.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 2.05. When complaint is made

If the offense be a misdemeanor, the attorney shall forthwith prepare an information based upon such complaint and file the same in the court having jurisdiction; provided, that in counties having no county attorney, misdemeanor cases may be tried upon complaint alone, without an information, pro-

vided, however, in counties having one or more criminal district courts an information must be filed in each misdemeanor case. If the offense be a felony, he shall forthwith file the complaint with a magistrate of the county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 2.06. May administer oaths

For the purpose mentioned in the two preceding Articles, district and county attorneys are authorized to administer oaths.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 2.07. Attorney pro tem

(a) Whenever an attorney for the state is disqualified to act in any case or proceeding, is absent from the county or district, or is otherwise unable to perform the duties of his office, or in any instance where there is no attorney for the state, the judge of the court in which he represents the state may appoint any competent attorney to perform the duties of the office during the absence or disqualification of the attorney for the state.

(b) If the appointed attorney is also an attorney for the state, the duties of the appointed office are additional duties of his present office, and he is not entitled to additional compensation.

(c) If the appointed attorney is not an attorney for the state, he is qualified to perform the duties of the office for the period of absence or disqualification of the attorney for the state on filing an oath with the clerk of the court. He shall receive compensation in the same amount and manner as an attorney appointed to represent an indigent person.

(d) In this article, "attorney for the state" means a county attorney, a district attorney, or a criminal district attorney.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1733, ch. 659, § 4, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 356, ch. 154, § 1, eff. May 23, 1973.]

#### Art. 2.08. Disqualified

District and county attorneys shall not be of counsel adversely to the State in any case, in any court, nor shall they, after they cease to be such officers, be of counsel adversely to the State in any case in which they have been of counsel for the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 2.09. Who are magistrates

Each of the following officers is a magistrate within the meaning of this Code: The judges of the Supreme Court, the judges of the Court of Criminal Appeals, the judges of the District Court, the county judges, the judges of the county courts at law, judges of the county criminal courts, the justices of the peace, the mayors and recorders and the judges of the city courts of incorporated cities or towns.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 2.10. Duty of magistrates

It is the duty of every magistrate to preserve the peace within his jurisdiction by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 2.11. Examining court

When the magistrate sits for the purpose of inquiring into a criminal accusation against any person, this is called an examining court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 2.12. Who are peace officers

The following are peace officers:

- (1) sheriffs and their deputies;
- (2) constables and deputy constables;
- (3) marshals or police officers of an incorporated city, town, or village;
- (4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;
- (5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;
- (6) law enforcement agents of the Alcoholic Beverage Commission;
- (7) each member of an arson investigating unit of a city, county or the state;
- (8) any private person specially appointed to execute criminal process;
- (9) officers commissioned by the governing board of any state institution of higher education, public junior college or the Texas State Technical Institute;
- (10) officers commissioned by the Board of Control;
- (11) game management officers commissioned by the Parks and Wildlife Commission;

[Text of subd. (12) added by Acts 1973, 63rd Leg., p. 9, ch. 7, § 2]

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state that operates an airport served by a Civil Aeronautics Board certificated air carrier.

[Text of subd. (12) added by Acts 1973, 63rd Leg., p. 1259, ch. 459, § 1]

(12) park and recreational patrolmen and security officers of municipalities with a population exceeding 1,200,000 persons.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1734, ch. 659, § 5, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1116, ch. 246, § 3, eff. May 17, 1971; Acts 1973, 63rd Leg., p. 9, ch. 7, § 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1259, ch. 459, § 1, eff. Aug. 27, 1973.]

Sections 4 and 5 of the amendatory Act of 1971 provided:  
 "Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 5. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only."

Sections 2 and 3 of Acts 1973, 63rd Leg., p. 1259, ch. 459, provided:  
 "Sec. 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only."

### Art. 2.13. Duties and powers

It is the duty of every peace officer to preserve the peace within his jurisdiction. To effect this purpose, he shall use all lawful means. He shall in every case where he is authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime. He shall execute all lawful process issued to him by any magistrate or court. He shall give notice to some magistrate of all offenses committed within his jurisdiction, where he has good reason to believe there has been a violation of the penal law. He shall arrest offenders without warrant in every case where he is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 2.14. May summon aid

Whenever a peace officer meets with resistance in discharging any duty imposed upon him by law, he shall summon a sufficient number of citizens of his county to overcome the resistance; and all persons summoned are bound to obey.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 2.15. Person refusing to aid

The peace officer who has summoned any person to assist him in performing any duty shall report such person, if he refuse to obey, to the proper district or county attorney, in order that he may be prosecuted for the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 2.16. Neglecting to execute process

If any sheriff or other officer shall wilfully refuse or fail from neglect to execute any summons, subpoena or attachment for a witness, or any other legal process which it is made his duty by law to execute, he shall be liable to a fine for contempt not less than ten nor more than two hundred dollars, at the discretion of the court. The payment of such fine shall be enforced in the same manner as fines for contempt in civil cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 2.17. Conservator of the peace

Each sheriff shall be a conservator of the peace in his county, and shall arrest all offenders against the laws of the State, in his view or hearing, and take them before the proper court for examination or trial. He shall quell and suppress all assaults and

batteries, affrays, insurrections and unlawful assemblies. He shall apprehend and commit to jail all offenders, until an examination or trial can be had. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 2.18. Custody of prisoners

When a prisoner is committed to jail by warrant from a magistrate or court, he shall be placed in jail by the sheriff. It is a violation of duty on the part of any sheriff to permit a defendant so committed to remain out of jail, except that he may, when a defendant is committed for want of bail, or when he arrests in aailable case, give the person arrested a reasonable time to procure bail; but he shall so guard the accused as to prevent escape.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 2.19. Report as to prisoners

On the first day of each month, the sheriff shall give notice, in writing, to the district or county attorney, where there be one, as to all prisoners in his custody, naming them, and of the authority under which he detains them.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 2.20. Deputy

Wherever a duty is imposed by this Code upon the sheriff, the same duty may lawfully be performed by his deputy. When there is no sheriff in a county, the duties of that office, as to all proceedings under the criminal law, devolve upon the officer who, under the law, is empowered to discharge the duties of sheriff, in case of vacancy in the office.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 2.21. Duty of clerks

Each clerk of the district or county court shall receive and file all papers in respect to criminal proceedings, issue all process in such cases, and perform all other duties imposed upon them by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 2.22. Power of deputy clerks

Whenever a duty is imposed upon the clerk of the district or county court, the same may be lawfully performed by his deputy.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 2.23. Report to Attorney General

The clerks of the district and county courts shall, when required by the Attorney General, report to him at such times, and in accordance with such forms as he may direct, such information in relation to criminal matters as may be shown by their records.

When any district clerk has failed, neglected or refused to make any such report after being requested in writing by the Attorney General to make such report, the Attorney General shall notify in writing the Comptroller of Public Accounts of such failure, neglect or refusal, and said Comptroller shall not thereafter draw any warrant in favor of said clerk

until said report has been filed with the Attorney General.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 2.24. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3b, eff. Jan. 1, 1974**

### CHAPTER THREE. DEFINITIONS

Art.

- 3.01. Words and phrases.
- 3.02. Criminal action.
- 3.03. Officers.

#### Art. 3.01. Words and phrases

All words, phrases and terms used in this Code are to be taken and understood in their usual acceptance in common language, except where specially defined; and, unless herein specially excepted have the meaning which is given to them in the Penal Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 3.02. Criminal action

A criminal action is prosecuted in the name of the State of Texas against the accused, and is conducted by some person acting under the authority of the State, in accordance with its laws.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 3.03. Officers

The general term "officers" includes both magistrates and peace officers.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER FOUR. COURTS AND CRIMINAL JURISDICTION

Art.

- 4.01. What courts have criminal jurisdiction.
- 4.02. Existing courts continued.
- 4.03. Court of Criminal Appeals.
- 4.04. Mandamus, certiorari, and contempt.
- 4.05. Jurisdiction of district courts.
- 4.06. When felony includes misdemeanor.
- 4.07. Jurisdiction of county courts.
- 4.08. Appellate jurisdiction of county courts.
- 4.09. Appeals from inferior court.
- 4.10. To forfeit bail bonds.
- 4.11. Jurisdiction of justice courts.
- 4.12. Misdemeanor cases; precinct in which defendant to be tried in justice court.
- 4.13. Justice may forfeit bond.
- 4.14. Corporation court.
- 4.15. May sit at any time.
- 4.16. Concurrent jurisdiction.

#### Art. 4.01. What courts have criminal jurisdiction

The following courts have jurisdiction in criminal actions:

1. The Court of Criminal Appeals;
2. The district courts;
3. The criminal district courts;
4. Courts of domestic relations where they have criminal jurisdiction by legislative enactment;
5. The county courts;

6. All county courts at law with criminal jurisdiction;

7. County criminal courts;

8. Justice courts; and

9. Corporation courts.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.02. Existing courts continued

No existing courts shall be abolished by this Code and shall continue with the jurisdiction, organization, terms and powers currently existing unless otherwise provided by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.03. Court of Criminal Appeals

The Court of Criminal Appeals shall have appellate jurisdiction coextensive with the limits of the State in all criminal cases. This Article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court, the county criminal court, or county court at law, in which the fine imposed by the county court, the county criminal court or county court at law shall not exceed one hundred dollars.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.04. Mandamus, certiorari, and contempt

Sec. 1. In addition to the power and authority now vested in the Court of Criminal Appeals of the State of Texas, said court and each member thereof shall have, and is hereby given, power and authority to grant and issue and cause the issuance of writs of mandamus and certiorari agreeable to the principles of law regarding said writs, whenever in the judgment of said court or any member thereof the same should be necessary to enforce the jurisdiction of said court.

Sec. 2. Repealed by Acts 1971, 62nd Leg., p. 2536, ch. 831, § 6, eff. Aug. 30, 1971.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 2536, ch. 831, § 6, eff. Aug. 30, 1971.]

#### Art. 4.05. Jurisdiction of district courts

District courts and criminal district courts shall have original jurisdiction in criminal cases of the grade of felony, and of all misdemeanors involving official misconduct.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.06. When felony includes misdemeanor

Upon the trial of a felony case, the court shall hear and determine the case as to any grade of offense included in the indictment, whether the proof shows a felony or a misdemeanor.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.07. Jurisdiction of county courts

The county courts shall have original jurisdiction of all misdemeanors of which exclusive original ju-

risdiction is not given to the justice court, and when the fine to be imposed shall exceed two hundred dollars.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.08. Appellate jurisdiction of county courts

The county courts shall have appellate jurisdiction in criminal cases of which justice courts and other inferior courts have original jurisdiction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.09. Appeals from inferior court

If the jurisdiction of any county court has been transferred to the district court or to a county court at law, then an appeal from a justice or other inferior court will lie to the court to which such appellate jurisdiction has been transferred.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.10. To forfeit bail bonds

County courts and county courts at law shall have jurisdiction in the forfeiture and final judgment of all bail bonds and personal bonds taken in criminal cases of which said courts have jurisdiction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.11. Jurisdiction of justice courts

Justices of the peace shall have jurisdiction in criminal cases where the fine to be imposed by law may not exceed two hundred dollars.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.12. Misdemeanor cases; precinct in which defendant to be tried in justice court

A misdemeanor case to be tried in justice court shall be tried in the precinct in which the offense was committed, or in which the defendant or any of the defendants reside, or, with the written consent of the State and each defendant or his attorney, in any other precinct within the county; provided that in any misdemeanor case in which the offense was committed in a precinct where there is no qualified justice precinct court, then trial shall be had in the next adjacent precinct in the same county which may have a duly qualified justice precinct court, or in the precinct in which the defendant may reside; provided that in any such misdemeanor case, upon disqualification for any reason of all justices of the peace in the precinct where the offense was committed, such case may be tried in the next adjoining precinct in the same county, having a duly qualified justice of the peace.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.13. Justice may forfeit bond

A justice of the peace shall have the power to take forfeitures of all bonds given for the appearance of any party at his court, regardless of the amount.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.14. Corporation court

The corporation court in each incorporated city, town or village of this State shall have jurisdiction within the corporate limits in all criminal cases arising under the ordinances of such city, town or village, and shall have concurrent jurisdiction with any justice of the peace in any precinct in which said city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars, and arising within such corporate limits.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.15. May sit at any time

Justice courts and corporation courts may sit at any time to try criminal cases over which they have jurisdiction. Any case in which a fine may be assessed shall be tried in accordance with the rules of evidence and this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 4.16. Concurrent jurisdiction

When two or more courts have concurrent jurisdiction of any criminal offense, the court in which an indictment or a complaint shall first be filed shall retain jurisdiction except as provided in Article 4.12.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER FIVE. PREVENTING OFFENSES BY THE ACT OF A PRIVATE PERSON [REPEALED]

Art.

5.01. to 5.07. Repealed.

Arts. 5.01 to 5.07. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(c), eff. Jan. 1, 1974

### CHAPTER SIX. PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND OTHER OFFICERS

Art.

- 6.01. When magistrate hears threat.
- 6.02. Threat to take life.
- 6.03. On attempt to injure.
- 6.04. May compel offender to give security.
- 6.05. Duty of peace officer as to threats.
- 6.06. Peace officer to prevent injury.
- 6.07. Conduct of peace officer.

#### Art. 6.01. When magistrate hears threat

It is the duty of every magistrate, when he may have heard, in any manner, that a threat has been made by one person to do some injury to himself or the person or property of another, immediately to give notice to some peace officer, in order that such peace officer may use lawful means to prevent the injury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 6.02. Threat to take life

If, within the hearing of a magistrate, one person shall threaten to take the life of another or himself,

the magistrate shall issue a warrant for the arrest of the person making the threat, or in case of emergency, he may himself immediately arrest such person. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 6.03. On attempt to injure

Whenever, in the presence or within the observation of a magistrate, an attempt is made by one person to inflict an injury upon himself or to the person or property of another, it is his duty to use all lawful means to prevent the injury. This may be done, either by verbal order to a peace officer to interfere and prevent the injury, or by the issuance of an order of arrest against the offender, or by arresting the offender; for which purpose he may call upon all persons present to assist in making the arrest.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 6.04. May compel offender to give security

When the person making such threat is brought before a magistrate, he may compel him to give security to keep the peace, or commit him to custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 6.05. Duty of peace officer as to threats

It is the duty of every peace officer, when he may have been informed in any manner that a threat has been made by one person to do some injury to himself or to the person or property of another, to prevent the threatened injury, if within his power; and, in order to do this, he may call in aid any number of citizens in his county. He may take such measures as the person about to be injured might for the prevention of the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 6.06. Peace officer to prevent injury

Whenever, in the presence of a peace officer, or within his view, one person is about to commit an offense against the person or property of another or injure himself, it is his duty to prevent it; and, for this purpose the peace officer may summon any number of the citizens of his county to his aid. The peace officer must use the amount of force necessary to prevent the commission of the offense, and no greater.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 6.07. Conduct of peace officer

The conduct of peace officers, in preventing offenses about to be committed in their presence, or within their view, is to be regulated by the same rules as are prescribed to the action of the person about to be injured. They may use all force necessary to repel the aggression.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER SEVEN. PROCEEDINGS BEFORE MAGISTRATES TO PREVENT OFFENSES

Art.

7.01. Shall issue warrant.

7.02. Appearance bond pending peace bond hearing.

Art.

7.03. Accused brought before magistrate.

7.04. Form of peace bond.

7.05. Oath of surety; bond filed.

7.06. Amount of bail.

7.07. Surety may exonerate himself.

7.08. Failure to give bond.

7.09. Discharge of defendant.

7.10. May discharge defendant.

7.11, 7.12. Repealed.

7.13. When the defendant has committed a crime.

7.14. Costs.

7.15. May order protection.

7.16. Suit on bond.

7.17. Limitation and procedure.

#### Art. 7.01. Shall issue warrant

Whenever a magistrate is informed upon oath that an offense is about to be committed against the person or property of the informant, or of another, or that any person has threatened to commit an offense, the magistrate shall immediately issue a warrant for the arrest of the accused; that he may be brought before such magistrate or before some other named in the warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 7.02. Appearance bond pending peace bond hearing

In proceedings under this Chapter, the accused shall have the right to make an appearance bond; such bond shall be conditioned as appearance bonds in other cases, and shall be further conditioned that the accused, pending the hearing, will not commit such offense and that he will keep the peace toward the person threatened or about to be injured, and toward all others, pending the hearing. Should the accused enter into such appearance bond, such fact shall not constitute any evidence of the accusation brought against him at the hearing on the merits before the magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 7.03. Accused brought before magistrate

When the accused has been brought before the magistrate, he shall hear proof as to the accusation, and if he be satisfied that there is just reason to apprehend that the offense was intended to be committed, or that the threat was seriously made, he shall make an order that the accused enter into bond in such sum as he may in his discretion require, conditioned that he will not commit such offense, and that he will keep the peace toward the person threatened or about to be injured, and toward all others named in the bond for any period of time, not to exceed one year from the date of the bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 7.04. Form of peace bond

Such bond shall be sufficient if it be payable to the State of Texas, conditioned as required in said order of the magistrate, be for some certain sum, and be signed by the defendant and his surety or sureties and dated, and the provisions of Article 17.02 permitting the deposit of current United

States money in lieu of sureties is applicable to this bond. No error of form shall vitiate such bond, and no error in the proceedings prior to the execution of the bond shall be a defense in a suit thereon.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 7.05. Oath of surety; bond filed**

The officer taking such bond shall require the sureties of the accused to make oath as to the value of their property as pointed out with regard to bail bonds. Such officer shall forthwith deposit such bond and oaths in the office of the clerk of the county where such bond is taken.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 7.06. Amount of bail**

The magistrate, in fixing the amount of such bonds, shall be governed by the pecuniary circumstances of the accused and the nature of the offense threatened or about to be committed.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 7.07. Surety may exonerate himself**

A surety upon any such bond may, at any time before a breach thereof, exonerate himself from the obligations of the same by delivering to any magistrate of the county where such bond was taken, the person of the defendant; and such magistrate shall in that case again require of the defendant bond, with other security in the same amount as the first bond; and the same proceeding shall be had as in the first instance, but the one year's time shall commence to run from the date of the first order.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 7.08. Failure to give bond**

If the defendant fail to give bond, he shall be committed to jail for one year from the date of the first order requiring such bond.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 7.09. Discharge of defendant**

A defendant committed for failing to give bond shall be discharged by the officer having him in custody, upon giving the required bond, or at the expiration of the time for which he has been committed.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 7.10. May discharge defendant**

If the magistrate believes from the evidence that there is no good reason to apprehend that the offense was intended or will be committed, or that no serious threat was made by the defendant, he shall discharge the accused, and may, in his discretion, tax the cost of the proceeding against the party making the complaint.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Arts. 7.11, 7.12. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(b), eff. Jan. 1, 1974**

**Art. 7.13. When the defendant has committed a crime**

If it appears from the evidence before the magistrate that the defendant has committed a criminal offense, the same proceedings shall be had as in other cases where parties are charged with crime.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 7.14. Costs**

If the accused is found subject to the charge and required to give bond, the costs of the proceedings shall be adjudged against him.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 7.15. May order protection**

When, from the nature of the case and the proof offered to the magistrate, it may appear necessary and proper, he shall have a right to order any peace officer to protect the person or property of any individual threatened; and such peace officer shall have the right to summon aid by requiring any number of citizens of his county to assist in giving the protection.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 7.16. Suit on bond**

A suit to forfeit any bond taken under the provisions of this Chapter shall be brought in the name of the State by the district or county attorney in the county where the bond was taken.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 7.17. Limitation and procedure**

Suits upon such bonds shall be commenced within two years from the breach of the same, and not thereafter, and shall be governed by the same rules as civil actions, except that the sureties may be sued without joining the principal. To entitle the State to recover, it shall only be necessary to prove that the accused violated any condition of said bond. The full amount of such bond may be recovered of the accused and the sureties.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**CHAPTER EIGHT. SUPPRESSION OF RIOTS AND OTHER DISTURBANCES**

Art.

- 8.01. Officer may require aid.
- 8.02. Military aid in executing process.
- 8.03. Military aid in suppressing riots.
- 8.04. Dispersing riot.
- 8.05. Officer may call aid.
- 8.06. Means adopted to suppress.
- 8.07. Unlawful assembly.
- 8.08. Suppression at election.
- 8.09. Power of special constable.

**Art. 8.01. Officer may require aid**

When any officer authorized to execute process is resisted, or when he has sufficient reason to believe that he will meet with resistance in executing the

same, he may command as many of the citizens of his county as he may think proper; and the sheriff may call any military company in the county to aid him in overcoming the resistance, and if necessary, in seizing and arresting the persons engaged in such resistance.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 8.02. Military aid in executing process

If it be represented to the Governor in such manner as to satisfy him that the power of the county is not sufficient to enable the sheriff to execute process, he may, on application, order any military company of volunteers or militia company from another county to aid in overcoming such resistance.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 8.03. Military aid in suppressing riots

Whenever, for the purpose of suppressing riots or unlawful assemblies, the aid of military or militia companies is called, they shall obey the orders of the civil officer who is engaged in suppressing the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 8.04. Dispersing riot

Whenever a number of persons are assembled together in such a manner as to constitute a riot, according to the penal law of the State, it is the duty of every magistrate or peace officer to cause such persons to disperse. This may either be done by commanding them to disperse or by arresting the persons engaged, if necessary, either with or without warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 8.05. Officer may call aid

In order to enable the officer to disperse a riot, he may call to his aid the power of the county in the same manner as is provided where it is necessary for the execution of process.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 8.06. Means adopted to suppress

The officer engaged in suppressing a riot, and those who aid him are authorized and justified in adopting such measures as are necessary to suppress the riot, but are not authorized to use any greater degree of force than is requisite to accomplish that object.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 8.07. Unlawful assembly

The Articles of this Chapter relating to the suppression of riots apply equally to an unlawful assembly and other unlawful disturbances, as defined by the Penal Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 8.08. Suppression at election

To suppress riots, unlawful assemblies and other disturbances at elections, any magistrate may appoint a sufficient number of special constables.

Such appointments shall be made to each special constable, shall be in writing, dated and signed by the magistrate, and shall recite the purposes for which such appointment is made, and the length of time it is to continue. Before the same is delivered to such special constable, he shall take an oath before the magistrate to suppress, by lawful means, all riots, unlawful assemblies and breaches of the peace of which he may receive information, and to act impartially between all parties and persons interested in the result of the election.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 8.09. Power of special constable

Special constables so appointed shall, during the time for which they are appointed, exercise the powers and perform the duties properly belonging to peace officers.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER NINE. OFFENSES INJURIOUS TO PUBLIC HEALTH

Art.

9.01. Trade injurious to health.

9.02. Refusal to give bond.

9.03. Requisites of bond.

9.04. Suit upon bond.

9.05. Proof.

9.06. Unwholesome food.

#### Art. 9.01. Trade injurious to health

After an indictment or information has been presented against any person for carrying on a trade, business or occupation injurious to the health of those in the neighborhood, the court shall have power, on the application of anyone interested, and after hearing proof both for and against the accused, to restrain the defendant, in such penalty as may be deemed proper, from carrying on such trade, business or occupation, or may make such order respecting the manner and place of carrying on the same as may be deemed advisable; and if upon trial, the defendant be convicted, the restraint shall be made perpetual, and the party shall be required to enter into bond, with security, not to continue such trade, business or occupation to the detriment of the health of such neighborhood, or of any other neighborhood within the county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 9.02. Refusal to give bond

If the party refuses to give bond when required under the provisions of the preceding Article, the court may either commit him to jail, or make an order requiring the sheriff to seize upon the implements of such trade, business or occupation, or the goods and property used in conducting such trade, business or occupation, and destroy the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 9.03. Requisites of bond

Such bond shall be payable to the State of Texas, in a reasonable amount to be fixed by the court,

conditioned that the defendant will not carry on such trade, business or occupation, naming the same, at such place, naming the place, or at any other place in the county, to the detriment of the health of the neighborhood. The bond shall be signed by the defendant and his sureties and dated, and shall be approved by the court taking the same, and filed in such court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 9.04. Suit upon bond

Any such bond, upon the breach thereof, may be sued upon by the district or county attorney, in the name of the State of Texas, within two years after such breach, and not afterwards; and such suits shall be governed by the same rules as civil actions.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 9.05. Proof

It shall be sufficient proof of the breach of any such bond to show that the party continued after executing the same, to carry on the trade, business or occupation which he bound himself to discontinue; and the full amount of such bond may be recovered of the defendant and his sureties.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 9.06. Unwholesome food

After conviction for selling unwholesome food or adulterated medicine, the court shall enter and issue an order to the sheriff or other proper officer to seize and destroy such as remains in the hands of the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER TEN. OBSTRUCTIONS OF PUBLIC HIGHWAYS

Art.

- 10.01. Order to remove.
- 10.02. Bond of applicant.
- 10.03. Removal.

#### Art. 10.01. Order to remove

After prosecution begun against any person for obstructing any highway, any one, in behalf of the public, may apply to the county judge of the county in which such highway is situated; and upon hearing proof, such judge, either in term time or in vacation, may issue his written order to the sheriff or other proper officer of the county, directing him to remove the obstruction. Before the issuance of such order, the applicant therefor shall give bond with security in an amount to be fixed by the judge, to indemnify the accused, in case of his acquittal, for the loss he sustains. Such bond shall be approved by the county judge and filed with the papers in the cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 10.02. Bond of applicant

If the defendant be acquitted after a trial upon the merits of the case, he may maintain a civil action against the applicant and his sureties upon such

bond, and may recover the full amount of the bond, or such damages, less than the full amount thereof, as may be assessed by a court or jury; provided, he shows on the trial that the place was not in fact, at the time he placed the obstruction or impediment thereupon, a public highway established by proper authority, but was in fact his own property or in his lawful possession.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 10.03. Removal

Upon the conviction of a defendant for obstructing a public highway, if such obstruction still exists, the court shall order the sheriff or other proper officer to forthwith remove the same at the cost of the defendant, to be taxed and collected as other costs in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER ELEVEN. HABEAS CORPUS

Art.

- 11.01. What writ is.
- 11.02. To whom directed.
- 11.03. Want of form.
- 11.04. Construction.
- 11.05. By whom writ may be granted.
- 11.06. Returnable to any county.
- 11.07. Return to certain county; procedure after conviction.
- 11.08. Applicant charged with felony.
- 11.09. Applicant charged with misdemeanor.
- 11.10. Proceedings under the writ.
- 11.11. Early hearing.
- 11.12. Who may present petition.
- 11.13. Applicant.
- 11.14. Requisites of petition.
- 11.15. Writ granted without delay.
- 11.16. Writ may issue without motion.
- 11.17. Judge may issue warrant of arrest.
- 11.18. May arrest detainer.
- 11.19. Proceedings under the warrant.
- 11.20. Officer executing warrant.
- 11.21. Constructive custody.
- 11.22. Restraint.
- 11.23. Scope of writ.
- 11.24. One committed in default of bail.
- 11.25. Person afflicted with disease.
- 11.26. Who may serve writ.
- 11.27. How writ may be served and returned.
- 11.28. Return under oath.
- 11.29. Must make return.
- 11.30. How return is made.
- 11.31. Applicant brought before judge.
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- 11.33. Court shall allow time.
- 11.34. Disobeying writ.
- 11.35. Further penalty for disobeying writ.
- 11.36. Applicant may be brought before court.
- 11.37. Death, etc., sufficient return of writ.
- 11.38. When a prisoner dies.
- 11.39. Who shall represent the State.
- 11.40. Prisoner discharged.
- 11.41. Where party is indicted for capital offense.
- 11.42. If court has no jurisdiction.
- 11.43. Presumption of innocence.
- 11.44. Action of court upon examination.
- 11.45. Void or informal.
- 11.46. If proof shows offense.
- 11.47. May summon magistrate.
- 11.48. Written issue not necessary.
- 11.49. Order of argument.
- 11.50. Costs.
- 11.51. Record of proceedings.
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Art.

- 11.53. Construing the two preceding Articles.
- 11.54. Court may grant necessary orders.
- 11.55. Meaning of "return".
- 11.56. Effect of discharge before indictment.
- 11.57. Writ after indictment.
- 11.58. Person committed for a capital offense.
- 11.59. Obtaining writ a second time.
- 11.60. Refusing to execute writ.
- 11.61. Refusal to obey writ.
- 11.62. Refusal to give copy of process.
- 11.63. Held under Federal authority.
- 11.64. Application of Chapter.

**Art. 11.01. What writ is**

The writ of habeas corpus is the remedy to be used when any person is restrained in his liberty. It is an order issued by a court or judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody or under restraint.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.02. To whom directed**

The writ runs in the name of "The State of Texas". It is addressed to a person having another under restraint, or in his custody, describing, as near as may be, the name of the office, if any, of the person to whom it is directed, and the name of the person said to be detained. It shall fix the time and place of return, and be signed by the judge, or by the clerk with his seal, where issued by a court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.03. Want of form**

The writ of habeas corpus is not invalid, nor shall it be disobeyed for any want of form, if it substantially appear that it is issued by competent authority, and the writ sufficiently show the object of its issuance.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.04. Construction**

Every provision relating to the writ of habeas corpus shall be most favorably construed in order to give effect to the remedy, and protect the rights of the person seeking relief under it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.05. By whom writ may be granted**

The Court of Criminal Appeals, the District Courts, the County Courts, or any Judge of said Courts, have power to issue the writ of habeas corpus; and it is their duty, upon proper motion, to grant the writ under the rules prescribed by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.06. Returnable to any county**

Before indictment found, the writ may be made returnable to any county in the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.07. Return to certain county; procedure after conviction**

Sec. 1. After indictment found in any felony case, and before conviction, the writ must be made returnable in the county where the offense has been committed.

Sec. 2. (a) After final conviction in any felony case, the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas. The writ may issue upon the order of any district judge, and said judge may upon presentation to him of a petition for said writ, set the same down for a hearing as to whether the writ should issue, and ascertain the facts, which facts shall be transmitted to the Court of Criminal Appeals with the return of the writ if same is issued after such hearing. Provided further, that should such writ be returned to the Court of Criminal Appeals without all the facts deemed necessary by the Court of Criminal Appeals, said court may designate and direct any district judge or judges of this state to ascertain the facts necessary for proper consideration of the issues involved.

(b) When a petition for writ of habeas corpus presented to the judge of the convicting court contains sworn allegations of fact, which, if true, would render petitioner's confinement under the felony conviction illegal, the attorney representing the state in said court and the Attorney General of Texas shall be afforded an opportunity to answer such allegations, and if it appears that there are issues of fact which are material on the question of whether the petitioner is illegally restrained which have not been resolved, the petitioner may be granted a hearing on such issues of fact and the judge conducting such hearing shall make and file his findings of fact and conclusions of law.

(c) It shall be the duty of the official court reporter of the district judge or judges so designated to forthwith prepare a narration of the facts adduced in evidence upon any such hearing and transmit the same, together with the judge's findings of fact and conclusions of law, to the clerk of the Court of Criminal Appeals within fifteen days of the date of such hearing. And it shall be the duty of the district clerk of the county wherein the writ is issued to make up a transcript of all pleadings in such case and to transmit the same within fifteen days to the clerk of the Court of Criminal Appeals. Provided, that upon good cause shown, the time may be extended by the Court of Criminal Appeals for filing of such narration of facts or transcript.

Sec. 3. The Court of Criminal Appeals may deny relief upon the findings and conclusions of the hearing judge without docketing the cause, or may direct that the cause be docketed and heard as though originally presented to said court or as an appeal. Upon reviewing the record the court shall enter its judgment remanding the petitioner to custody or

ordering his release, as the law and facts may justify. The mandate of the court shall issue to the court issuing the writ, as in other criminal cases. After conviction the procedure outlined in this Act shall be exclusive and any other proceeding shall be void and of no force and effect in discharging the prisoner.

Sec. 4. Upon any hearing by a district judge by virtue of this Act, the attorney for petitioner, and the state, shall be given at least three full days' notice before such hearing is held.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1734, ch. 659, § 7, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1271, ch. 465, § 2, eff. June 14, 1973.]

#### Art. 11.08. Applicant charged with felony

If a person is confined after indictment on a charge of felony, he may apply to the judge of the court in which he is indicted; or if there be no judge within the district, then to the judge of any district whose residence is nearest to the court house of the county in which the applicant is held in custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.09. Applicant charged with misdemeanor

If a person is confined on a charge of misdemeanor, he may apply to the county judge of the county in which the misdemeanor is charged to have been committed, or if there be no county judge in said county, then to the county judge whose residence is nearest to the courthouse of the county in which the applicant is held in custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.10. Proceedings under the writ

When motion has been made to a judge under the circumstances set forth in the two preceding Articles, he shall appoint a time when he will examine the cause of the applicant, and issue the writ returnable at that time, in the county where the offense is charged in the indictment or information to have been committed. He shall also specify some place in the county where he will hear the motion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.11. Early hearing

The time so appointed shall be the earliest day which the judge can devote to hearing the cause of the applicant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.12. Who may present petition

Either the party for whose relief the writ is intended, or any person for him, may present a petition to the proper authority for the purpose of obtaining relief.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.13. Applicant

The word applicant, as used in this Chapter, refers to the person for whose relief the writ is asked, though the petition may be signed and presented by any other person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.14. Requisites of petition

The petition must state substantially:

1. That the person for whose benefit the application is made is illegally restrained in his liberty, and by whom, naming both parties, if their names are known, or if unknown, designating and describing them;

2. When the party is confined or restrained by virtue of any writ, order or process, or under color of either, a copy shall be annexed to the petition, or it shall be stated that a copy cannot be obtained;

3. When the confinement or restraint is not by virtue of any writ, order or process, the petition may state only that the party is illegally confined or restrained in his liberty;

4. There must be a prayer in the petition for the writ of habeas corpus; and

5. Oath must be made that the allegations of the petition are true, according to the belief of the petitioner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.15. Writ granted without delay

The writ of habeas corpus shall be granted without delay by the judge or court receiving the petition, unless it be manifest from the petition itself, or some documents annexed to it, that the party is entitled to no relief whatever.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.16. Writ may issue without motion

A judge of the district or county court who has knowledge that any person is illegally confined or restrained in his liberty within his district or county may, if the case be one within his jurisdiction, issue the writ of habeas corpus, without any motion being made for the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.17. Judge may issue warrant of arrest

Whenever it appears by satisfactory evidence to any judge authorized to issue such writ that any one is held in illegal confinement or custody, and there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury before he can obtain relief in the usual course of law, or whenever the writ of habeas corpus has been issued and disregarded, the said judge may issue a warrant to any peace officer, or to any person specially named by said judge, directing him to take and bring such person before such judge, to be dealt with according to law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.18. May arrest detainer**

Where it appears by the proof offered, under circumstances mentioned in the preceding Article, that the person charged with having illegal custody of the prisoner is, by such act, guilty of an offense against the law, the judge may, in the warrant, order that he be arrested and brought before him; and upon examination, he may be committed, discharged, or held to bail, as the law and the nature of the case may require.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.19. Proceedings under the warrant**

The officer charged with the execution of the warrant shall bring the persons therein mentioned before the judge or court issuing the same, who shall inquire into the cause of the imprisonment or restraint, and make an order thereon, as in cases of habeas corpus, either remanding into custody, discharging or admitting to bail the party so imprisoned or restrained.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.20. Officer executing warrant**

The same power may be exercised by the officer executing the warrant in cases arising under the foregoing Articles as is exercised in the execution of warrants of arrest.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.21. Constructive custody**

The words "confined", "imprisoned", "in custody", "confinement", "imprisonment", refer not only to the actual, corporeal and forcible detention of a person, but likewise to any coercive measures by threats, menaces or the fear of injury, whereby one person exercises a control over the person of another, and detains him within certain limits.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.22. Restraint**

By "restraint" is meant the kind of control which one person exercises over another, not to confine him within certain limits, but to subject him to the general authority and power of the person claiming such right.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.23. Scope of writ**

The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.24. One committed in default of bail**

Where a person has been committed to custody for failing to enter into bond, he is entitled to the writ of habeas corpus, if it be stated in the petition that there was no sufficient cause for requiring bail, or

that the bail required is excessive. If the proof sustains the petition, it will entitle the party to be discharged, or have the bail reduced.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.25. Person afflicted with disease**

When a judge or court authorized to grant writs of habeas corpus shall be satisfied, upon investigation, that a person in legal custody is afflicted with a disease which will render a removal necessary for the preservation of life, an order may be made for the removal of the prisoner to some other place where his health will not be likely to suffer; or he may be admitted to bail when it appears that any species of confinement will endanger his life.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.26. Who may serve writ**

The service of the writ may be made by any person competent to testify.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.27. How writ may be served and returned**

The writ may be served by delivering a copy of the original to the person who is charged with having the party under restraint or in custody, and exhibiting the original, if demanded; if he refuse to receive it, he shall be informed verbally of the purport of the writ. If he refuses admittance to the person wishing to make the service, or conceals himself, a copy of the writ may be fixed upon some conspicuous part of the house where such person resides or conceals himself, or of the place where the prisoner is confined; and the person serving the writ of habeas corpus shall, in all cases, state fully, in his return, the manner and the time of the service of the writ.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.28. Return under oath**

The return of a writ of habeas corpus, under the provisions of the preceding Article, if made by any person other than an officer, shall be under oath.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.29. Must make return**

The person on whom the writ of habeas corpus is served shall immediately obey the same, and make the return required by law upon the copy of the original writ served on him, and this, whether the writ be directed to him or not.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.30. How return is made**

The return is made by stating in plain language upon the copy of the writ or some paper connected with it:

1. Whether it is true or not, according to the statement of the petition, that he has in his custody, or under his restraint, the person named or described in such petition;

2. By virtue of what authority, or for what cause, he took and detains such person;

3. If he had such person in his custody or under restraint at any time before the service of the writ, and has transferred him to the custody of another, he shall state particularly to whom, at what time, for what reason or by what authority he made such transfer;

4. He shall annex to his return the writ or warrant, if any, by virtue of which he holds the person in custody; and

5. The return must be signed and sworn to by the person making it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.31. Applicant brought before judge

The person on whom the writ is served shall bring before the judge the person in his custody, or under his restraint, unless it be made to appear that by reason of sickness he cannot be removed; in which case, another day may be appointed by the judge or court for hearing the cause, and for the production of the person confined; or the application may be heard and decided without the production of the person detained, by the consent of his counsel.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.32. Custody pending examination

When the return of the writ has been made, and the applicant brought before the court, he is no longer detained on the original warrant or process, but under the authority of the habeas corpus. The safekeeping of the prisoner, pending the examination or hearing, is entirely under the direction and authority of the judge or court issuing the writ, or to which the return is made. He may be bailed from day to day, or be remanded to the same jail whence he came, or to any other place of safekeeping under the control of the judge or court, till the case is finally determined.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.33. Court shall allow time

The court or judge granting the writ of habeas corpus shall allow reasonable time for the production of the person detained in custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.34. Disobeying writ

When service has been made upon a person charged with the illegal custody of another, if he refuses to obey the writ and make the return required by law, or, if he refuses to receive the writ, or conceals himself, the court or judge issuing the writ shall issue a warrant directed to any officer or other suitable person willing to execute the same, commanding him to arrest the person charged with the illegal custody or detention of another, and bring him before such court or judge. When such person has been arrested and brought before the court or judge, if he still refuses to return the writ, or does not produce the person in his custody, he shall be committed to jail and remain there until he is will-

ing to obey the writ of habeas corpus, and until he pays all the costs of the proceeding.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.35. Further penalty for disobeying writ

Any person disobeying the writ of habeas corpus shall also be liable to a civil action at the suit of the party detained, and shall pay in such suit fifty dollars for each day of illegal detention and restraint, after service of the writ. It shall be deemed that a person has disobeyed the writ who detains a prisoner a longer time than three days after service thereof, unless where further time is allowed in the writ for making the return thereto.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.36. Applicant may be brought before court

In case of disobedience of the writ of habeas corpus, the person for whose relief it is intended may also be brought before the court or judge having competent authority, by an order for that purpose, issued to any peace officer or other proper person specially named.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.37. Death, etc., sufficient return of writ

It is a sufficient return of the writ of habeas corpus that the person, once detained, has died or escaped, or that by some superior force he has been taken from the custody of the person making the return; but where any such cause shall be assigned, the court or judge shall proceed to hear testimony; and the facts stated in the return shall be proved by satisfactory evidence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.38. When a prisoner dies

When a prisoner confined in jail, or who is in legal custody, shall die, the officer having charge of him shall forthwith report the same to a justice of the peace of the county, who shall hold an inquest to ascertain the cause of his death. All the proceedings had in such cases shall be reduced to writing, certified and returned as in other cases of inquest; a certified copy of which shall be sufficient proof of the death of the prisoner at the hearing of a motion under habeas corpus.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.39. Who shall represent the State

If neither the county nor the district attorney be present, the judge may appoint some qualified practicing attorney to represent the State, who shall be paid the same fee allowed district attorneys for like services.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 11.40. Prisoner discharged

The judge or court before whom a person is brought by writ of habeas corpus shall examine the writ and the papers attached to it; and if no legal cause be shown for the imprisonment or restraint, or

if it appear that the imprisonment or restraint, though at first legal, cannot for any cause be lawfully prolonged, the applicant shall be discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.41. Where party is indicted for capital offense**

If it appears by the return and papers attached that the party stands indicted for a capital offense, the judge or court having jurisdiction of the case shall, nevertheless, proceed to hear such testimony as may be offered on the part of the State and the applicant, and may either remand or admit him to bail, as the law and the facts may justify.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.42. If court has no jurisdiction**

If it appear by the return and papers attached that the judge or court has no jurisdiction, such court or judge shall at once remand the applicant to the person from whose custody he has been taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.43. Presumption of innocence**

No presumption of guilt arises from the mere fact that a criminal accusation has been made before a competent authority.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.44. Action of court upon examination**

The judge or court, after having examined the return and all documents attached, and heard the testimony offered on both sides, shall, according to the facts and circumstances of the case, proceed either to remand the party into custody, admit him to bail or discharge him; provided, that no defendant shall be discharged after indictment without bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.45. Void or informal**

If it appears that the applicant is detained or held under a warrant of commitment which is informal, or void; yet, if from the document on which the warrant was based, or from the proof on the hearing of the habeas corpus, it appears that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or held to bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.46. If proof shows offense**

Where, upon an examination under habeas corpus, it appears to the court or judge that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or admitted to bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.47. May summon magistrate**

To ascertain the grounds on which an informal or void warrant has been issued, the judge or court

may cause to be summoned the magistrate who issued the warrant, and may, by an order, require him to bring with him all the papers and proceedings touching the matter. The attendance of such magistrate and the production of such papers may be enforced by warrant of arrest.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.48. Written issue not necessary**

It shall not be necessary, on the trial of any cause arising under habeas corpus, to make up a written issue, though it may be done by the applicant for the writ. He may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance. If written denial on his part be not made, it shall be considered, for the purpose of investigation, that the statements of said return are contested by a denial of the same; and the proof shall be heard accordingly, both for and against the applicant for relief.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.49. Order of argument**

The applicant shall have the right by himself or counsel to open and conclude the argument upon the trial under habeas corpus.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.50. Costs**

The judge trying the cause under habeas corpus may make such order as is deemed right concerning the cost of bringing the defendant before him, and all other costs of the proceeding, awarding the same either against the person to whom the writ was directed, the person seeking relief, or may award no costs at all.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.51. Record of proceedings**

If a writ of habeas corpus be made returnable before a court in session, all the proceedings had shall be entered of record by the clerk thereof, as in any other case in such court. When the motion is heard out of the county where the offense was committed, or in the Court of Criminal Appeals, the clerk shall transmit a certified copy of all the proceedings upon the motion to the clerk of the court which has jurisdiction of the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.52. Proceedings had in vacation**

If the return is made and the proceedings had before a judge of a court in vacation, he shall cause all of the proceedings to be written, shall certify to the same, and cause them to be filed with the clerk of the court which has jurisdiction of the offense, who shall keep them safely.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.53. Construing the two preceding Articles**

The two preceding Articles refer only to cases where an applicant is held under accusation for some

offense; in all other cases the proceedings had before the judge shall be filed and kept by the clerk of the court hearing the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.54. Court may grant necessary orders**

The court or judge granting a writ of habeas corpus may grant all necessary orders to bring before him the testimony taken before the examining court, and may issue process to enforce the attendance of witnesses.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.55. Meaning of "return"**

The word "return", as used in this Chapter, means the report made by the officer or person charged with serving the writ of habeas corpus, and also the answer made by the person served with such writ.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.56. Effect of discharge before indictment**

Where a person, before indictment found against him, has been discharged or held to bail on habeas corpus by order of a court or judge of competent jurisdiction, he shall not be again imprisoned or detained in custody on an accusation for the same offense, until after he shall have been indicted, unless surrendered by his bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.57. Writ after indictment**

Where a person once discharged or admitted to bail is afterward indicted for the same offense for which he has been once arrested, he may be committed on the indictment, but shall be again entitled to the writ of habeas corpus, and may be admitted to bail, if the facts of the case render it proper; but in cases where, after indictment is found, the cause of the defendant has been investigated on habeas corpus, and an order made, either remanding him to custody, or admitting him to bail, he shall neither be subject to be again placed in custody, unless when surrendered by his bail, nor shall he be again entitled to the writ of habeas corpus, except in the special cases mentioned in this Chapter.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.58. Person committed for a capital offense**

If the accusation against the defendant for a capital offense has been heard on habeas corpus before indictment found, and he shall have been committed after such examination, he shall not be entitled to the writ, unless in the special cases mentioned in Articles 11.25 and 11.59.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.59. Obtaining writ a second time**

A party may obtain the writ of habeas corpus a second time by stating in a motion therefor that since the hearing of his first motion important testimony has been obtained which it was not in his power to produce at the former hearing. He shall

also set forth the testimony so newly discovered; and if it be that of a witness, the affidavit of the witness shall also accompany such motion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.60. Refusing to execute writ**

Any officer to whom a writ of habeas corpus, or other writ, warrant or process authorized by this Chapter shall be directed, delivered or tendered, who refuses to execute the same according to his directions, or who wantonly delays the service or execution of the same, shall be liable to fine as for contempt of court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.61. Refusal to obey writ**

Any one having another in his custody, or under his power, control or restraint who refuses to obey a writ of habeas corpus, or who evades the service of the same, or places the person illegally detained under the control of another, removes him, or in any other manner attempts to evade the operation of the writ, shall be dealt with as provided in Article 11.34 of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.62. Refusal to give copy of process**

Any jailer, sheriff or other officer who has a prisoner in his custody and refuses, upon demand, to furnish a copy of the process under which he holds the person, is guilty of an offense, and shall be dealt with as provided in Article 11.34 of this Code for refusal to return the writ therein required.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.63. Held under Federal authority**

No person shall be discharged under the writ of habeas corpus who is in custody by virtue of a commitment for any offense exclusively cognizable by the courts of the United States, or by order or process issuing out of such courts in cases where they have jurisdiction, or who is held by virtue of any legal engagement or enlistment in the army, or who, being rightfully subject to the rules and articles of war, is confined by any one legally acting under the authority thereof, or who is held as a prisoner of war under the authority of the United States.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 11.64. Application of Chapter**

This Chapter applies to all cases of habeas corpus for the enlargement of persons illegally held in custody or in any manner restrained in their personal liberty, for the admission of prisoners to bail, and for the discharge of prisoners before indictment upon a hearing of the testimony. Instead of a writ of habeas corpus in other cases heretofore used, a simple order shall be substituted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

## LIMITATION AND VENUE

## CHAPTER TWELVE. LIMITATION

Art.

- 12.01. Felonies.  
 12.02. Misdemeanors.  
 12.03. Aggravated offenses, attempt, conspiracy, solicitation.  
 12.04. Computation.  
 12.05. Absence from State and time of pendency of indictment, etc., not computed.  
 12.06. An indictment is "presented," when.  
 12.07. An information is "presented," when.

**Art. 12.01. Felonies**

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

- (1) no limitation: murder and manslaughter;
- (2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which he exercises control in his official capacity;

(C) forgery or the uttering, using or passing of forged instruments;

- (3) five years from the date of the commission of the offense:

(A) theft, burglary, robbery;

(B) arson.

- (4) one year from the date of the commission of the offense: any felony in Penal Code Chapter 21 (Sexual Offenses).

- (5) three years from the date of the commission of the offense: all other felonies.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 975, ch. 399, § 2(B), eff. Jan. 1, 1974.]

**Art. 12.02. Misdemeanors**

An indictment or information for any misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 975, ch. 399, § 2(B), eff. Jan. 1, 1974.]

**Art. 12.03. Aggravated offenses, attempt, conspiracy, solicitation**

(a) The limitation period for criminal attempt is the same as that of the offense attempted.

(b) The limitation period for criminal conspiracy is the same as that of the most serious offense that is the object of the conspiracy.

(c) The limitation period for criminal solicitation is the same as that of the felony solicited.

(d) Any offense that bears the title "aggravated" shall carry the same limitation period as the primary crime.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 975, ch. 399, § 2(B), eff. Jan. 1, 1974.]

**Art. 12.04. Computation**

The day on which the offense was committed and the day on which the indictment or information is presented shall be excluded from the computation of time.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(B), eff. Jan. 1, 1974.]

**Art. 12.05. Absence from State and time of pendency of indictment, etc., not computed**

(a) The time during which the accused is absent from the state shall not be computed in the period of limitation.

(b) The time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation.

(c) The term "during the pendency," as used herein, means that period of time beginning with the day the indictment, information, or complaint is filed in a court of competent jurisdiction, and ending with the day such accusation is, by an order of a trial court having jurisdiction thereof, determined to be invalid for any reason.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(B), eff. Jan. 1, 1974.]

**Art. 12.06. An indictment is "presented," when**

An indictment is considered as "presented" when it has been duly acted upon by the grand jury and received by the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(B), eff. Jan. 1, 1974.]

**Art. 12.07. An information is "presented," when**

An information is considered as "presented," when it has been filed by the proper officer in the proper court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(B), eff. Jan. 1, 1974.]

## CHAPTER THIRTEEN. VENUE

Art.

- 13.01. Offenses committed outside this State.  
 13.02. Forgery.  
 13.03. Perjury.  
 13.04. On the boundary of counties.  
 13.05. Criminal homicide committed outside this State.  
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 13.07. Injured in one county and dying in another.  
 13.08. Theft.  
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Art.

- 13.11. On vessels.
- 13.12. False imprisonment and kidnapping.
- 13.13. Conspiracy.
- 13.14. Bigamy.
- 13.15. Rape.
- 13.16. Criminal nonsupport.
- 13.17. Proof of venue.
- 13.18. Other offenses.
- 13.19. Where venue cannot be determined.

**Art. 13.01. Offenses committed outside this State**

Offenses committed wholly or in part outside this State, under circumstances that give this State jurisdiction to prosecute the offender, may be prosecuted in any county in which the offender is found or in any county in which an element of the offense occurs.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.02. Forgery**

Forgery may be prosecuted in any county where the writing was forged, or where the same was used or passed, or attempted to be used or passed, or deposited or placed with another person, firm, association, or corporation either for collection or credit for the account of any person, firm, association or corporation. In addition, a forging and uttering, using or passing of forged instruments in writing which concern or affect the title to land in this State may be prosecuted in the county in which such land, or any part thereof, is situated.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.03. Perjury**

Perjury and aggravated perjury may be prosecuted in the county where committed, or in the county where the false statement is used or attempted to be used.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.04. On the boundary of counties**

An offense committed on the boundaries of two or more counties, or within four hundred yards thereof, may be prosecuted and punished in any one of such counties except that any offense committed on the premises of any airport operated jointly by two municipalities and situated in two counties shall be prosecuted in the county in which the offense is committed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1251, ch. 454, art. 2, § 1, eff. Jan. 1, 1974.]

**Art. 13.05. Criminal homicide committed outside this State**

The offense of criminal homicide committed wholly or in part outside this State, under circumstances

that give this State jurisdiction to prosecute the offender, may be prosecuted in the county where the injury was inflicted, or in the county where the offender was located when he inflicted the injury, or in the county where the victim died or the body was found.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.06. Committed on a boundary stream**

If an offense be committed upon any river or stream, the boundary of this State, it may be prosecuted in the county the boundary of which is upon such stream or river, and the county seat of which is nearest the place where the offense was committed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.07. Injured in one county and dying in another**

If a person receives an injury in one county and dies in another by reason of such injury, the offender may be prosecuted in the county where the injury was received or where the death occurred, or in the county where the dead body is found.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.08. Theft**

Where property is stolen in one county and removed by the offender to another county, the offender may be prosecuted either in the county where he took the property or in any other county through or into which he may have removed the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.09. Hindering secured creditors**

If secured property is taken from one county and unlawfully disposed of in another county or state, the offender may be prosecuted either in the county in which such property was disposed of, or in the county from which it was removed, or in the county in which the security agreement is filed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.10. Persons acting under authority of this State**

An offense committed outside this State by any officer acting under the authority of this State, under circumstances that give this state jurisdiction to prosecute the offender, may be prosecuted in the county of his residence or, if a nonresident of this State, in Travis County.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.11. On vessels**

An offense committed on board a vessel which is at the time upon any navigable water within the boundaries of this State, may be prosecuted in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage commences or terminates.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.12. False imprisonment and kidnapping**

Venue for false imprisonment and kidnapping is in either the county in which the offense was committed, or in any county through, into or out of which the person falsely imprisoned or kidnapped may have been taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.13. Conspiracy**

Criminal conspiracy may be prosecuted in the county where the conspiracy was entered into, in the county where the conspiracy was agreed to be executed, or in any county in which one or more of the conspirators does any act to effect an object of the conspiracy. If a conspiracy was entered into outside this State under circumstances that give this State jurisdiction to prosecute the offender, the offender may be prosecuted in the county where the conspiracy was agreed to be executed, or in the county where any one of the conspirators was found, or in Travis County.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 978, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.14. Bigamy**

Bigamy may be prosecuted in the county where the bigamous marriage occurred or in any county in this State in which the parties to such bigamous marriage may live or cohabit together as man and wife.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 978, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.15. Rape**

Rape may be prosecuted in the county in which it is committed, or in any county of the judicial district in which it is committed, or in any county of the judicial district the judge of which resides nearest the county seat of the county in which the offense is committed. When the judicial district comprises only one county, prosecutions may be commenced and carried on in that county, if the offense be committed there, or in any adjoining county. When it shall come to the knowledge of any district judge whose court has jurisdiction under this Article that rape has probably been committed, he shall immediately, if his court be in session, and if not in session, then, at the first term thereafter in any county of

the district, call the attention of the grand jury thereto; and if the court be in session, but the grand jury has been discharged, he shall immediately recall the grand jury to investigate the accusation. Prosecution for rape shall take precedence in all cases in courts; and the district courts are authorized and directed to change the venue in such cases whenever it shall be necessary to secure a speedy trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 978, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.16. Criminal nonsupport**

Criminal nonsupport may be prosecuted in the county where the offended spouse or child is residing at the time the information or indictment is presented.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 978, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.17. Proof of venue**

In all cases mentioned in this Chapter, the indictment or information, or any pleading in the case, may allege that the offense was committed in the county where the prosecution is carried on. To sustain the allegation of venue, it shall only be necessary to prove by the preponderance of the evidence that by reason of the facts in the case, the county where such prosecution is carried on has venue.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 978, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.18. Other offenses**

If venue is not specifically stated, the proper county for the prosecution of offenses is that in which the offense was committed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 978, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**Art. 13.19. Where venue cannot be determined**

If an offense has been committed within the state and it cannot readily be determined within which county or counties the commission took place, trial may be held in the county in which the defendant resides, in the county in which he is apprehended, or in the county to which he is extradited.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 979, ch. 399, § 2(C), eff. Jan. 1, 1974.]

**ARREST, COMMITMENT AND BAIL****CHAPTER FOURTEEN. ARREST WITHOUT WARRANT**

Art.

- 14.01. Offense within view.
- 14.02. Within view of magistrate.
- 14.03. Authority of peace officers.
- 14.04. When felony has been committed.
- 14.05. Rights of officer.
- 14.06. Must take offender before magistrate.

**Art. 14.01. Offense within view**

(a) A peace officer or any other person, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace.

(b) A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1735, ch. 659, § 8, eff. Aug. 28, 1967.]

**Art. 14.02. Within view of magistrate**

A peace officer may arrest, without warrant, when a felony or breach of the peace has been committed in the presence or within the view of a magistrate, and such magistrate verbally orders the arrest of the offender.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 14.03. Authority of peace officers**

Any peace officer may arrest, without warrant, persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1735, ch. 659, § 9, eff. Aug. 28, 1967.]

**Art. 14.04. When felony has been committed**

Where it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a felony has been committed, and that the offender is about to escape, so that there is no time to procure a warrant, such peace officer may, without warrant, pursue and arrest the accused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 14.05. Rights of officer**

In each case enumerated where arrests may be lawfully made without warrant, the officer or person making the arrest is justified in adopting all the measures which he might adopt in cases of arrest under warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 14.06. Must take offender before magistrate**

In each case enumerated in this Code, the person making the arrest shall take the person arrested or have him taken without unnecessary delay before the magistrate who may have ordered the arrest or before some magistrate of the county where the arrest was made without an order. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1735, ch. 659, § 10, eff. Aug. 28, 1967.]

**CHAPTER FIFTEEN. ARREST UNDER WARRANT**

Art.

- 15.01. Warrant of arrest.
- 15.02. Requisites of warrant.
- 15.03. Magistrate may issue warrant or summons.
- 15.04. Complaint.
- 15.05. Requisites of complaint.
- 15.06. Warrant extends to every part of the State.
- 15.07. Warrant issued by other magistrate.
- 15.08. Warrant may be telegraphed.
- 15.09. Complaint by telegraph.
- 15.10. Copy to be deposited.
- 15.11. Duty of telegraph manager.
- 15.12. Warrant or complaint must be under seal.
- 15.13. Telegram prepaid.
- 15.14. Warrant may be directed to any person.
- 15.15. Private person executing warrant.
- 15.16. How warrant is executed.
- 15.17. Duties of arresting officer and magistrate.
- 15.18. Arrest for out-of-county offense.
- 15.19. Notice of arrest.
- 15.20. Duty of sheriff receiving notice.
- 15.21. Prisoner discharged if not timely demanded.
- 15.22. When a person is arrested.
- 15.23. Time of arrest.
- 15.24. What force may be used.
- 15.25. May break door.
- 15.26. Authority to arrest must be made known.
- 15.27. Repealed.

**Art. 15.01. Warrant of arrest**

A "warrant of arrest" is a written order from a magistrate, directed to a peace officer or some other person specially named, commanding him to take the body of the person accused of an offense, to be dealt with according to law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 15.02. Requisites of warrant**

It issues in the name of "The State of Texas", and shall be sufficient, without regard to form, if it have these substantial requisites:

1. It must specify the name of the person whose arrest is ordered, if it be known, if unknown, then some reasonably definite description must be given of him.

2. It must state that the person is accused of some offense against the laws of the State, naming the offense.

3. It must be signed by the magistrate, and his office be named in the body of the warrant, or in connection with his signature.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 15.03. Magistrate may issue warrant or summons**

(a) A magistrate may issue a warrant of arrest or a summons:

1. In any case in which he is by law authorized to order verbally the arrest of an offender;

2. When any person shall make oath before the magistrate that another has committed some offense against the laws of the State; and

3. In any case named in this Code where he is specially authorized to issue warrants of arrest.

(b) A summons may be issued in any case where a warrant may be issued, and shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address. If a defendant fails to appear in response to the summons a warrant shall be issued.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.04. Complaint

The affidavit made before the magistrate or district or county attorney is called a "complaint" if it charges the commission of an offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.05. Requisites of complaint

The complaint shall be sufficient, without regard to form, if it have these substantial requisites:

1. It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him.
2. It must show that the accused has committed some offense against the laws of the State, either directly or that the affiant has good reason to believe, and does believe, that the accused has committed such offense.
3. It must state the time and place of the commission of the offense, as definitely as can be done by the affiant.
4. It must be signed by the affiant by writing his name or affixing his mark.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.06. Warrant extends to every part of the State

A warrant of arrest, issued by any county or district clerk, or by any magistrate (except mayors or recorders of an incorporated city or town), shall extend to any part of the State; and any peace officer to whom said warrant is directed, or into whose hands the same has been transferred, shall be authorized to execute the same in any county in this State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.07. Warrant issued by other magistrate

When a warrant of arrest is issued by any mayor or recorder of an incorporated city or town, it cannot be executed in another county than the one in which it issues, except:

1. It be endorsed by a judge of a court of record, in which case it may be executed anywhere in the State; or
2. If it be endorsed by any magistrate in the county in which the accused is found, it may be executed in such county. The endorsement may

be: "Let this warrant be executed in the county of . . . . .". Or, if the endorsement is made by a judge of a court of record, then the endorsement may be: "Let this warrant be executed in any county of the State of Texas". Any other words of the same meaning will be sufficient. The endorsement shall be dated, and signed officially by the magistrate making it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.08. Warrant may be telegraphed

A warrant of arrest may be forwarded by telegraph from any telegraph office to another in this State. If issued by any magistrate named in Article 15.06, the peace officer receiving the same shall execute it without delay. If it be issued by any other magistrate than is named in Article 15.06, the peace officer receiving the same shall proceed with it to the nearest magistrate of his county, who shall endorse thereon, in substance, these words:

"Let this warrant be executed in the county of . . . . .", which endorsement shall be dated and signed officially by the magistrate making the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.09. Complaint by telegraph

A complaint in accordance with Article 15.05, may be telegraphed, as provided in the preceding Article, to any magistrate in the State; and the magistrate who receives the same shall forthwith issue a warrant for the arrest of the accused; and the accused, when arrested, shall be dealt with as provided in this Chapter in similar cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.10. Copy to be deposited

A certified copy of the original warrant or complaint, certified to by the magistrate issuing or taking the same, shall be deposited with the manager of the telegraph office from which the same is to be forwarded, taking precedence over other business, to the place of its destination or to the telegraph office nearest thereto, precisely as it is written, including the certificate of the seal attached.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.11. Duty of telegraph manager

When a warrant or complaint is received at a telegraph office for delivery, it shall be delivered to the party to whom it is addressed as soon as practicable, written on the proper blanks of the telegraph company and certified to by the manager of the telegraph office as being a true and correct copy of the warrant or complaint received at his office.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.12. Warrant or complaint must be under seal

No manager of a telegraph office shall receive and forward a warrant or complaint unless the same shall be certified to under the seal of a court of

record or by a justice of the peace, with the certificate under seal of the district or county clerk of his county that he is a legally qualified justice of the peace of such county; nor shall it be lawful for any magistrate to endorse a warrant received by telegraph, or issue a warrant upon a complaint received by telegraph, unless all the requirements of the law in relation thereto have been fully complied with. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.13. Telegram prepaid

Whoever presents a warrant or complaint to the manager of a telegraph office to be forwarded by telegraph, shall pay for the same in advance, unless, by the rules of the company, it may be sent collect. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.14. Warrant may be directed to any person

If it is made known by satisfactory proof to the magistrate that a peace officer cannot be procured to execute a warrant of arrest, or that such delay will be occasioned in procuring the services of a peace officer that the accused will probably escape, such warrant may be directed to any suitable person who is willing to execute the same; and in such case, his name shall be set forth in the warrant. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.15. Private person executing warrant

No person other than a peace officer can be compelled to execute a warrant of arrest; but if any person shall undertake its execution, he shall be bound to do so under all the penalties to which a peace officer would be liable. He has the same rights, and is governed by the same rules as apply to peace officers. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.16. How warrant is executed

The officer or person executing a warrant of arrest shall without unnecessary delay take the person or have him taken before the magistrate who issued the warrant or before the magistrate named in the warrant, if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which he was arrested.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1736, ch. 659, § 11, eff. Aug. 28, 1967.]

#### Art. 15.17. Duties of arresting officer and magistrate

In each case enumerated in this Code, the person making the arrest shall without unnecessary delay take the person arrested or have him taken before some magistrate of the county where the accused was arrested. The magistrate shall inform in clear language the person arrested of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain

silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, of his right to request the appointment of counsel if he is indigent and cannot afford counsel, and of his right to have an examining trial. He shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall admit the person arrested to bail if allowed by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1736, ch. 659, § 12, eff. Aug. 28, 1967.]

#### Art. 15.18. Arrest for out-of-county offense

One arrested under a warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place who shall take bail, if allowed by law, and immediately transmit the bond taken to the court having jurisdiction of the offense. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.19. Notice of arrest

If the accused fails or refuses to give bail, as provided in the preceding Article, he shall be committed to the jail of the county where he was arrested; and the magistrate committing him shall immediately notify the sheriff of the county in which the offense is alleged to have been committed of the arrest and commitment, which notice may be given by telegraph, by mail or by other written notice.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.20. Duty of sheriff receiving notice

The sheriff receiving the notice shall forthwith go or send for the prisoner and have him brought before the proper court or magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.21. Prisoner discharged if not timely demanded

If the proper office of the county where the offense is alleged to have been committed does not demand the prisoner and take charge of him within ten days from the day he is committed, such prisoner shall be discharged from custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.22. When a person is arrested

A person is arrested when he has been actually placed under restraint or taken into custody by an officer or person executing a warrant of arrest, or by an officer or person arresting without a warrant. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 15.23. Time of arrest

An arrest may be made on any day or at any time of the day or night.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 15.24. What force may be used**

In making an arrest, all reasonable means are permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 15.25. May break door**

In case of felony, the officer may break down the door of any house for the purpose of making an arrest, if he be refused admittance after giving notice of his authority and purpose.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 15.26. Authority to arrest must be made known**

In executing a warrant of arrest, it shall always be made known to the accused under what authority the arrest is made. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, provided the warrant was issued under the provisions of this Code, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of arrest he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1736, ch. 659, § 13, eff. Aug. 28, 1967.]

**Art. 15.27. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(b), eff. Jan. 1, 1974****CHAPTER SIXTEEN. THE COMMITMENT OR DISCHARGE OF THE ACCUSED**

Art.

- 16.01. Examining trial.
- 16.02. Examination postponed.
- 16.03. Warning to accused.
- 16.04. Voluntary statement.
- 16.05. Witness placed under rule.
- 16.06. Counsel may examine witness.
- 16.07. Same rules of evidence as on final trial.
- 16.08. Presence of the accused.
- 16.09. Testimony reduced to writing.
- 16.10. Attachment for witness.
- 16.11. Attachment to another county.
- 16.12. Witness need not be tendered his witness fees or expenses.
- 16.13. Attachment executed forthwith.
- 16.14. Postponing examination.
- 16.15. Who may discharge capital offense.
- 16.16. If insufficient bail has been taken.
- 16.17. Decision of judge.
- 16.18. When no safe jail.
- 16.19. Warrant in such case.
- 16.20. "Commitment".
- 16.21. Duty of sheriff as to prisoners.

**Art. 16.01. Examining trial**

When the accused has been brought before a magistrate for an examining trial that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure counsel. In a proper case, the magistrate may appoint counsel to represent an accused in such

examining trial only, to be compensated as otherwise provided in this Code. The accused in any felony case shall have the right to an examining trial before indictment in the county having jurisdiction of the offense, whether he be in custody or on bail, at which time the magistrate at the hearing shall determine the amount or sufficiency of bail, if aailable case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.02. Examination postponed**

The magistrate may at the request of either party postpone the examination to procure testimony; but the accused shall in the meanwhile be detained in custody unless he give bail to be present from day to day before the magistrate until the examination is concluded, which he may do in all cases except murder and treason.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.03. Warning to accused**

Before the examination of the witnesses, the magistrate shall inform the accused that it is his right to make a statement relative to the accusation brought against him, but at the same time shall also inform him that he cannot be compelled to make any statement whatever, and that if he does make such statement, it may be used in evidence against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.04. Voluntary statement**

If the accused desires to make a voluntary statement, he may do so before the examination of any witness, but not afterward. His statement shall be reduced to writing by or under the direction of the magistrate, or by the accused or his counsel, and shall be signed by the accused by affixing his name or mark, but shall not be sworn to by him. The magistrate shall attest by his own certificate and signature to the execution and signing of the statement.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.05. Witness placed under rule**

The magistrate shall, if requested by the accused or his counsel, or by the prosecutor, have all the witnesses placed in charge of an officer, so that the testimony given by any one witness shall not be heard by any of the others. However, if the defendant is a corporation or association it may designate one representative in addition to counsel to assist at the examining trial, which representative may not be placed under the rule.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 968, ch. 399, § 2(A), eff. Jan. 1, 1974.]

**Art. 16.06. Counsel may examine witness**

The counsel for the State, and the accused or his counsel may question the witnesses on direct or cross examination. If no counsel appears for the State the magistrate may examine the witnesses.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.07. Same rules of evidence as on final trial**

The same rules of evidence shall apply to and govern a trial before an examining court that apply to and govern a final trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.08. Presence of the accused**

The examination of each witness shall be in the presence of the accused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.09. Testimony reduced to writing**

The testimony of each witness shall be reduced to writing by or under the direction of the magistrate, and shall then be read over to the witness, or he may read it over himself. Such corrections shall be made in the same as the witness may direct; and he shall then sign the same by affixing thereto his name or mark. All the testimony thus taken shall be certified to by the magistrate. In lieu of the above provision, a statement of facts authenticated by State and defense counsel and approved by the presiding magistrate may be used to preserve the testimony of witnesses.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.10. Attachment for witness**

The magistrate has the power in all cases, where a witness resides or is in the county where the prosecution is pending, to issue an attachment for the purpose of enforcing the attendance of such witness; this he may do without having previously issued a subpoena for that purpose.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.11. Attachment to another county**

The magistrate may issue an attachment for a witness to any county in the State, when affidavit is made by the party applying therefor that the testimony of the witness is material to the prosecution, or the defense, as the case may be; and the affidavit shall further state the facts which it is expected will be proved by the witness; and if the facts set forth are not considered material by the magistrate, or if they be admitted to be true by the adverse party, the attachment shall not issue.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.12. Witness need not be tendered his witness fees or expenses**

A witness attached need not be tendered his witness fees or expenses.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.13. Attachment executed forthwith**

The officer receiving the attachment shall execute it forthwith by bringing before the magistrate the witness named therein, unless such witness shall give bail for his appearance before the magistrate at the time and place required by the writ.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.14. Postponing examination**

After examining the witness in attendance, if it appear to the magistrate that there is other important testimony which may be had by a postponement, he shall, at the request of the prosecutor or of the defendant, postpone the hearing for a reasonable time to enable such testimony to be procured; but in such case the accused shall remain in the custody of the proper officer until the day fixed for such further examination. No postponement shall take place, unless a sworn statement be made by the defendant, or the prosecutor, setting forth the name and residence of the witness, and the facts which it is expected will be proved. If it be testimony other than that of a witness, the statement made shall set forth the nature of the evidence. If the magistrate is satisfied that the testimony is not material, or if the same be admitted to be true by the adverse party, the postponement shall be refused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.15. Who may discharge capital offense**

The examination of one accused of a capital offense shall be conducted by a justice of the peace, county judge, county court at law, or county criminal court. The judge may admit to bail, except in capital cases where the proof is evident.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.16. If insufficient bail has been taken**

Where it is made to appear by affidavit to a judge of the Court of Criminal Appeals, district or county court, that the bail taken in any case is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrant of arrest, and require of the defendant sufficient bond and security, according to the nature of the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.17. Decision of judge**

After the examining trial has been had, the judge shall make an order committing the defendant to the jail of the proper county, discharging him or admitting him to bail, as the law and facts of the case may require. Failure of the judge to make or enter an order within 48 hours after the examining trial has been completed operates as a finding of no probable cause and the accused shall be discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.18. When no safe jail**

If there is no safe jail in the county in which the prosecution is carried on, the magistrate may commit defendant to the nearest safe jail in any other county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 16.19. Warrant in such case**

The commitment in the case mentioned in the preceding Article shall be directed to the sheriff of the county to which the defendant is sent, but the

sheriff of the county from which the defendant is taken shall be required to deliver the prisoner into the hands of the sheriff to whom he is sent. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 16.20. "Commitment"

A "commitment" is an order signed by the proper magistrate directing a sheriff to receive and place in jail the person so committed. It will be sufficient if it have the following requisites:

1. That it run in the name of "The State of Texas";
2. That it be addressed to the sheriff of the county to the jail of which the defendant is committed;
3. That it state in plain language the offense for which the defendant is committed, and give his name, if it be known, or if unknown, contain an accurate description of the defendant;
4. That it state to what court and at what time the defendant is to be held to answer;
5. When the prisoner is sent out of the county where the prosecution arose, the warrant of commitment shall state that there is no safe jail in the proper county; and
6. If bail has been granted, the amount of bail shall be stated in the warrant of commitment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 16.21. Duty of sheriff as to prisoners

Every sheriff shall keep safely a person committed to his custody. He shall use no cruel or unusual means to secure this end, but shall adopt all necessary measures to prevent the escape of a prisoner. He may summon a guard of sufficient number, in case it becomes necessary to prevent an escape from jail, or the rescue of a prisoner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER SEVENTEEN. BAIL

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#### Art. 17.01. Definition of "bail"

"Bail" is the security given by the accused that he will appear and answer before the proper court the accusation brought against him, and includes a bail bond or a personal bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 17.02. Definition of "bail bond"

A "bail bond" is a written undertaking entered into by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation; provided, however, that the defendant upon execution of such bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same. Any cash funds deposited under this Article shall be receipted for by the officer receiving the same and shall be refunded to the defendant if and when the defendant complies with the conditions of his bond, and upon order of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 17.03. Personal bond

The court before whom the case is pending may, in its discretion, release the defendant on his personal bond without sureties or other security.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 17.031. Release on personal bond

(a) A magistrate may, upon the setting of a bond, release the defendant on his personal bond, in which case the bond may be transferred to any court wherein the case may later be heard, and subsequent courts may not revoke the personal bond except for good cause shown.

(b) Any magistrate in this state may release a defendant on his personal bond where the complaint and warrant for arrest does not originate in the county wherein the accused is arrested if the magistrate would have had jurisdiction over the matter had the complaint arisen within the county wherein the magistrate presides. The personal bond may not be revoked by the judge of the court issuing the warrant for arrest except for good cause shown.

(c) If there is a personal bond office in the county from which the warrant for arrest was issued, the court releasing a defendant on his personal bond will forward a copy of the personal bond to the personal bond office in that county.

[Acts 1971, 62nd Leg., p. 2445, ch. 787, § 1, eff. June 8, 1971.]

#### Art. 17.04. Requisites of a personal bond

A personal bond is sufficient if it includes the requisites of a bail bond as set out in Article 17.08, except that no sureties are required. In addition, a personal bond shall contain the defendant's name, address and place of employment, and the following oath sworn and signed by the defendant:

"I swear that I will appear before (the court or magistrate) at (address, city, county) Texas, on the (date), at the hour of (time, a. m. or p. m.) or upon notice by the court, or pay to the court the principal sum of (amount) plus all necessary and reasonable expenses incurred in any arrest for failure to appear."

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 17.045. Bail bond certificates

A bail bond certificate with respect to which a fidelity and surety company has become surety as provided in the Automobile Club Services Act, or for any truck and bus association incorporated in this state, when posted by the person whose signature appears thereon, shall be accepted as bail bond in an amount not to exceed \$200 to guarantee the appearance of such person in any court in this state when the person is arrested for violation of any motor vehicle law of this state or ordinance of any municipality in this state, except for the offense of driving while intoxicated or for any felony, and the alleged violation was committed prior to the date of expiration shown on such bail bond certificate.

[Acts 1969, 61st Leg., p. 2033, ch. 697, § 2, eff. Sept. 1, 1969.]

#### Art. 17.05. When a bail bond is given

A bail bond is entered into either before a magistrate, upon an examination of a criminal accusation, or before a judge upon an application under habeas corpus; or it is taken from the defendant by a peace officer if authorized by Article 17.20, 17.21, or 17.22.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 3045, ch. 1006, § 1, eff. Aug. 30, 1971.]

#### Art. 17.06. Corporation as surety

Wherever in this Chapter, any person is required or authorized to give or execute any bail bond, such bail bond may be given or executed by such principal and any corporation authorized by law to act as surety, subject to all the provisions of this Chapter regulating and governing the giving of bail bonds by personal surety insofar as the same is applicable.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 17.07. Corporation to file with county clerk power of attorney designating agent

Any corporation authorized by the law of this State to act as a surety, shall before executing any bail bond as authorized in the preceding Article, first file in the office of the county clerk of the county where such bail bond is given, a power of attorney designating and authorizing the named agent, agents or attorney of such corporation to execute such bail bonds and thereafter the execution of such bail bonds by such agent, agents or attorney, shall be a valid and binding obligation of such corporation.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 17.08. Requisites of a bail bond

A bail bond shall be sufficient if it contain the following requisites:

1. That it be made payable to "The State of Texas";

2. That the defendant and his sureties, if any, bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him;

3. If the defendant is charged with a felony, that it state that he is charged with a felony. If the defendant is charged with a misdemeanor, that it state that he is charged with a misdemeanor;

4. That the bond be signed by name or mark by the principal and sureties, if any, each of whom shall write thereon his mailing address;

5. That the bond state the time and place, when and where the accused binds himself to appear, and the court or magistrate before whom he is to appear. The bond shall also bind the defendant to appear before any court or magistrate before whom the cause may thereafter be pending at any time when, and place where, his presence may be required under this Code or by any court or magistrate;

6. The bond shall also be conditioned that the principal and sureties, if any, will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in rearresting the principal in the event he fails to appear before the court or magistrate named in the bond at the time stated therein. The amount of such expense shall be in addition to the principal amount specified in the bond. The failure of any bail bond to contain the conditions specified in this paragraph shall in no manner affect the legality of any such bond, but it is intended that the sheriff or other peace officer shall look to the defendant and his sureties, if any, for expenses incurred by him, and not to the State for any fees earned by him in connection with the rearresting of an accused who has violated the conditions of his bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.09. Duration; original and subsequent proceedings; new bail**

Sec. 1. Where a defendant, in the course of a criminal action, gives bail before any court or person authorized by law to take same, for his personal appearance before a court or magistrate, to answer a charge against him, the said bond shall be valid and binding upon the defendant and his sureties, if any, thereon, for the defendant's personal appearance before the court or magistrate designated therein, as well as before any other court to which same may be transferred, and for any and all subsequent proceedings had relative to the charge, and each such bond shall be so conditioned except as hereinafter provided.

Sec. 2. When a defendant has once given bail for his appearance in answer to a criminal charge, he shall not be required to give another bond in the course of the same criminal action except as herein provided.

Sec. 3. Provided that whenever, during the course of the action, the judge or magistrate in whose court such action is pending finds that the bond is defective, excessive or insufficient in amount, or that the sureties, if any, are not acceptable, or for any other good and sufficient cause, such judge or magistrate may, either in term-time or in vacation, order the accused to be rearrested, and require the accused to give another bond in such amount as the judge or magistrate may deem proper. When such bond is so given and approved, the defendant shall be released from custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.10. Disqualified sureties**

A minor cannot be surety on a bail bond, but the accused party may sign as principal.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.11. How bail bond is taken**

Sec. 1. Every court, judge, magistrate or other officer taking a bail bond shall require evidence of the sufficiency of the security offered; but in every case, one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound, exclusive of all property exempted by law from execution, and of debts or other encumbrances; and that he is a resident of this state, and has property therein liable to execution worth the sum for which he is bound.

Sec. 2. Provided, however, any person who has signed as a surety on a bail bond and is in default thereon shall thereafter be disqualified to sign as a surety so long as he is in default on said bond. It shall be the duty of the clerk of the court wherein such surety is in default on a bail bond, to notify in writing the sheriff, chief of police, or other peace officer, of such default. A surety shall be deemed in

default from the time the trial court enters its final judgment on the scire facias until such judgment is satisfied or set aside.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1736, ch. 659, § 14, eff. Aug. 28, 1967.]

**Art. 17.12. Exempt property**

The property secured by the Constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of bail, either as to principal or sureties, if any.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.13. Sufficiency of sureties ascertained**

To test the sufficiency of the security offered to any bail bond, unless the court or officer taking the same is fully satisfied as to its sufficiency, the following oath shall be made in writing and subscribed by the sureties: "I, do swear that I am worth, in my own right, at least the sum of (here insert the amount in which the surety is bound), after deducting from my property all that which is exempt by the Constitution and Laws of the State from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all encumbrances upon my property which are known to me; that I reside in . . . . . County, and have property in this State liable to execution worth said amount or more.

(Dated . . . . ., and attested by the judge of the court, clerk, magistrate or sheriff.)"

Such affidavit shall be filed with the papers of the proceedings.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.14. Affidavit not conclusive**

Such affidavit shall not be conclusive as to the sufficiency of the security; and if the court or officer taking the bail bond is not fully satisfied as to the sufficiency of the security offered, further evidence shall be required before approving the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.15. Rules for fixing amount of bail**

The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.

2. The power to require bail is not to be so used as to make it an instrument of oppression.

3. The nature of the offense and the circumstances under which it was committed are to be considered.

4. The ability to make bail is to be regarded, and proof may be taken upon this point.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.16. Surety may surrender his principal**

Those who have become bail for the accused, or either of them, may at any time relieve themselves of their undertaking by surrendering the accused into the custody of the sheriff of the county where he is prosecuted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.17. When surrender is made during term**

If a surrender of the accused be made during a term of the court to which he has bound himself to appear, the sheriff shall take him before the court; and if he is willing to give other bail, the court shall forthwith require him to do so. If he fails or refuses to give bail, the court shall make an order that he be committed to jail until the bail is given, and this shall be a sufficient commitment without any written order to the sheriff.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.18. Surrender in vacation**

When the surrender is made at any other time than during the session of the court, the sheriff may take the necessary bail bond, but if the defendant fails or refuses to give other bail, the sheriff shall take him before the nearest magistrate; and such magistrate shall issue a warrant of commitment, reciting the fact that the accused has been once admitted to bail, has been surrendered, and now fails or refuses to give other bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.19. Surety may obtain a warrant**

Any surety, desiring to surrender his principal, may upon making affidavit of such intention before the court or magistrate before which the prosecution is pending, obtain from such court or magistrate a warrant of arrest for such principal, which shall be executed as in other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.20. Bail in misdemeanor**

The sheriff, or other peace officer, in cases of misdemeanor, may, whether during the term of the court or in vacation, where he has a defendant in custody, take of the defendant a bail bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 3045, ch. 1006, § 1, eff. Aug. 30, 1971.]

**Art. 17.21. Bail in felony**

In cases of felony, when the accused is in custody of the sheriff or other peace officer, and the court before which the prosecution is pending is in session in the county where the accused is in custody, the court shall fix the amount of bail, if it is aailable case and determine if the accused is eligible for a personal bond; and the sheriff, or other peace offi-

cer, unless it be the police of a city, is authorized to take a bail bond of the accused in the amount as fixed by the court, to be approved by such officer taking the same, and will thereupon discharge the accused from custody. It shall not be necessary for the defendant or his sureties to appear in court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.22. May take bail in felony**

In a felony case, if the court before which the same is pending is not in session in the county where the defendant is in custody, the sheriff, or other peace officer having him in custody, may take his bail bond in such amount as may have been fixed by the court or magistrate, or if no amount has been fixed, then in such amount as such officer may consider reasonable.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.23. Sureties severally bound**

In all bail bonds taken under any provision of this Code, the sureties shall be severally bound. Where a surrender of the principal is made by one or more of them, all the sureties shall be considered discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.24. General rules applicable**

All general rules in the Chapter are applicable to bail defendant before an examining court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.25. Proceedings when bail is granted**

After a full examination of the testimony, the magistrate shall, if the case be one where bail may properly be granted and ought to be required, proceed to make an order that the accused execute a bail bond with sufficient security, conditioned for his appearance before the proper court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.26. Time given to procure bail**

Reasonable time shall be given the accused to procure security.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.27. When bail is not given**

If, after the allowance of a reasonable time, the security be not given, the magistrate shall make an order committing the accused to jail to be kept safely until legally discharged; and he shall issue a commitment accordingly

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.28. When ready to give bail**

If the party be ready to give bail, the magistrate shall cause to be prepared a bond, which shall be signed by the accused and his surety or sureties, if any.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.29. Accused liberated**

When the accused has given the required bond, either to the magistrate or the officer having him in custody, he shall at once be set at liberty.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.30. Shall certify proceedings**

The magistrate, before whom an examination has taken place upon a criminal accusation, shall certify to all the proceedings had before him, as well as where he discharges, holds to bail or commits, and transmit them, sealed up, to the court before which the defendant may be tried, writing his name across the seals of the envelope. The voluntary statement of the defendant, the testimony, bail bonds, and every other proceeding in the case, shall be thus delivered to the clerk of the proper court, without delay.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.31. Duty of clerks who receive such proceedings**

If the proceedings be delivered to a district clerk, he shall keep them safely and deliver the same to the next grand jury. If the proceedings are delivered to a county clerk, he shall without delay deliver them to the district or county attorney of his county.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.32. In case of no arrest**

Upon failure from any cause to arrest the accused the magistrate shall file with the proper clerk the complaint, warrant of arrest, and a list of the witnesses.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.33. Request setting of bail**

The accused may at any time after being confined request a magistrate to review the written statements of the witnesses for the State as well as all other evidence available at that time in determining the amount of bail. This setting of the amount of bail does not waive the defendant's right to an examining trial as provided in Article 16.01.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.34. Witnesses to give bond**

Witnesses for the State or defendant may be required by the magistrate, upon the examination of any criminal accusation before him, to give bail for their appearance to testify before the proper court. A personal bond may be taken of a witness by the court before whom the case is pending.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.35. Security of witness**

The amount of security to be required of a witness is to be regulated by his pecuniary condition, character and the nature of the offense with respect to which he is a witness.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.36. Effect of witness bond**

The bond given by a witness for his appearance has the same effect as a bond of the accused and may be forfeited and recovered upon in the same manner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.37. Witness may be committed**

A witness required to give bail who fails or refuses to do so shall be committed to jail as in other cases of a failure to give bail when required, but shall be released from custody upon giving such bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 17.38. Rules applicable to all cases of bail**

The rules in this Chapter respecting bail are applicable to all such undertakings when entered into in the course of a criminal action, whether before or after an indictment, in every case where authority is given to any court, judge, magistrate, or other officer, to require bail of a person accused of an offense, or of a witness in a criminal action.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

## CHAPTER SEVENTEEN-A. CORPORATIONS AND ASSOCIATIONS

Art.

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- 17A.09. Notifying attorney general of corporation's conviction.

**Art. 17A.01. Application and definitions**

(a) This chapter sets out some of the procedural rules applicable to the criminal responsibility of corporations and associations. Where not in conflict with this chapter, the other chapters of this code apply to corporations and associations.

(b) In this code, unless the context requires a different definition:

(1) "Agent" means a director, officer, employee, or other person authorized to act in behalf of a corporation or association.

(2) "Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

(3) "High managerial agent" means:

(A) an officer of a corporation or association;

(B) a partner in a partnership; or

(C) an agent of a corporation or association who has duties of such responsibility that his conduct may reasonably be assumed to represent the policy of the corporation or association.

(4) "Person," "he," and "him" include corporation and association.

[Acts 1973, 63rd Leg., p. 979, ch. 399, § 2(D), eff. Jan. 1, 1974.]

#### Art. 17A.02. Allegation of name

(a) In alleging the name of a defendant corporation, it is sufficient to state in the complaint, indictment, or information the corporate name, or to state any name or designation by which the corporation is known or may be identified. It is not necessary to allege that the defendant was lawfully incorporated.

(b) In alleging the name of a defendant association it is sufficient to state in the complaint, indictment, or information the association's name, or to state any name or designation by which the association is known or may be identified, or to state the name or names of one or more members of the association, referring to the unnamed members as "others." It is not necessary to allege the legal form of the association.

[Acts 1973, 63rd Leg., p. 979, ch. 399, § 2(D), eff. Jan. 1, 1974.]

#### Art. 17A.03. Summoning corporation or association

(a) When a complaint is filed or an indictment or information presented against a corporation or association, the court or clerk shall issue a summons to the corporation or association. The summons shall be in the same form as a *caapias* except that:

(1) it shall summon the corporation or association to appear before the court named at the place stated in the summons; and

(2) it shall be accompanied by a certified copy of the complaint, indictment, or information; and

(3) it shall provide that the corporation or association appear before the court named at or before 10 a. m. of the Monday next after the expiration of 20 days after it is served with summons, except when service is made upon the secretary of state or chairman of the State Board of Insurance, in which instance the summons shall provide that the corporation or association appear before the court named at or before 10 a. m. of the Monday next after the expiration of 30 days after the secretary of state or chairman of the State Board of Insurance is served with summons.

(b) No individual may be arrested upon a complaint, indictment, information, judgment, or sentence against a corporation or association.

[Acts 1973, 63rd Leg., p. 980, ch. 399, § 2(D), eff. Jan. 1, 1974.]

#### Art. 17A.04. Service on corporation

(a) Except as provided in Paragraph (d) of this article, a peace officer shall serve a summons on a corporation by personally delivering a copy of it to the corporation's registered agent. However, if a registered agent has not been designated, or cannot

with reasonable diligence be found at the registered office, then the peace officer shall serve the summons by personally delivering a copy of it to the president or a vice-president of the corporation.

(b) If the peace officer certifies on the return that he diligently but unsuccessfully attempted to effect service under Paragraph (a) of this article, or if the corporation is a foreign corporation that has no certificate of authority, then he shall serve the summons on the secretary of state by personally delivering a copy of it to him, or to the assistant secretary of state, or to any clerk in charge of the corporation department of his office. On receipt of the summons copy, the secretary of state shall immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered or principal office in the state or country under whose law it was incorporated.

(c) The secretary of state shall keep a permanent record of the date and time of receipt and his disposition of each summons served under Paragraph (b) of this article together with the return receipt.

(d) The method of service on a corporation regulated under the Insurance Code is governed by that code.

[Acts 1973, 63rd Leg., p. 980, ch. 399, § 2(D), eff. Jan. 1, 1974.]

#### Art. 17A.05. Service on association

(a) Except as provided in Paragraph (b) of this article, a peace officer shall serve a summons on an association by personally delivering a copy of it:

(1) to a high managerial agent at any place where business of the association is regularly conducted; or

(2) if the peace officer certifies on the return that he diligently but unsuccessfully attempted to serve a high managerial agent, to any employee of suitable age and discretion at any place where business of the association is regularly conducted; or

(3) if the peace officer certifies on the return that he diligently but unsuccessfully attempted to serve a high managerial agent, or employee of suitable age and discretion, to any member of the association.

(b) The method of service on an association regulated under the Insurance Code is governed by that code.

[Acts 1973, 63rd Leg., p. 981, ch. 399, § 2(D), eff. Jan. 1, 1974.]

#### Art. 17A.06. Appearance

(a) In all criminal actions instituted against a corporation or association, in which original jurisdiction is in a district or county-level court:

(1) appearance is for the purpose of arraignment;

(2) the corporation or association has 10 full days after the day the arraignment takes place

and before the day the trial begins to file written pleadings.

(b) In all criminal actions instituted against a corporation or association, in which original jurisdiction is in a justice court or corporation court:

(1) appearance is for the purpose of entering a plea; and

(2) 10 full days must elapse after the day of appearance before the corporation or association may be tried.

[Acts 1973, 63rd Leg., p. 981, ch. 399, § 2(D), eff. Jan. 1, 1974.]

#### Art. 17A.07. Presence of corporation or association

(a) A defendant corporation or association appears through counsel.

(b) If a corporation or association does not appear in response to summons, or appears but fails or refuses to plead:

(1) it is deemed to be present in person for all purposes; and

(2) the court shall enter a plea of not guilty in its behalf; and

(3) the court may proceed with trial, judgment, and sentencing.

(c) If, having appeared and entered a plea in response to summons, a corporation or association is absent without good cause at any time during later proceedings:

(1) it is deemed to be present in person for all purposes; and

(2) the court may proceed with trial, judgment, or sentencing.

[Acts 1973, 63rd Leg., p. 981, ch. 399, § 2(D), eff. Jan. 1, 1974.]

#### Art. 17A.08. Probation

The benefits of the adult probation laws shall not be available to corporations and associations.

[Acts 1973, 63rd Leg., p. 981, ch. 399, § 2(D), eff. Jan. 1, 1974.]

#### Art. 17A.09. Notifying attorney general of corporation's conviction

If a corporation is convicted of an offense, or if a high managerial agent is convicted of an offense committed in the conduct of the affairs of the corporation, the court shall notify the attorney general in writing of the conviction when it becomes final and unappealable. The notice shall include:

(1) the corporation's name, and the name of the corporation's registered agent and the address of the registered office, or the high managerial agent's name and address, or both; and

(2) certified copies of the judgment and sentence and of the complaint, information, or indictment on which the judgment and sentence were based.

[Acts 1973, 63rd Leg., p. 981, ch. 399, § 2(D), eff. Jan. 1, 1974.]

## SEARCH WARRANTS

### CHAPTER EIGHTEEN. SEARCH WARRANTS

Art.

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18.18. Disposition of gambling paraphernalia, prohibited weapon, criminal instrument.

18.19. Disposition of certain weapons.

#### Art. 18.01. Search warrant

(a) A "search warrant" is a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate.

(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 982, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.02. Grounds for issuance

A search warrant may be issued to search for and seize:

(1) property acquired by theft or in any other manner which makes its acquisition a penal offense;

(2) property specially designed, made, or adapted for or commonly used in the commission of an offense;

(3) arms and munitions kept or prepared for the purpose of insurrection or riot;

(4) weapons prohibited by the Penal Code;

(5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;

(6) obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;

(7) drugs kept, prepared, or manufactured in violation of the laws of this state;

(8) any property the possession of which is prohibited by law;

(9) implements or instruments used in the commission of a crime.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 982, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.03. Search warrant may order arrest

If the facts presented to the magistrate under Article 18.02 of this chapter also establish the existence of probable cause that a person has committed some offense under the laws of this state, the search warrant may, in addition, order the arrest of such person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 983, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.04. Contents of warrant

A search warrant issued under this chapter shall be sufficient if it contains the following requisites:

(1) that it run in the name of "The State of Texas";

(2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;

(3) that it command any peace officer of the proper county to search forthwith the person, place, or thing named; and

(4) that it be dated and signed by the magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 983, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.05. Warrants for fire marshals and health officers

(a) A search warrant may be issued to the fire marshal or health officer of the state or of any county, city, or other political subdivision for the purpose of allowing the inspection of any specified premises to determine the presence of a fire or health hazard or a violation of any fire or health regulation, statute, or ordinance.

(b) A search warrant may not be issued under this article except upon the presentation of evidence of probable cause to believe that a fire or health hazard or violation is present in the premises sought to be inspected.

(c) In determining probable cause, the magistrate is not limited to evidence of specific knowledge, but may consider any of the following:

(1) the age and general condition of the premises;

(2) previous violations or hazards found present in the premises;

(3) the type of premises;

(4) the purposes for which the premises are used; and

(5) the presence of hazards or violations in and the general condition of premises near the premises sought to be inspected.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 1623, ch. 502, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 983, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.06. Execution of warrants

(a) A peace officer to whom a search warrant is delivered shall execute it without delay and forthwith return it to the proper magistrate. It must be executed within three days from the time of its issuance, and shall be executed within a shorter period if so directed in the warrant by the magistrate.

(b) The officer shall, upon going to the place ordered to be searched or before seizing any property for which he is ordered to make the search, give notice of his purpose to the person who has charge of or is an inmate of the place or who has possession of the property described in the warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 983, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.07. Days allowed for warrant to run

The time allowed for the execution of a search warrant shall be three whole days, exclusive of the day of its issuance and of the day of its execution. The magistrate issuing a search warrant under the provisions of this chapter shall endorse on such search warrant the date and hour of the issuance of the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.08. Power of officer executing warrant

In the execution of a search warrant, the officer may call to his aid any number of citizens in this county, who shall be bound to aid in the execution of the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.09. Shall seize accused and property

When the property which the officer is directed to search for and seize is found he shall take possession of the same and carry it before the magistrate. He shall also arrest any person whom he is directed to arrest by the warrant and immediately take such person before the magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.10. How return made

Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which it has been executed and shall likewise deliver to the magistrate

an inventory of the property taken in his possession under the warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.11. Custody of property found

When a warrant has been issued to search a suspected place and there be found any property as alleged to have been there kept or concealed, the same shall be safely kept by the officer seizing the same, subject to the further order of the magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.12. Magistrate shall investigate

The magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.13. Shall discharge defendant

If the magistrate be not satisfied, upon investigation, that there was good ground for the issuance of the warrant, he shall discharge the defendant and order restitution of the property taken from him, except for criminal instruments. In such case, the criminal instruments shall be kept by the sheriff subject to the order of the proper court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.14. Examining trial

The magistrate shall proceed to deal with the accused as in other cases before an examining court if he is satisfied there was good ground for issuing the warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.15. Certify record to proper court

The magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall certify the same and deliver them to the clerk of the court having jurisdiction of the case, before the next term of said court, and accompany the same with all the original papers relating thereto, including the certified schedule of the property seized.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 985, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.16. Preventing consequences of theft

All persons have a right to prevent the consequences of theft by seizing any personal property which has been stolen and bringing it, with the

supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and the proceedings had without delay.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 985, ch. 399, § 2(E), eff. Jan. 1, 1974.]

#### Art. 18.17. Disposition of abandoned or unclaimed property

(a) All unclaimed or abandoned personal property of every kind, except whiskey, wine and beer, seized by any state or county peace officer in the State of Texas which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the person entitled to possession of the same by a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered for sale to the purchasing agent of the county in which the property was seized. If the county has no purchasing agent, then such property shall be sold by the sheriff of the county.

(b) The purchasing agent or sheriff of the county, as the case may be, shall mail a notice to the last known address of the owner of such property by certified mail. Such notice shall describe the property being held, give the name and address of the officer holding such property, and shall state that if the owner does not claim such property within six months from the date of the notice such property will be sold and the proceeds of such sale, after deducting the reasonable expense of keeping such property and the costs of the sale, placed in the county treasury.

(c) If the owner of such property is unknown or if the address of the owner is unknown, then the purchasing agent or the sheriff, as the case may be, shall cause to be published once in a paper of general circulation in the county a notice containing a description of the property held, the name of the owner if known, the name and address of the officer holding such property, and a statement that if the owner does not claim such property within six months from the date of the publication such property will be sold and the proceeds of such sale, after deducting the reasonable expense of keeping such property and the costs of the sale, placed in the county treasury.

(d) The sale of any property hereunder shall be preceded by a notice published once at least three weeks prior to the date of such sale in a newspaper of general circulation in the county where the sale is to take place, stating the description of the property, the names of the owner if known, and the date and place that such sale will occur. If the purchasing agent or sheriff, as the case may be, shall consider any bid as insufficient, he need not sell such property but may decline such bid and reoffer such property for sale.

(e) The real owner of any property sold shall have the right to file a claim to the proceeds of such sale with the commissioners court of the county in which the sale took place. If the claim is allowed by the commissioners court, the county treasurer shall pay the owner such funds as were paid into the treasury of the county as proceeds of the sale. If the claim is denied by the commissioners court or if said court fails to act upon such claim within 90 days, the claimant may sue the county treasurer in a court of competent jurisdiction in the county, and upon sufficient proof of ownership, recover judgment against such county for the recovery of the proceeds of the sale.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1737, ch. 659, § 15, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 985, ch. 399, § 2(E), eff. Jan. 1, 1974.]

**Art. 18.18. Disposition of gambling paraphernalia, prohibited weapon, criminal instrument**

(a) Following the final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, for an offense involving a criminal instrument, or an offense involving a prohibited weapon, the court entering the judgment of conviction shall order that the machine, device, gambling equipment or gambling paraphernalia, instrument, or weapon be destroyed or forfeited to the state. If forfeited, the court shall order the contraband delivered to the state, any political subdivision of the state, or to any state institution or agency. If gambling proceeds were seized, the court shall order them forfeited to the state and shall transmit them to the grand jury of the county in which they were seized for use in investigating alleged violations of the Penal Code, or to the state, any political subdivision of the state, or to any state institution or agency.

(b) If there is no prosecution or conviction following seizure, the magistrate to whom the return was made shall notify in writing the person found in possession of the alleged gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, prohibited weapon, or criminal instrument to show cause why the property seized should not be destroyed or the proceeds forfeited.

(c) The magistrate shall include in the notice a detailed description of the property seized and the total amount of alleged gambling proceeds; the name of the person found in possession; the address where the property or proceeds were seized; and the date and time of the seizure.

(d) The magistrate shall send the notice by registered or certified mail, return receipt requested, to the person found in possession at the address where the property or proceeds were seized. If no one was found in possession, or the possessor's address is unknown, the magistrate shall post the notice on the courthouse door.

(e) Any person interested in the alleged gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, prohibited weapon, or criminal instrument seized must appear before the magistrate on the 20th day following the date the notice was mailed or posted. Failure to timely appear forfeits any interest the person may have in the property or proceeds seized, and no person after failing to timely appear may contest destruction or forfeiture.

(f) If a person timely appears to show cause why the property or proceeds should not be destroyed or forfeited, the magistrate shall conduct a hearing on the issue and determine the nature of property or proceeds and the person's interest therein. Unless the person proves by a preponderance of the evidence that the property or proceeds is not gambling equipment, altered gambling equipment, gambling paraphernalia, gambling device, gambling proceeds, prohibited weapon, or criminal instrument, and that he is entitled to possession, the magistrate shall dispose of the property or proceeds in accordance with Paragraph (a) of this article.

(g) For purposes of this article:

(1) "criminal instrument" has the meaning defined in the Penal Code;

(2) "gambling device or equipment, altered gambling equipment or gambling paraphernalia" has the meaning defined in the Penal Code;

(3) "prohibited weapon" has the meaning defined in the Penal Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 986, ch. 399, § 2(E), eff. Jan. 1, 1974.]

**Art. 18.19. Disposition of certain weapons**

(a) Weapons seized in connection with an offense involving the use of a deadly weapon or an offense under Penal Code Chapter 46 shall be held by the law enforcement agency making the seizure, subject to the following provisions, unless:

(1) the weapon is a prohibited weapon identified in Penal Code Chapter 46, in which event Article 18.18 of this code applies; or

(2) the weapon is alleged to be stolen property, in which event Chapter 47 of this code applies.

(b) When a weapon described in Paragraph (a) of this article is seized, and the seizure is not made pursuant to a search or arrest warrant, the person seizing the same shall prepare and deliver to a magistrate a written inventory of each weapon seized.

(c) If there is no prosecution or conviction for an offense involving the weapon seized, the magistrate to whom the seizure was reported shall notify in writing the person found in possession that he is entitled to the weapon upon request to the court in which he was convicted. If the weapon is not requested within 60 days after notification, the magistrate may order the weapon destroyed or forfeited.

to the state for use by the law enforcement agency holding the weapon.

(d) A person convicted under Penal Code Chapter 46 is entitled to the weapon seized upon request to the law enforcement agency holding the weapon. However, the court entering the judgment of conviction may order the weapon destroyed or forfeited to the state for use by the law enforcement agency holding the weapon if:

(1) the person does not request the weapon within 60 days after his release from jail or the date of the judgment of conviction if he was not imprisoned; or

(2) the person has been previously convicted under Penal Code Chapter 46; or

(3) the weapon is one defined as a prohibited weapon under Penal Code Chapter 46.

(e) If the person found in possession of a weapon is convicted of an offense involving the use of a deadly weapon or under Penal Code Chapter 46, the court entering judgment of conviction may order destruction of the weapon or forfeiture to the state for use by the law enforcement agency holding the weapon.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 987, ch. 399, § 2(E), eff. Jan. 1, 1974.]

## AFTER COMMITMENT OR BAIL AND BEFORE THE TRIAL

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#### Art. 19.01. Appointment of jury commissioners

The district judge, at or during any term of court, shall appoint not less than three, nor more than five persons to perform the duties of jury commissioners, and shall cause the sheriff to notify them of their appointment, and when and where they are to appear. The district judge shall, in the order appointing such commissioners, designate whether such commissioners shall serve during the term at which selected or for the next succeeding term. Such commissioners shall receive as compensation for each day or part thereof they may serve the sum of Ten Dollars, and they shall possess the following qualifications:

1. Be intelligent citizens of the county and able to read and write the English language;
2. Be qualified jurors in the county;
3. Have no suit in said court which requires intervention of a jury;
4. Be residents of different portions of the county; and
5. The same person shall not act as jury commissioner more than once in the same year.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 905, ch. 131, § 1, eff. May 10, 1971.]

#### Art. 19.02. Notified of appointment

The judge shall cause the proper officer to notify such appointees of such appointment, and when and where they are to appear.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.03. Oath of commissioners

When the appointees appear before the judge, he shall administer to them the following oath: "You do swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as juror whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juror selected by you and reported to the court; that you will not, directly or indirectly, converse with any one selected by you as a juror concerning the merits of any case to be tried at the next term of this court, until after said cause may be tried or continued, or the jury discharged".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.04. Instructed

The jury commissioners, after they have been organized and sworn, shall be instructed by the judge in their duties and shall then retire in charge of the sheriff to a suitable room to be secured by the sheriff for that purpose. The clerk shall furnish

them the necessary stationery, the names of those appearing from the records of the court to be exempt or disqualified from serving on the jury at each term, and the last assessment roll of the county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.05. Kept free from intrusion**

The jury commissioners shall be kept free from the intrusion of any person during their session, and shall not separate without leave of the court until they complete their duties.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.06. Shall select grand jurors**

The jury commissioners shall select not less than 15 nor more than 20 persons from the citizens of different portions of the county to be summoned as grand jurors for the next term of court, or the term of court for which said commissioners were selected to serve, as directed in the order of the court selecting the commissioners.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1158, ch. 515, § 1, eff. Aug. 28, 1967.]

**Art. 19.07. Extension beyond term of period for which grand jurors shall sit**

If prior to the expiration of the term for which the grand jury was impaneled, it is made to appear by a declaration of the foreman or of a majority of the grand jurors in open court, that the investigation by the grand jury of the matters before it cannot be concluded before the expiration of the term, the judge of the district court in which said grand jury was impaneled may, by the entry of an order on the minutes of said court, extend, from time to time, for the purpose of concluding the investigation of matters then before it, the period during which said grand jury shall sit, for not to exceed a total of ninety days after the expiration of the term for which it was impaneled, and all indictments pertaining thereto returned by the grand jury within said extended period shall be as valid as if returned before the expiration of the term. The extension of the term of a grand jury under this article does not affect the provisions of Article 19.06 relating to the selection and summoning of grand jurors for each regularly scheduled term.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.08. Qualifications**

No person shall be selected or serve as a grand juror who does not possess the following qualifications:

1. He must be a citizen of the state, and of the county in which he is to serve, and be qualified under the Constitution and laws to vote in said county, provided that his failure to pay a poll tax or register to vote shall not be held to disqualify him in this instance;
2. He must be of sound mind and good moral character;

3. He must be able to read and write;
4. He must not have been convicted of any felony;
5. He must not be under indictment or other legal accusation for theft or of any felony.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 1364, ch. 412, § 5, eff. Sept. 1, 1969.]

**Art. 19.09. Names returned**

The names of those selected as grand jurors by the commissioners shall be written upon a paper; and the fact that they were so selected shall be certified and signed by the jury commissioners, who shall place said paper, so certified and signed, in an envelope, and seal the same, and endorse thereon the words, "The list of grand jurors selected at . . . . . term of the district court", the blank being for the month and year in which the term of the court began its session. The commissioners shall write their names across the seal of said envelope, direct the same to the district judge and deliver it to him in open court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.10. List to clerk**

The judge shall deliver the envelope containing the list of grand jurors to the clerk or one of his deputies in open court without opening the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.11. Oath to clerk**

Before the list of grand jurors is delivered to the clerk, the judge shall administer to the clerk and each of his deputies in open court the following oath: "You do swear that you will not open the jury lists now delivered you, nor permit them to be opened until the time prescribed by law; that you will not, directly or indirectly, converse with any one selected as a juror concerning any case or proceeding which may come before such juror for trial in this court at its next term".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.12. Deputy clerk sworn**

Should the clerk subsequently appoint a deputy, such clerk shall administer to him the same oath, at the time of such appointment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.13. Clerk shall open lists**

The grand jury may be convened on the first or any subsequent day of the term. The judge shall designate the day on which the grand jury is to be impaneled and notify the clerk of such date; and within thirty days of such date, and not before, the clerk shall open the envelope containing the list of grand jurors, make out a copy of the names of those selected as grand jurors, certify to it under his official seal, note thereon the day for which they are to be summoned, and deliver it to the sheriff.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.14. Summoning**

The sheriff shall summon the persons named in the list at least three days, exclusive of the day of service, prior to the day on which the grand jury is to be impaneled, by giving personal notice to each juror of the time and place when and where he is to attend as a grand juror, or by leaving at his place of residence with a member of his family over sixteen years old, a written notice to such juror that he has been selected as a grand juror, and the time and place when and where he is to attend; or the judge, at his election, may direct the sheriff to summon the grand jurors by registered mail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.15. Return of officer**

The officer executing such summons shall return the list on the day on which the grand jury is to be impaneled, with a certificate thereon of the date and manner of service upon each juror. If any of said jurors have not been summoned, he shall also state in his certificate the reason why they have not been summoned.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.16. Absent juror fined**

A juror legally summoned, failing to attend without a reasonable excuse, may, by order of the court entered on the record, be fined not less than ten dollars nor more than one hundred dollars.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.17. Failure to select**

If for any reason a grand jury shall not be selected or summoned prior to the commencement of any term of court, or when none of those summoned shall attend, the district judge may at any time after the commencement of the term, in his discretion, direct a writ to be issued to the sheriff commanding him to summon a jury commission, selected by the court, which commission shall select twenty persons, as provided by law, who shall serve as grand jurors.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.18. If less than twelve attend**

When less than twelve of those summoned to serve as grand jurors are found to be in attendance and qualified to so serve, the court shall order the sheriff to summon such additional number of persons as may be deemed necessary to constitute a grand jury of twelve persons.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.19. Jurors to attend forthwith**

The jurors provided for in the two preceding Articles shall be summoned in person to attend before the court forthwith.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.20. To summon qualified persons**

Upon directing the sheriff to summon grand jurors not selected by the jury commissioners, the court

shall instruct him that he must summon no person to serve as a grand juror who does not possess the qualifications prescribed by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.21. To test qualifications**

When as many as twelve persons summoned to serve as grand jurors are in attendance upon the court, it shall proceed to test their qualifications as such.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.22. Interrogated**

Each person who is presented to serve as a grand juror shall, before being impaneled, be interrogated on oath by the court or under his direction, touching his qualifications.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.23. Mode of test**

In trying the qualifications of any person to serve as a grand juror, he shall be asked:

1. Are you a citizen of this state and county, and qualified to vote in this county, under the Constitution and laws of this state?
2. Are you able to read and write?
3. Have you ever been convicted of a felony?
4. Are you under indictment or other legal accusation for theft or for any felony?

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 1364, ch. 412, § 6, eff. Sept. 1, 1969.]

**Art. 19.24. Qualified juror accepted**

When, by the answer of the person, it appears to the court that he is a qualified juror, he shall be accepted as such, unless it be shown that he is not of sound mind or of good moral character, or unless it be shown that he is in fact not qualified to serve as a grand juror.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.25. Excused if disqualified**

Any person summoned who does not possess the requisite qualifications shall be excused by the court from serving.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.26. Jury impaneled**

When twelve qualified jurors are found to be present, the court shall proceed to impanel them as a grand jury, unless a challenge is made, which may be to the array or to any particular person presented to serve as a grand juror.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.27. Any person may challenge**

Before the grand jury has been impaneled, any person may challenge the array of jurors or any person presented as a grand juror. In no other way shall objections to the qualifications and legality of the grand jury be heard. Any person confined in

jail in the county shall upon his request be brought into court to make such challenge.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.28. "Array"

By the "array" of grand jurors is meant the whole body of persons summoned to serve as such before they have been impaneled.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.29. "Impaneled" and "panel"

A grand juror is said to be "impaneled" after his qualifications have been tried and he has been sworn. By "panel" is meant the whole body of grand jurors.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.30. Challenge to "array"

A challenge to the "array" shall be made in writing for these causes only:

1. That those summoned as grand jurors are not in fact those selected by the jury commissioners; and

2. In case of grand jurors summoned by order of the court, that the officer who summoned them had acted corruptly in summoning any one or more of them.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.31. Challenge to juror

A challenge to a particular grand juror may be made orally for the following causes only:

1. That he is not a qualified juror; and

2. That he is the prosecutor upon an accusation against the person making the challenge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.32. Summarily decided

When a challenge to the array or to any individual has been made, the court shall hear proof and decide in a summary manner whether the challenge be well-founded or not.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.33. Other jurors summoned

The court shall order another grand jury to be summoned if the challenge to the array be sustained, or order the panel to be completed if by challenge to any particular grand juror their number be reduced below twelve.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.34. Oath of grand jurors

When the grand jury is completed, the court shall appoint one of the number foreman; and the following oath shall be administered by the court, or under its direction, to the jurors: "You solemnly swear that you will diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge; the State's counsel, your fellows and your own, you shall keep secret,

unless required to disclose the same in the course of a judicial proceeding in which the truth or falsity of evidence given in the grand jury room, in a criminal case, shall be under investigation. You shall present no person from envy, hatred or malice; neither shall you leave any person unrepresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding, so help you God".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.35. To instruct jury

The court shall instruct the grand jury as to their duty.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.36. Bailiffs appointed

The court and the district attorney may each appoint one or more bailiffs to attend upon the grand jury, and at the time of appointment, the following oath shall be administered to each of them by the court, or under its direction: "You solemnly swear that you will faithfully and impartially perform all the duties of bailiff of the grand jury, and that you will keep secret the proceedings of the grand jury, so help you God". Such bailiffs shall be compensated in a sum to be set by the commissioners court of said county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.37. Bailiff's duties

A bailiff is to obey the instructions of the foreman, to summon all witnesses, and generally, to perform all such duties as the foreman may require of him. One bailiff shall be always with the grand jury, if two or more are appointed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.38. Bailiff violating duty

No bailiff shall take part in the discussions or deliberations of the grand jury nor be present when they are discussing or voting upon a question. The grand jury shall report to the court any violation of duty by a bailiff and the court may punish him for such violation as for contempt.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.39. Another foreman appointed

If the foreman of the grand jury is from any cause absent or unable or disqualified to act, the court shall appoint in his place some other member of the body.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 19.40. Quorum

Nine members shall be a quorum for the purpose of discharging any duty or exercising any right properly belonging to the grand jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 19.41. Reassembled**

A grand jury discharged by the court for the term may be reassembled by the court at any time during the term. If one or more of them fail to reassemble, the court may complete the panel by impaneling other men in their stead in accordance with the rules provided in this Chapter for completing the grand jury in the first instance.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

## CHAPTER TWENTY. DUTIES AND POWERS OF THE GRAND JURY

Art.

- 20.01. Grand jury room.
- 20.02. Deliberations secret.
- 20.03. Attorney representing State entitled to appear.
- 20.04. Attorney may examine witnesses.
- 20.05. May send for attorney.
- 20.06. Advice from court.
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- 20.09. Duties of grand jury.
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- 20.11. Out-of-county witnesses.
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- 20.15. When witness refuses to testify.
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- 20.17. How suspect or accused questioned.
- 20.18. How witness questioned.
- 20.19. Grand jury shall vote.
- 20.20. Indictment prepared.
- 20.21. Indictment presented.
- 20.22. Present entered of record.

**Art. 20.01. Grand jury room**

After the grand jury is organized they shall proceed to the discharge of their duties in a suitable place which the sheriff shall prepare for their sessions.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.02. Deliberations secret**

The deliberations of the grand jury shall be secret. Any grand juror or bailiff who divulges anything transpiring before them in the course of their official duties shall be liable to a fine as for contempt of the court, not exceeding five hundred dollars, and to imprisonment not exceeding thirty days.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.03. Attorney representing State entitled to appear**

"The attorney representing the State" means the Attorney General, district attorney, criminal district attorney, or county attorney. The attorney representing the State, is entitled to go before the grand jury and inform them of offenses liable to indictment at any time except when they are discussing the propriety of finding an indictment or voting upon the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.04. Attorney may examine witnesses**

The attorney representing the State may examine the witnesses before the grand jury and may advise as to the proper mode of interrogating them.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.05. May send for attorney**

The grand jury may send for the State's attorney and ask his advice upon any matter of law or upon any question arising respecting the proper discharge of their duties.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.06. Advice from court**

The grand jury may also seek and receive advice from the court touching any matter before them, and for this purpose, shall go into court in a body; but they shall so guard the manner of propounding their questions as not to divulge the particular accusation that is pending before them; or they may propound their questions in writing, upon which the court may give them the desired information in writing.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.07. Foreman shall preside**

The foreman shall preside over the sessions of the grand jury, and conduct its business and proceedings in an orderly manner. He may appoint one or more members of the body to act as clerks for the grand jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.08. Adjournments**

The grand jury shall meet and adjourn at times agreed upon by a majority of the body; but they shall not adjourn, at any one time, for more than three days, unless by consent of the court. With the consent of the court, they may adjourn for a longer time, and shall as near as may be, conform their adjournments to those of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.09. Duties of grand jury**

The grand jury shall inquire into all offenses liable to indictment of which any member may have knowledge, or of which they shall be informed by the attorney representing the State, or any other credible person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.10. Attorney or foreman may issue process**

The attorney representing the state, or the foreman, in term time or vacation, may issue a summons or attachment for any witness in the county where they are sitting; which summons or attachment may require the witness to appear before them at a time fixed, or forthwith, without stating the matter under investigation.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.11. Out-of-county witnesses**

Sec. 1. The foreman or the attorney representing the State may, upon written application to the district court stating the name and residence of the witness and that his testimony is believed to be material, cause a subpoena or an attachment to be issued to any county in the State for such witness, returnable to the grand jury then in session, or to the next grand jury for the county from whence the same issued, as such foreman or attorney may desire. The subpoena may require the witness to appear and produce records and documents. An attachment shall command the sheriff or any constable of the county where the witness resides to serve the witness, and have him before the grand jury at the time and place specified in the writ.

Sec. 2. A subpoena or attachment issued pursuant to this article shall be served and returned in the manner prescribed in Chapter 24 of this code.

A witness subpoenaed pursuant to this article shall be compensated as provided in this code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 787, ch. 350, § 1, eff. June 12, 1973.]

**Art. 20.12. Attachment in vacation**

The attorney representing the state may cause an attachment for a witness to be issued, as provided in the preceding Article, either in term time or in vacation.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.13. Execution of process**

The bailiff or other officer who receives process to be served from a grand jury shall forthwith execute the same and return it to the foreman, if the grand jury be in session; and if the grand jury be not in session, the process shall be returned to the district clerk. If the process is returned not executed, the return shall state why it was not executed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.14. Evasion of process**

If it be made to appear satisfactorily to the court that a witness for whom an attachment has been issued to go before the grand jury is in any manner wilfully evading the service of such summons or attachment, the court may fine such witness, as for contempt, not exceeding five hundred dollars.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.15. When witness refuses to testify**

When a witness, brought in any manner before a grand jury, refuses to testify, such fact shall be made known to the attorney representing the State or to the court; and the court may compel the witness to answer the question, if it appear to be a proper one, by imposing a fine not exceeding five hundred dollars, and by committing the party to jail until he is willing to testify.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.16. Oaths to witnesses**

The following oath shall be administered by the foreman, or under his direction, to each witness before being interrogated: "You solemnly swear that you will not divulge, either by words or signs, any matter about which you may be interrogated, and that you will keep secret all proceedings of the grand jury which may be had in your presence, and that you will true answers make to such questions as may be propounded to you by the grand jury, or under its direction, so help you God." Any witness who divulges any matter about which he is interrogated, or any proceedings of the grand jury had in his presence, other than when required to give evidence thereof in due course, shall be liable to a fine as for contempt of court, not exceeding \$500, and to imprisonment not exceeding six months.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 968, ch. 399, § 2(A), eff. Jan. 1, 1974.]

**Art. 20.17. How suspect or accused questioned**

The grand jury, in propounding questions to the person accused or suspected, shall first state the offense with which he is suspected or accused, the county where the offense is said to have been committed and as nearly as may be, the time of commission of the offense, and shall direct the examination to the offense under investigation.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.18. How witness questioned**

When a felony has been committed in any county within the jurisdiction of the grand jury, and the name of the offender is known or unknown or where it is uncertain when or how the felony was committed, the grand jury shall first state to the witness called the subject matter under investigation, then may ask pertinent questions relative to the transaction in general terms and in such a manner as to determine whether he has knowledge of the violation of any particular law by any person, and if so, by what person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.19. Grand jury shall vote**

After all the testimony which is accessible to the grand jury shall have been given in respect to any criminal accusation, the vote shall be taken as to the presentment of an indictment, and if nine members concur in finding the bill, the foreman shall make a memorandum of the same with such data as will enable the attorney who represents the State to write the indictment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.20. Indictment prepared**

The attorney representing the State shall prepare all indictments which have been found, with as little delay as possible, and deliver them to the foreman, who shall sign the same officially, and said attorney shall endorse thereon the names of the witnesses upon whose testimony the same was found.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.21. Indictment presented**

When the indictment is ready to be presented, the grand jury shall go in a body into open court, and through their foreman, deliver the indictment to the judge of the court. At least nine members of the grand jury must be present on such occasion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 20.22. Presentment entered of record**

The fact of a presentment of indictment in open court by a grand jury shall be entered upon the minutes of the court, noting briefly the style of the criminal action and the file number of the indictment, but omitting the name of the defendant, unless he is in custody or under bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER TWENTY-ONE. INDICTMENT AND INFORMATION

Art.

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**Art. 21.01. "Indictment"**

An "indictment" is the written statement of a grand jury accusing a person therein named of some act or omission which, by law, is declared to be an offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.02. Requisites of an indictment**

An indictment shall be deemed sufficient if it has the following requisites:

1. It shall commence, "In the name and by authority of The State of Texas".
2. It must appear that the same was presented in the district court of the county where the grand jury is in session.
3. It must appear to be the act of a grand jury of the proper county.

4. It must contain the name of the accused, or state that his name is unknown and give a reasonably accurate description of him.

5. It must show that the place where the offense was committed is within the jurisdiction of the court in which the indictment is presented.

6. The time mentioned must be some date anterior to the presentment of the indictment, and not so remote that the prosecution of the offense is barred by limitation.

7. The offense must be set forth in plain and intelligible words.

8. The indictment must conclude, "Against the peace and dignity of the State".

9. It shall be signed officially by the foreman of the grand jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.03. What should be stated**

Everything should be stated in an indictment which is necessary to be proved.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.04. The certainty required**

The certainty required in an indictment is such as will enable the accused to plead the judgment that may be given upon it in bar of any prosecution for the same offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.05. Particular intent; intent to defraud**

Where a particular intent is a material fact in the description of the offense, it must be stated in the indictment; but in any case where an intent to defraud is required to constitute an offense, it shall be sufficient to allege an intent to defraud, without naming therein the particular person intended to be defrauded.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.06. Allegation of venue**

When the offense may be prosecuted in either of two or more counties, the indictment may allege the offense to have been committed in the county where the same is prosecuted, or in any county or place where the offense was actually committed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.07. Allegation of name**

In alleging the name of the defendant, or of any other person necessary to be stated in the indictment, it shall be sufficient to state one or more of the initials of the Christian name and the surname. When a person is known by two or more names, it shall be sufficient to state either name. When the name of the person is unknown to the grand jury, that fact shall be stated, and if it be the accused, a reasonably accurate description of him shall be given in the indictment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.08. Allegation of ownership**

Where one person owns the property, and another person has the possession of the same, the ownership thereof may be alleged to be in either. Where property is owned in common, or jointly, by two or more persons, the ownership may be alleged to be in all or either of them. When the property belongs to the estate of a deceased person, the ownership may be alleged to be in the executor, administrator or heirs of such deceased person, or in any one of such heirs. Where the ownership of the property is unknown to the grand jury, it shall be sufficient to allege that fact.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1738, ch. 659, § 16, eff. Aug. 28, 1967.]

**Art. 21.09. Description of property**

When it becomes necessary to describe property of any kind in an indictment, a general description of the same by name, kind, quality, number and ownership, if known, shall be sufficient. If the property be real estate, its general locality in the county, and the name of the owner, occupant or claimant thereof, shall be a sufficient description of the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.10. "Felonious" and "feloniously"**

It is not necessary to use the words "felonious" or "feloniously" in any indictment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.11. Certainty; what sufficient**

An indictment shall be deemed sufficient which charges the commission of the offense in ordinary and concise language in such a manner as to enable a person of common understanding to know what is meant, and with that degree of certainty that will give the defendant notice of the particular offense with which he is charged, and enable the court, on conviction, to pronounce the proper judgment; and in no case are the words "force and arms" or "contrary to the form of the statute" necessary.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.12. Special and general terms**

When a statute defining any offense uses special or particular terms, indictment on it may use the general term which, in common language, embraces the special term. To charge an unlawful sale, it is necessary to name the purchaser.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.13. Act with intent to commit an offense**

An indictment for an act done with intent to commit some other offense may charge in general terms the commission of such act with intent to commit such other offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.14. Perjury and aggravated perjury**

An indictment for perjury or aggravated perjury need not charge the precise language of the false statement, but may state the substance of the same, and no such indictment shall be held insufficient on account of any variance which does not affect the subject matter or general import of such false statement; and it is not necessary in such indictment to set forth the pleadings, records or proceeding with which the false statement is connected, nor the commission or authority of the court or person before whom the false statement was made; but it is sufficient to state the name of the court or public servant by whom the oath was administered with the allegation of the falsity of the matter on which the perjury or aggravated perjury is assigned.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 968, ch. 399, § 2(A), eff. Jan. 1, 1974.]

**Art. 21.15. Must allege acts of recklessness or criminal negligence**

Whenever recklessness or criminal negligence enters into or is a part or element of any offense, or it is charged that the accused acted recklessly or with criminal negligence in the commission of an offense, the complaint, information, or indictment in order to be sufficient in any such case must allege, with reasonable certainty, the act or acts relied upon to constitute recklessness or criminal negligence, and in no event shall it be sufficient to allege merely that the accused, in committing the offense, acted recklessly or with criminal negligence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 968, ch. 399, § 2(A), eff. Jan. 1, 1974.]

**Art. 21.16. Certain forms of indictments**

The following form of indictments is sufficient:

"In the name and by authority of the State of Texas: The grand jury of . . . . . County, State of Texas, duly organized at the . . . . . term, A.D. . . . . , of the district court of said county, in said court at said term, do present that . . . . . (defendant) on the . . . . . day of . . . . . A.D. . . . . , in said county and State, did . . . . . (description of offense) against the peace and dignity of the State.

. . . . ., Foreman of the grand jury."

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.17. Following statutory words**

Words used in a statute to define an offense need not be strictly pursued in the indictment; it is sufficient to use other words conveying the same meaning, or which include the sense of the statutory words.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.18. Matters of judicial notice**

Presumptions of law and matters of which judicial notice is taken (among which are included the authority and duties of all officers elected or appointed under the General Laws of this State) need not be stated in an indictment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.19. Defects of form**

An indictment shall not be held insufficient, nor shall the trial, judgment or other proceedings thereon be affected, by reason of any defect of form which does not prejudice the substantial rights of the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.20. "Information"**

An "information" is a written statement filed and presented in behalf of the State by the district or county attorney, charging the defendant with an offense which may by law be so prosecuted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.21. Requisites of an information**

An information is sufficient if it has the following requisites:

1. It shall commence, "In the name and by authority of the State of Texas";
2. That it appear to have been presented in a court having jurisdiction of the offense set forth;
3. That it appear to have been presented by the proper officer;
4. That it contain the name of the accused, or state that his name is unknown and give a reasonably accurate description of him;
5. It must appear that the place where the offense is charged to have been committed is within the jurisdiction of the court where the information is filed;
6. That the time mentioned be some date anterior to the filing of the information, and that the offense does not appear to be barred by limitation;
7. That the offense be set forth in plain and intelligible words;
8. That it conclude, "Against the peace and dignity of the State"; and
9. It must be signed by the district or county attorney, officially.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.22. Information based upon complaint**

No information shall be presented until affidavit has been made by some credible person charging the defendant with an offense. The affidavit shall be filed with the information. It may be sworn to before the district or county attorney who, for that purpose, shall have power to administer the oath, or

it may be made before any officer authorized by law to administer oaths.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.23. Rules as to indictment apply to information**

The rules with respect to allegations in an indictment and the certainty required apply also to an information.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.24. Joinder of certain offenses**

(a) Two or more offenses may be joined in a single indictment, information, or complaint, with each offense stated in a separate count, if the offenses arise out of the same criminal episode, as defined in Chapter 3 of the Penal Code.

(b) A count may contain as many separate paragraphs charging the same offense as necessary, but no paragraph may charge more than one offense.

(c) A count is sufficient if any one of its paragraphs is sufficient. An indictment, information, or complaint is sufficient if any one of its counts is sufficient.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 968, ch. 399, § 2(A), eff. Jan. 1, 1974.]

**Art. 21.25. When indictment has been lost, etc.**

When an indictment or information has been lost, mislaid, mutilated or obliterated, the district or county attorney may suggest the fact to the court; and the same shall be entered upon the minutes of the court. In such case, another indictment or information may be substituted, upon the written statement of such attorney that it is substantially the same as that which has been lost, mislaid, mutilated, or obliterated. Or another indictment may be presented, as in the first instance; and in such case, the period for the commencement of the prosecution shall be dated from the time of making such entry.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.26. Order transferring cases**

Upon the filing of an indictment in the district court which charges an offense over which such court has no jurisdiction, the judge of such court shall make an order transferring the same to such inferior court as may have jurisdiction, stating in such order the cause transferred and to what court transferred.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.27. Causes transferred to justice court**

Causes over which justices of the peace have jurisdiction may be transferred to a justice of the peace at the county seat, or in the discretion of the judge, to a justice of the precinct in which the same can be most conveniently tried, as may appear by memorandum endorsed by the grand jury on the indictment or otherwise. If it appears to the judge that the offense has been committed in any incorporated

town or city, the cause shall be transferred to a justice in said town or city, if there be one therein; and any justice to whom such cause may be transferred shall have jurisdiction to try the same.  
 [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.28. Duty on transfer**

The clerk of the court, without delay, shall deliver the indictments in all cases transferred, together with all the papers relating to each case, to the proper court or justice, as directed in the order of transfer; and shall accompany each case with a certified copy of all the proceedings taken therein in the district court, and with a bill of the costs that have accrued therein in the district court. The said costs shall be taxed in the court in which said cause is tried, in the event of a conviction.  
 [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.29. Proceedings of inferior court**

Any case so transferred shall be entered on the docket of the court to which it is transferred. All process thereon shall be issued and the defendant tried as if the case had originated in the court to which it was transferred.  
 [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 21.30. Cause improvidently transferred**

When a cause has been improvidently transferred to a court which has no jurisdiction of the same, the court to which it has been transferred shall order it to be re-transferred to the proper court; and the same proceedings shall be had as in the case of the original transfer. In such case, the defendant and the witnesses shall be held bound to appear before the court to which the case has been re-transferred, the same as they were bound to appear before the court so transferring the same.  
 [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**CHAPTER TWENTY-TWO. FORFEITURE OF BAIL**

- Art.
- 22.01. Bail forfeited, when.
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- 22.15. Judgment final by default.
- 22.16. The court may remit.
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**Art. 22.01. Bail forfeited, when**

When a defendant is bound by bail to appear and fails to appear in any court in which such case may be pending and at any time when his personal ap-

pearance is required under this Code, or by any court or magistrate, a forfeiture of his bail shall be taken by such court.  
 [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 22.01a. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(b), eff. Jan. 1, 1974**

Sections 2 and 3 of the act of 1967 provided:  
 "Sec. 2. All laws and parts of laws in conflict herewith are hereby repealed.  
 "Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

**Art. 22.02. Manner of taking a forfeiture**

Bail bonds and personal bonds are forfeited in the following manner: The name of the defendant shall be called distinctly at the courthouse door, and if the defendant does not appear within a reasonable time after such call is made, judgment shall be entered that the State of Texas recover of the defendant the amount of money in which he is bound, and of his sureties, if any, the amount of money in which they are respectively bound, which judgment shall state that the same will be made final, unless good cause be shown why the defendant did not appear.  
 [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 22.03. Citation to sureties**

Upon entry of judgment, a citation shall issue forthwith notifying the sureties of the defendant, if any, that the bond has been forfeited, and requiring them to appear and show cause why the judgment of forfeiture should not be made final.  
 [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 22.04. Requisites of citation**

A citation shall be sufficient if it be in the form provided for citations in civil cases in such court; provided, however, that a copy of the judgment of forfeiture entered by the court shall be attached to the citation and the citation shall notify the parties cited to appear and show cause why the judgment of forfeiture should not be made final.  
 [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 22.05. Citation as in civil actions**

Sureties shall be entitled to notice by service of citation, the length of time and in the manner required in civil actions; and the officer executing the citation shall return the same as in civil actions. It shall not be necessary to give notice to the defendant unless he has furnished his address on the bond, in which event notice to the defendant shall be deposited in the United States mail directed to the defendant at the address shown on the bond.  
 [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 22.06. Citation by publication**

Where the surety is a nonresident of the State, or where he is a transient person, or where his residence is unknown, the district or county attorney may, upon application in writing to the county clerk,

stating the facts, obtain a citation to be served by publication; and the same shall be served by a publication and returned as in civil actions.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 22.07. Cost of publication

When service of citation is made by publication, the county in which the forfeiture has been taken shall pay the costs thereof, to be taxed as costs in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 22.08. Service out of the State

Service of a certified copy of the citation upon any absent or non-resident surety may be made outside of the limits of this State by any person competent to make oath of the fact; and the affidavit of such person, stating the facts of such service, shall be a sufficient return.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 22.09. When surety is dead

If the surety is dead at the time the forfeiture is taken, the forfeiture shall nevertheless be valid. The final judgment shall not be rendered where a surety has died, either before or after the forfeiture has been taken, unless his executor, administrator or heirs, as the case may be, have been cited to appear and show cause why the judgment should not be made final, in the same manner as provided in the case of the surety.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 22.10. Scire facias docket

When a forfeiture has been declared upon a bond, the court or clerk shall docket the case upon the scire facias or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his sureties, if any, as defendants; and the proceedings had therein shall be governed by the same rules governing other civil suits.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 22.11. Sureties may answer

After the forfeiture of the bond, if the sureties, if any, have been duly notified, the sureties, if any, may answer in writing and show cause why the defendant did not appear, which answer may be filed within the time limited for answering in other civil actions.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 22.12. Proceedings not set aside for defect of form

The bond, the judgment declaring the forfeiture, the citation and the return thereupon, shall not be set aside because of any defect of form; but such defect of form may, at any time, be amended under the direction of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 22.13. Causes which will exonerate

The following causes, and no other, will exonerate the defendant and his sureties, if any, from liability upon the forfeiture taken:

1. That the bond is, for any cause, not a valid and binding undertaking in law. If it be valid and binding as to the principal, and one or more of his sureties, if any, they shall not be exonerated from liability because of its being invalid and not binding as to another surety or sureties, if any. If it be invalid and not binding as to the principal, each of the sureties, if any, shall be exonerated from liability. If it be valid and binding as to the principal, but not so as to the sureties, if any, the principal shall not be exonerated, but the sureties, if any, shall be.

2. The death of the principal before the forfeiture was taken.

3. The sickness of the principal or some uncontrollable circumstance which prevented his appearance at court, and it must, in every such case, be shown that his failure to appear arose from no fault on his part. The causes mentioned in this subdivision shall not be deemed sufficient to exonerate the principal and his sureties, if any, unless such principal appear before final judgment on the bond to answer the accusation against him, or show sufficient cause for not so appearing.

4. Failure to present an indictment or information at the first term of the court which may be held after the principal has been admitted to bail, in case where the party was bound over before indictment or information, and the prosecution has not been continued by order of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 22.14. Judgment final

When, upon a trial of the issues presented, no sufficient cause is shown for the failure of the principal to appear, the judgment shall be made final against him and his sureties, if any, for the amount in which they are respectively bound; and the same shall be collected by execution as in civil actions. Separate executions shall issue against each party for the amount adjudged against him. The costs shall be equally divided between the sureties, if there be more than one.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 22.15. Judgment final by default

When the sureties have been duly cited and fail to answer, and the principal also fails to answer within the time limited for answering in other civil actions, the court shall enter judgment final by default.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 22.16. The court may remit

If, before final judgment is entered against the bail, the principal appears or is arrested and lodged

in jail of the proper county, the court may, at its discretion, remit the whole or part of the sum specified in the bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 22.17. Forfeiture set aside

When the principal appears before the entry of final judgment, and sufficient cause is shown for his failure to appear before the forfeiture is taken, and a trial is had of the criminal action pending against him, he shall be entitled to have the forfeiture set aside. The criminal action against him shall stand for trial, but the State shall not be forced to try the same until reasonable time has been allowed to prepare for trial, and the State shall, in such case, be entitled to a continuance.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER TWENTY-THREE. THE CAPIAS

Art.

- 23.01. Definition of a "capias".
- 23.02. Its requisites.
- 23.03. Capias or summons in felony.
- 23.04. In misdemeanor case.
- 23.05. Capias after forfeiture.
- 23.06. New bail in felony case.
- 23.07. Capias does not lose its force.
- 23.08. Reasons for retaining capias.
- 23.09. Capias to several counties.
- 23.10. Bail in felony.
- 23.11. Sheriff may take bail in felony.
- 23.12. Court shall fix bail in felony.
- 23.13. Who may arrest under capias.
- 23.14. Bail in misdemeanor.
- 23.15. Arrest in capital cases.
- 23.16. Arrest in capital case in another county.
- 23.17. Return of bail and capias.
- 23.18. Return of capias.

#### Art. 23.01. Definition of a "capias"

A "capias" is a writ issued by the court or clerk, and directed "To any peace officer of the State of Texas", commanding him to arrest a person accused of an offense and bring him before that court immediately, or on a day or at a term stated in the writ. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 23.02. Its requisites

A capias shall be held sufficient if it have the following requisites:

1. That it run in the name of "The State of Texas";
2. That it name the person whose arrest is ordered, or if unknown, describe him;
3. That it specify the offense of which the defendant is accused, and it appear thereby that he is accused of some offense against the penal laws of the State;
4. That it name the court to which and the time when it is returnable; and
5. That it be dated and attested officially by the authority issuing the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 23.03. Capias or summons in felony

(a) A capias shall be immediately issued by the district clerk upon each indictment for felony presented, or upon the request of the attorney representing the State, a summons shall be issued by the district clerk, and shall be delivered by the clerk or mailed to the sheriff of the county where the defendant resides or is to be found. A capias or a summons need not issue for a defendant in custody or under bond.

(b) Upon the request of the attorney representing the State a summons instead of a capias shall issue. If a defendant fails to appear in response to the summons a capias shall issue.

(c) Summons. The summons shall be in the same form as the capias except that it shall summon the defendant to appear before the proper court at a stated time and place. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 23.04. In misdemeanor case

In misdemeanor cases the capias or summons shall issue from a court having jurisdiction of the case. The summons shall be issued only upon request of the attorney representing the State and shall follow the same form and procedure as in a felony case. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 23.05. Capias after forfeiture

Where a forfeiture of bail is declared, a capias shall be immediately issued for the arrest of the defendant, and when arrested, in its discretion, the court may require the defendant, in order to be released from custody, to deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the new bond as set by the court, in lieu of a surety bond, unless the forfeiture taken has been set aside under the third subdivision of Article 22.13 of this code, in which case the defendant and his sureties shall remain bound under the same bail. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 2383, ch. 740, § 1, eff. Aug. 30, 1971.]

#### Art. 23.06. New bail in felony case

When a defendant who has been arrested for a felony under a capias has previously given bail to answer said charge, his sureties, if any, shall be released by such arrest, and he shall be required to give new bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 23.07. Capias does not lose its force

A capias shall not lose its force if not executed and returned at the time fixed in the writ, but may be executed at any time afterward, and return

made. All proceedings under such *capias* shall be as valid as if the same had been executed and returned within the time specified in the writ.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 23.08. Reasons for retaining *capias***

When the *capias* is not returned at the time fixed in the writ, the officer holding it shall notify the court from whence it was issued, in writing, of his reasons for retaining it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 23.09. *Capias* to several counties**

*Capiases* for a defendant may be issued to as many counties as the district or county attorney may direct.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 23.10. Bail in felony**

In cases of arrest for felony in the county where the prosecution is pending, during a term of court, the officer making the arrest may take bail as provided in Article 17.21.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 23.11. Sheriff may take bail in felony**

In cases of arrest for felony less than capital, made during vacation or made in another county than the one in which the prosecution is pending, the sheriff may take bail; in such cases the amount of the bail bond shall be the same as is endorsed upon the *capias*; and if no amount be endorsed on the *capias*, the sheriff shall require a reasonable amount of bail. If it be made to appear by affidavit, made by any district attorney, county attorney, or the sheriff approving the bail bond, to a judge of the Court of Criminal Appeals, district or county court, that the bail taken in any case after indictment is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrant of arrest and require of the defendant sufficient bond, according to the nature of the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 23.12. Court shall fix bail in felony**

In felony cases which areailable, the court shall, before adjourning, fix and enter upon the minutes the amount of the bail to be required in each case. The clerk shall endorse upon the *capias* the amount of bail required. In case of neglect to so comply with this Article, the arrest of the defendant, and the bail taken by the sheriff, shall be as legal as if there had been no such omission.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 23.13. Who may arrest under *capias***

A *capias* may be executed by any peace officer. In felony cases, the defendant must be delivered immediately to the sheriff of the county where the arrest is made together, with the writ under which he was taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 23.14. Bail in misdemeanor**

Any officer making an arrest under a *capias* in a misdemeanor may in term time or vacation take a bail bond of the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 23.15. Arrest in capital cases**

Where an arrest is made under a *capias* in a capital case, the sheriff shall confine the defendant in jail, and the *capias* shall, for that purpose, be a sufficient commitment. This Article is applicable when the arrest is made in the county where the prosecution is pending.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 23.16. Arrest in capital case in another county**

In each capital case where a defendant is arrested under a *capias* in a county other than that in which the case is pending, the sheriff who arrests or to whom the defendant is delivered, shall convey him immediately to the county from which the *capias* issued and deliver him to the sheriff of such county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 23.17. Return of bail and *capias***

When an arrest has been made and a bail taken, such bond, together with the *capias*, shall be returned forthwith to the proper court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 23.18. Return of *capias***

The return of the *capias* shall be made to the court from which it is issued. If it has been executed, the return shall state what disposition has been made of the defendant. If it has not been executed, the cause of the failure to execute it shall be fully stated. If the defendant has not been found, the return shall further show what efforts have been made by the officer to find him, and what information he has as to the defendant's whereabouts.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**CHAPTER TWENTY-FOUR. SUBPOENA AND ATTACHMENT**

Art.

- 24.01. Definition of "subpoena".
- 24.02. Subpoena *duces tecum*.
- 24.03. Subpoena and application therefor.
- 24.04. Service and return of subpoena.
- 24.05. Refusing to obey.
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- 24.07. Fine against witness conditional.
- 24.08. Witness may show cause.
- 24.09. Court may remit fine.
- 24.10. When witness appears and testifies.
- 24.11. Requisites of an "Attachment".
- 24.12. When attachment may issue.
- 24.13. Attachment for convict witnesses.
- 24.14. Attachment for resident witness.
- 24.15. To secure attendance before grand jury.
- 24.16. Application for out-county witness.
- 24.17. Duty of officer receiving said subpoena.
- 24.18. Subpoena returnable forthwith.
- 24.19. Certificate to officer.
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- 24.21. Stating bail in subpoena.

Art.

- 24.22. Witness fined and attached.  
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 24.27. No surrender after forfeiture.  
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**Art. 24.01. Definition of "subpoena"**

A "subpoena" is a writ issued to the sheriff or other proper officer commanding him to summon one or more persons therein named to appear at a certain term of the court, or on a certain day, to testify in a criminal action, or before an examining court, coroner's inquest, the grand jury, or before a judge hearing an application under habeas corpus, or in any other case in which the testimony of a witness may be required under the provisions of this Code. The writ shall be dated and signed officially by the court or clerk issuing the same, but need not be under seal.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.02. Subpoena duces tecum**

If a witness have in his possession any instrument of writing or other thing desired as evidence, the subpoena may specify such evidence and direct that the witness bring the same with him and produce it in court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.03. Subpoena and application therefor**

Before the clerk or his deputy shall be required or permitted to issue a subpoena in any felony case pending in any district or criminal district court of this State of which he is clerk or deputy, the defendant or his attorney or the State's attorney shall make written, sworn application to such clerk for each witness desired. Such application shall state the name of each witness desired, the location and vocation, if known, and that the testimony of said witness is material to the State or to the defense. The application must be filed with the clerk and placed with the papers in the cause and made available to both the State and the defendant. As far as is practical such clerk shall include in one subpoena the names of all witnesses for the State and for defendant, and such process shall show that the witnesses are summoned for the State or for the defendant. When a witness has been served with a subpoena, attached or placed under bail at the instance of either party in a particular case, such execution of process shall inure to the benefit of the opposite party in such case in the event such opposite party desires to use such witness on the trial of the case, provided that when a witness has once been served with a subpoena, no further subpoena shall be issued for said witness.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.04. Service and return of subpoena**

A subpoena is served by reading the same in the hearing of the witness. The officer having the

subpoena shall make due return thereof, showing the time and manner of service, if served, and if not served, he shall show in his return the cause of his failure to serve it; and if the witness could not be found, he shall state the diligence he has used to find him, and what information he has as to the whereabouts of the witness.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.05. Refusing to obey**

If a witness refuses to obey a subpoena, he may be fined at the discretion of the court, as follows: In a felony case, not exceeding five hundred dollars; in a misdemeanor case, not exceeding one hundred dollars.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.06. What is disobedience of a subpoena**

It shall be held that a witness refuses to obey a subpoena:

1. If he is not in attendance on the court on the day set apart for taking up the criminal docket or on any day subsequent thereto and before the final disposition or continuance of the particular case in which he is a witness;
2. If he is not in attendance at any other time named in a writ; and
3. If he refuses without legal cause to produce evidence in his possession which he has been summoned to bring with him and produce.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.07. Fine against witness conditional**

When a fine is entered against a witness for failure to appear and testify, the judgment shall be conditional; and a citation shall issue to him to show cause, at the term of the court at which said fine is entered, or at the first term thereafter, at the discretion of the judge of said court, why the same should not be final; provided, citation shall be served upon said witness in the manner and for the length of time prescribed for citations in civil cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.08. Witness may show cause**

A witness cited to show cause, as provided in the preceding Article, may do so under oath, in writing or verbally, at any time before judgment final is entered against him; but if he fails to show cause within the time limited for answering in civil actions, a judgment final by default shall be entered against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.09. Court may remit fine**

It shall be within the discretion of the court to judge of the sufficiency of an excuse rendered by a witness, and upon the hearing the court shall render judgment against the witness for the whole or any part of the fine, or shall remit the fine altogether, as to the court may appear proper and right. Said fine shall be collected as fines in misdemeanor cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.10. When witness appears and testifies**

When a fine has been entered against a witness, but no trial of the cause takes place, and such witness afterward appears and testifies upon the trial thereof, it shall be discretionary with the judge, though no good excuse be rendered, to reduce the fine or remit it altogether; but the witness, in such case, shall, nevertheless, be adjudged to pay all the costs accruing in the proceeding against him by reason of his failure to attend.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.11. Requisites of an "Attachment"**

An "attachment" is a writ issued by a clerk of a court under seal, or by any magistrate, or by the foreman of a grand jury, in any criminal action or proceeding authorized by law, commanding some peace officer to take the body of a witness and bring him before such court, magistrate or grand jury on a day named, or forthwith, to testify in behalf of the State or of the defendant, as the case may be. It shall be dated and signed officially by the officer issuing it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.12. When attachment may issue**

When a witness who resides in the county of the prosecution has been duly served with a subpoena to appear and testify in any criminal action or proceeding fails to so appear, the State or the defendant shall be entitled to have an attachment issued forthwith for such witness.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.13. Attachment for convict witnesses**

All persons who have been or may be convicted in this State, and who are confined in an institution operated by the Department of Corrections or any jail in this State, shall be permitted to testify in person in any court for the State and the defendant when the presiding judge finds, after hearing, that the ends of justice require their attendance, and directs that an attachment issue to accomplish the purpose, notwithstanding any other provision of this Code. Nothing in this Article shall be construed as limiting the power of the courts of this State to issue bench warrants.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.14. Attachment for resident witness**

When a witness resides in the county of the prosecution, whether he has disobeyed a subpoena or not, either in term-time or vacation, upon the filing of an affidavit with the clerk by the defendant or State's counsel, that he has good reason to believe, and does believe, that such witness is a material witness, and is about to move out of the county, the clerk shall forthwith issue an attachment for such witness; provided, that in misdemeanor cases, when the witness makes oath that he cannot give surety, the officer executing the attachment shall take his personal bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.15. To secure attendance before grand jury**

At any time before the first day of any term of the district court, the clerk, upon application of the State's attorney, shall issue a subpoena for any witness who resides in the county. If at the time such application is made, such attorney files a sworn application that he has good reason to believe and does believe that such witness is about to move out of the county, then said clerk shall issue an attachment for such witness to be and appear before said district court on the first day thereof to testify as a witness before the grand jury. Any witness so summoned, or attached, who shall fail or refuse to obey a subpoena or attachment, shall be punished by the court by a fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.16. Application for out-county witness**

Where, in misdemeanor cases in which confinement in jail is a permissible punishment, or in felony cases, a witness resides out of the county in which the prosecution is pending, the State or the defendant shall be entitled, either in term-time or in vacation, to a subpoena to compel the attendance of such witness on application to the proper clerk or magistrate. Such application shall be in the manner and form as provided in Article 24.03. Witnesses in such misdemeanor cases shall be compensated in the same manner as in felony cases. This Article shall not apply to more than one character witness in a misdemeanor case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.17. Duty of officer receiving said subpoena**

The officer receiving said subpoena shall execute the same by delivering a copy thereof to each witness therein named. He shall make due return of said subpoena, showing therein the time and manner of executing the same, and if not executed, such return shall show why not executed, the diligence used to find said witness, and such information as the officer has as to the whereabouts of said witness.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.18. Subpoena returnable forthwith**

When a subpoena is returnable forthwith, the officer shall immediately serve the witness with a copy of the same; and it shall be the duty of said witness to immediately make his appearance before the court, magistrate or other authority issuing the same. If said witness makes affidavit of his inability from lack of funds to appear in obedience to said subpoena, the officer executing the same shall provide said witness, if said subpoena be issued as provided in Article 24.16, with the necessary funds or means to appear in obedience to said subpoena, taking his receipt therefor, and showing in his return on said subpoena, under oath, the amount furnished to said witness, together with the amount of his fees for executing said subpoena.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.19. Certificate to officer**

The clerk, magistrate, or foreman of the grand jury issuing said process, immediately upon the return of said subpoena, if issued as provided in Article 24.16, shall issue to such officer a certificate for the amount furnished such witness, together with the amount of his fees for executing the same, showing the amount of each item; which certificate shall be approved by the district judge and recorded by the district clerk in a book kept for that purpose; and said certificate transmitted to the officer executing such subpoena, which amount shall be paid by the State, as costs are paid in other criminal matters. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.20. Subpoena returnable at future date**

If the subpoena be returnable at some future date, the officer shall have authority to take bail of such witness for his appearance under said subpoena, which bond shall be returned with such subpoena, and shall be made payable to the State of Texas, in the amount in which the witness and his surety, if any, shall be bound and conditioned for the appearance of the witness at the time and before the court, magistrate or grand jury named in said subpoena, and shall be signed by the witness and his sureties. If the witness refuses to give bond, he shall be kept in custody until such time as he starts in obedience to said subpoena, when he shall be, upon affidavit being made, provided with funds necessary to appear in obedience to said subpoena. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.21. Stating bail in subpoena**

The court or magistrate issuing said subpoena may direct therein the amount of the bail to be required. The officer may fix the amount if not specified, and in either case, shall require sufficient security, to be approved by himself. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.22. Witness fined and attached**

If a witness summoned from without the county refuses to obey a subpoena, he shall be fined by the court or magistrate not exceeding five hundred dollars, which fine and judgment shall be final, unless set aside after due notice to show cause why it should not be final, which notice may immediately issue, requiring the defaulting witness to appear at once or at the next term of said court, in the discretion of the judge, to answer for such default. The court may cause to be issued at the same time an attachment for said witness, directed to the proper county, commanding the officer to whom said writ is directed to take said witness into custody and have him before said court at the time named in said writ; in which case such witness shall receive no fees, unless it appears to the court that such disobedience is excusable, when the witness may receive the same pay as if he had not been attached. Said fine when made final and all costs thereon shall be collected as in other criminal cases. Said fine and

judgment may be set aside in vacation or at the time or any subsequent term of the court for good cause shown, after the witness testifies or has been discharged. The following words shall be written or printed on the face of such subpoena for out-county witnesses: "A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases."

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.23. Witness released**

A witness who is in custody for failing to give bail shall be at once released upon giving bail required. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.24. Bail for witness**

Witnesses on behalf of the State or defendant may, at the request of either party, be required to enter into bail in an amount to be fixed by the court to appear and testify in a criminal action; but if it shall appear to the court that any witness is unable to give security upon such bail, he shall be released without security.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.25. Personal bond of witness**

When it appears to the satisfaction of the court that personal bond of the witness will insure his attendance, no security need be required of him; but no bond without security shall be taken by any officer.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.26. Enforcing forfeiture**

The bond of a witness may be enforced against him and his sureties, if any, in the manner pointed out in this Code for enforcing the bond of a defendant in a criminal case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.27. No surrender after forfeiture**

The sureties of a witness have no right to discharge themselves by the surrender of the witness after the forfeiture of their bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 24.28. Uniform Act to secure attendance of witnesses from without State****Short Title**

Sec. 1. This Act may be cited as the "Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Proceedings".

**Definitions**

Sec. 2. "Witness" as used in this Act shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "State" shall include any territory of the United States and the District of Columbia.

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness.

Summoning witnesses in this State to testify in another State

Sec. 3. (a) If a judge of a court of record in any State which by its laws has made provision for commanding persons within that State to attend and testify in this State certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this State is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other State, and that the laws of the State in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, (and of any other State through which the witness may be required to pass by ordinary course of travel), will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(c) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting State to assure his attendance in the requesting State, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting State.

(d) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the compensation for nonresident witnesses authorized and provided for by Article 35.27 of this Code, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

Witnesses from another State summoned to testify in this State

Sec. 4. (a) If a person in any State, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this State, is a material witness in a prosecution pending in a court of record in this State, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(b) If the witness is summoned to attend and testify in this State he shall be tendered the compensation for nonresident witnesses authorized by Article 35.27 of this Code, together with such additional compensation, if any, required by the other State for compliance. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

Exemption from arrest and service of process

Sec. 5. If a person comes into this State in obedience to a summons directing him to attend and testify in this State he shall not while in this State pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

If a person passes through this State while going to another State in obedience to a summons to attend and testify in that State or while returning therefrom, he shall not while so passing through this State be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 1285, ch. 477, § 1, eff. Aug. 27, 1963.]

CHAPTER TWENTY-FIVE. SERVICE OF A COPY OF THE INDICTMENT

Art.

- 25.01. In felony.
- 25.02. Service and return.
- 25.03. If on bail in felony.
- 25.04. In misdemeanor.

**Art. 25.01. In felony**

In every case of felony, when the accused is in custody, or as soon as he may be arrested, the clerk of the court where an indictment has been presented shall immediately make a certified copy of the same, and deliver such copy to the sheriff, together with a writ directed to such sheriff, commanding him forthwith to deliver such certified copy to the accused. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 25.02. Service and return**

Upon receipt of such writ and copy, the sheriff shall immediately deliver such certified copy of the indictment to the accused and return the writ to the clerk issuing the same, with his return thereon, showing when and how the same was executed. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 25.03. If on bail in felony**

When the accused, in case of felony, is on bail at the time the indictment is presented, it is not necessary to serve him with a copy, but the clerk shall on request deliver a copy of the same to the accused or his counsel, at the earliest possible time. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 25.04. In misdemeanor**

In misdemeanors, it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**CHAPTER TWENTY-SIX. ARRAIGNMENT**

Art.

- 26.01. Arraignment.
- 26.02. Purpose of arraignment.
- 26.03. Time of arraignment.
- 26.04. Court shall appoint counsel.
- 26.05. Compensation of counsel appointed to defend.
- 26.05-1. Contribution from state in certain counties.
- 26.06. Elected officials not to be appointed.
- 26.07. Name as stated in indictment.
- 26.08. If defendant suggests different name.
- 26.09. If accused refuses to give his real name.
- 26.10. Where name is unknown.
- 26.11. Indictment read.
- 26.12. Plea of not guilty entered.
- 26.13. Plea of guilty.
- 26.14. Jury on plea of guilty.
- 26.15. Correcting name.

**Art. 26.01. Arraignment**

In all felony cases, after indictment, and all misdemeanor cases punishable by imprisonment, there shall be an arraignment. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 26.02. Purpose of arraignment**

An arraignment takes place for the purpose of fixing his identity and hearing his plea. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 26.03. Time of arraignment**

No arraignment shall take place until the expiration of at least two entire days after the day on which a copy of the indictment was served on the defendant, unless the right to such copy or to such delay be waived, or unless the defendant is on bail. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 26.04. Court shall appoint counsel**

(a) Whenever the court determines at an arraignment or at any time prior to arraignment that an accused charged with a felony or a misdemeanor punishable by imprisonment is too poor to employ counsel, the court shall appoint one or more practicing attorneys to defend him. In making the determination, the court shall require the accused to file an affidavit, and may call witnesses and hear any relevant testimony or other evidence.

(b) The appointed counsel is entitled to ten days to prepare for trial, but may waive the time by written notice, signed by the counsel and the accused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 26.05. Compensation of counsel appointed to defend**

Sec. 1. A counsel appointed to defend a person accused of a felony or a misdemeanor punishable by imprisonment, or to represent an indigent in a habeas corpus hearing, shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held, according to the following schedule:

(a) For each day or a fractional part thereof in court representing the accused, a reasonable fee to be set by the court but in no event to be less than \$50;

(b) For each day in court representing the accused in a capital case, a reasonable fee to be set by the court but in no event to be less than \$250;

(c) For each day or a fractional part thereof in court representing the indigent in a habeas corpus hearing, a reasonable fee to be set by the court but in no event to be less than \$50;

(d) For expenses incurred for purposes of investigation and expert testimony, a reasonable fee to be set by the court but in no event to exceed \$500;

(e) For the prosecution to a final conclusion of a bona fide appeal to the Court of Criminal Appeals, a reasonable fee to be set by the court but in no event to be less than \$350;

(f) For the prosecution to a final conclusion of a bona fide appeal to the Court of Criminal Appeals in a case where the death penalty has been assessed, a reasonable fee to be set by the court but in no event to be less than \$500.

Sec. 2. The minimum fee will be automatically allowed unless the trial judge orders more within five days of the judgment.

Sec. 3. All payments made under the provisions of this Article may be included as costs of court.

Sec. 4. An attorney may not receive more than one fee for each day in court, regardless of the number of cases in which he appears as appointed counsel on the same day.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 1054, ch. 347, § 1, eff. May 27, 1969; Acts 1971, 62nd Leg., p. 1777, ch. 520, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1126, ch. 426, art. 3, § 3, eff. June 14, 1973.]

#### Art. 26.05-1. Contribution from state in certain counties

Sec. 1. A county in which a state training school for delinquent children is located shall pay from its general fund the first \$250 of fees awarded for court-appointed counsel under Article 26.05 toward defending a child committed to the school from another county who is being prosecuted for a felony or misdemeanor in the county where the training school is located.

Sec. 2. If the fees awarded for counsel compensation are in excess of \$250, the court shall certify the amount in excess of \$250 to the Comptroller of Public Accounts of the State of Texas. The Comptroller shall issue a warrant to the court-appointed counsel in the amount certified to the comptroller by the court.

[Acts 1967, 60th Leg., p. 733, ch. 307, § 1, eff. Aug. 28, 1967.]

#### Art. 26.06. Elected officials not to be appointed

No court may appoint an elected county, district or state official to represent a person accused of crime, unless the official has notified the court of his availability for appointment. If an official has notified the court of his availability and is appointed as counsel, he may decline the appointment if he determines that it is in the best interest of his office to do so. Nothing in this Code shall modify any statutory provision for legislative continuance.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 26.07. Name as stated in indictment

When the defendant is arraigned, his name, as stated in the indictment, shall be distinctly called; and unless he suggest by himself or counsel that he is not indicted by his true name, it shall be taken that his name is truly set forth, and he shall not thereafter be allowed to deny the same by way of defense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 26.08. If defendant suggests different name

If the defendant, or his counsel for him, suggests that he bears some name different from that stated in the indictment, the same shall be noted upon the minutes of the court, the indictment corrected by inserting therein the name of the defendant as suggested by himself or his counsel for him, the style of the case changed so as to give his true name, and the cause proceed as if the true name had been first recited in the indictment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 26.09. If accused refuses to give his real name

If the defendant alleges that he is not indicted by his true name, and refuses to say what his real name is, the cause shall proceed as if the name stated in the indictment were true; and the defendant shall not be allowed to contradict the same by way of defense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 26.10. Where name is unknown

A defendant described as a person whose name is unknown may have the indictment so corrected as to give therein his true name.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 26.11. Indictment read

The name of the accused having been called, if no suggestion, such as is spoken of in the four preceding Articles, be made, or being made is disposed of as before directed, the indictment shall be read, and the defendant asked whether he is guilty or not, as therein charged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 26.12. Plea of not guilty entered

If the defendant answers that he is not guilty, such plea shall be entered upon the minutes of the court; if he refuses to answer, the plea of not guilty shall in like manner be entered.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 26.13. Plea of guilty

If the defendant pleads guilty, or enters a plea of nolo contendere, he shall be admonished by the court of the consequences; and neither of such pleas shall be received unless it plainly appears that he is mentally competent, and is uninfluenced by any consideration of fear, or by any persuasion, or delusive hope of pardon, prompting him to confess his guilt.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 969, ch. 399, § 2(A), eff. Jan. 1, 1974.]

#### Art. 26.14. Jury on plea of guilty

Where a defendant in a case of felony persists in pleading guilty or in entering a plea of nolo contendere, if the punishment is not absolutely fixed by law, a jury shall be impaneled to assess the punishment and evidence may be heard to enable them to decide thereupon, unless the defendant in accordance

with Articles 1.13 or 37.07 shall have waived his right to trial by jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 26.15. Correcting name

In any case, the same proceedings shall be had with respect to the name of the defendant and the correction of the indictment or information as provided with respect to the same in capital cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER TWENTY-SEVEN. THE PLEADING IN CRIMINAL ACTIONS

Art.

- 27.01. Indictment or information.
- 27.02. Defendant's pleadings.
- 27.03. Motion to set aside indictment.
- 27.04. Motion tried by judge.
- 27.05. Defendant's special plea.
- 27.06. Special plea verified.
- 27.07. Special plea tried.
- 27.08. Exception to substance of indictment.
- 27.09. Exception to form of indictment.
- 27.10. Written pleadings.
- 27.11. Ten days allowed for filing pleadings.
- 27.12. Time after service.
- 27.13. Plea of guilty or nolo contendere in felony.
- 27.14. Plea of guilty or nolo contendere in misdemeanor.
- 27.15. Change of venue to plead guilty.
- 27.16. Plea of not guilty, how made.
- 27.17. Plea of not guilty construed.

#### Art. 27.01. Indictment or information

The primary pleading in a criminal action on the part of the State is the indictment or information.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.02. Defendant's pleadings

The pleadings and motions of the defendant shall be:

(1) A motion to set aside or an exception to an indictment or information for some matter of form or substance;

(2) A special plea as provided in Article 27.05 of this code;

(3) A plea of guilty;

(4) A plea of not guilty;

(5) A plea of nolo contendere, the legal effect of which shall be the same as that of a plea of guilty, except that such plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based;

(6) An application for probation, if any;

(7) An election, if any, to have the jury assess the punishment if he is found guilty; and

(8) Any other motions or pleadings that are by law permitted to be filed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1738, ch. 659, § 17, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 968, ch. 399, § 2(A), eff. Jan. 1, 1974.]

#### Art. 27.03. Motion to set aside indictment

In addition to any other grounds authorized by law, a motion to set aside an indictment or information may be based on the following:

1. That it appears by the records of the court that the indictment was not found by at least nine grand jurors, or that the information was not based upon a valid complaint;

2. That some person not authorized by law was present when the grand jury was deliberating upon the accusation against the defendant, or was voting upon the same; and

3. That the grand jury was illegally impaneled; provided, however, in order to raise such question on motion to set aside the indictment, the defendant must show that he did not have an opportunity to challenge the array at the time the grand jury was impaneled.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.04. Motion tried by judge

An issue of fact arising upon a motion to set aside an indictment or information shall be tried by the judge without a jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.05. Defendant's special plea

A defendant's only special plea is that he has already been prosecuted for the same or a different offense arising out of the same criminal episode that was or should have been consolidated into one trial, and that the former prosecution:

(1) resulted in acquittal;

(2) resulted in conviction;

(3) was improperly terminated; or

(4) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 969, ch. 399, § 2(A), eff. Jan. 1, 1974.]

#### Art. 27.06. Special plea verified

Every special plea shall be verified by the affidavit of the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.07. Special plea tried

All issues of fact presented by a special plea shall be tried by the trier of the facts on the trial on the merits.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.08. Exception to substance of indictment

There is no exception to the substance of an indictment or information except:

1. That it does not appear therefrom that an offense against the law was committed by the defendant;

2. That it appears from the face thereof that a prosecution for the offense is barred by a lapse of time, or that the offense was committed after the finding of the indictment;

3. That it contains matter which is a legal defense or bar to the prosecution; and

4. That it shows upon its face that the court trying the case has no jurisdiction thereof.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.09. Exception to form of indictment

Exceptions to the form of an indictment or information may be taken for the following causes only:

1. That it does not appear to have been presented in the proper court as required by law;

2. The want of any requisite prescribed by Articles 21.02 and 21.21.

3. That it was not returned by a lawfully chosen or empaneled grand jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.10. Written pleadings

All motions to set aside an indictment or information and all special pleas and exceptions shall be in writing.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.11. Ten days allowed for filing pleadings

In all cases the defendant shall be allowed ten entire days, exclusive of all fractions of a day after his arrest, and during the term of the court, to file written pleadings.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.12. Time after service

In cases where the defendant is entitled to be served with a copy of the indictment, he shall be allowed the ten days time mentioned in the preceding Article to file written pleadings after such service.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.13. Plea of guilty or nolo contendere in felony

A plea of "guilty" or a plea of "nolo contendere" in a felony case must be made in open court by the defendant in person; and the proceedings shall be as provided in Articles 26.13, 26.14 and 27.02. If the plea is before the judge alone, same may be made in the same manner as is provided for by Articles 1.13 and 1.15.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.14. Plea of guilty or nolo contendere in misdemeanor

A plea of "guilty" or a plea of "nolo contendere" in a misdemeanor case may be made either by the defendant or his counsel in open court; in such case, the defendant or his counsel may waive a jury, and

the punishment may be assessed by the court either upon or without evidence, at the discretion of the court. In a misdemeanor case arising out of a moving traffic violation for which the maximum possible punishment is by fine only, payment of a fine, or an amount accepted by the court constitutes a finding of guilty in open court, as though a plea of nolo contendere had been entered by the defendant. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1738, ch. 659, § 18, eff. Aug. 28, 1967.]

#### Art. 27.15. Change of venue to plead guilty

When in any county which is located in a judicial district composed of more than one county, a party is charged with a felony and the maximum punishment therefor shall not exceed fifteen years, and the district court of said county is not in session, such party may, if he desires to plead guilty, or enter a plea of nolo contendere, make application to the district judge of such district for a change of venue to the county in which said court is in session, and said district judge may enter an order changing the venue of said cause to the county in which the court is then in session, and the defendant may plead guilty or enter a plea of nolo contendere to said charge in said court to which the venue has been changed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.16. Plea of not guilty, how made

The plea of not guilty may be made orally by the defendant or by his counsel in open court. If the defendant refuses to plead, the plea of not guilty shall be entered for him by the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 27.17. Plea of not guilty construed

The plea of not guilty shall be construed to be a denial of every material allegation in the indictment or information. Under this plea, evidence to establish the insanity of defendant, and every fact whatever tending to acquit him of the accusation may be introduced, except such facts as are proper for a special plea under Article 27.05.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER TWENTY-EIGHT. MOTIONS, PLEADINGS AND EXCEPTIONS

Art.

- 28.01. Pre-trial.
- 28.02. Order of argument.
- 28.03. Process for testimony on pleadings.
- 28.04. Quashing charge in misdemeanor.
- 28.05. Quashing indictment in felony.
- 28.06. Shall be fully discharged, when.
- 28.07. If exception is that no offense is charged.
- 28.08. When defendant is held by order of court.
- 28.09. Exception on account of form.
- 28.10. Amendment of indictment or information.
- 28.11. How amended.
- 28.12. Exception and trial of special pleas.
- 28.13. Former acquittal or conviction.
- 28.14. Plea allowed.

**Art. 28.01. Pre-trial**

Sec. 1. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his attorney, if any of record, and the State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. The defendant must be present at the arraignment, and his presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters:

(1) Arraignment of the defendant, if such be necessary; and appointment of counsel to represent the defendant, if such be necessary;

(2) Pleadings of the defendant;

(3) Special pleas, if any;

(4) Exceptions to the form or substance of the indictment or information;

(5) Motions for continuance either by the State or defendant; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial;

(6) Motions to suppress evidence—When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court;

(7) Motions for change of venue by the State or the defendant; provided, however, that such motions for change of venue, if overruled at the pre-trial hearing, may be renewed by the State or the defendant during the voir dire examination of the jury;

(8) Discovery; and

(9) Entrapment.

Sec. 2. When a criminal case is set for such pre-trial hearing, the defendant shall have five days after notice of setting in which to file his motions, pleadings and exceptions; and any such preliminary matters not raised and filed within the time allowed will not thereafter be allowed to be raised or filed, except by permission of the court for good cause shown. The record made at such pre-trial hearing, the rulings of the court and the exceptions and objections thereto shall become a part of the trial record of the case upon its merits.

Sec. 3. The notice mentioned in Section 2 above shall be sufficient if given in any one of the following ways:

(1) By announcement made by the court in open court in the presence of the defendant or his attorney of record;

(2) By personal service upon the defendant or his attorney of record;

(3) By mail to either the defendant or his attorney of record deposited by the clerk in the mail at least six days prior to the date set for hearing. If the defendant has no attorney of record such notice shall be addressed to defendant at the address shown on his bond, if the bond shows such an address, and if not, it may be addressed to one of the sureties on his bond. If the envelope containing the notice is properly addressed, stamped and mailed, the state will not be required to show that it was received.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1738, ch. 659, § 19, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 969, ch. 399, § 2(A), eff. Jan. 1, 1974.]

**Art. 28.02. Order of argument**

The counsel of the defendant has the right to open and conclude the argument upon all pleadings of the defendant presented for the decision of the judge. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 28.03. Process for testimony on pleadings**

When the matters involved in any written pleading depend in whole or in part upon testimony, and not altogether upon the record of the court, every process known to the law may be obtained on behalf of either party to procure such testimony; but there shall be no delay on account of the want of the testimony, unless it be shown to the satisfaction of the court that all the means given by the law have been used to procure the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 28.04. Quashing charge in misdemeanor**

If the motion to set aside or the exception to an indictment or information is sustained, the defendant in a misdemeanor case shall be discharged, but may be again prosecuted within the time allowed by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 28.05. Quashing indictment in felony**

If the motion to set aside or the exception to the indictment in cases of felony be sustained, the defendant shall not therefor be discharged, but may immediately be recommitted by order of the court, upon motion of the State's attorney or without motion; and proceedings may afterward be had against him as if no prosecution had ever been commenced. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 28.06. Shall be fully discharged, when**

Where, after the motion or exception is sustained, it is made known to the court by sufficient testimony that the offense of which the defendant is accused will be barred by limitation before another indictment can be presented, he shall be fully discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 28.07. If exception is that no offense is charged**

If an exception to an indictment or information is taken and sustained upon the ground that there is no offense against the law charged therein, the defendant shall be discharged, unless an affidavit be filed accusing him of the commission of a penal offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 28.08. When defendant is held by order of court**

If the motion to set aside the indictment or any exception thereto is sustained, but the court refuses to discharge the defendant, then at the expiration of ten days from the order sustaining such motions or exceptions, the defendant shall be discharged, unless in the meanwhile complaint has been made before a magistrate charging him with an offense, or unless another indictment has been presented against him for such offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 28.09. Exception on account of form**

If the exception to an indictment or information is only on account of form, it shall be amended, if defective, and the cause proceed upon such amended charge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 28.10. Amendment of indictment or information**

Any matter of form in an indictment or information may be amended at any time before an announcement of ready for trial upon the merits by both parties, but not afterward. No matter of substance can be amended.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 28.11. How amended**

All amendments of an indictment or information shall be made with the leave of the court and under its direction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 28.12. Exception and trial of special pleas**

When a special plea is filed by the defendant, the State may except to it for substantial defects. If the exception be sustained, the plea may be amended. If the plea be not excepted to, it shall be considered that issue has been taken upon the same. Such special pleas as set forth matter of fact proper to be tried by a jury shall be submitted and tried with a plea of not guilty.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 28.13. Former acquittal or conviction**

A former judgment of acquittal or conviction in a court of competent jurisdiction shall be a bar to any further prosecution for the same offense, but shall not bar a prosecution for any higher grade of offense over which said court had not jurisdiction,

unless such judgment was had upon indictment or information, in which case the prosecution shall be barred for all grades of the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 28.14. Plea allowed**

Judgment shall, in no case, be given against the defendant where his motion, exception or plea is overruled; but in all cases the plea of not guilty may be made by or for him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**CHAPTER TWENTY-NINE. CONTINUANCE**

Art.

29.01. By operation of law.

29.02. By agreement.

29.03. For sufficient cause shown.

29.04. First motion by State.

29.05. Subsequent motion by State.

29.06. First motion by defendant.

29.07. Subsequent motion by defendant.

29.08. Motion sworn to.

29.09. Controverting motion.

29.10. When denial is filed.

29.11. Argument.

29.12. Bail resulting from continuance.

29.13. Continuance after trial is begun.

**Art. 29.01. By operation of law**

Criminal actions are continued by operation of law if:

- (1) The individual defendant has not been arrested;
- (2) A defendant corporation or association has not been served with summons; or
- (3) There is not sufficient time for trial at that term of court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 970, ch. 399, § 2(A), eff. Jan. 1, 1974.]

**Art. 29.02. By agreement**

A criminal action may be continued by consent of the parties thereto, in open court, at any time.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 29.03. For sufficient cause shown**

A criminal action may be continued on the written motion of the State or of the defendant, upon sufficient cause shown; which cause shall be fully set forth in the motion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 29.04. First motion by State**

It shall be sufficient, upon the first motion by the State for a continuance, if the same be for the want of a witness, to state:

1. The name of the witness and his residence, if known, or that his residence is unknown;

2. The diligence which has been used to procure his attendance; and it shall not be considered sufficient diligence to have caused to be issued, or to have applied for, a subpoena, in

cases where the law authorized an attachment to issue; and

3. That the testimony of the witness is believed by the applicant to be material for the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 29.05. Subsequent motion by State

On any subsequent motion for a continuance by the State, for the want of a witness, the motion, in addition to the requisites in the preceding Article, must show:

1. The facts which the applicant expects to establish by the witness, and it must appear to the court that they are material;

2. That the applicant expects to be able to procure the attendance of the witness at the next term of the court; and

3. That the testimony cannot be procured from any other source during the present term of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 29.06. First motion by defendant

In the first motion by the defendant for a continuance, it shall be necessary, if the same be on account of the absence of a witness, to state:

1. The name of the witness and his residence, if known, or that his residence is not known.

2. The diligence which has been used to procure his attendance; and it shall not be considered sufficient diligence to have caused to be issued, or to have applied for, a subpoena, in cases where the law authorized an attachment to issue.

3. The facts which are expected to be proved by the witness, and it must appear to the court that they are material.

4. That the witness is not absent by the procurement or consent of the defendant.

5. That the motion is not made for delay.

6. That there is no reasonable expectation that attendance of the witness can be secured during the present term of court by a postponement of the trial to some future day of said term. The truth of the first, or any subsequent motion, as well as the merit of the ground set forth therein and its sufficiency shall be addressed to the sound discretion of the court called to pass upon the same, and shall not be granted as a matter of right. If a motion for continuance be overruled, and the defendant convicted, if it appear upon the trial that the evidence of the witness or witnesses named in the motion was of a material character, and that the facts set forth in said motion were probably true, a new trial should be granted, and the cause continued or postponed to a future day of the same term.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 29.07. Subsequent motion by defendant

Subsequent motions for continuance on the part of the defendant shall, in addition to the requisites in the preceding Article, state also:

1. That the testimony cannot be procured from any other source known to the defendant; and

2. That the defendant has reasonable expectation of procuring the same at the next term of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 29.08. Motion sworn to

All motions for continuance on the part of the defendant must be sworn to by himself.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 29.09. Controverting motion

Any material fact stated, affecting diligence, in a motion for a continuance, may be denied in writing by the adverse party. The denial shall be supported by the oath of some credible person, and filed as soon as practicable after the filing of such motion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 29.10. When denial is filed

When such denial is filed, the issue shall be tried by the judge; and he shall hear testimony by affidavits, and grant or refuse continuance, according to the law and facts of the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 29.11. Argument

No argument shall be heard on a motion for a continuance, unless requested by the judge; and when argument is heard, the applicant shall have the right to open and conclude it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 29.12. Bail resulting from continuance

If a defendant in a capital case demand a trial, and it appears that more than one continuance has been granted to the State, and that the defendant has not before applied for a continuance, he shall be entitled to be admitted to bail, unless it be made to appear to the satisfaction of the court that a material witness of the State had been prevented from attendance by the procurement of the defendant or some person acting in his behalf.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 29.13. Continuance after trial is begun

A continuance or postponement may be granted on the motion of the State or defendant after the trial has begun, when it is made to appear to the satisfaction of the court that by some unexpected occurrence since the trial began, which no reasonable diligence could have anticipated, the applicant is so taken by surprise that a fair trial cannot be had.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER THIRTY. DISQUALIFICATION OF THE JUDGE

Art.

- 30.01. Causes which disqualify.
- 30.02. District judge disqualified.
- 30.03. County judge disqualified.
- 30.04. Special judge to take oath.
- 30.05. Record made by clerk.
- 30.06. Compensation.
- 30.07. Justice disqualified.
- 30.08. Order of transfer.

#### Art. 30.01. Causes which disqualify

No judge or justice of the peace shall sit in any case where he may be the party injured, or where he has been of counsel for the State or the accused, or where the accused or the party injured may be connected with him by consanguinity or affinity within the third degree.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 30.02. District judge disqualified

Whenever any case is pending in which the district judge or criminal district judge is disqualified from trying the case, no change of venue shall be made necessary thereby; but the judge presiding shall certify that fact to the presiding judge of the administrative judicial district in which the case is pending and the presiding judge of such administrative judicial district shall assign a judge to try such case in accordance with the provisions of Article 200a, V.A.C.S.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 30.03. County judge disqualified

When the judge of the county court or county court at law, or of any county criminal court, is disqualified in any criminal case pending in the court of which he is judge, the parties may by consent agree upon a special judge to try such case. If they fail to agree upon a special judge to try such case, on or before the third day of the term at which such case may be called for trial, the practicing attorneys of the court present may elect from among their number a special judge who shall try the case. The election of the special judge shall be conducted in accordance with the provisions of Article 1887 et seq., V.A.C.S.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 30.04. Special judge to take oath

The attorney agreed upon or appointed shall, before he enters upon his duties as special judge, take the oath of office required by the Constitution.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 30.05. Record made by clerk

When a special judge is agreed upon by the parties or elected as herein provided, the clerk shall enter in the minutes as a part of the proceedings in such cause a record showing:

1. That the judge of the court was disqualified to try the cause;

2. That such special judge (naming him) was by consent of the parties agreed upon or elected;

3. That the oath of office prescribed by law has been duly administered to such special judge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 30.06. Compensation

A special judge selected or appointed in accordance with the preceding Articles shall receive the same compensation as provided by law for regular judges in similar cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 30.07. Justice disqualified

If a justice of the peace be disqualified from sitting in any criminal action pending before him, he shall transfer the same to any justice of the peace in the county who is not disqualified to try the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 30.08. Order of transfer

In cases provided for in the preceding Article, the order of transfer shall state the cause of the transfer, and name the court to which the transfer is made, and the time and place, when and where, the parties and witnesses shall appear before such court. The rules governing the transfer of cases from the district to inferior courts shall govern in the transfer of cases under the preceding Article.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER THIRTY-ONE. CHANGE OF VENUE

Art.

- 31.01. On court's own motion.
- 31.02. State may have.
- 31.03. Granted on motion of defendant.
- 31.04. Motion may be controverted.
- 31.05. Clerk's duties on change of venue.
- 31.06. If defendant be in custody.
- 31.07. Witness need not again be summoned.

#### Art. 31.01. On court's own motion

Whenever in any case of felony or misdemeanor punishable by confinement, the judge presiding shall be satisfied that a trial, alike fair and impartial to the accused and to the State, cannot, from any cause, be had in the county in which the case is pending, he may, upon his own motion, after due notice to accused and the State, and after hearing evidence thereon, order a change of venue to any county in the judicial district in which such county is located or in an adjoining district, stating in his order the grounds for such change of venue. The judge, upon his own motion, after ten days notice to the parties or their counsel, may order a change of venue to any county beyond an adjoining district; provided, however, an order changing venue to a county beyond an adjoining district shall be grounds for reversal if, upon timely contest by the defendant, the record of the contest affirmatively shows that

any county in his own and the adjoining district is not subject to the same conditions which required the transfer.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 31.02. State may have

Whenever the district or county attorney shall represent in writing to the court before which any felony or misdemeanor case punishable by confinement, is pending, that, by reason of existing combinations or influences in favor of the accused, or on account of the lawless condition of affairs in the county, a fair and impartial trial as between the accused and the State cannot be safely and speedily had; or whenever he shall represent that the life of the prisoner, or of any witness, would be jeopardized by a trial in the county in which the case is pending, the judge shall hear proof in relation thereto, and if satisfied that such representation is well-founded and that the ends of public justice will be subserved thereby, he shall order a change of venue to any county in the judicial district in which such county is located or in an adjoining district.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 31.03. Granted on motion of defendant

A change of venue may be granted in any felony or misdemeanor case punishable by confinement on the written motion of the defendant, supported by his own affidavit and the affidavit of at least two credible persons, residents of the county where the prosecution is instituted, for either of the following causes, the truth and sufficiency of which the court shall determine:

1. That there exists in the county where the prosecution is commenced so great a prejudice against him that he cannot obtain a fair and impartial trial; and
2. That there is a dangerous combination against him instigated by influential persons, by reason of which he cannot expect a fair trial.

An order changing venue to a county beyond an adjoining district shall be grounds for reversal, if upon timely contest by defendant, the record of the contest affirmatively shows that any county in his own and the adjoining district is not subject to the same conditions which required the transfer.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 31.04. Motion may be controverted

The credibility of the persons making affidavit for change of venue, or their means of knowledge, may be attacked by the affidavit of a credible person. The issue thus formed shall be tried by the judge, and the motion granted or refused, as the law and facts shall warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 31.05. Clerk's duties on change of venue

Where an order for a change of venue of any court in any criminal cause in this State has been made the clerk of the court where the prosecution is

pending shall make out a certified copy of the court's order directing such change of venue, together with a certified copy of the defendant's bail bond or personal bond, together with all the original papers in said cause and also a certificate of the said clerk under his official seal that such papers are the papers and all the papers on file in said court in said cause; and he shall transmit the same to the clerk of the court to which the venue has been changed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 31.06. If defendant be in custody

When the venue is changed in any criminal action if the defendant be in custody, an order shall be made for his removal to the proper county, and his delivery to the sheriff thereof before the next succeeding term of the court of the county to which the case is to be taken, and he shall be delivered by the sheriff as directed in the order.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 31.07. Witness need not again be summoned

When the venue in a criminal action has been changed, it shall not be necessary to have the witnesses therein again subpoenaed, attached or bailed, but all the witnesses who have been subpoenaed, attached or bailed to appear and testify in the cause shall be held bound to appear before the court to which the cause has been transferred, as if there had been no such transfer.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

## TRIAL AND ITS INCIDENTS

### CHAPTER THIRTY-TWO. DISMISSING PROSECUTIONS

Art.

32.01. Defendant in custody and no indictment presented.

32.02. Dismissal by State's attorney.

#### Art. 32.01. Defendant in custody and no indictment presented

When a defendant has been detained in custody or held to bail for his appearance to answer any criminal accusation before the district court, the prosecution, unless otherwise ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against such defendant at the next term of the court which is held after his commitment or admission to bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 32.02. Dismissal by State's attorney

The attorney representing the State may, by permission of the court, dismiss a criminal action at any time upon filing a written statement with the papers in the case setting out his reasons for such dismissal, which shall be incorporated in the judgment of dismissal. No case shall be dismissed without the consent of the presiding judge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER THIRTY-THREE. THE MODE OF TRIAL

Art.

- 33.01. Jury; when of twelve, when of six.
- 33.02. Failure to register or pay poll tax.
- 33.03. Presence of defendant.
- 33.04. May appear by counsel.
- 33.05. On bail during trial.
- 33.06. Sureties bound in case of mistrial.
- 33.07. Criminal docket.
- 33.08. To fix day for criminal docket.
- 33.09. Jury drawn.

#### Art. 33.01. Jury; when of twelve, when of six

In the district court, the jury shall consist of twelve qualified jurors; in the county court and inferior courts, the jury shall consist of six qualified jurors.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 33.02. Failure to register or pay poll tax

Failure to pay poll tax or register to vote shall not disqualify any person from jury service.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 33.03. Presence of defendant

In all prosecutions for felonies, the defendant must be personally present at the trial, and he must likewise be present in all cases of misdemeanor when the punishment or any part thereof is imprisonment in jail; provided, however, that in all cases, when the defendant voluntarily absents himself after pleading to the indictment or information, the trial may proceed to its conclusion. When the record in the appellate court shows that the defendant was present at the commencement, or any portion of the trial, it shall be presumed in the absence of all evidence in the record to the contrary that he was present during the whole trial. Provided, however, that the presence of the defendant shall not be required at the hearing on the motion for new trial in any misdemeanor case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 33.04. May appear by counsel

In other misdemeanor cases, the defendant may, by consent of the State's attorney, appear by counsel, and the trial may proceed without his personal presence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 33.05. On bail during trial

If the defendant is on bail when the trial commences, such bail shall be considered as discharged if he is acquitted. If a verdict of guilty is returned against him, the discharge of his bail shall be governed by other provisions of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 33.06. Sureties bound in case of mistrial

If there be a mistrial in a felony case, the original sureties, if any, of the defendant shall be still held bound for his appearance until they surrender him in accordance with the provisions of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 33.07. Criminal docket

Each clerk of a court of record having criminal jurisdiction shall keep a docket in which shall be set down the style and file number of each criminal action, the nature of the offense, the names of counsel, the proceedings had therein, and the date of each proceeding.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 33.08. To fix day for criminal docket

The district courts and county courts shall have control of their respective dockets as to the settings of criminal cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 33.09. Jury drawn

Jury panels, including special venires, for the trial of criminal cases shall be selected and summoned (with return on summons) in the same manner as the selection of panels for the trial of civil cases except as otherwise provided in this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER THIRTY-FOUR. SPECIAL VENIRE IN CAPITAL CASES

Art.

- 34.01. Special venire.
- 34.02. Additional names drawn.
- 34.03. Instructions to sheriff.
- 34.04. Notice of list.

#### Art. 34.01. Special venire

A "special venire" is a writ issued in a capital case by order of the district court, commanding the sheriff to summon either verbally or by mail such a number of persons, not less than 50, as the court may order, to appear before the court on a day named in the writ from whom the jury for the trial of such case is to be selected. Where as many as one hundred jurors have been summoned in such county for regular service for the week in which such capital case is set for trial, the judge of the court having jurisdiction of a capital case in which a motion for a special venire has been made, shall grant or refuse such motion for a special venire, and upon such refusal require the case to be tried by regular jurors summoned for service in such county for the week in which such capital case is set for trial and such additional talesmen as may be summoned by the sheriff upon order of the court as provided in Article 34.02 of this Code, but the clerk of such court shall furnish the defendant or his counsel a list of the persons summoned as provided in Article 34.04.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 34.02. Additional names drawn

In any criminal case in which the court deems that the veniremen theretofore drawn will be insufficient for the trial of the case, or in any criminal case in which the venire has been exhausted by challenge or otherwise, the court shall order additional veniremen

in such numbers as the court may deem advisable, to be summoned as follows:

(a) In a jury wheel county, the names of those to be summoned shall be drawn from the jury wheel.

(b) In counties not using the jury wheel, the veniremen shall be summoned by the sheriff. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 34.03. Instructions to sheriff**

When the sheriff is ordered by the court to summon persons upon a special venire whose names have not been selected under the Jury Wheel Law, the court shall, in every case, caution and direct the sheriff to summon such persons as have legal qualifications to serve on juries, informing him of what those qualifications are, and shall direct him, as far as he may be able to summon persons of good character who can read and write, and such as are not prejudiced against the defendant or biased in his favor, if he knows of such bias or prejudice. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 34.04. Notice of list**

No defendant in a capital case shall be brought to trial until he shall have had at least two days (including holidays) a copy of the names of the persons summoned as veniremen, for the week for which his case is set for trial except where he waives the right or is on bail. When such defendant is on bail, the clerk of the court in which the case is pending shall furnish such a list to the defendant or his counsel at least two days prior to the trial (including holidays) upon timely motion by the defendant or his counsel therefor at the office of such clerk, and the defendant shall not be brought to trial until such list has been furnished defendant or his counsel for at least two days (including holidays). Where the venire is exhausted, by challenges or otherwise, and additional names are drawn, the defendant shall not be entitled to two days service of the names additionally drawn, but the clerk shall compile a list of such names promptly after they are drawn and if the defendant is not on bail, the sheriff shall serve a copy of such list promptly upon the defendant, and if on bail, the clerk shall furnish a copy of such list to the defendant or his counsel upon request, but the proceedings shall not be delayed thereby. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**CHAPTER THIRTY-FIVE. FORMATION OF THE JURY**

- Art.
- 35.01. Jurors called.
- 35.02. Sworn to answer questions.
- 35.03. Excuses.
- 35.04. Claiming exemption.
- 35.05. Excused by consent.
- 35.06. Challenge to array first heard.
- 35.07. Challenge to the array.
- 35.08. When challenge is sustained.
- 35.09. List of new venire.
- 35.10. Court to try qualifications.

- Art.
- 35.11. Preparation of list.
- 35.12. Mode of testing.
- 35.13. Passing juror for challenge.
- 35.14. A peremptory challenge.
- 35.15. Number of challenges.
- 35.16. Reasons for challenge for cause.
- 35.17. Voir dire examination.
- 35.18. Other evidence on challenge.
- 35.19. Absolute disqualification.
- 35.20. Names called in order.
- 35.21. Judge to decide qualifications.
- 35.22. Oath to jury.
- 35.23. Jurors may separate.
- 35.24. Special pay for veniremen.
- 35.25. Making peremptory challenge.
- 35.26. Lists returned to clerk.
- 35.27. Compensation of nonresident witnesses.
- 35.28. When no clerk.

**Art. 35.01. Jurors called**

When a case is called for trial and the parties have announced ready for trial, the names of those summoned as jurors in the case shall be called. Those not present may be fined not exceeding fifty dollars. An attachment may issue on request of either party for any absent summoned juror, to have him brought forthwith before the court. A person who is summoned but not present, may upon an appearance, before the jury is qualified, be tried as to his qualifications and impaneled as a juror unless challenged, but no cause shall be unreasonably delayed on account of his absence. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 35.02. Sworn to answer questions**

To those present the court shall cause to be administered this oath: "You, and each of you, solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror, so help you God." [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 35.03. Excuses**

The court shall then hear and determine excuses offered for not serving as a juror, and if he deems the excuse sufficient, he shall discharge the juror. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 35.04. Claiming exemption**

Any person summoned as a juror who is exempt by law from jury service may establish his exemption without appearing in person by filing a signed statement of the ground of his exemption with the clerk of the court at any time before the date upon which he is summoned to appear. [Acts 1965, 59th Leg.; p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 1560, ch. 421, § 3, eff. May 26, 1971.]

**Art. 35.05. Excused by consent**

One summoned upon a special venire may by consent of both parties be excused from attendance by the court at any time before he is impaneled. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 35.06. Challenge to array first heard**

The court shall hear and determine a challenge to the array before interrogating those summoned as to their qualifications.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 35.07. Challenge to the array**

Each party may challenge the array only on the ground that the officer summoning the jury has wilfully summoned jurors with a view to securing a conviction or an acquittal. All such challenges must be in writing setting forth distinctly the grounds of such challenge. When made by the defendant, it must be supported by his affidavit or the affidavit of any credible person. When such challenge is made, the judge shall hear evidence and decide without delay whether or not the challenge shall be sustained.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 35.08. When challenge is sustained**

The array of jurors summoned shall be discharged if the challenge be sustained, and the court shall order other jurors to be summoned in their stead, and direct that the officer who summoned those so discharged, and on account of whose misconduct the challenge has been sustained shall not summon any other jurors in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 35.09. List of new venire**

When a challenge to the array has been sustained, the defendant shall be entitled, as in the first instance, to service of a copy of the list of names of those summoned by order of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 35.10. Court to try qualifications**

When no challenge to the array has been made, or if made, has been over-ruled, the court shall proceed to try the qualifications of those present who have been summoned to serve as jurors.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 35.11. Preparation of list**

The trial judge, upon the demand of the defendant or his attorney, or of the State's counsel, shall cause the names of all the members of the general panel drawn or assigned as jurors in such case to be placed in a receptacle and well-shaken, and the clerk shall draw therefrom the names of a sufficient number of jurors from which a jury may be selected to try such case, and such names shall be written, in the order drawn, on the jury list from which the jury is to be selected to try such case, and write the names as drawn upon two slips of paper and deliver one slip to the State's counsel and the other to the defendant or his attorney.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 35.12. Mode of testing**

In testing the qualification of a prospective juror after he has been sworn, he shall be asked by the court, or under its direction:

1. Except for payment of poll tax or registration, are you a qualified voter in this county and state under the Constitution and laws of this state?
2. Have you ever been convicted of theft or any felony?
3. Are you under indictment or legal accusation for theft or any felony?

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 1364, ch. 412, § 2, eff. Sept. 1, 1969.]

**Art. 35.13. Passing juror for challenge**

A juror in a capital case in which the state has made it known it will seek the death penalty, held to be qualified, shall be passed for acceptance or challenge first to the state and then to the defendant. Challenges to jurors are either peremptory or for cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1739, ch. 659, § 20, eff. Aug. 28, 1967.]

**Art. 35.14. A peremptory challenge**

A peremptory challenge is made to a juror without assigning any reason therefor.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 35.15. Number of challenges**

(a) In capital cases both the State and defendant shall be entitled to fifteen peremptory challenges. Where two or more defendants are tried together, the State shall be entitled to eight peremptory challenges for each defendant; and each defendant shall be entitled to eight peremptory challenges.

(b) In non-capital felony cases, the State and defendant shall each be entitled to ten peremptory challenges. If two or more defendants are tried together each defendant shall be entitled to six peremptory challenges and the State to six for each defendant.

(c) The State and the defendant shall each be entitled to five peremptory challenges in a misdemeanor tried in the district court and to three in the county court, or county court at law. If two or more defendants are tried together, each defendant shall be entitled to three such challenges and the State to three for each defendant in either court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 1127, ch. 426, art. 3, § 4, eff. June 14, 1973.]

**Art. 35.16. Reasons for challenge for cause**

(a) A challenge for cause is an objection made to a particular juror, alleging some fact which renders him incapable or unfit to serve on the jury. A

challenge for cause may be made by either the state or the defense for any one of the following reasons:

1. That he is not a qualified voter in the state and county under the Constitution and laws of the state; provided, however, the failure to pay a poll tax or register to vote shall not be a disqualification;
2. That he has been convicted of theft or any felony;
3. That he is under indictment or other legal accusation for theft or any felony;
4. That he is insane or has such defect in the organs of seeing, feeling or hearing, or such bodily or mental defect or disease as to render him unfit for jury service;
5. That he is a witness in the case;
6. That he served on the grand jury which found the indictment;
7. That he served on a petit jury in a former trial of the same case;
8. That he has a bias or prejudice in favor of or against the defendant;
9. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence him in his action in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in his opinion, the conclusion so established will influence his verdict. If he answers in the affirmative, he shall be discharged without further interrogation by either party or the court. If he answers in the negative, he shall be further examined as to how his conclusion was formed, and the extent to which it will affect his action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if the juror states that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that he is impartial and will render such verdict, may, in its discretion, admit him as competent to serve in such case. If the court, in its discretion, is not satisfied that he is impartial, the juror shall be discharged;
10. That he cannot read or write.

No juror shall be impaneled when it appears that he is subject to the second, third or fourth grounds of challenge for cause set forth above, although both parties may consent. All other grounds for challenge may be waived by the party or parties in whose favor such grounds of challenge exist.

(b) A challenge for cause may be made by the State for any of the following reasons:

1. That the juror has conscientious scruples in regard to the infliction of the punishment of death for crime, in a capital case, where the State is seeking the death penalty;

2. That he is related within the third degree of consanguinity or affinity to the defendant; and

3. That he has a bias or prejudice against any phase of the law upon which the State is entitled to rely for conviction or punishment.

(c) A challenge for cause may be made by the defense for any of the following reasons:

1. That he is related within the third degree of consanguinity or affinity to the person injured by the commission of the offense, or to any prosecutor in the case; and

2. That he has a bias or prejudice against any of the law applicable to the case upon which the defense is entitled to rely, either as a defense to some phase of the offense for which the defendant is being prosecuted or as a mitigation thereof or of the punishment therefor.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 1364, ch. 412, § 3, eff. Sept. 1, 1969.]

#### Art. 35.17. Voir dire examination

1. When the court in its discretion so directs, except as provided in Section 2, the state and defendant shall conduct the voir dire examination of prospective jurors in the presence of the entire panel.

2. In a capital felony case, the court shall propound to the entire panel of prospective jurors questions concerning the principles, as applicable to the case on trial, of reasonable doubt, burden of proof, return of indictment by grand jury, presumption of innocence, and opinion. Then, on demand of the State or defendant, either is entitled to examine each juror on voir dire individually and apart from the entire panel, and may further question the juror on the principles propounded by the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 1127, ch. 426, art. 3, § 5, eff. June 14, 1973.]

#### Art. 35.18. Other evidence on challenge

Upon a challenge for cause, the examination is not confined to the answers of the juror, but other evidence may be heard for or against the challenge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 35.19. Absolute disqualification

No juror shall be impaneled when it appears that he is subject to the second, third or fourth cause of challenge in Article 35.16, though both parties may consent.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 1364, ch. 412, § 4, eff. Sept. 1, 1969.]

#### Art. 35.20. Names called in order

In selecting the jury from the persons summoned, the names of such persons shall be called in the order in which they appear upon the list furnished the defendant. Each juror shall be tried and passed upon separately. A person who has been summoned,

but who is not present, may, upon his appearance before the jury is completed, be tried as to his qualifications and impaneled as a juror, unless challenged, but no cause shall be unreasonably delayed on account of such absence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 35.21. Judge to decide qualifications

The court is the judge, after proper examination, of the qualifications of a juror, and shall decide all challenges without delay and without argument thereupon.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 35.22. Oath to jury

When the jury has been selected, the following oath shall be administered them by the court or under its direction: "You and each of you do solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence, so help you God".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 35.23. Jurors may separate

The court may adjourn veniremen to any day of the term. When jurors have been sworn in a felony case, the court may, at its discretion, permit the jurors to separate until the court has given its charge to the jury, after which the jury shall be kept together, and not permitted to separate except to the extent of housing female jurors separate and apart from male jurors, until a verdict has been rendered or the jury finally discharged, unless by permission of the court with the consent of each party. Any person who makes known to the jury which party did not consent to separation shall be punished for contempt of court. If such jurors are kept overnight, facilities shall be provided for female jurors separate and apart from the facilities provided for male jurors. In misdemeanor cases the court may, at its discretion, permit the jurors to separate at any time before the verdict. In any case in which the jury is permitted to separate, the court shall first give the jurors proper instructions with regard to their conduct as jurors when so separated.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 35.24. Special pay for veniremen

All veniremen and jurors shall be paid a per diem of not less than four dollars nor more than ten dollars per day, as fixed by the commissioners court of such county, which shall be paid out of the jury fund. No greater sum shall be paid challenged veniremen, regardless of the number of cases to which they may be summoned in any one day.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 35.25. Making peremptory challenge

In non-capital cases and in capital cases in which the State's attorney has announced that he will not qualify the jury for, or seek the death penalty, the

party desiring to challenge any juror peremptorily shall strike the name of such juror from the list furnished him by the clerk.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 35.26. Lists returned to clerk

When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the clerk. The clerk shall, if the case be in the district court, call off the first twelve names on the lists that have not been stricken; and, if the case be in the county court, he shall call off the first six names on the lists that have not been stricken, those whose names are called shall be the jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 35.27. Compensation of nonresident witnesses

##### Expenses for nonresident witnesses

Sec. 1. Every person subpoenaed by either party or otherwise required or requested in writing by the prosecuting attorney or the court to appear for the purpose of giving testimony in a criminal proceeding who resides outside the State or the county in which the prosecution is pending shall be compensated by the State for the reasonable and necessary travel and daily living expenses he incurs by reason of his attendance as a witness at such proceeding.

##### Amount of compensation for expenses

Sec. 2. Any person seeking compensation as a witness shall make an affidavit setting out the travel and daily living expenses necessitated by his travel to and from and attendance at the place he appeared to give testimony, together with the number of days that such travel and attendance made him absent from his place of residence. Compensation paid by the State to the witness for such expenses shall not exceed twenty-five dollars per day for daily living expenses and twelve cents per mile for travel by personal automobile.

##### Other expenses

Sec. 3. In addition to compensation for travel and living expenses, the Comptroller of Public Accounts, upon proper application by the attorney for the State, shall pay such other expenses as may be required by the laws of this State or the state from which the attendance of the witness is sought.

##### Application and approval by judge

Sec. 4. Compensation to witnesses as provided for in this Article shall be paid by the State to the witness or his assignee. Claim shall be made by sworn application to the Comptroller of Public Accounts, a copy of which shall be filed with the clerk of the court, setting out the facts showing entitlement as provided in this Article to the compensation, which application shall be presented for approval by the judge who presided over the court or empaneled the grand jury before whom the criminal proceeding was pending. No fee shall be required of any witness for the processing of his claim for compensation.

## Payment by state

Sec. 5. The Comptroller of Public Accounts, upon receipt of a claim approved by the judge, shall examine it and, if he deems the claim in compliance with and authorized by this Article, draw his warrant on the State Treasury for the amount due the witness, or to any person to which the certificate has been assigned by the witness, but no warrant may issue to any assignee of a witness claim unless the assignment is made under oath and acknowledged before some person authorized to administer oaths, certified to by the officer, and under seal. If the appropriation for paying the account is exhausted, the Comptroller of Public Accounts shall file it away and issue a certificate in the name of the witness entitled to it, stating therein the amount of the claim. Each claim not filed in the office of the Comptroller of Public Accounts within twelve months from the date it became due and payable shall be forever barred.

## Advance by state

Sec. 6. Funds required to be tendered to an out-of-state witness pursuant to Article 24.28 of this Code shall be paid by the Comptroller of Public Accounts into the registry of the Court in which the case is to be tried upon certification by the Court such funds are necessary to obtain attendance of said witness. The court shall then cause to be issued checks drawn upon the registry of the Court to secure the attendance of such witness. In the event that such funds are not used pursuant to this Act, the Court shall return the funds to the Comptroller of Public Accounts.

## Advance by county

Sec. 7. The county in which a criminal proceeding is pending, upon request of the district attorney or other prosecutor charged with the duty of prosecution in the proceeding, may advance funds from its treasury to any witness who will be entitled to compensation under this Article in such amounts as may be reasonably necessary to enable the witness to attend as required or requested, including any sums in excess of the compensation provided for by this Article which are required for compliance with Section 4 of Article 24.28 in securing the attendance of a witness from another state under the Uniform Act, and upon any such advance or advances, the county shall be entitled to reimbursement by the State, as an assignee of compensation due a witness from the State.

## Advance for expenses for witnesses of indigent defendant

Sec. 8. Upon application by a defendant shown to be indigent and a showing to the court of reasonable necessity and materiality for the testimony of a witness residing outside the State, the court shall act pursuant to Section 6 hereof to secure advance of funds necessary for the attendance of such witness.

## Limitations

Sec. 9. A witness, when attached and conveyed by a sheriff or other officer, shall not be entitled to

receive compensation while in custody of such officers and the court in its discretion may limit the number of character witnesses allowed compensation pursuant to this Article to not less than two for each defendant and two per defendant for the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 1287, ch. 477, § 2, eff. Aug. 27, 1973.]

**Art. 35.28. When no clerk**

In each instance in Article 35.27 in which the clerk of the court is authorized or directed to perform any act, the judge of such court shall perform the same if there is no clerk of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER THIRTY-SIX. THE TRIAL BEFORE THE JURY

## Art.

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- 36.02. Testimony at any time.
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- 36.33. Discharge without verdict.

**Art. 36.01. Order of proceeding in trial**

A jury being impaneled in any criminal action, the cause shall proceed in the following order:

1. The indictment or information shall be read to the jury by the attorney prosecuting. When prior convictions are alleged for purposes of enhancement only and are not jurisdictional, that portion of the indictment or information reciting such convictions shall not be read until the hearing on punishment is held as provided in Article 37.07.

2. The special pleas, if any, shall be read by the defendant's counsel, and if the plea of not guilty is also relied upon, it shall also be stated.

3. The State's attorney shall state to the jury the nature of the accusation and the facts which are expected to be proved by the State in support thereof.

4. The testimony on the part of the State shall be offered.

5. The nature of the defenses relied upon and the facts expected to be proved in their support shall be stated by defendant's counsel.

6. The testimony on the part of the defendant shall be offered.

7. Rebutting testimony may be offered on the part of each party.

8. In the event of a finding of guilty, the trial shall then proceed as set forth in Article 37.07.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.02. Testimony at any time

The court shall allow testimony to be introduced at any time before the argument of a cause is concluded, if it appears that it is necessary to a due administration of justice.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.03. Witnesses placed under rule

At the request of either party, the witnesses on both sides may be sworn and placed in the custody of an officer and removed out of the courtroom to some place where they cannot hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under the rule. However, if the defendant is a corporation or association it may designate one representative in addition to counsel to aid in the presentation of its case, which representative may not be placed under the rule. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 971, ch. 399, § 2(A), eff. Jan. 1, 1974.]

#### Art. 36.04. Part of witnesses under rule

The party requesting the witnesses to be placed under rule may designate such as he desires placed under rule, and those not designated will be exempt from the rule, or the party may have all of the witnesses in the case placed under rule. The enforcement of the rule is in the discretion of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.05. Not to hear testimony

Witnesses under rule shall be attended by an officer, and all their reasonable wants provided for, unless the court, in its discretion, directs that they be allowed to go at large; but in no case where the witnesses are under rule shall they be allowed to hear any testimony in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.06. Instructed by the court

Witnesses, when placed under rule, shall be instructed by the court that they are not to converse with each other or with any other person about the case, except by permission of the court, and that they are not to read any report of or comment upon the testimony in the case while under rule. The officer who attends the witnesses shall report to the court at once any violation of its instructions, and the party violating the same shall be punished for contempt of court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.07. Order of argument

The order of argument may be regulated by the presiding judge; but the State's counsel shall have the right to make the concluding address to the jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.08. Number of arguments

The court shall never restrict the argument in felony cases to a number of addresses less than two on each side.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.09. Severance on separate indictments

Two or more defendants who are jointly or separately indicted or complained against for the same offense or any offense growing out of the same transaction may be, in the discretion of the court, tried jointly or separately as to one or more defendants; provided that in any event either defendant may testify for the other or on behalf of the state; and provided further, that in cases in which, upon timely motion to sever, and evidence introduced thereon, it is made known to the court that there is a previous admissible conviction against one defendant or that a joint trial would be prejudicial to any defendant, the court shall order a severance as to the defendant whose joint trial would prejudice the other defendant or defendants.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1739, ch. 659, § 21, eff. Aug. 28, 1967.]

#### Art. 36.10. Order of trial

If a severance is granted, the defendants may agree upon the order in which they are to be tried, but if they fail to agree, the court shall direct the order of the trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.11. Discharge before verdict

If it appears during a trial that the court has no jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense, the jury shall be discharged. The accused shall also be discharged, but such discharge shall be no bar in any case to a prosecution before the proper court for any offense unless termination of the former prosecution was improper.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 971, ch. 399, § 2(A), eff. Jan. 1, 1974.]

#### Art. 36.12. Court may commit

If the want of jurisdiction arises from the fact that the defendant is not liable to prosecution in the county where the indictment was presented, the court may in felony cases order the accused into custody for a reasonable length of time to await a warrant for his arrest from the proper county; or if the offense be bailable, may require him to enter into recognizance to answer before the proper court; in which case a certified copy of the recognizance shall be sent forthwith to the clerk of the proper court, to be enforced by that court in case of forfeiture.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.13. Jury is judge of facts

Unless otherwise provided in this Code, the jury is the exclusive judge of the facts, but it is bound to receive the law from the court and be governed thereby.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.14. Charge of court

Subject to the provisions of Article 36.07 in each felony case and in each misdemeanor case tried in a court of record, the judge shall, before the argument begins, deliver to the jury, except in pleas of guilty, where a jury has been waived, a written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury. Before said charge is read to the jury, the defendant or his counsel shall have a reasonable time to examine the same and he shall present his objections thereto in writing, distinctly specifying each ground of objection. Said objections may embody errors claimed to have been committed in the charge, as well as errors claimed to have been committed by omissions therefrom or in failing to charge upon issues arising from the facts, and in no event shall it be necessary for the defendant or his counsel to present special requested charges to preserve or maintain any error assigned to the charge, as herein provided. Compliance with the provisions of this Article is all that is necessary to preserve, for review, the exceptions and objections presented to the charge and any amendment or modification thereof. In no event shall it be necessary for the defendant to except to the action of the court in over-ruling defendant's exceptions or objections to the charge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.15. Requested special charges

Before the court reads his charge to the jury, counsel on both sides shall have a reasonable time to present written instructions and ask that they be

given to the jury. The court shall give or refuse these charges. The defendant may, by a special requested instruction, call the trial court's attention to error in the charge, as well as omissions therefrom, and no other exception or objection to the court's charge shall be necessary to preserve any error reflected by any special requested instruction which the trial court refuses.

Any special requested charge which is granted shall be incorporated in the main charge and shall be treated as a part thereof, and the jury shall not be advised that it is a special requested charge of either party. The judge shall read to the jury only such special charges as he gives.

When the defendant has leveled objections to the charge or has requested instructions or both, and the court thereafter modifies his charge and rewrites the same and in so doing does not respond to objections or requested charges, or any of them, then the objections or requested charges shall not be deemed to have been waived by the party making or requesting the same, but shall be deemed to continue to have been urged by the party making or requesting the same unless the contrary is shown by the record; no exception by the defendant to the action of the court shall be necessary or required in order to preserve for review the error claimed in the charge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.16. Final charge

After the judge shall have received the objections to his main charge, together with any special charges offered, he may make such changes in his main charge as he may deem proper, and the defendant or his counsel shall have the opportunity to present their objections thereto and in the same manner as is provided in Article 36.15, and thereupon the judge shall read his charge to the jury as finally written, together with any special charges given, and no further exception or objection shall be required of the defendant in order to preserve any objections or exceptions theretofore made. After the argument begins no further charge shall be given to the jury unless required by the improper argument of counsel or the request of the jury, or unless the judge shall, in his discretion, permit the introduction of other testimony, and in the event of such further charge, the defendant or his counsel shall have the right to present objections in the same manner as is prescribed in Article 36.15. The failure of the court to give the defendant or his counsel a reasonable time to examine the charge and specify the ground of objection shall be subject to review either in the trial court or in the appellate court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 36.17. Charge certified by judge

The general charge given by the court and all special charges given or refused shall be certified by the judge and filed among the papers in the cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.18. Jury may take charge**

The jury may take to their jury room the charges given by the court after the same have been filed. They shall not be permitted to take with them any charge or part thereof which the court has refused to give.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.19. Review of charge on appeal**

Whenever it appears by the record in any criminal action upon appeal that any requirement of Articles 36.14, 36.15, 36.16, 36.17 and 36.18 has been disregarded, the judgment shall not be reversed unless the error appearing from the record was calculated to injure the rights of defendant, or unless it appears from the record that the defendant has not had a fair and impartial trial. All objections to the charge and to the refusal of special charges shall be made at the time of the trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.20. Bill of exceptions**

The defendant, by himself, or counsel, may tender his bills of exceptions to any decision, opinion, order or charge of the court or other proceedings in the case; and the judge shall sign such bills of exceptions, under the rules prescribed in Article 40.10. The bills of exception may be in narrative form or by questions and answers, and no particular form of words shall be required. Where the matter about which complaint is made and the trial court's ruling thereon reasonably appear from any formal or informal bill of exception, same shall be considered upon appeal, regardless of whether or not the bill of exception is multifarious or relates to more than one subject, complaint, or objection. Where the argument of State's counsel about which complaint is made in a bill of exception is manifestly improper, or violates some mandatory statute, or some new fact is thereby injected into the case, it shall not be necessary that the bill of exception negative that the argument was not invited, or in reply to argument of defendant or his counsel, or any other fact by which the argument complained of may have been authorized. If such matters exist, the trial court by qualification or otherwise, may require the bill of exception to reflect any reason whereby the argument complained of would not be error. The transcription of any evidence, testimony, or argument of State's counsel, with the objections made to such evidence, testimony, or argument, shall constitute an acceptable bill of exceptions under this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.21. To provide jury room**

The sheriff shall provide a suitable room for the deliberation of the jury and supply them with such necessary food and lodging as he can obtain. No intoxicating liquor shall be furnished them. In all cases wherein a jury consists partly of male jurors and partly of female jurors, the sheriff shall provide

facilities for the female jurors separate and apart from the facilities provided for the male jurors. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.22. Conversing with jury**

No person shall be permitted to be with a jury while it is deliberating. No person shall be permitted to converse with a juror about the case on trial except in the presence and by the permission of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.23. Violation of preceding Article**

Any juror or other person violating the preceding Article shall be punished for contempt of court by confinement in jail not to exceed three days or by fine not to exceed one hundred dollars, or by both such fine and imprisonment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.24. Officer shall attend jury**

The sheriff of the county shall furnish the court with a bailiff during the trial of any case to attend the wants of the jury and to act under the direction of the court. If the person furnished by the sheriff is to be called as a witness in the case he may not serve as bailiff.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.25. Written evidence**

There shall be furnished to the jury upon its request any exhibits admitted as evidence in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.26. Foreman of jury**

Each jury shall appoint one of its members foreman.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.27. Jury may communicate with court**

When the jury wishes to communicate with the court, it shall so notify the sheriff, who shall inform the court thereof. Any communication relative to the cause must be written, prepared by the foreman and shall be submitted to the court through the bailiff. The court shall answer any such communication in writing, and before giving such answer to the jury shall use reasonable diligence to secure the presence of the defendant and his counsel, and shall first submit the question and also submit his answer to the same to the defendant or his counsel or objections and exceptions, in the same manner as any other written instructions are submitted to such counsel, before the court gives such answer to the jury, but if he is unable to secure the presence of the defendant and his counsel, then he shall proceed to answer the same as he deems proper. The written instruction or answer to the communication shall be read in open court unless expressly waived by the defendant.

All such proceedings in felony cases, shall be a part of the record and recorded by the court reporter.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.28. Jury may have witness re-examined or testimony read**

In the trial of a criminal case in a court of record, if the jury disagree as to the statement of any witness they may, upon applying to the court, have read to them from the court reporter's notes that part of such witness testimony or the particular point in dispute, and no other; but if there be no such reporter, or if his notes cannot be read to the jury, the court may cause such witness to be again brought upon the stand and the judge shall direct him to repeat his testimony as to the point in dispute, and no other, as nearly as he can in the language used on the trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.29. If a juror becomes ill**

Not less than twelve jurors can render and return a verdict in a felony case. It must be concurred in by each juror and signed by the foreman; provided, however, when pending the trial of any felony case, one juror may die or be disabled from sitting at any time before the charge of the court is read to the jury, the remainder of the jury shall have the power to render the verdict; but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. After the charge of the court is read to the jury, if any one of them becomes so sick as to prevent the continuance of his duty, or any accident of circumstance occurs to prevent their being kept together under circumstances under which the law or the instructions of the court requires that they be kept together, the jury may be discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.30. Discharging jury in misdemeanor**

If nine of the jury can be kept together in a misdemeanor case in the district court, they shall not be discharged. If more than three of the twelve are discharged, the entire jury shall be discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.31. Disagreement of jury**

After the cause is submitted to the jury, it may be discharged when it cannot agree and both parties consent to its discharge; or the court may in its discretion discharge it where it has been kept together for such time as to render it altogether improbable that it can agree.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.32. Receipt of verdict and final adjournment**

During the trial of any case, the term shall be deemed to have been extended until such time as the jury has rendered its verdict or been discharged according to law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 36.33. Discharge without verdict**

When a jury has been discharged, as provided in the four preceding Articles, without having rendered a verdict, the cause may be again tried at the same or another term.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**CHAPTER THIRTY-SEVEN. THE VERDICT**

Art.

- 37.01. Verdict.
- 37.02. Verdict by nine jurors.
- 37.03. In county court.
- 37.04. When jury has agreed.
- 37.05. Polling the jury.
- 37.06. Presence of defendant.
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- 37.071. Procedure in capital case.
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- 37.09. Lesser included offenses.
- 37.10. Informal verdict.
- 37.11. Defendants tried jointly.
- 37.12. Judgment on verdict.
- 37.13. If jury believes accused insane.
- 37.14. Acquittal of higher offense as jeopardy.

**Art. 37.01. Verdict**

A "verdict" is a written declaration by a jury of its decision of the issue submitted to it in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 37.02. Verdict by nine jurors**

In misdemeanor cases in the district court, where one or more jurors have been discharged from serving after the cause has been submitted to them, if there be as many as nine of the jurors remaining, those remaining may render and return a verdict; but in such case, the verdict must be signed by each juror rendering it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 37.03. In county court**

In the county court the verdict must be concurred in by each juror.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 37.04. When jury has agreed**

When the jury agrees upon a verdict, it shall be brought into court by the proper officer; and if it states that it has agreed, the verdict shall be read aloud by the clerk. If in proper form and no juror dissents therefrom, and neither party requests a poll of the jury, the verdict shall be entered upon the minutes of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 37.05. Polling the jury**

The State or the defendant shall have the right to have the jury polled, which is done by calling separately the name of each juror and asking him if the verdict is his. If all, when asked, answer in the affirmative, the verdict shall be entered upon the minutes; but if any juror answer in the negative, the jury shall retire again to consider its verdict.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 37.06. Presence of defendant**

In felony cases the defendant must be present when the verdict is read unless his absence is wilful or voluntary. A verdict in a misdemeanor case may be received and read in the absence of the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 37.07. Verdict must be general; separate hearing on proper punishment**

Sec. 1. (a) The verdict in every criminal action must be general. When there are special pleas on which a jury is to find they must say in their verdict that the allegations in such pleas are true or untrue.

(b) If the plea is not guilty, they must find that the defendant is either guilty or not guilty, and, except as provided in Section 2, they shall assess the punishment in all cases where the same is not absolutely fixed by law to some particular penalty.

(c) If the charging instrument contains more than one count or if two or more offenses are consolidated for trial pursuant to Chapter 3 of the Penal Code, the jury shall be instructed to return a finding of guilty or not guilty in a separate verdict as to each count and offense submitted to them.

Sec. 2. (a) In all criminal cases, other than misdemeanor cases of which the justice court or municipal court has jurisdiction, which are tried before a jury on a plea of not guilty, the judge shall, before argument begins, first submit to the jury the issue of guilt or innocence of the defendant of the offense or offenses charged, without authorizing the jury to pass upon the punishment to be imposed.

(b) Except as provided in Article 37.071, if a finding of guilty is returned, it shall then be the responsibility of the judge to assess the punishment applicable to the offense; provided, however, that (1) in any criminal action where the jury may recommend probation and the defendant filed his sworn motion for probation before the trial began, and (2) in other cases where the defendant so elects in writing at the time he enters his plea in open court, the punishment shall be assessed by the same jury. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment.

(c) Punishment shall be assessed on each count on which a finding of guilty has been returned.

Sec. 3. Evidence of prior criminal record in all criminal cases after a finding of guilty.

(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the state and the defendant as to the prior criminal record of the defendant, his general reputation and his character. The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged.

(b) After the introduction of such evidence has been concluded, and if the jury has the responsibility of assessing the punishment, the court shall give such additional written instructions as may be necessary and the order of procedure and the rules governing the conduct of the trial shall be the same as are applicable on the issue of guilt or innocence.

(c) In cases where the matter of punishment is referred to the jury, the verdict shall not be complete until the jury has rendered a verdict both on the guilt or innocence of the defendant and the amount of punishment, where the jury finds the defendant guilty. In the event the jury shall fail to agree, a mistrial shall be declared, the jury shall be discharged, and no jeopardy shall attach.

(d) When the judge assesses the punishment, and after the hearing of the evidence hereinabove provided for, he shall forthwith announce his decision in open court as to the punishment to be assessed.

(e) Nothing herein contained shall be construed as affecting the admissibility of extraneous offenses on the question of guilt or innocence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1739, ch. 659, § 22, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 971, ch. 399, § 2(A), eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1126, ch. 426, art. 3, § 2, eff. June 14, 1973.]

**Art. 37.071. Procedure in capital case**

(a) Upon a finding that the defendant is guilty of a capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment. The proceeding shall be conducted in the trial court before the trial jury as soon as practicable. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence. This subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(b) On conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result;

(2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

(3) if raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased.

(c) The state must prove each issue submitted beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue submitted.

(d) The court shall charge the jury that:

(1) it may not answer any issue "yes" unless it agrees unanimously; and

(2) it may not answer any issue "no" unless 10 or more jurors agree.

(e) If the jury returns an affirmative finding on each issue submitted under this article, the court shall sentence the defendant to death. If the jury returns a negative finding on any issue submitted under this article, the court shall sentence the defendant to confinement in the Texas Department of Corrections for life.

(f) The judgment of conviction and sentence of death shall be subject to automatic review by the Court of Criminal Appeals within 60 days after certification by the sentencing court of the entire record unless time is extended an additional period not to exceed 30 days by the Court of Criminal Appeals for good cause shown. Such review by the Court of Criminal Appeals shall have priority over all other cases, and shall be heard in accordance with rules promulgated by the Court of Criminal Appeals. [Acts 1973, 63rd Leg., p. 1125, ch. 426, art. 3, § 1, eff. June 14, 1973.]

#### Art. 37.08. Conviction of lesser included offenses

In a prosecution for an offense with lesser included offenses, the jury may find the defendant not guilty of the greater offense, but guilty of any lesser included offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 972, ch. 399, § 2(A), eff. Jan. 1, 1974.]

#### Art. 37.09. Lesser included offenses

An offense is a lesser included offense if:

(1) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(2) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest suffices to establish its commission;

(3) it differs from the offense charged only in the respect that a less culpable mental state suffices to establish its commission; or

(4) it consists of an attempt to commit the offense charged or an otherwise included offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 972, ch. 399, § 2(A), eff. Jan. 1, 1974.]

#### Art. 37.10. Informal verdict

If the verdict of the jury is informal, its attention shall be called to it, and with its consent the verdict may, under the direction of the court, be reduced to

the proper form. If the jury refuses to have the verdict altered, it shall again retire to its room to deliberate, unless it manifestly appear that the verdict is intended as an acquittal; and in that case, the judgment shall be rendered accordingly, discharging the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 37.11. Defendants tried jointly

Where several defendants are tried together, the jury may convict each defendant it finds guilty and acquit others. If it agrees to a verdict as to one or more, it may find a verdict in accordance with such agreement, and if it cannot agree as to others, a mistrial may be entered as to them.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 37.12. Judgment on verdict

On each verdict of acquittal or conviction, the proper judgment shall be entered immediately. If acquitted, the defendant shall be at once discharged from all further liability upon the charge for which he was tried; provided that, in misdemeanor cases where there is returned a verdict, or a plea of guilty is entered and the punishment assessed is by fine only, the court may, on written request of the defendant and for good cause shown, defer judgment until some other day fixed by order of the court; but in no event shall the judgment be deferred for a longer period of time than six months. On expiration of the time fixed by the order of the court, the court or judge thereof, shall enter judgment on the verdict or plea and the same shall be executed as provided by Chapter 43 of this Code. Provided further, that the court or judge thereof, in the exercise of sound discretion may permit the defendant where judgment is deferred, to remain at large on his personal bond, or may require him to enter into bail bond in a sum at least double the amount of the assessed fine and costs, conditioned that the defendant and sureties, jointly and severally, will pay such fine and costs unless the defendant personally appears on the day, set in the order and discharges the judgment in the manner provided by Chapter 43 of this Code; and for the enforcement of any judgment entered, all writs, processes and remedies of this Code are made applicable so far as necessary to carry out the provisions of this Article. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 37.13. If jury believes accused insane

When a jury has been impaneled to assess the punishment upon a plea of guilty, it shall say in its verdict what the punishment is which it assesses; but if it is of the opinion that a person pleading guilty is insane, it shall so report to the court, and an issue as to that fact shall be tried before another jury; and if, upon such trial, it be found that the defendant is insane, such proceedings shall be had as directed in cases where a defendant becomes insane after conviction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 37.14. Acquittal of higher offense as jeopardy**

If a defendant, prosecuted for an offense which includes within it lesser offenses, be convicted of an offense lower than that for which he is indicted, and a new trial be granted him, or the judgment be arrested for any cause other than the want of jurisdiction, the verdict upon the first trial shall be considered an acquittal of the higher offense; but he may, upon a second trial, be convicted of the same offense of which he was before convicted, or any other inferior thereto.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### CHAPTER THIRTY-EIGHT. EVIDENCE IN CRIMINAL ACTIONS

Art.

- 38.01. Rules of common law.
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**Art. 38.01. Rules of common law**

The rules of evidence known to the common law of England, both in civil and criminal cases, shall govern in the trial of criminal actions in this State, except where they are in conflict with the provisions of this Code or of some other statute of the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.02. Rules of civil statute**

The rules of evidence prescribed in the statute law of this State in civil suits shall, so far as applicable, govern also in criminal actions when not in conflict with the provisions of this Code or of the Penal Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.03. Presumption of innocence**

The defendant in a criminal case is presumed to be innocent until his guilt is established by legal evidence beyond a reasonable doubt, and in case of reasonable doubt as to his guilt he is entitled to be acquitted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.04. Jury are judges of facts**

The jury, in all cases, is the exclusive judge of the facts proved, and of the weight to be given to the testimony, except where it is provided by law that proof of any particular fact is to be taken as either conclusive or presumptive proof of the existence of another fact, or where the law directs that a certain degree of weight is to be attached to a certain species of evidence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.05. Judge shall not discuss evidence**

In ruling upon the admissibility of evidence, the judge shall not discuss or comment upon the weight of the same or its bearing in the case, but shall simply decide whether or not it is admissible; nor shall he, at any stage of the proceeding previous to the return of the verdict, make any remark calculated to convey to the jury his opinion of the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.06. Persons competent to testify**

All persons are competent to testify in criminal cases except the following:

1. Insane persons who are in an insane condition of mind at the time when they are offered as a witness, or who were in that condition when the events happened of which they are called to testify; and

2. Children or other persons who, after being examined by the court, appear not to possess sufficient intellect to relate transactions with respect to which they are interrogated, or who do not understand the obligation of an oath.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.07. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(b), eff. Jan. 1, 1974****Art. 38.08. Defendant may testify**

Any defendant in a criminal action shall be permitted to testify in his own behalf therein, but the failure of any defendant to so testify shall not be taken as a circumstance against him, nor shall the same be alluded to or commented on by counsel in the cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.09. Court may determine competency**

The court may, upon suggestion made, or of its own option interrogate a person who is offered as a witness, to ascertain whether he is competent to testify, or the competency or incompetency of the witness may be shown by evidence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.10. All others competent witnesses**

All other persons, except those enumerated in Articles 38.06, 38.101, and 38.11, whatever may be the relationship between the defendant and witness, are competent to testify, except that an attorney at law shall not disclose a communication made to him by his client during the existence of that relationship, nor disclose any other fact which came to the knowledge of such attorney by reason of such relationship.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 2984, ch. 983, § 1, eff. June 15, 1971.]

**Art. 38.101. Communications by drug abusers**

A communication to any person involved in the treatment or examination of drug abusers by a person being treated voluntarily or being examined for admission to voluntary treatment for drug abuse is not admissible. However, information derived from the treatment or examination of drug abusers may be used for statistical and research purposes if the names of the patients are not revealed.

[Acts 1971, 62nd Leg., p. 2984, ch. 983, § 2, eff. June 15, 1971.]

**Art. 38.11. Husband or wife as witness**

Neither husband nor wife shall, in any case, testify as to communications made by one to the other while married. Neither husband nor wife shall, in any case, after the marriage relation ceases, be made witnesses as to any communication made while the marriage relation existed except in a case where one or the other is on trial for an offense and a declaration or communication made by the wife to the husband or by the husband to the wife goes to extenuate or justify the offense. The husband and wife may, in all criminal actions, be witnesses for each other, but except as hereinafter provided, they shall in no case testify against each other in a criminal prosecution. However, a wife or husband may voluntarily testify against each other in any case for an offense involving any grade of assault or violence committed by one against the other or against any child of either under 16 years of age, or in any case where either is charged with incest of a child of either, or in any case where either is charged with bigamy, or in any case where either is charged with interference with child custody, or in any case where either is charged with nonsupport of his or her spouse or minor child.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 972, ch. 399, § 2(A), eff. Jan. 1, 1974.]

**Art. 38.12. Religious opinion**

No person is incompetent to testify on account of his religious opinion or for the want of any religious belief.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.13. Judge as a witness**

The trial judge is a competent witness for either the State or the accused, and may be sworn by the clerk of his court and examined, but he is not required to testify if he declares that there is no fact within his knowledge important in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.14. Testimony of accomplice**

A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.15. Two witnesses in treason**

No person can be convicted of treason except upon the testimony of at least two witnesses to the same overt act, or upon his own confession in open court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.16. Evidence in treason**

Evidence shall not be admitted in a prosecution for treason as to an overt act not expressly charged in the indictment; nor shall any person be convicted under an indictment for treason unless one or more overt acts are expressly charged therein.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.17. Two witnesses required**

In all cases where, by law, two witnesses, or one with corroborating circumstances, are required to authorize a conviction, if the requirement be not fulfilled, the court shall instruct the jury to render a verdict of acquittal, and they are bound by the instruction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.18. Perjury and aggravated perjury**

(a) No person may be convicted of perjury or aggravated perjury if proof that his statement is false rests solely upon the testimony of one witness other than the defendant.

(b) Paragraph (a) of this article does not apply to prosecutions for perjury or aggravated perjury involving inconsistent statements.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 973, ch. 399, § 2(A), eff. Jan. 1, 1974.]

**Art. 38.19. Intent to defraud in forgery**

In trials of forgery, it need not be proved that the defendant committed the act with intent to defraud any particular person. It shall be sufficient to prove that the forgery was, in its nature, calculated to injure or defraud any of the sovereignties, bodies corporate or politic, officers or persons, named in the definition of forgery in the Penal Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.20. Dying declarations**

The dying declaration of a deceased person may be offered in evidence, either for or against a defendant charged with the homicide of such deceased person, under the restrictions hereafter provided. To render the declarations of the deceased competent evidence, it must be satisfactorily proved:

1. That at the time of making such declaration he was conscious of approaching death, and believed there was no hope of recovery;

2. That such declaration was voluntarily made, and not through the persuasion of any person;

3. That such declaration was not made in answer to interrogatories calculated to lead the deceased to make any particular statement; and

4. That he was of sane mind at the time of making the declaration.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.21. Confession**

The confession of a defendant may be used in evidence against him if it appear that the same was freely made without compulsion or persuasion, under the rules hereafter prescribed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.22. When oral and written confessions shall be used**

1. The oral or written confession of a defendant made while the defendant was in jail or other place of confinement or in the custody of an officer shall be admissible if:

(a) it be shown to be the voluntary statement of the accused taken in the presence of an examining court in accordance with law; or

(b) it be made in writing and signed by the accused, and show that the accused has at some time prior to the making thereof received from the person to whom the statement is made the warning set out in Subsection (c)(1), (2) and (3) below or received from the magistrate the warning provided in Article 15.17, and shows the time, date, and place of the warning and the name of the person or magistrate who administered the warning; or

(c) it be made in writing to some person who has warned the defendant from whom the statement is taken that

(1) he has the right to have a lawyer present to advise him either prior to any questioning or during any questioning,

(2) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to counsel with him prior to or during any questioning, and

(3) he has the right to remain silent and not make any statement at all and that any statement he makes may be used in evidence against him at his trial.

The defendant must knowingly, intelligently, and voluntarily waive these rights prior to and during the making of the statement.

(d) If a written statement is taken and if the defendant is unable to write his name and signs the statement by making his mark, such statement shall not be admitted in evidence, unless it be witnessed by some person other than a peace officer, who shall sign the same as witness.

(e) It be made orally and the defendant makes a statement of facts or circumstances that are found to be true, which conduce to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed.

(f) Nothing contained herein shall preclude the admissibility of any statement made by the defendant in open court at his trial or at his examining trial in compliance with Articles 16.03 and 16.04 or of any statement that is the res gestae of the arrest or of the offense.

2. In all cases where a question is raised as to the voluntariness of a confession or statement, the court must make an independent finding in the absence of the jury as to whether the confession or statement was made under voluntary conditions. If the confession or statement has been found to have been voluntarily made and held admissible as a matter of law and fact by the court in a hearing in the absence of the jury, the court must enter an order stating its findings, which order shall be filed among the papers of the cause. Such order shall not be exhibited to the jury nor the finding thereof made known to the jury in any manner. Upon the finding by the judge as a matter of law and fact that the confession or statement was voluntarily made, evidence pertaining to such matter may be submitted to the jury and it shall be instructed that unless the jury believes beyond a reasonable doubt that the confession or statement was voluntarily made, the jury shall not consider such statement or confession for any purpose nor any evidence obtained as a result thereof. In any case where a motion to suppress the statement or confession has been filed and evidence has been submitted to the court on this issue, the court within its discretion may reconsider such evidence in his finding that the statement or confession was voluntarily made and the same evidence submitted to the court at the hearing on the motion to suppress shall be made a part of the record the same as if it were being presented at the time of trial. However, the state or the defendant shall be entitled to present any new evidence on the issue of the voluntariness of the statement or confession prior to the court's final ruling and order stating its findings.

3. When the issue is raised by the evidence, the trial judge shall appropriately instruct the jury, gen-

erally, on the law pertaining to such statement or confession.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1740, ch. 659, § 23, eff. Aug. 28, 1967.]

**Art. 38.23. Evidence not to be used**

No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

In any case where the legal evidence raises an issue hereunder, the jury shall be instructed that if it believes, or has a reasonable doubt, that the evidence was obtained in violation of the provisions of this Article, then and in such event, the jury shall disregard any such evidence so obtained.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.24. Part of an act, declaration, conversation or writing**

When part of an act, declaration or conversation or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other, as when a letter is read, all letters on the same subject between the same parties may be given. When a detailed act, declaration, conversation or writing is given in evidence, any other act, declaration or writing which is necessary to make it fully understood or to explain the same may also be given in evidence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.25. Written part of instrument controls**

When an instrument is partly written and partly printed, the written shall control the printed portion when the two are inconsistent.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.26. If subscribing witness denies execution**

When a subscribing witness denies or does not recollect the execution of an instrument to which his name appears, its execution may be proved by other evidence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.27. Evidence of handwriting**

It is competent to give evidence of handwriting by comparison, made by experts or by the jury. Proof by comparison only shall not be sufficient to establish the handwriting of a witness who denies his signature under oath.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.28. Attacking testimony of his own witness**

A party may, when testimony of his own witness is injurious to his cause, attack the testimony in any other manner except by offering evidence of the witness' bad character.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.29. Indictment, information or complaint not admissible to impeach witness**

The fact that a defendant in a criminal case, or a witness in a criminal case, is or has been, charged by indictment, information or complaint, with the commission of an offense against the criminal laws of this State, of the United States, or any other State shall not be admissible in evidence on the trial of any criminal case for the purpose of impeaching any person as a witness unless on trial under such indictment, information or complaint a final conviction has resulted, or a suspended sentence has been given and has not been set aside, or such person has been placed on probation and the period of probation has not expired. In trials of defendants under Article 36.09, it may be shown that the witness is presently charged with the same offense as the defendant at whose trial he appears as a witness.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.30. Interpreter**

When a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person may be subpoenaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein, under the same rules and penalties as are provided for witnesses. Such interpreters shall receive the same pay as interpreters receive in civil suits.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 38.31. Interpreters for deaf or deaf-mute persons**

(a) In all criminal prosecutions, where the accused is deaf or a deaf-mute, he shall have the proceedings of the trial interpreted to him in a language that he can understand by a qualified interpreter appointed by the court.

(b) In all cases where the mental condition of a person is being considered and where such person may be committed to a mental institution, and where such person is deaf or a deaf-mute, all of the court proceedings pertaining to him shall be interpreted by a qualified interpreter appointed by the court.

(c) In any case where an interpreter is required to be appointed by the court under this Article, the court shall not commence proceedings until the appointed interpreter is in court in a position not exceeding ten feet from and in full view of the deaf person.

(d) The interpreter appointed under the terms of this Article shall be required to take an oath that he will make a true interpretation to the person accused or being examined, which person is deaf or a deaf-mute, of all the proceedings of his case in a language that he understands; and that he will repeat said deaf or deaf-mute person's answer to questions to counsel, court, or jury, in the English language, in his best skill and judgment.

(e) Interpreters appointed under the terms of this Article will receive for their services a sum not to exceed \$50 a day, as follows: interpreters shall be paid not less than \$15 nor more than \$50 a day, at the discretion of the judge presiding. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 195, ch. 105, § 2, eff. Aug. 28, 1967.]

#### Art. 38.32. Presumption of death

(a) Upon introduction and admission into evidence of a valid certificate of death wherein the time of death of the decedent has been entered by a licensed physician, a presumption exists that death occurred at the time stated in the certificate of death.

(b) A presumption existing pursuant to Section (a) of this Article is sufficient to support a finding as to time of death but may be rebutted through a showing by a preponderance of the evidence that death occurred at some other time.

[Acts 1969, 61st Leg., p. 1034, ch. 337, § 1, eff. May 27, 1969.]

### CHAPTER THIRTY-NINE. DEPOSITIONS AND DISCOVERY

Art.

- 39.01. In examining trial.
- 39.02. Depositions for defendant.
- 39.03. Officers who may take the deposition.
- 39.04. Applicability of civil rules.
- 39.05. Objections.
- 39.06. Written interrogatories.
- 39.07. Certificate.
- 39.08. Authenticating the deposition.
- 39.09. Non-resident witnesses.
- 39.10. Return.
- 39.11. Waiver.
- 39.12. Predicate to read.
- 39.13. Impeachment.
- 39.14. Discovery.

#### Art. 39.01. In examining trial

When an examination takes place in a criminal action before a magistrate, the defendant may have the deposition of any witness taken by any officer or officers named in this Chapter. The defendant shall not use the deposition for any purpose unless he first consent that the entire evidence or statement of the witness may be used against him by the State on the trial of the case, subject to all legal objections. The deposition of a witness duly taken before an examining trial or a jury of inquest and reduced to writing and certified according to law where the defendant was present when such testimony was taken, and had the privilege afforded of cross-examining the witness, or taken at any prior trial of the defendant for the same offense, may be used by either the State or the defendant in the trial of such defendant's criminal case under the following circumstances:

When oath is made by the party using the same that the witness resides outside the State; or that

since his testimony was taken, the witness has died, or that he has removed beyond the limits of the State, or that he has been prevented from attending the court through the act or agency of the other party, or by the act or agency of any person whose object was to deprive the defendant of the benefit of the testimony; or that by reason of age or bodily infirmity, such witness cannot attend. When the testimony is sought to be used by the State, the oath may be made by any credible person. When sought to be used by the defendant, the oath shall be made by him in person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 39.02. Depositions for defendant

Depositions of witnesses may be taken by the defendant. When the defendant desires to take the deposition of a witness, he shall, by himself or counsel, file with the clerk of the court in which the case is pending an affidavit stating the facts necessary to constitute a good reason for taking the same, and an application to take the same. Provided that upon the filing of such application, and after notice to the attorney for the state, the courts shall hear the application and determine if good reason exists for taking the deposition. Such determination shall be based on the facts made known at the hearing and the court, in its judgment, shall grant or deny the application on such facts.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1741, ch. 659, § 24, eff. Aug. 28, 1967.]

#### Art. 39.03. Officers who may take the deposition

Upon the filing of such an affidavit and application, the court shall appoint, order or designate one of the following persons before whom such deposition shall be taken:

1. A district judge.
2. A county judge.
3. A notary public.
4. A district clerk.
5. A county clerk.

Such order shall specifically name such person and the time when and place where such deposition shall be taken. Failure of a witness to respond thereto, shall be punishable by contempt by the court. Such deposition shall be oral or written, as the court shall direct.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1741, ch. 659, § 25, eff. Aug. 28, 1967.]

#### Art. 39.04. Applicability of civil rules

The rules prescribed in civil cases for issuance of commissions, subpoenaing witnesses, taking the depositions of witnesses and all other formalities governing depositions shall, as to the manner and form of taking and returning the same and other formalities to the taking of the same, govern in criminal actions, when not in conflict with this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 39.05. Objections**

The rules of procedure as to objections in depositions in civil actions shall govern in criminal actions when not in conflict with this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 39.06. Written interrogatories**

When any such deposition is to be taken by written interrogatories, such written interrogatories shall be filed with the clerk of the court, and a copy of the same served on all other parties or their counsel for the length of time and in the manner required for service of interrogatories in civil action, and the same procedure shall also be followed with reference to cross-interrogatories as that prescribed in civil actions.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 39.07. Certificate**

Where depositions are taken under commission in criminal actions, the officer or officers taking the same shall certify that the person deposing is the identical person named in the commission; or, if they cannot certify to the identity of the witness, there shall be an affidavit of some person attached to the deposition proving the identity of such witness, and the officer or officers shall certify that the person making the affidavit is known to them.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1742, ch. 659, § 26, eff. Aug. 28, 1967.]

**Art. 39.08. Authenticating the deposition**

The official seal and signature of the officer taking the deposition shall be attached to the certificate authenticating the deposition.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 39.09. Non-resident witnesses**

Depositions of a witness residing out of the State may be taken before a judge or before a commissioner of deeds and depositions for this State, who resides within the State where the deposition is to be taken, or before a notary public of the place where such deposition is to be taken, or before any commissioned officer of the armed services or before any diplomatic or consular officer. The deposition of a non-resident witness who may be temporarily within the State, may be taken under the same rules which apply to the taking of depositions of other witnesses in the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 39.10. Return**

In all cases the return of depositions may be made as provided in civil actions.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 39.11. Waiver**

The State and defense may agree upon a waiver of any formalities in the taking of a deposition other than that the taking of such deposition must be under oath.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 39.12. Predicate to read**

Depositions taken in criminal actions shall not be read unless oath be made that the witness resides out of the State; or that since his deposition was taken, the witness has died; or that he has removed beyond the limits of the State; or that he has been prevented from attending the court through the act or agency of the defendant; or by the act or agency of any person whose object was to deprive the defendant of the benefit of the testimony; or that by reason of age or bodily infirmity, such witness cannot attend. When the deposition is sought to be used by the State, the oath may be made by any credible person. When sought to be used by the defendant, the oath shall be made by him in person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 39.13. Impeachment**

Nothing contained in the preceding Articles shall be construed as prohibiting the use of any such evidence for impeachment purposes under the rules of evidence heretofore existing at common law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 39.14. Discovery**

Upon motion of the defendant showing good cause therefor and upon notice to the other parties, the court in which an action is pending may order the State before or during trial of a criminal action therein pending or on trial to produce and permit the inspection and copying or photographing by or on behalf of the defendant of any designated documents, papers, written statement of the defendant, (except written statements of witnesses and except the work product of counsel in the case and their investigators and their notes or report), books, accounts, letters, photographs, objects or tangible things not privileged, which constitute or contain evidence material to any matter involved in the action and which are in the possession, custody or control of the State or any of its agencies. The order shall specify the time, place and manner of making the inspection and taking the copies and photographs of any of the aforementioned documents or tangible evidence; provided, however, that the rights herein granted shall not extend to written communications between the State or any of its agents or representatives or employees. Nothing in this Act shall authorize the removal of such evidence from the possession of the State, and any inspection shall be in the presence of a representative of the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**PROCEEDINGS AFTER VERDICT****CHAPTER FORTY. NEW TRIALS****Art.**

- 40.01. Definition of "new trial".
- 40.02. Granted only to accused.
- 40.03. Grounds for new trial in felony.
- 40.04. In misdemeanors.
- 40.05. Time to apply for new trial; amendment.
- 40.06. State may controvert motion.

- Art.  
 40.07. Judge not to discuss evidence.  
 40.08. Effect of a new trial.  
 40.09. The record on appeal.  
 40.10. Application of Civil Statutes.

**Art. 40.01. Definition of "new trial"**

A "new trial" is the rehearing of a criminal action, after verdict, before the judge or another jury. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 40.02. Granted only to accused**

A new trial can in no case be granted where the verdict or judgment has been rendered for the accused. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 40.03. Grounds for new trial in felony**

New trials, in cases of felony, shall be granted the defendant for the following causes, and for no other:

(1) Where the defendant is an individual and has been tried in his absence, except as otherwise provided in this code, or has been denied counsel;

(2) Where the court has misdirected the jury as to the law, or has committed any other material error calculated to injure the rights of the defendant;

(3) Where the verdict has been decided by lot, or in any other manner than by a fair expression of opinion by the jurors;

(4) Where a juror has received a bribe to convict, or has been guilty of any other corrupt conduct;

(5) Where any material witness of the defendant has, by force, threats or fraud, been prevented from attending the court, or where any written evidence, tending to establish the innocence of the defendant, has been intentionally destroyed or removed so that it could not be produced upon the trial;

(6) Where new evidence material to the defendant has been discovered since the trial. A motion for a new trial on this ground shall be governed by the rules which regulate civil suits;

(7) Where the jury, after having retired to deliberate upon a case, has received other evidence; or where a juror has conversed with any person in regard to the case; or where any juror at any time during the trial or after retiring for deliberation, may have become so intoxicated as to render it probable his verdict was influenced thereby. The mere consumption of alcoholic beverage by a juror shall not be sufficient ground for a new trial;

(8) Where, from the misconduct of the jury, the court is of the opinion that the defendant has not received a fair and impartial trial. It shall be competent to prove such misconduct by the voluntary affidavit of a juror; and the verdict may, in like manner, be sustained by such affidavit; and

(9) Where the verdict is contrary to law and evidence. A verdict is not contrary to the law and evidence, within the meaning of this provision, where the defendant is found guilty of an offense of inferior grade to, but of the same nature as, the offense proved.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 973, ch. 399, § 2(A), eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1127, ch. 426, art. 3, § 5, eff. June 14, 1973.]

**Art. 40.04. In misdemeanors**

New trials in misdemeanor cases may be granted for any cause specified in the preceding Article, except that the first cause specified in subdivision 1 of said Article shall not be available as ground for new trial in any misdemeanor case where the maximum punishment may be a fine only.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 40.05. Time to apply for new trial; amendment**

A motion for new trial shall be filed within ten days after conviction as evidenced by the verdict of the jury, and may be amended by leave of the court at any time before it is acted on within twenty days after it is filed. Such motion shall be presented to the court within ten days after the filing of the original or amended motion, and shall be determined by the court within twenty days after the filing of the original or amended motion, but for good cause shown the time for filing or amending may be extended by the court, but shall not delay the filing of the record on appeal.

A motion for new trial may be filed after the expiration of the term at which said conviction resulted, either during a new term of court or during vacation, and a motion for new trial may be determined in vacation or at a new term of court, and need not be determined during the term at which filed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 40.06. State may controvert motion**

The State may take issue with the defendant upon the truth of any cause set forth in the motion for a new trial; and in such case, the judge shall hear evidence, by affidavit or otherwise, and determine the issue.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 40.07. Judge not to discuss evidence**

In granting or refusing a new trial, the judge shall not sum up, discuss or comment upon the evidence in the case, but shall simply grant or refuse the motion, without prejudice to either party.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 40.08. Effect of a new trial**

The effect of a new trial is to place the cause in the same position in which it was before any trial had taken place. The former conviction shall be

regarded as no presumption of guilt, nor shall it be alluded to in the argument.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 40.09. The record on appeal

##### 1. Record in appeals to the Court of Criminal Appeals

In all cases appealable by law to the Court of Criminal Appeals, the clerk of the court that entered the conviction sought to be appealed from shall, under his hand and seal of the court, make and prepare an appellate record comprising a true copy of the matter designated by the parties, but shall always include, whether designated or not, copies of the material pleadings, material docket entries made by the court, the charge, verdict, judgment, sentence, notice of appeal, any appeal bond, all written motions and pleas and orders of the court, and bills of exception. The matter so prepared shall be assembled under one cover and shall constitute the record on appeal. The pages of this record shall be numbered consecutively and there shall be an index prepared by the clerk showing the location of each document in the record. The record shall be made in duplicate and one copy shall be retained by the clerk for use by the parties with permission of the court.

##### 2. Designation of material for inclusion in the record

Each party may file with the clerk a written designation specifying matter for inclusion in the record. The failure of the clerk to include designated matter will not be ground for complaint on appeal if the designation specifying such matter be not filed with the clerk within sixty days after notice of appeal is given.

##### 3. Statement of facts and other proceedings

The record may include a transcription of all or any part of the proceedings shown by notes of the report<sup>1</sup> to have occurred before, during or after the trial and same will constitute the statement of facts for the appeal. A transcription applicable to any proceeding occurring before or within a period of ninety days after notice of appeal shall be filed with the clerk for inclusion in the record not later than the end of such period. A transcription of notes applicable to any proceeding occurring after the end of such period shall be filed with the clerk for inclusion in the record not later than thirty days after the end of such proceeding. The times herein provided for filing transcription of the notes of the reporter may be extended by the court for good cause shown, and the court shall have the power, in term time or vacation, on application for good cause to extend for as many times as deemed necessary the time for preparation and filing of the transcription, and the approval of the record after the expiration of the time provided by law for its approval shall be sufficient proof that the time for filing the transcription was properly extended, and the transcription so filed shall be construed as having been filed within the time required by law.

<sup>1</sup> Probably should read "reporter".

##### 4. Effect of transcription of reporter's notes

At the request of either party the court reporter shall take shorthand notes of all trial proceedings, including voir dire examination, objections to the court's charge, and final arguments. He is not entitled to any fee in addition to his salary for taking these notes. A transcription of the reporter's notes when certified to by him and included in the record shall establish the occurrence and existence of all testimony, argument, motions, pleas, objections, exceptions, court actions, refusals of the court to act and other events thereby shown and no further proof of the occurrence or existence of same shall be necessary on appeal; provided, however, that the court shall have power, after hearing, to enter and make part of the record any finding or adjudication which the court may deem essential to make any such transcription speak the truth in any particular in which the court finds it does not speak the truth and any such finding or adjudication having support in the evidence shall be final.

##### 5. Responsibility for obtaining transcription of reporter's notes

A party desiring to have included in the record a transcription of notes of the reporter shall have the responsibility of obtaining such transcription and furnishing same to the clerk in duplicate in time for inclusion in the record and the defendant shall pay therefor. The court will order the reporter to make such transcription without charge to defendant if the court finds, after hearing in response to affidavit by defendant that he is unable to pay or give security therefor. Upon certificate of the court that this service has been rendered, payment therefor shall be made from the general funds by the county in which the offense is alleged to have been committed in a sum to be set by the trial judge. The court reporter shall report any portion of the proceedings requested by either party or directed by the court.

##### 6. Bills of exception

(a) A party desiring to have the record disclose some action, testimony, evidence, proceeding, objection, exception or other event or occurrence not otherwise shown by the record may utilize a bill of exception for this purpose. Bills of exception must be filed with the clerk and presented to the trial judge within ninety days after notice of appeal is given, and for good cause shown, the judge trying the cause may further extend the time in which to file the bills of exception and shall have the power, in term-time or in vacation, upon application for good cause to extend for as many times as deemed necessary the time for preparation and filing of bills of exception and the approval for any bill of exception by the judge trying the cause after the expiration of the ninety-day period shall be sufficient proof that the time for filing was properly extended, and any bill of exception so filed shall be construed to have been filed within the time required by law. The clerk shall notify the court of each bill immediately upon its being filed. The court shall either

approve the bill without qualification or shall approve it subject to qualification or refuse it, setting forth in the qualification or refusal any reasons that may seem proper to the judge. Notice of the court's action in qualifying or refusing a bill shall be immediately given by the clerk to the party filing the bill or to his counsel, and such party, if unwilling to accept the court's qualification or refusal may not later than fifteen days after receipt of such notice, file a by-stander's bill of exception, and the clerk shall include same in the record. A bill of exception will be deemed approved without qualification if it be not acted upon by the trial judge within a period of 100 days after notice of appeal is given and no extension of time for filing has been granted; provided, however, if an extension of time for filing has been granted, a bill of exception will be deemed approved without qualification if it be not acted upon by the trial judge within a period of 10 days after the actual filing of the bill.

(b) A bill of exception shall be a necessary predicate for appellate review only if the matter complained of is not otherwise shown by the record as herein provided. Errors otherwise shown by the record may be reviewed on appeal without the necessity of any bill of exception. If the date of filing with the clerk of any document in the record is shown by notation of the clerk thereon, no further proof of such date or of the fact of the filing of the document with the clerk shall be necessary. If the transcription of the reporter's notes or any court order or docket entry by the court shows the occurrence or existence of any particular action by the court or refusal of the court to act or any objection or exception or any other event, no further proof of the occurrence or existence of same shall be necessary.

(c) Formal exceptions to rulings on evidence, opinions or other actions of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary, it is sufficient that a party, at the time the ruling, opinion or action of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and if a party has no opportunity to object to the ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

(d) (1) When the court refuses to admit offered testimony or other evidence, the party offering same shall as soon as practicable but before the court's charge is read to the jury be allowed, out of the presence of the jury, to adduce the excluded testimony or other evidence before the reporter, and a transcription of his notes showing such testimony or other evidence and any objections and exceptions of the party offering same shall, when certified to by the reporter and included in the record, establish the nature of such testimony or other evidence, and the objections and exceptions made in connection with the court's exclusion of such testimony or other

evidence and no bills of exception shall be essential to authorize appellate review of the question whether the court erred in excluding such testimony or other evidence. The court, in its discretion, may allow an offer of proof in the form of a concise statement by the party offering the same of what the excluded evidence would show, to be made before the reporter out of the presence of the jury as an alternative method of causing the record to show such excluded testimony or other evidence, and in the event the record contains transcription of the reporter's notes showing such an offer of proof the same shall be accepted on appeal as establishing what such excluded testimony or other evidence would have consisted of had it been admitted into evidence.

(2) When testimony or other evidence has been excluded by the court over objection of the party offering same, no further offer of the same need be made to preserve the claimed error.

(3) When the court hears objections to offered evidence out of the presence of the jury and rules that such evidence shall be admitted, then in that event such objections shall be deemed to apply to such evidence when it is admitted before the jury without the necessity of such objections being renewed in the presence of the jury.

#### 7. Approval of the record

Notice of completion of the record shall be made by the clerk by certified mail to the parties or their respective counsel. If neither files and presents to the court in writing any objection to the record, within fifteen days after the mailing of such notice and if the court has no objection to the record, he shall approve the same. If such objection be made, or if the court fails to approve the record within five days after the expiration of such fifteen-day period, the court shall set the matter down for hearing, and, after hearing, shall enter such orders as may be appropriate to cause the record to speak the truth and the findings and adjudications in such orders, if supported by evidence, shall be final. In its discretion, the court may require the attendance of the defendant at such hearing. Such proceeding shall be included in the record, and the entire record approved by the court.

#### 8. Filing approved record with clerk

The record, on approval by the court, shall be filed with the clerk of the trial court.

#### 9. Defendant's brief

Within thirty days after approval of the record by the court, or within such additional period as the court may in its discretion authorize, the defendant shall file with the clerk of the trial court his appellate brief and sufficient copies of said brief so that each Judge and Commissioner of the Court of Criminal Appeals individually will be provided with a copy of same. This brief shall set forth separately each

ground of error of which defendant desires to complain on appeal and may set forth such arguments as he deems appropriate. Each ground of error shall briefly refer to that part of the ruling of the trial court, charge given to the jury, or charge refused, admission or rejection of evidence or other proceedings which are designated to be complained of in such way as that the point of objection can be clearly identified and understood by the court. If the defendant includes in his brief arguments supporting a particular ground of error, they shall be construed with it in determining what point of objection is sought to be presented by such ground of error; and if the court, upon consideration of such ground of error in the light of arguments made in support thereof in the brief, can identify and understand such point of objection, the same shall be reviewed notwithstanding any generality, vagueness or any other technical defect that may exist in the language employed to set forth such ground of error.

#### 10. The State's brief

Within thirty days after defendant files his brief with the clerk of the trial court, or within such additional period as the trial court may in its discretion authorize, the State shall file with the clerk of the trial court its brief and sufficient copies of said brief so that each Judge and Commissioner of the Court of Criminal Appeals individually will be provided with a copy of same. Each party, upon filing his brief with the clerk of the trial court, shall cause a true copy thereof to be delivered to the opposing party or to the latter's counsel.

#### 11. Oral arguments

The trial court may require oral arguments on the briefs and, if so, shall cause the clerk to notify counsel for both sides of the time and place for such arguments.

#### 12. Trial court's duty

It shall be the duty of the trial court to decide from the briefs and oral arguments, if any, whether the defendant should be granted a new trial by the trial court. This duty shall be performed within the period of thirty days immediately after the state's brief is filed, or, if none be filed, then within the period of thirty days immediately after the last day on which the state's brief could be timely filed. Omission of the court to perform this duty within such period shall constitute refusal of the court to grant a new trial to defendant.

#### 13. Transmission of record to Court of Criminal Appeals

Upon refusal of the court to grant defendant a new trial, the clerk shall thereupon promptly transmit the record and briefs to the Court of Criminal Appeals, in which court all grounds of error and arguments in support thereof urged in defendant's brief in the trial court shall be reviewed, as well as

any unassigned error which in the opinion of the Court of Criminal Appeals should be reviewed in the interest of justice.

#### 14. Agreed statement

The parties may agree, with the approval of the trial court, upon a brief statement of the case and of the facts proven as will enable the appellate court to determine whether there is error in the trial. Such statement shall be copied into the record in lieu of the proceedings themselves.

#### 15. Order as to original papers or exhibits

Whenever the trial court is of the opinion that original papers or exhibits should be inspected by the appellate court or sent to the appellate court in lieu of copies, it may make such order therefor and for the safekeeping, transportation and return thereof as it deems proper. The appellate court on its own initiative may direct the clerk of the trial court to send to it any original paper or exhibit for its inspection.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1742, ch. 659, § 27, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1261, ch. 460, § 2, eff. Aug. 27, 1973.]

### Art. 40.10. Application of Civil Statutes

The provisions of the rules of civil procedure, insofar as the same are applicable and not in conflict with the provisions of this Code, as such rules now exist or may hereafter exist, shall govern bills of exception and statements of fact.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

## CHAPTER FORTY-ONE. ARREST OF JUDGMENT

Art.

- 41.01. Motion in arrest of judgment.
- 41.02. Time to make motion.
- 41.03. Granted for substantial defect.
- 41.04. Want of form.
- 41.05. Effect of arresting judgment.

### Art. 41.01. Motion in arrest of judgment

A motion in arrest of judgment is an oral or written suggestion to the court on the part of defendant that judgment has not been legally rendered against him. The record must show the grounds of the motion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 41.02. Time to make motion

A motion must be made within ten days after conviction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 41.03. Granted for substantial defect

Such motion shall be granted upon any ground which may be good upon exception to an indictment or information for any substantial defect therein.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 41.04. Want of form**

No judgment shall be arrested for want of form. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 41.05. Effect of arresting judgment**

The effect of arresting a judgment is to place the defendant in the same position he was before the indictment or information was presented; and if the court be satisfied from the evidence that he may be convicted upon a proper indictment or information, he shall be remanded into custody or bailed. If not so satisfied, the defendant shall be discharged. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

## CHAPTER FORTY-TWO. JUDGMENT AND SENTENCE

Art.

- 42.01. Judgment.
- 42.02. Sentence.
- 42.03. Pronouncing sentence; time; credit for time spent in jail between arrest and sentence or pending appeal.
- 42.04. Sentence when appeal is taken.
- 42.05. If court is about to adjourn.
- 42.06. Sentence nunc pro tunc.
- 42.07. Reasons to prevent sentence.
- 42.08. Cumulative or concurrent sentence.
- 42.09. Indeterminate sentence; commencement of sentence and delivery to place of confinement.
- 42.10. Satisfaction of judgment as in misdemeanor convictions.
- 42.11. Uniform Act for out-of-State parolee supervision.
- 42.12. Adult Probation and Parole Law.
- 42.13. Misdemeanor Probation Law.
- 42.14. In absence of defendant.
- 42.15. Fines.
- 42.16. On other judgment.

**Art. 42.01. Judgment**

A "judgment" is the declaration of the court entered of record, showing:

1. The title and number of the case;
2. That the case was called for trial and that the parties appeared;
3. The plea of the defendant;
4. The selection, impaneling and swearing of the jury;
5. The submission of the evidence;
6. That the jury was charged by the court;
7. The return of the verdict;
8. The verdict;
9. In the case of a conviction, that it is considered by the court that the defendant is adjudged to be guilty of the offense as found by the jury; or in case of acquittal, that the defendant be discharged;
10. That the defendant be punished as has been determined.

The provisions of this Article shall apply to both felony and misdemeanor cases. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 42.02. Sentence**

A "sentence" is the order of the court in a felony or misdemeanor case made in the presence of the

defendant, except in misdemeanor cases where the maximum possible punishment is by fine only, and entered of record, pronouncing the judgment, and ordering the same to be carried into execution in the manner prescribed by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 42.03. Pronouncing sentence; time; credit for time spent in jail between arrest and sentence or pending appeal**

Sec. 1. If a new trial is not granted, nor judgment arrested in felony and misdemeanor cases, the sentence shall be pronounced in the presence of the defendant except when his presence is not required by Article 42.02 at any time after the expiration of the time allowed for making the motion for a new trial or the motion in arrest of judgment.

Sec. 2. In all criminal cases the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail in said cause, from the time of his arrest and confinement until his sentence by the trial court.

Sec. 3. If a defendant appeals his conviction, is not released on bail, and is retained in a local jail as provided in Section 5, Article 42.09, pending his appeal, the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail pending disposition of his appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the defendant under this section, and the Department of Corrections shall grant the credit in computing the defendant's eligibility for parole and discharge.

Sec. 4. When a defendant who has been sentenced to imprisonment in the Department of Corrections has spent time in jail pending trial and sentence or pending appeal, the judge of the sentencing court shall direct the sheriff to attach to the commitment papers a statement assessing the defendant's conduct while in jail. On the basis of the statement, the Department of Corrections shall grant the defendant such credit for good behavior for the time spent in jail as he would have earned had he been in the custody of the department.

Sec. 5. Where jail time has been awarded, the trial judge may, when in his discretion the ends of justice would best be served, sentence the defendant to serve his sentence during his off-work hours, or on week-ends. When such a sentence is permitted by the trial judge it must be served on consecutive days or consecutive week-ends. The trial judge may require bail of the defendant to insure the faithful performance of the sentence. The trial judge may attach conditions regarding the employment, travel, and other conduct of the defendant during the performance of such a sentence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1743, ch. 659, § 28, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 205, ch. 91, § 1, eff. Aug. 27, 1973.]

**Art. 42.04. Sentence when appeal is taken**

When an appeal is taken from a death penalty, sentence shall not be pronounced, but shall be suspended until the decision of the Court of Criminal Appeals has been received. In all other cases, except where imposition of sentence has been suspended in probation cases, sentence shall be pronounced before the appeal is taken. Upon the affirmance of the judgment by the appellate court, the clerk shall at once send its mandate to the clerk of the Court from which the appeal was taken, there to be duly recorded.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 42.05. If court is about to adjourn**

The time limit within which any act is to be done within the meaning of this Code shall not be affected by the expiration of the term of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 42.06. Sentence nunc pro tunc**

If there is a failure from any cause whatever to enter judgment and pronounce sentence, the judgment may be entered and sentence pronounced at any subsequent time, unless a new trial has been granted, or the judgment arrested, or an appeal has been taken. Any time served or punishment suffered from the time the judgment and sentence should have been entered and pronounced and until finally entered shall be credited upon the sentence finally pronounced.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 42.07. Reasons to prevent sentence**

Before pronouncing sentence, the defendant shall be asked whether he has anything to say why the sentence should not be pronounced against him. The only reasons which can be shown, on account of which sentence cannot be pronounced, are:

1. That the defendant has received a pardon from the proper authority, on the presentation of which, legally authenticated, he shall be discharged;

2. That the defendant is insane; and if sufficient proof be shown to satisfy the court that the allegation is well-founded, no sentence shall be pronounced. Where there is sufficient time left, a jury may be impaneled to try the issue. Where sufficient time does not remain, the court shall order the defendant to be confined safely until the next term of the court, and shall then cause a jury to be impaneled to try such issue;

3. Where there has not been a motion for a new trial or a motion in arrest of judgment made, the defendant may answer that he has good grounds for either or both of these motions

and either or both motions may be immediately entered and disposed of, although more than ten days may have elapsed since the rendition of the verdict; and

4. When a person who has been convicted escapes after conviction and before sentence and an individual supposed to be the same has been arrested he may before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a jury as to his identity.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 42.08. Cumulative or concurrent sentence**

When the same defendant has been convicted in two or more cases, and the punishment assessed in each case is confinement in an institution operated by the Department of Corrections or the jail for a term of imprisonment, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction, except that in the discretion of the court, the judgment in the second and subsequent convictions may either be that the punishment shall begin when the judgment and sentence in the preceding conviction has ceased to operate, or that the punishment shall run concurrently with the other case or cases, and sentence and execution shall be accordingly.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 42.09. Indeterminate sentence; commencement of sentence and delivery to place of confinement**

Sec. 1. If the verdict fixes the punishment at confinement in an institution operated by the Department of Corrections for more than the minimum term, the judge in passing sentence shall pronounce an indeterminate sentence, fixing in such sentence as the minimum the time provided by law as the lowest term in an institution operated by the Department of Corrections and as the maximum the term stated in the verdict.

Sec. 2. Except as provided in Sections 3 and 4, a defendant shall be delivered to jail or to the Department of Corrections when his sentence to imprisonment is pronounced, or his sentence to death is announced, by the court. The defendant's sentence begins to run on the day it is pronounced, but with all credits, if any, allowed by Article 42.03.

Sec. 3. If a defendant appeals his conviction and is released on bail pending disposition of his appeal, when his conviction is affirmed, the clerk of the trial court, on receipt of the mandate from the appellate court, shall issue a commitment against the defendant. The officer executing the commitment shall endorse thereon the date he takes the defendant into custody and the defendant's sentence begins to run from the date endorsed on the commitment. The Department of Corrections shall admit the defendant named in the commitment on the basis of the commitment.

Sec. 4. If a defendant is convicted of a felony and sentenced to death, life, or a term of more than fifteen years in the Department of Corrections and he gives notice of appeal, he shall be transferred to the Department of Corrections on a commitment pending a mandate from the Court of Criminal Appeals.

Sec. 5. If a defendant is convicted of a felony and his sentence is a term of fifteen years or less and he gives notice of appeal, he shall be transferred to the Department of Corrections on a commitment pending a mandate from the Court of Criminal Appeals upon request in open court or upon written request to the sentencing court. Upon a valid transfer to the Department of Corrections under this section, the defendant may not thereafter be released on bail pending his appeal.

Sec. 6. If a defendant is transferred to the Department of Corrections pending appeal under Section 4 or 5, his sentence shall be computed as if no appeal had been taken if the appeal is affirmed.

Sec. 7. All defendants who have been transferred to the Department of Corrections pending the appeal of their convictions under this Article, shall be under the control and authority of the Department of Corrections for all purposes as if no appeal were pending.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 206, ch. 91, § 2, eff. Aug. 27, 1973.]

#### Art. 42.10. Satisfaction of judgment as in misdemeanor convictions

When a person is convicted of a felony, and the punishment assessed is only a fine or a term in jail, or both, the judgment may be satisfied in the same manner as a conviction for a misdemeanor is by law satisfied.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 42.11. Uniform Act for out-of-State parolee supervision

Sec. 1. This Act may be cited as the Uniform Act for out-of-State parolee supervision.

Sec. 2. The Governor of this State is hereby authorized and directed to execute a compact on behalf of the State of Texas with any of the United States legally joining therein in the form substantially as follows:

##### A COMPACT

Entering into by and among the contracting state, signatories hereto, with the consent of the Congress of the United States of America, granted by an Act entitled "An Act granting the consent of Congress to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes".

The contracting States solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a State party to this compact (herein called "sending State"), to permit any person convicted of an offense within such State and placed on probation or released on parole to reside in any other State party to this compact (herein called "receiving State"), while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving State and can obtain employment there; and

(b) Though not a resident of the receiving State and not having his family residing there, the receiving State consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving State to investigate the home and prospective employment of such person.

A resident of the receiving State, within the meaning of this section is one who has been an actual inhabitant of such State continuously for more than one year prior to his coming to the sending State and has not resided within the sending State more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving State will assume the duties of visitation of and supervision over probationers or parolees of any sending State and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending State may at all times enter a receiving State and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of States party hereto, as to such persons. The decision of the sending State to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving State; provided, however, that if at the time when a State seeks to retake a probationer or parolee there should be pending against him within the receiving State any criminal charge, or he should be suspected of having committed within such State a criminal offense, he shall not be retaken without the consent of the receiving State until discharged from prosecution or from any imprisonment for such offense.

(4) That the duly accredited officers of the sending State will be permitted to transport

prisoners being retaken through any and all States party to this compact, without interference.

(5) That the Governor of each State may designate an officer who, acting jointly with like officers of other contracting States, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any State as between it and other State or States so executing. When executed it shall have the full force and effect of law within such State, the form of execution to be in accordance with the laws of the executing State.

(7) That this compact shall continue in force and remain binding upon each executing State until renounced by it. The duties and obligations hereunder of a renouncing State shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending State. Renunciation of this compact shall be by the same authority which executed it, by sending six months notice in writing of its intention to withdraw from the compact to the other States party hereto.

Sec. 3. The officer designated by the Governor under Subdivision (5) of the compact shall be entitled the Interstate Parole Compact Administrator and is authorized to appoint two Deputy Parole Compact Administrators.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 547, ch. 233, § 1, eff. Aug. 27, 1973.]

**Art. 42.12. Adult Probation and Parole Law**

**A. Purpose of Article and Definitions**

Sec. 1. It is the purpose of this Article to place wholly within the State courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of probation, and the supervision of probationers, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is also the intent of this Article to provide for the release of persons on parole and for the method thereof, to designate the Board of Pardons and Paroles as the responsible agency of State government to recommend determination of paroles and to further designate the Board of Pardons and Paroles as responsible for the investigation and supervision of persons released on parole. It is the final purpose of this Article to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of probations and paroles in the public interest.

Sec. 2. This Article may be cited as the "Adult Probation and Parole Law".

Unless the context otherwise requires, the following definitions shall apply to the specified words and phrases as used in this Article:

a. "Courts" shall mean the courts of record having original criminal jurisdiction;

b. "Probation" shall mean the release of a convicted defendant by a court under conditions imposed by the court for a specified period during which the imposition of sentence is suspended;

c. "Parole" shall mean the release of a prisoner from imprisonment but not from the legal custody of the State, for rehabilitation outside of prison walls under such conditions and provisions for disciplinary supervision as the Board of Pardons and Paroles may determine. Parole shall not be construed to mean a commutation of sentence or any other form of executive clemency;

d. "Probation officer" shall mean either a person duly appointed by one or more courts of record having original criminal jurisdiction, to supervise defendants placed on probation; or a person designated by such courts for such duties on a part-time basis;

e. "Parole officer" shall mean a person duly appointed by the Director of the Division of Parole Supervision and assigned the duties of investigating and supervising paroled prisoners to see that the conditions of parole are complied with;

f. "Board" shall mean the Board of Pardons and Paroles;

g. "Division" shall mean the Division of Parole Supervision of the Board of Pardons and Paroles; and

h. "Director" shall mean the Director of the Division of Parole Supervision.

**B. Probations**

Sec. 3. The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty for any crime or offense, where the maximum punishment assessed against the defendant does not exceed ten years imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. In all cases where the punishment is assessed by the Court it may fix the period of probation without regard to the term of punishment assessed, but in no event may the period of probation be greater than 10 years or less than the minimum prescribed for the offense for which the defendant was convicted. In all cases where the punishment is assessed by the jury and probation is recommended

by the jury in accordance with Section 3a, the Court may in its discretion fix a period of probation that is equal to or less than the term of punishment assessed by the jury, but in no event may the period of probation be less than the minimum prescribed by law for the offense of which defendant was convicted. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court.

Sec. 3a. Where there is a conviction in any court of this State and the punishment assessed by the jury shall not exceed ten years, the jury may recommend probation upon written sworn motion made therefor by the defendant, filed before the trial begins. When the trial is to a jury, and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the sworn motion and proof shall show, and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court if the jury recommends it in their verdict.

If probation is granted by the jury the court may impose only those conditions which are set forth in Section 6 hereof.

Sec. 3b. Where probation is recommended by the verdict of a jury as provided for in Sec. 3a above, a defendant's probation shall not be revoked during his good behavior, so long as he is within the jurisdiction of the court and his residence is known, except in accordance with the provisions of Sec. 8 of this Article. If such a defendant has no counsel, it shall be the duty of the court to inform him of his right to show cause why his probation should not be revoked; and if such a defendant requests such right, the court shall appoint counsel in accordance with Articles 26.04 and 26.05 of this Code to prepare and present the same; and in all other respects the procedure set forth in said Sec. 8 of this Article shall be followed.

Sec. 3c. Nothing herein shall limit the power of the court to grant a probation of sentence regardless of the recommendation of the jury or prior conviction of the defendant.

Sec. 4. When directed by the court, a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable, such investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution the probation officer shall send a report of such investigation to the institution at the time of commitment.

Sec. 5. Only the court in which the defendant was tried may grant probation, fix or alter conditions, revoke the probation, or discharge the defendant, unless the court has transferred jurisdiction of the case to another court with the latter's consent. After a defendant has been placed on probation, jurisdiction of the case may be transferred to a court of the same rank in this State having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs. Upon transfer, the clerk of the court of original jurisdiction shall forward a transcript of such portions of the record as the transferring judge shall direct to the court accepting jurisdiction, which latter court shall thereafter proceed as if the trial and conviction had occurred in that court. Any court having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs may issue a warrant for his arrest, but the determination of action to be taken after arrest shall be only by the court having jurisdiction of the case at the time the action is taken.

Sec. 6. The court having jurisdiction of the case shall determine the terms and conditions of probation and may, at any time, during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

- a. Commit no offense against the laws of this State or of any other State or of the United States;
- b. Avoid injurious or vicious habits;
- c. Avoid persons or places of disreputable or harmful character;
- d. Report to the probation officer as directed;
- e. Permit the probation officer to visit him at his home or elsewhere;
- f. Work faithfully at suitable employment as far as possible;
- g. Remain within a specified place;
- h. Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the court shall determine; and
- i. Support his dependents.

Sec. 6a. (a) A court granting probation may fix a fee not exceeding \$10 per month to be paid to the court by the probationer during the probationary period. The court may make payment of the fee a condition of granting or continuing the probation.

(b) The court shall distribute the fees received under Subsection (a) of this section to the county or

counties in which the court has jurisdiction for use in administering the probation laws. In instances where a district court has jurisdiction in two or more counties, the court shall distribute the fees received to the counties in proportion to population as prescribed by Paragraph 7, Section 10 of this Article.

Sec. 7. At any time, after the defendant has satisfactorily completed one-third of the original probationary period or two years of probation, whichever is the lesser, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation, and the expiration of the period of probation, the court, by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere, and the court has discharged the defendant hereunder, such court may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that proof of his said conviction or plea of guilty shall be made known to the court should the defendant again be convicted of any criminal offense.

Sec. 8. (a) At any time during the period of probation the court may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the order of the judge of such court to be noted on the docket of the court. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. Thereupon, the court shall cause the defendant to be brought before it and after a hearing without a jury, may either continue or revoke the probation. If probation is revoked, the court may proceed to dispose of the case as if there had been no probation, or if it determines that the best interests of society and the probationer would be served by a shorter term of imprisonment, reduce the term of imprisonment originally assessed to any term of imprisonment not less than the minimum prescribed for the offense of which the probationer was convicted.

(b) Any probationer who removes himself from the State of Texas without permission of the court having jurisdiction of the case, shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law. No part of the time that the defendant is on probation shall be considered as any part of the time that he shall

be sentenced to serve. The right of the probationer to appeal to the Court of Criminal Appeals for a review of the trial and conviction, as provided by law, shall be accorded the probationer at the time he is placed on probation. When he is notified that his probation is revoked for violation of the conditions of probation and he is called on to serve a sentence in a jail or in an institution operated by the Department of Corrections, he may appeal the revocation.

Sec. 9. If, for good and sufficient reasons, probationers desire to change their residence within the State, such transfer may be effected by application to their supervising probation officer, which transfer shall be subject to the court's consent and subject to such regulations as the court may require in the absence of a probation officer in the locality to which the probationer is transferred.

Sec. 10. For the purpose of providing adequate probation services, the district judge or district judges having original jurisdiction of criminal actions in the county or counties, if applicable, are authorized, with the advice and consent of the commissioners court as hereinafter provided, to employ and designate the titles and fix the salaries of probation officers, and such administrative, supervisory, stenographic, clerical, and other personnel as may be necessary to conduct presentence investigations, supervise and rehabilitate probationers, and enforce the terms and conditions of probation. Only those persons who have successfully completed education in an accredited college or university and two years full time paid employment in responsible probation or correctional work with juveniles or adults; social welfare work, teaching or personnel work; or persons who are licensed attorneys with experience in criminal law; or persons who are serving in such capacities at the time of the passage of this Article and who are not otherwise disqualified by Section 31 of this Article, shall be eligible for appointments as probation officers; providing that additional experience in any of the above work categories may be substituted year for year for the required college education, with a maximum substitution of two years. Provided, however, that in a county having a population of less than 50,000, according to the last preceding Federal census, any person having completed at least two years education in an accredited college or university will be eligible for appointment.

It is the further intent of this Article that the caseload of each probation officer not substantially exceed seventy-five probationers.

Where more than one probation officer is required, the judge or judges shall appoint a chief adult probation officer or director, who, with their approval, shall appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the court.

The judge or judges, with the approval of the juvenile board of the county, may authorize the chief probation or chief juvenile officer to establish

a separate division of adult probation and appoint adult probation officers and such other personnel as required. It is the further intent of this Act that the same person serving as a probation officer for juveniles shall not be required to serve as a probation officer for adults and vice-versa.

The judge or judges may, with the approval of the director of parole supervision, designate a parole officer or supervisor employed by the Division of Parole Supervision as a probation officer for the county or district.

Probation officers shall be furnished transportation, or alternatively, shall be entitled to an automobile allowance for use of personal automobile on official business, under the same terms and conditions as is provided for sheriffs.

The salaries of personnel, and other expenses essential to the adequate supervision of probationers, shall be paid from the funds of the county or counties comprising the judicial district or geographical area served by such probation officers. In instances where a district court has jurisdiction in two or more counties, the total expenses of such probation services shall be distributed approximately in the same proportion as the population in each county bears to the total population of all those counties, according to the last preceding or any future Federal Census. In all the instances of the employment of probation officers, the responsible judges and county commissioners are authorized to accept grants or gifts from other political subdivisions of the state or associations and foundations, for the sole purpose of financing adequate and effective probationary programs in the various parts of the state. For the purposes of this Act, the municipalities of this state are specifically authorized to grant and allocate such sums of money as their respective governing bodies may approve to their appropriate county governments for the support and maintenance of effective probationary programs. All grants, gifts, and allocations of the character and purpose described in this section shall be handled and accounted for separately from other public funds of the county.

Sec. 11. For the purpose of determining when fees are to be paid to any officer or officers, the placing of the defendant on probation shall be considered a final disposition of the case, without the necessity of waiting for the termination of the period of probation or suspension of sentence.

Sec. 12. The provisions of Sections 6a, 10, and 11 of this Article also apply to Article 42.13.

C. Paroles

Sec. 12. The Board of Pardons and Paroles created by Article 4, Section 11 of the Constitution of this State, shall administer the provisions of this Act respecting determinations of which prisoners shall be paroled from an institution operated by the Department of Corrections, the conditions of such paroles, and may recommend the revocation of paroles by the Governor.

Sec. 13. The members of the Board shall give full time to the duties of their office and shall be paid such salaries as the Legislature may determine in Appropriation Acts. The members of the Board shall elect one of their number as chairman, who shall serve for a period of two years and until his successor is elected and qualified.

The Board shall meet at the call of the chairman and from time to time as may otherwise be determined by majority vote of the Board. A majority of the Board shall constitute a quorum for the transaction of all business.

The Board shall adopt an official seal of which the courts shall take judicial notice. Decisions of the Board shall be by majority vote.

The Board shall keep a record of its acts and shall notify each institution of its decision relating to the persons who are to have been confined therein. At the close of each fiscal year the Board shall submit to the Governor and to the Legislature a report with statistical and other data of its work.

All minutes of the Board and decisions relating to parole, pardon and clemency shall be matters of public record and subject to public inspection at all reasonable times.

Sec. 14. The necessary office quarters shall be provided for the Board in the manner that the same are furnished to other departments, boards, commissions, bureaus and offices of the State.

Sec. 15. (a) The Board is hereby authorized to release on parole, with the approval of the Governor, any person confined in any penal or correctional institution of this State, except persons under sentence of death, who has served one-third of the maximum sentence imposed, provided that in any case he may be paroled after serving 20 calendar years. Time served on the sentence imposed shall be the total calendar time served and all credits allowed under the laws governing the operation of the Department of Corrections, and executive clemency. All paroles shall issue upon order of the Board, duly adopted and approved by the Governor.

(b) Within one year after a prisoner's admittance to the penal or correctional institution and at such intervals thereafter, as it may determine, the Board shall secure and consider all pertinent information regarding each prisoner, except any under sentence of death, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and the reports of such physical and mental examinations as have been made.

(c) Before ordering the parole of any prisoner, the Board may have the prisoner appear before it and interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been

made for his proper employment or for his maintenance and care, and when the Board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the Board.

(d) The Board may adopt such other reasonable rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole hearings, or conditions to be imposed upon parolees. Whenever an order for parole is issued it shall recite the conditions thereof in clear and intelligible language.

(e) It shall be the duty of the Board at least ten days before ordering the parole of any prisoner or upon the granting of executive clemency by the Governor to notify the sheriff, the district attorney and the district judge in the county where such person was convicted that such parole or clemency is being considered by the Board or by the Governor.

(f) If no parole officer has been assigned to the locality where a person is to be released on parole or executive clemency the Board shall notify the chairman of the Voluntary Parole Board of such county prior to the release of such person. The Board shall request such Voluntary Parole Board, in the absence of a parole office, for information which would herein be required of such duly appointed parole officer. This shall not, however, preclude the Board from requesting information from any public agency in such locality.

Sec. 16. It shall be the duty of any judge, district attorney, county attorney, police officer or other public official of the state, having information with reference to any prisoner eligible for parole, to send in writing such information as may be in his possession or under his control to the Board, upon request of any member or employee thereof.

Sec. 17. It shall be the duty of all prison officials to grant to the members of the Board, or its properly accredited representatives, access at all reasonable times to any prisoner, to provide for the Board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the Board such reports as the Board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the Board pertinent in determining whether such prisoner shall be paroled.

Sec. 18. The Board shall formulate rules as to the submission and presentation of information and arguments to the Board for and in behalf of any person within the jurisdiction of the Board.

All persons presenting information or arguments to the Board shall submit therewith an affidavit stating whether any fee has been paid or is to be paid for their services in the case, the amount of such fee, if any, and by whom such fee is paid or to be paid.

Sec. 19. The Board shall have power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oath administered by any member of the Board. Subpoenas so issued may be served by a sheriff, constable, police, parole, or probation officer, or other law enforcement officer, in the same manner as similar process in courts of record having original jurisdiction of criminal actions. Any person who testifies falsely or fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before a court is subject. Any courts of record having original jurisdiction of criminal actions upon application of the Board, may in their discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the Board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such courts of record having original jurisdiction of criminal actions.

Sec. 20. The Board shall have the power and duty to make rules for the conduct of persons placed on parole by the Board.

Sec. 21. Upon order by the Governor, the Board is authorized to issue a warrant for the return of any paroled prisoner to the institution from which he was paroled. Such warrant shall authorize all officers named therein to return such paroled prisoner to actual custody in the penal institution from which he was paroled. Pending hearing, as hereinafter provided, upon any charge of parole violation, the prisoner shall remain incarcerated in such institution.

A parolee for whose return a warrant has been issued by the Board shall, after the issuance of such warrant, be deemed a fugitive from justice and if it shall appear that he has violated the provisions of his parole, then the time from the issuing of such warrant to the date of his arrest shall not be counted as any part of the time to be served under his sentence. The law now in effect concerning the right of the State of Texas to extradite persons and return fugitives from justice, and Article 42.11 of this Code concerning the waiver of all legal requirements to obtain extradition of fugitives from justice, from other states to this State, shall not be impaired by this Act and shall remain in full force and effect.

Sec. 22. Whenever a paroled prisoner is accused of a violation of his parole on information and complaint by a law enforcement officer or parole officer, he shall be entitled to be heard on such charges before the Board under such rules and regulations as the Board may adopt; providing, however, said hearing shall be held within sixty days of the date of arrest under a warrant issued by the Board

of Pardons and Paroles or the Governor and at a time and place set by the Board. When the Board has heard the facts, it may recommend to the Governor that the parole be continued, or revoked, or modified in any manner the evidence may warrant. When the Governor revokes a prisoner's parole, he may be required to serve the portion remaining of the sentence on which he was released on parole, such portion remaining to be calculated without credit for the time from the date of his release on parole to the date of his revocation of parole by the Governor on the charge of parole violation. When a warrant is issued by the Board of Pardons and Paroles or the Governor charging a parole violation, the sentence time credit shall be suspended until a determination is made by the Board of Pardons and Paroles or the Governor in such case and such suspended time credit may be re-instated by the Board of Pardons and Paroles should such parole be continued.

Sec. 23. In order to complete the parole period, a parolee shall be required to serve out the whole term for which he was sentenced, subject to the deduction of the time he had served prior to his parole and to any diminution of sentence earned for good behavior while imprisoned in the Department of Corrections. The time on parole shall be calculated as calendar time. This provision, however, shall not be construed so as to interfere with the constitutional power conferred upon the Governor to grant pardons and to commute sentences.

When any paroled prisoner has fulfilled the obligations of his parole and has served out his term as conditioned in the preceding paragraph, the Board shall make a final order of discharge and issue to the parolee a certificate of such discharge.

Sec. 24. Whenever any prisoner serving an indeterminate sentence, as provided by law, shall have served for twelve months on parole in a manner acceptable to the Board, it shall review the prisoner's record and make a determination whether to recommend to the Governor that the prisoner be pardoned and finally discharged from the sentence under which he is serving.

When any prisoner who has been paroled has complied with the rules and conditions governing his parole until the end of the term to which he was sentenced, and without a revocation of his parole, the Board shall report such fact to the Governor prior to the issuance of the final order of discharge, together with its recommendation as to whether the prisoner should be restored to citizenship.

Sec. 25. On request of the Governor the Board shall investigate and report to the Governor with respect to any person being considered by the Governor for pardon, commutation of sentence, reprieve, or remission of fine or forfeiture, and make recommendations thereon.

#### D. Supervision of Parolees

Sec. 26. The Board of Pardons and Paroles shall have general responsibility for the investigation and supervision of all prisoners released on parole. For the discharge of this responsibility, there is hereby created with the Board of Pardons and Paroles, a Division of Parole Supervision. Subject to the general direction of the Board of Pardons and Paroles, the Division of Parole Supervision, including its field staff shall be responsible for obtaining and assembling any facts the Board of Pardons and Paroles may desire in considering parole eligibility, and for investigating and supervising paroled prisoners to see that the conditions of parole are complied with, and for making such periodic reports on the progress of parolees as the Board may desire.

Sec. 27. All information obtained in connection with inmates of the Texas Department of Corrections subject to parole or executive clemency or individuals who may be on parole and under the supervision of the division, or persons directly identified in any proposed plan of release for a parolee, shall be privileged information and shall not be subject to public inspection; provided, however, that all such information shall be available to the Governor and the Board of Pardons and Paroles upon request. It is further provided, that statistical and general information respecting the parole program and system, including the names of paroled prisoners and data recorded in connection with parole services, shall be subject to public inspection at any reasonable time.

Sec. 28. Salaries of all employees of the Division of Parole Supervision shall be governed by Appropriation Acts of the Legislature. The Board of Pardons and Paroles shall appoint a Director of the Division, and all other employees shall be selected by the Director, subject to such general policies and regulations as the Board may approve.

It is expressly provided, however, that no person may be employed as a parole officer or supervisor, or be responsible for the investigations, surveillance, or supervision of persons on parole, unless he meets the following qualifications together with any other qualifications that may be specified by the Director of the Division, with the approval of the Board of Pardons and Paroles; 24 to 55 years of age, with four years of successfully completed education in an accredited college or university, and two years of full time paid employment in responsible correctional work with adults or juveniles, social welfare work, teaching, or personnel work. Additional experience in the above categories may be substituted year for year for the required college education, with a maximum substitution for two years.

Sec. 29. Any parole officer or supervisor employed by the Division of Parole Supervision may, with the approval of the director, be designated as a probation officer by the judge of a court of the State having original jurisdiction of criminal actions.

Any proportional part of the salary paid to a parole officer or supervisor so designated, however, in compensation for his service as a probation officer, shall be only with the prior written approval of the director; and all such proportional salary payments shall be periodically reported to the Governor and the Legislature by the director.

Sec. 30. In order to provide supervision of parolees or of persons granted executive clemency who reside in sparsely settled areas of the State and in localities not served by regularly employed parole officers, the Governor of this State is authorized to appoint chairmen of Voluntary Parole Boards for such areas or localities. The appointed chairman may, with the advice and approval of the Director of the Division of Parole Supervision, appoint additional members of such Voluntary Parole Boards. The term of service by such appointed chairmen of Voluntary Parole Boards shall not exceed the term of office of the appointing Governor; and the terms of service of locally appointed additional members of such Voluntary Parole Boards shall not exceed the terms of office of the director. However, it is expressly provided that the terms of service by such chairmen and additional members of Voluntary Parole Boards may be continued by appropriate reappointments. The chairman of the Voluntary Parole Board shall be responsible for assigning supervision of parolees to the members of such board.

Sec. 31. No person who is serving as a sheriff, deputy sheriff, constable, deputy constable, city policeman, Texas Ranger, state highway patrolman, or similar law enforcement officer, or as a prosecuting attorney, shall act as a parole officer or be responsible for the supervision of persons on parole.

Sec. 32. Any parole officer or supervisor employed by the Division of Parole Supervision may, upon request of the Governor or the Board of Pardons and Paroles and by direction of the director, be responsible for supervising persons placed on conditional pardon or furlough.

E. General Provisions

Sec. 33. The provisions of this Act shall not be construed to prevent or limit the exercise by the Governor of powers of executive clemency vested in him by the Constitution of this State.

Sec. 34. The provisions of this Act shall not apply to parole from institutions for juveniles.

Sec. 35. This Article shall not be deemed to alter or invalidate any probationary period fixed under statutes in force prior to the effective date of this Code or to limit the jurisdiction or power of a court to modify or terminate such probationary period. In other respects, persons placed on probation or parole prior to the effective date of this Code shall be amenable to the provisions of this Code insofar as it may be made applicable to them. All other actions pertaining to probations and paroles granted prior to the effective date of this Code shall be regulated

according to the law in force at the time the probation or parole was granted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1744 to 1746, ch. 659, § 29, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 568, ch. 241, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1235, ch. 447, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1269, ch. 464, § 1, eff. June 14, 1973.]

Art. 42.13. Misdemeanor Probation Law

Sec. 1. All probation in misdemeanor cases shall be granted and administered under this Article.

Definitions

Sec. 2. In this Article, unless the context requires a different definition,

- (1) "court" means a county court, or a county court at law or county criminal court or any court with original criminal jurisdiction, and includes the judge of any of these courts;
- (2) "probation" means the release by a court under terms and for a period specified by the court of a defendant who has been found guilty of a misdemeanor;
- (3) "probationer" means a defendant who is on probation.

Probation authorized in misdemeanor cases

Sec. 3. (a) A defendant who has been found guilty of a misdemeanor wherein the maximum permissible punishment is by confinement in jail or by a fine in excess of \$200.00 or by both such fine and imprisonment may be granted probation if:

- (1) he applies by written motion under oath to the court for probation before trial;
- (2) he has not been granted probation nor been under probation under this Act or any other Act in the preceding 5 years;
- (3) he has paid all costs of his trial and so much of any fine imposed as the court directs; and
- (4) the court believes that the ends of justice and the best interests of society and of the defendant will be served by granting him probation.

(b) If a defendant satisfies all the requirements of Section 3(a)(1), (2), (3) and (4) of this Article, and the jury hearing his case recommends probation in its verdict, the court must grant the defendant probation. The court may grant the defendant probation regardless of the recommendation of the jury or the prior conviction of the defendant. The court may, however, extend the term of the probationary period to any length of time not exceeding the maximum time of confinement allowed by law. In the event probation is revoked in accordance with Section 6, the judgment of the court shall not prescribe any penalty in excess of that imposed by the jury.

(c) A defendant's application for probation must be made under oath and must also contain statements (1) either that he has never before been convicted in this or another jurisdiction of a felony or of a misdemeanor for which the maximum permissible punishment is by confinement in jail or by a fine in excess of \$200 or by both such fine and imprisonment, or, if he has been so convicted, setting forth such fact and specifying the time and place of such conviction, the nature of the offense for which he was convicted, and the final punishment assessed therein; and (2) that he has not been granted probation nor been under probation under this Article or any other Article in the preceding five years. The application may contain what other information the court directs.

(d) When a defendant has applied for probation, the court during the trial of his case must receive competent evidence concerning the defendant's entitlement to probation.

Effect of probation

Sec. 4. (a) When a defendant is granted probation under the terms of this Act, the finding of guilt does not become final, nor may the court render judgment thereon, except as provided in Section 6 of this Article.

(b) The court shall record the fact and date that probation was granted on the docket sheet or in the minutes of the court. The court shall also note the period and terms of the probation, and the details of the judgment. The court's records may not reflect a final conviction, however, unless probation is later revoked in accordance with Section 6 of this Article.

Terms and supervision of probation

Sec. 5. (a) The period and terms of probation shall be determined by the court granting it. Except as provided in Subsection (d) of this section, a probationer is under the supervision of the court granting him probation.

(b) The period and terms of probation shall be designed to prevent recidivism and promote rehabilitation of the probationer. The terms must include, but are not limited to, the requirement that a probationer:

- (1) commit no offense against the laws of this or any other state or the United States;
- (2) avoid injurious or vicious habits;
- (3) avoid persons or places of disreputable or harmful character;
- (4) report to the probation officer as directed;
- (5) permit the probation officer to visit him at his home or elsewhere;
- (6) work faithfully at suitable employment as far as possible;
- (7) remain within a specified place;
- (8) pay his fine, if the court so orders and, if one be assessed, in one or several sums, and

make restitution or reparation in any sum that the court shall determine not to exceed One Thousand Dollars (\$1,000);

(9) support his dependents; and

(10) submit a copy of his fingerprints to the sheriff's office of the county in which he was tried.

The clerk shall send such fingerprints to the Texas Department of Public Safety, which shall return a certificate to the court in which the defendant was tried, which certificate shall contain any criminal record of the defendant or record with the Department, or if no record exists, then a certificate from the Texas Department of Public Safety showing the absence of any previous criminal record. The Texas Department of Public Safety shall, in addition to its present responsibilities, keep a record of all misdemeanor arrests within the purview of this section and the deposition of such cases.

(c) The clerk of a court granting probation shall promptly furnish the probationer with a written statement of the period and terms of his probation. If the period or terms are later modified, the clerk of the modifying court shall promptly furnish the probationer with a written statement of the modifications. The clerk in either case shall take a receipt from the probationer for delivery of the statement.

(d) After probation has been granted, jurisdiction of the probationer's case may be transferred to another court which can more conveniently supervise the probation. If the other court accepts the transfer, the transferring court shall forward to it all pertinent records in the case. The court accepting the transfer is vested with jurisdiction of the case and may exercise any power conferred by this Act upon the court initially granting probation.

Revocation of probation

Sec. 6. (a) If a probationer violates any term of his probation, the court may cause his arrest by warrant as in other cases. The probationer upon arrest shall be brought promptly before the court causing his arrest and the court, upon motion of the state and after a hearing without a jury, may continue, modify, or revoke the probation as the evidence warrants.

(b) On the date the probation is revoked, the finding of guilty becomes final and the court shall render judgment thereon against the defendant. The judgment shall be enforced as in other cases and the time served on probation may not be credited or otherwise considered for any purpose.

Discharge from probation

Sec. 7. (a) When the period and terms of a probation have been satisfactorily completed, the court shall, upon its own motion, discharge him from probation and enter an order in the minutes of the court setting aside the finding of guilty and dismissing the accusation or complaint and the information or indictment against the probationer.

(b) After the case against the probationer is dismissed by the court, his finding of guilty may not be considered *for any purpose* except to determine his entitlement to a future probation under this Act, or any other probation Act.

Appellate rights

Sec. 8. (a) A probationer, at the time he is granted probation, may appeal his conviction as in other cases. He may also appeal the revocation of his probation, but the revocation may not be set aside on appeal without a clear showing of abuse of discretion by the revoking court.

(b) The refusal of a court to grant probation is not appealable unless the jury hearing the case has recommended probation in its verdict and the defendant has satisfied the requirements of Section 3(a)(1), (2), (3), and (4) of this Article. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., pp. 1746, 1747, ch. 659, § 30, eff. Aug. 28, 1967.]

**Art. 42.14. In absence of defendant**

The judgment and sentence in a misdemeanor case may be rendered in the absence of the defendant. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 42.15. Fines**

(a) When the defendant is fined, the judgment shall be that the defendant pay the amount of the fine and all costs to the state.

(b) When imposing a fine and costs a court may direct a defendant:

- (1) to pay the entire fine and costs when sentence is pronounced; or
- (2) to pay the entire fine and costs at some later date; or
- (3) to pay a specified portion of the fine and costs at designated intervals.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 2990, ch. 987, § 1, eff. June 15, 1971.]

**Art. 42.16. On other judgment**

If the punishment is any other than a fine, the judgment shall specify it, and order it enforced by the proper process. It shall also adjudge the costs against the defendant, and order the collection thereof as in other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**CHAPTER FORTY-THREE. EXECUTION OF JUDGMENT**

- Art. 43.01. Discharging judgment for fine.
- 43.02. Payable in money.
- 43.03. Pay or jail.
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- 43.05. Capias shall recite what.
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- 43.26. Preventing rescue.

**Art. 43.01. Discharging judgment for fine**

(a) When the sentence against an individual defendant is for fine and costs, he shall be discharged from the same:

- (1) when the amount thereof has been fully paid; or
- (2) when remitted by the proper authority; or
- (3) when he has remained in custody for the time required by law to satisfy the amount thereof.

(b) When the sentence against a defendant corporation or association is for fine and costs, it shall be discharged from same:

- (1) when the amount thereof has been fully paid; or
- (2) when the execution against the corporation or association has been fully satisfied; or
- (3) when the judgment has been fully satisfied in any other manner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 974, ch. 399, § 2(A), eff. Jan. 1, 1974.]

**Art. 43.02. Payable in money**

All recognizances, bail bonds, and undertakings of any kind, whereby a party becomes bound to pay money to the State, and all fines and forfeitures of a pecuniary character, shall be collected in the lawful money of the United States only.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 43.03. Payment of fine**

(a) If a defendant is sentenced to pay a fine or costs or both and he defaults in payment, the court may order him imprisoned in jail until discharged as provided by law. A certified copy of the judgment, sentence, and order is sufficient to authorize such imprisonment.

(b) A term of imprisonment for default in payment of fine or costs or both may not exceed the maximum term of imprisonment authorized for the offense for which defendant was sentenced to pay the fine or costs or both.

(c) If a defendant is sentenced both to imprisonment and to pay a fine or costs or both, and he defaults in payment of either, a term of imprisonment for the default, when combined with the term of imprisonment already assessed, may not exceed the maximum term of imprisonment authorized for the offense for which defendant was sentenced.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 2990, ch. 987, § 2, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 974, ch. 399, § 2(A), eff. Jan. 1, 1974.]

#### Art. 43.04. If defendant is absent

When a judgment and sentence have been rendered against a defendant for a fine in his absence, the court may order a *capias* issued for his arrest. The sheriff shall execute the *capias* by bringing the defendant before the court or by placing the defendant in jail until he can be brought before the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 2990, ch. 987, § 3, eff. June 15, 1971.]

#### Art. 43.05. Capias shall recite what

Where such *capias* issues, it shall state the rendition and amount of the judgment and sentence, and command the sheriff to bring the defendant before the court or place him in jail until he can be brought before the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 2990, ch. 987, § 4, eff. June 15, 1971.]

#### Art. 43.06. Capias may issue to any county

The *capias* provided for in this Chapter may be issued to any county in the State, and shall be executed and returned as in other cases, but no bail shall be taken in such cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.07. Execution for fine and costs

In each case of pecuniary fine, an execution may issue for the fine and costs, though a *capias* was issued for the defendant; and a *capias* may issue for the defendant though an execution was issued against his property. The execution shall be collected and returned as in civil actions. When the execution has been collected, the defendant shall be at once discharged; and whenever the fine and costs have been legally discharged in any way, the execution shall be returned satisfied.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.08. Further enforcement of judgment

When a defendant has been committed to jail in default of the fine and costs adjudged against him, the further enforcement of such judgment and sentence shall be in accordance with the provisions of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.09. Fine discharged

When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding Article; or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him; rating such labor or imprisonment at five dollars for each day thereof; provided, however, that the defendant may pay the pecuniary fine assessed against him at any time while he is serving at work in the workhouse, or on the county farm, or on the public improvements of the county, or while he is serving his jail sentence, and in such instances he shall be entitled to a credit of five dollars for each day or fraction of a day that he has served and he shall only be required to pay his balance of the pecuniary fine assessed against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.10. To do manual labor

Where the punishment assessed in a conviction for misdemeanor is confinement in jail for more than one day, or where in such conviction the punishment is assessed only at a pecuniary fine and the party so convicted is unable to pay the fine and costs adjudged against him, those so convicted shall be required to do manual labor in accordance with the provisions of this Article under the following rules and regulations:

1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of said parties so convicted;

2. Such farms and workhouses shall be under the control and management of the commissioners court, and said court may adopt such rules and regulations not inconsistent with the laws as they deem necessary for the successful management and operation of said institutions and for effectively utilizing said labor;

3. Such overseers and guards may be employed under the authority of the commissioners court as may be necessary to prevent escapes and to enforce such labor, and they shall be paid out of the county treasury such compensation as said court may prescribe;

4. Those so convicted shall be so guarded while at work as to prevent escape;

5. They shall be put to labor upon the public roads, bridges or other public works of the county when their labor cannot be utilized in the county workhouse or county farm;

6. They shall be required to labor not less than eight nor more than ten hours each day, Sundays excepted. No person shall ever be required to work for more than one year;

7. One who refuses to labor or is otherwise refractory or insubordinate may be punished by solitary confinement on bread and water or in such other manner as the commissioners court may direct;

8. When not at labor they may be confined in jail or the workhouse, as may be most convenient, or as the regulations of the commissioners court may prescribe;

9. A female shall in no case be required to do manual labor except in the workhouse; and

10. One who from age, disease, or other physical or mental disability is unable to do manual labor shall not be required to work, but shall remain in jail until his term of imprisonment is ended, or until the fine and costs adjudged against him are discharged according to law. His inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.11. Authority for imprisonment

When, by the judgment and sentence of the court, a defendant is to be imprisoned in jail, a certified copy of such judgment and sentence shall be sufficient authority for the sheriff to place such defendant in jail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.12. Capias for imprisonment

A capias issued for the arrest and commitment of one convicted of a misdemeanor, the penalty of which or any part thereof is imprisonment in jail, shall recite the judgment and sentence and command the sheriff to place the defendant in jail, to remain the length of time therein fixed; and this writ shall be sufficient to authorize the sheriff to place such defendant in jail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.13. Discharge of defendant

A defendant who has remained in jail the length of time required by the judgment and sentence shall be discharged. The sheriff shall return the copy of the judgment and sentence, or the capias under which the defendant was imprisoned, to the proper court, stating how it was executed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.14. Execution of convict

Whenever the sentence of death is pronounced against a convict, the sentence shall be executed at any time before the hour of sunrise on the day set for the execution not less than thirty days from the day of sentence, as the court may adjudge, by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application and continuance of such current through the body of such convict until he is dead.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.15. Warrant of execution

Whenever any person is sentenced to death, the clerk of the court in which the sentence is pronounced, shall within ten days after sentence has been pronounced, issue a warrant under the seal of the court for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offense, the judgment of the court, the time fixed for his execution, and directed to the Director of the Department of Corrections at Huntsville, Texas, commanding him to proceed, at the time and place named in the sentence, to carry the same into execution, as provided in the preceding Article, and shall deliver such warrant to the sheriff of the county in which such judgment of conviction was had, to be by him delivered to the said Director of the Department of Corrections, together with the condemned person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.16. Taken to Department of Corrections

Immediately upon the receipt of such warrant, the sheriff shall transport such condemned person to the Director of the Department of Corrections and shall deliver him and the warrant aforesaid into the hands of the Director of the Department of Corrections and shall take from the Director of the Department of Corrections his receipt for such person and such warrant, which receipt the sheriff shall return to the office of the clerk of the court where the judgment of death was rendered. For his services, the sheriff shall be entitled to the same compensation as is now allowed by law to sheriffs for removing or conveying prisoners under the provisions of Section 4 of Article 1029 or 1030 of the Code of Criminal Procedure of 1925, as amended.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.17. Visitors

Upon the receipt of such condemned person by the Director of the Department of Corrections, he shall be confined therein until the time for his execution arrives, and while so confined, all persons outside of said prison shall be denied access to him, except his physician and lawyer, who shall be admitted to see him when necessary to his health or for the transaction of business, and the relatives, friends and spiritual advisors of the condemned person, who shall be admitted to see and converse with him at all proper times, under such reasonable rules and regulations as may be made by the Board of Directors of the Department of Corrections.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.18. Executioner

The Director of the Department of Corrections at Huntsville, or in case of his death, disability or absence, his deputy, shall be the executioner. In the event of the death or disability or absence of both the Director of the Department of Corrections and his deputy, the executioner shall be that person

appointed by the Board of Directors of the Department of Corrections for that purpose.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 43.19. Place of execution**

The execution shall take place at the Department of Corrections at Huntsville, Texas, in a room arranged for that purpose.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 43.20. Present at execution**

The following persons may be present at the execution: the executioner, and such persons as may be necessary to assist him in conducting the execution; the Board of Directors of the Department of Corrections, two physicians, including the prison physician, the spiritual advisor of the condemned, the chaplains of the Department of Corrections, the county judge and sheriff of the county in which the Department of Corrections is situated, and any of the relatives or friends of the condemned person that he may request, not exceeding five in number, shall be admitted. No convict shall be permitted by the prison authorities to witness the execution.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 43.21. Escape after sentence**

If the condemned escape after sentence and before his delivery to the Director of the Department of Corrections, and be not rearrested until after the time fixed for execution, any person may arrest and commit him to the jail of the county in which he was sentenced; and thereupon the court by whom the condemned was sentenced; either in term-time or vacation, on notice of such arrest being given by the sheriff, shall again appoint a time for the execution, not less than thirty days from such appointment, which appointment shall be by the clerk of said court immediately certified to the Director of the Department of Corrections and such clerk shall place such certificate in the hands of the sheriff, who shall deliver the same, together with the warrant aforesaid and the condemned person to the Director of the Department of Corrections, who shall receipt to the sheriff for the same and proceed at the appointed time to carry the sentence of death into execution as hereinabove provided.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 43.22. Escape from Department of Corrections**

If the condemned person escapes after his delivery to the Director of the Department of Corrections, and is not retaken before the time appointed for his execution, any person may arrest and commit him to the Director of the Department of Corrections whereupon the Director of the Department of Corrections shall certify the fact of his escape and recapture to the court in which sentence was passed; and the court, either in term-time or vacation, shall again appoint a time for the execution which shall not be less than thirty days from the date of such

appointment; and thereupon the clerk of such court shall certify such appointment to the Director of the Department of Corrections, who shall proceed at the time so appointed to execute the condemned, as hereinabove provided. The sheriff or other officer or other person performing any service under this and the preceding Article shall receive the same compensation as is provided for similar services under the provisions of Articles 1029 or 1030 of the Code of Criminal Procedure of 1925, as amended. If for any reason execution is delayed beyond the date set, then the court which originally sentenced the defendant may set a later date for execution.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 43.23. Return of Director**

When the execution of sentence is suspended or respited to another date, same shall be noted on the warrant and on the arrival of such date, the Director of the Department of Corrections shall proceed with such execution; and in case of death of any condemned person before the time for his execution arrives, or if he should be pardoned or his sentence commuted by the Governor, no execution shall be had; but in such cases, as well as when the sentence is executed, the Director of the Department of Corrections shall return the warrant and certificate with a statement of any such act and his proceedings endorsed thereon, together with a statement showing what disposition was made of the dead body of the convict, to the clerk of the court in which the sentence was passed, who shall record the warrant and return in the minutes of the court.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 43.24. Treatment of condemned**

No torture, or ill treatment, or unnecessary pain, shall be inflicted upon a prisoner to be executed under the sentence of the law.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 43.25. Body of convict**

The body of a convict who has been legally executed shall be embalmed immediately and so directed by the Director of the Department of Corrections. If the body is not demanded or requested by a relative or bona fide friend within forty-eight hours after execution then it shall be delivered to the Anatomical Board of the State of Texas, if requested by the Board. If the body is requested by a relative, bona fide friend, or the Anatomical Board of the State of Texas, such recipient shall pay a fee of not to exceed twenty-five dollars to the mortician for his services in embalming the body for which the mortician shall issue to the recipient a written receipt. When such receipt is delivered to the Director of the Department of Corrections, the body of the deceased shall be delivered to the party named in the receipt or his authorized agent. If the body is not delivered to a relative, bona fide friend, or the Anatomical Board of the State of Texas, the Director of the Department of Corrections shall cause the body to be decently buried, and the fee for embalm-

ing shall be paid by the county in which the indictment which resulted in conviction was found.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 43.26. Preventing rescue

The sheriff may, when he supposes there will be a necessity, order such number of citizens of his county, or request any military or militia company, to aid in preventing the rescue of a prisoner.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

## APPEAL AND WRIT OF ERROR

### CHAPTER FORTY-FOUR. APPEAL AND WRIT OF ERROR

Art.

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#### Art. 44.01. State cannot appeal

The State shall have no right of appeal in criminal actions.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.02. Defendant may appeal

A defendant in any criminal action has the right of appeal under the rules hereinafter prescribed.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.03. Presence in appellate court

The defendant need not be personally present upon the hearing of his cause in the Court of Criminal Appeals, but if not in jail, he may appear in person.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.04. Bond pending appeal

(a) Any defendant who is convicted of a misdemeanor, or who is convicted of a felony and whose punishment is assessed at a fine or confinement not to exceed fifteen years or both, shall be entitled to bail under the rules set forth in this Chapter pending disposition of his motion for new trial, if any, and pending disposition of his appeal, if any, and until his conviction becomes final.

(b) If the defendant is on bail when the trial commences, he shall have the same right to remain on bail during the trial of the case and until the return into court of the verdict as he had under the law before the trial commences.

(c) If the defendant is on bail when the trial commences and is convicted of a misdemeanor appealable to any court where a trial de novo may be had and is on bail when the trial commences, he shall remain at large on such bail and such bail shall not be considered as discharged until his conviction becomes final or he files an appeal bond as required by this Code for appeal from such conviction.

(d) If the defendant is on bail when the trial commences and is convicted of a misdemeanor appealable to the Court of Criminal Appeals or of a felony and his punishment is assessed at a fine or confinement not to exceed fifteen years, or both, he shall remain on such bail and the bail shall not be considered discharged until his conviction has become final, either through his failure to obtain a new trial or to perfect or pursue an appeal or through final affirmance by the appellate court on appeal and the filing of a mandate thereof with the clerk of the trial court.

After conviction, either pending determination of any motion for new trial or pending final determination of the appeal, the court in which he was tried may increase or decrease the amount of his bail, as it deems proper, either upon its own motion or the motion of the State or of the defendant, which bail and the sureties thereon shall be approved by such trial court in the event any additional bond is required.

(e) If the defendant is in custody when the trial commences, and his punishment is assessed at a fine or confinement not to exceed fifteen years, or both, he shall be entitled to bail until his conviction has become final, either through his failure to obtain a new trial or to perfect an appeal or through final affirmance by the appellate court upon appeal and the filing of a mandate thereof with the clerk of the trial court. Upon application by the defendant, and at any time prior to the time such conviction becomes final, the trial court shall set his bail at such

amount as such court deems proper, which bail and sureties on which bond shall be approved by the trial court. Such defendant shall be committed to jail unless he enters into such bail. If he be in custody, his motion for new trial or notice of appeal shall have no effect to release him from such custody unless he enters into such bail.

(f) Any such bail may be entered into and given either in the same or any subsequent term of the court, and shall be sufficient if it substantially meets the requirements of Article 17.09.

(g) In no event shall the defendant and the sureties on his bond be released from their liability on such bond or bonds until the defendant is placed in the custody of the sheriff.

(h) If the punishment assessed exceeds fifteen years confinement, the defendant shall be placed in custody of the sheriff and the bail thereby considered discharged immediately upon the return into court of the verdict as to punishment, or if the minimum punishment possible under the law exceeds fifteen years, then immediately upon the return into court of the verdict of guilty.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.05. Receipt of mandate

When the clerk of any court from whose judgment an appeal has been taken in cases wherein bail has been allowed shall receive the mandate of the Court of Criminal Appeals affirming such judgment, he shall immediately file the same and forthwith issue a *capias* for the arrest of the defendant for the execution of the sentence of the court, which shall recite the fact of conviction, setting forth the offense and the judgment and sentence of the court, the appeal from and affirmance of such judgment and the filing of such mandate, and shall command the sheriff to arrest and take into his custody the defendant and place him in jail and therein keep him until delivered to the proper authorities, as directed by said sentence. The sheriff shall forthwith execute such *capias* as directed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.06. Capias may issue to any county

Such *capias* may issue to any county of this State, and shall be executed and returned as in other felony cases, except that no bail shall be taken in such cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.07. Right of appeal not abridged

The right of appeal, as otherwise provided by law, shall in no wise be abridged by any provision of this Chapter.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.08. Notice of appeal

(a) It shall be necessary for defendant, as a condition of perfecting an appeal to the Court of Criminal Appeals, to give notice of appeal. This notice may be given orally in open court or may be in writing

filed with the clerk. Such notice shall be sufficient if it shows the desire of defendant to appeal from the conviction to the Court of Criminal Appeals.

(b) In cases where the death penalty has been assessed or in probation cases where imposition of sentence is suspended, such notice shall be given or filed within ten days after overruling of the motion or amended motion for new trial and if there be no motion or amended motion for new trial, then within ten days after entry of judgment on the verdict.

(c) In all other cases such notice shall be given or filed within ten days after sentence is pronounced.

(d) The record on appeal will be deemed sufficient to show notice of appeal was duly given if it contains written notice of appeal showing a date of filing within the time required by law or if the record contains any judgment or sentence or other court order or any docket entry by the court showing that notice of appeal was duly given.

(e) For good cause shown, the trial court may permit the giving of notice of appeal after the expiration of such ten days.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.09. Escape pending appeal

If the defendant, pending an appeal in the felony case, makes his escape from custody, the jurisdiction of the Court of Criminal Appeals shall no longer attach in the case. Upon the fact of such escape being made to appear, the court shall, on motion of the State's attorney, dismiss the appeal; but the order dismissing the appeal shall be set aside if it is made to appear that the defendant has voluntarily returned within ten days to the custody of the officer from whom he escaped; and in cases where the punishment inflicted by the jury is death or confinement in an institution operated by the Department of Corrections for life, the court may in its discretion reinstate the appeal if the defendant is recaptured or voluntarily surrenders within thirty days after such escape.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.10. Sheriff to report escape

When any such escape occurs, the sheriff who had the prisoner in custody shall immediately report the fact under oath to the district or county attorney of the county in which the conviction was had, who shall forthwith forward such report to the State prosecuting attorney. Such report shall be sufficient evidence of the fact of such escape to authorize the dismissal of the appeal.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.11. Effect of appeal

Upon the appellate record being filed in the Court of Criminal Appeals, all further proceedings in the trial court, except as to bond as provided in Article 44.04 and the proceedings in Article 40.09, shall be suspended and arrested until the judgment of the Court of Criminal Appeals is received by the trial court. In cases where the record or any portion

thereof is lost or destroyed it may be substituted in the trial court and when so substituted the record may be prepared and transmitted to the Court of Criminal Appeals as in other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1748, ch. 659, § 31, eff. Aug. 28, 1967.]

#### Art. 44.12. Procedure as to bail pending appeal

The amount of any bail given in any felony or misdemeanor case to perfect an appeal from any court to the Court of Criminal Appeals shall be fixed by the court in which the judgment and sentence appealed from was rendered. The sufficiency of the security thereon shall be tested, and the same proceedings had in case of forfeiture, as in other cases regarding bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.13. Appeals from justice and corporation courts

In appeals from the judgments and sentence of justice or corporation courts, the defendant shall, if he be in custody, be committed to jail unless he gives bail, to be approved by the court from whose judgment and sentence the appeal is taken, in an amount not less than double the amount of fine and costs adjudged against him, payable to the State of Texas; provided the bail shall not in any case be for a less sum than fifty dollars. The bond shall recite that in the cause the defendant was convicted and has appealed, and be conditioned that the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if said court be then in session; and if said court be not in session, then at its next regular term, stating the time and place of holding the same, and there remain from day to day and term to term, and answer in said cause in said court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.14. Filing bond perfects appeal

In appeals from justice and corporation courts, when the appeal bond provided for in the preceding Article has been filed with the justice or judge who tried the case, the appeal in such case shall be held to be perfected. No appeal shall be dismissed because defendant failed to give notice of appeal in open court, nor on account of any defect in the transcript.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.15. Appellate court may allow new bond

When an appeal is taken from any court of this State, by filing a bond within the time prescribed by law in such cases, and the court to which appeal is taken determines that such bond is defective in form or substance, such appellate court may allow the appellant to amend such bond by filing a new bond, on such terms as the court may prescribe.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.16. Appeal bond given within what time

If the defendant is not in custody, a notice of appeal as provided in Article 44.13 shall have no effect whatever until the required appeal bond has been given and approved; and such appeal bond shall, in all cases, be given within ten days after the sentence of the court has been rendered, and not afterward.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.17. Trials de novo

In all appeals from justice and corporation courts to the county court, the trial shall be de novo in the trial in the county court, the same as if the prosecution had been originally commenced in that court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.18. Original papers sent up

In appeals from justice and corporation courts, all the original papers in the case, together with the appeal bond, if any, and together, with a certified transcript of all the proceedings had in the case before such court shall be delivered without delay to the clerk of the court to which the appeal was taken, who shall file the same and docket the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.19. Witnesses not again summoned

In the cases mentioned in the preceding Article, the witnesses who have been summoned or attached to appear in the case before the court below, shall appear before the court to which the appeal is taken without further process. In case of their failure to do so, the same proceedings may be had as if they had been originally summoned or attached to appear before such court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.20. Rules governing appeal bonds

The rules governing the taking and forfeiture of bail shall govern appeal bonds, and the forfeiture and collection of such appeal bonds shall be in the court to which such appeal is taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.21. Clerk to make list of cases

The clerk, immediately after the adjournment of the court at which appeals were taken, shall make out a certificate under his seal showing a list of each cause appealed. This certificate shall show the style of the cause, the offense, the date judgment was rendered, and the date the appeal was taken; and the clerk shall send it to the clerk of the appellate court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.22. Failure to receive record

When it appears by the clerk's certificate that an appeal has been taken but that the record has not been received by the clerk of the Court of Criminal Appeals within the time required by law for filing the record, such clerk shall immediately notify the

clerk of the proper court that the same has not been received, and such clerk without delay shall prepare and forward another record as in the first instance, and notify the clerk of the appellate court by letter of the fact that such record has been forwarded and how and when it was forwarded.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.23. Appeals, when determined

The Court of Criminal Appeals shall hear and determine appeals in criminal actions at the earliest time it may be done, with due regard to the rights of parties and proper administration of justice, and no affirmance or reversal of a case shall be determined on mere technicalities or on technical errors in the preparation and filing of the record on appeal.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1748, ch. 659, § 32, eff. Aug. 28, 1967.]

#### Art. 44.24. Presumptions on appeal; decisions by the Appellate Court

(a) The Court of Criminal Appeals shall presume that the venue was proved in the court below; that the jury was properly impaneled and sworn; that the defendant was arraigned; that he pleaded to the indictment; that the court's charge was certified by the judge and filed by the clerk before it was read to the jury, unless such matters were made an issue in the court below, or it otherwise affirmatively appears to the contrary from the record.

(b) The Court of Criminal Appeals may affirm the judgment of the court below, or may reverse and remand for a new trial, or may reverse and dismiss the case, or may reform and correct the judgment, as the law and nature of the case may require.

(c) The Court of Criminal Appeals, in each case decided by it, shall deliver a written opinion, setting forth in intelligible language the reason for such decision; or where precedent exists, in its discretion may decide the same by a certificate of affirmance or reversal with citation of supporting authorities. In either event, any judge may file an opinion dissenting from or concurring in the action of the court.

(d) If the court decides a case by certification, the certificate must certify that each member of the court has examined and read the briefs of the parties.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 1260, ch. 460, § 1, eff. Aug. 27, 1973.]

#### Art. 44.25. Cases remanded

The Court of Criminal Appeals may reverse the judgment in a criminal action, as well upon the law as upon the facts. A cause reversed because the verdict is contrary to the evidence shall be remanded for new trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.26. Duty of the clerk after judgment

When the judgment of the Court of Criminal Appeals is final, the clerk shall make out the proper certificate of the proceedings had and judgment rendered, and mail the same to the clerk of the proper court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.27. Mandate to be filed

When the mandate of the Court of Criminal Appeals is received by the proper clerk, he shall file it with the papers of the cause, and note it upon the docket.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.28. When misdemeanor is affirmed

In misdemeanor cases where there has been an affirmance, no proceedings need be had after filing the mandate, except to forfeit the bond of the defendant, or to issue a writ of habeas corpus for the defendant, or an execution against his property, to enforce the judgment of the court, as if no appeal had been taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.29. Effect of reversal

Where the Court of Criminal Appeals awards a new trial to the defendant, the cause shall stand as it would have stood in case the new trial had been granted by the court below.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.30. Motion in arrest of judgment

Where the motion in arrest of judgment was overruled, and it is decided on appeal that the same ought to have been sustained, the cause shall stand as if the motion had been sustained, unless the appellate court directs the cause to be dismissed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.31. Defendant discharged, when

When the Court of Criminal Appeals reverses a judgment and orders the cause to be dismissed, the defendant, if in custody, must be discharged. The clerk of the appellate court shall at once transmit to the officer having custody of the defendant an order by telegraph or mail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.32. Bail after reversal

When a felony case is reversed and remanded for a new trial, the defendant shall be released from custody, upon his giving bail as in other cases when he is entitled to bail. The clerk of the appellate court shall send the officer having custody of the defendant an order to that effect.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.33. Hearing in appellate court

The Court of Criminal Appeals may make rules of procedure as to the hearing of criminal actions upon appeal not inconsistent with this Code. After the

record is filed in the Court of Criminal Appeals the parties may file such supplemental briefs as they may desire before the case is heard on oral argument by such court. Each party, upon filing any such supplemental brief, shall promptly cause true copy thereof to be delivered to the opposing party or to the latter's counsel. In every case at least two counsel for the defendant shall be heard in the Court of Criminal Appeals if such be desired by defendant.

Appellant's failure to file his brief in the time prescribed shall not authorize a dismissal of the appeal by the Court of Criminal Appeals, nor shall the Court of Criminal Appeals, for such reason, refuse to consider appellant's case on appeal. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.34. Appeal in habeas corpus

When the defendant appeals from the judgment rendered on the hearing of an application under habeas corpus, a record of the proceedings in the cause shall be made out and certified to, together with all the testimony offered, and shall be sent up to the Court of Criminal Appeals for review. This record shall be sent up to the Court of Criminal Appeals within fifteen days after the date of the judgment, except that if good cause is shown, the time may be extended by the Court of Criminal Appeals. This record, when the proceedings take place before the court in session, shall be prepared and certified by the clerk thereof; but when had before a judge in vacation, the record may be prepared by any person, under direction of the judge, and certified by such judge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 1270, ch. 465, § 1, eff. June 14, 1973.]

#### Art. 44.35. Bail pending habeas corpus appeal

In any habeas corpus proceeding in any court or before any judge in this State where the defendant is remanded to the custody of an officer and an appeal is taken to an appellate court, the defendant shall be allowed bail by the court or judge so remanding the defendant, except in capital cases where the proof is evident. The fact that such defendant is released on bail shall not be grounds for a dismissal of the appeal except in capital cases where the proof is evident.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.36. Hearing habeas corpus

Cases of habeas corpus, taken to the Court of Criminal Appeals by appeal, shall be heard at the earliest practicable time. The defendant need not be personally present, and such appeal shall be heard and determined upon the law and the facts arising upon record. No incidental question which may have arisen on the hearing of the application before the court below shall be reviewed. The only design of the appeal is to do substantial justice to the party appealing.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.37. Orders on appeal

The Court of Criminal Appeals shall enter such judgment, and make such orders as the law and the nature of the case may require, and may make such orders relative to the costs in the case as may seem right, allowing costs and fixing the amount, or allowing no costs at all.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.38. Judgment conclusive

The judgment of the Court of Criminal Appeals in appeals under habeas corpus shall be final and conclusive; and no further application in the same case can be made for the writ, except in cases specially provided for by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.39. Appellant detained by other than officer

If the appellant in a case of habeas corpus be detained by any person other than an officer, the sheriff receiving the mandate of the Court of Criminal Appeals, shall immediately cause the person so held to be discharged; and the mandate shall be sufficient authority therefor.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.40. Judgment to be certified

The judgment of the Court of Criminal Appeals shall be certified by the clerk thereof to the officer holding the defendant in custody, or when he is held by any person other than an officer, to the sheriff of the proper county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.41. Who shall take bail bond

When, by the judgment of the Court of Criminal Appeals upon cases of habeas corpus, the applicant is ordered to give bail, such judgment shall be certified to the officer holding him in custody; and if such officer be the sheriff, the bail bond may be executed before him; if any other officer, he shall take the person detained before some magistrate, who may receive a bail bond, and shall file the same in the proper court of the proper county; and such bond may be forfeited and enforced as provided by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.42. Appeal on forfeitures

An appeal may be taken by the defendant from every final judgment rendered upon a personal bond, bail bond or bond taken for the prevention or suppression of offenses, where such judgment is for twenty dollars or more, exclusive of costs, but not otherwise.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 44.43. Writ of error

The defendant may also have any such judgment as is mentioned in the preceding Article, and which may have been rendered in courts other than the justice and corporation courts, reviewed upon writ of error.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 44.44. Rules in forfeitures**

In the cases provided for in the two preceding Articles, the proceeding shall be regulated by the same rules that govern civil actions where an appeal is taken or a writ of error sued out.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**JUSTICE AND CORPORATION COURTS****CHAPTER FORTY-FIVE. JUSTICE AND CORPORATION COURTS**

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**Art. 45.01. Complaint**

Proceedings in a corporation court shall be commenced by complaint, which shall begin: "In the name and by authority of the State of Texas"; and shall conclude: "Against the peace and dignity of

the State"; and if the offense is only covered by an ordinance, it may also conclude: "Contrary to the said ordinance". The recorder shall charge the jury when requested in writing by the defendant or his attorney. Complaints before such court may be sworn to before any officer authorized to administer oaths or before the recorder, clerk of the court, city secretary, city attorney or his deputy, each of whom, for that purpose, shall have power to administer oaths.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 1655, ch. 520, § 1, eff. June 10, 1969.]

**Art. 45.02. Seal**

The said court shall have a seal with a star of five points in the center and the words "Corporation Court in \_\_\_\_\_ Texas", the impress of which shall be attached to all papers issued out of said court except subpoenas, and shall be used to authenticate the official acts of the clerk and of the recorder.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.03. Prosecutions**

All prosecutions in a corporation court shall be conducted by the city attorney of such city, town or village, or by his deputy. The county attorney of the county in which said city, town or village is situated may, if he so desires, also represent the State in such prosecutions. In such cases, the said county attorney shall not be entitled to receive any fees or other compensation whatever for said services. The county attorney shall have no power to dismiss any prosecution pending in said court unless for reasons filed and approved by the recorder.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.031. Directed verdict**

If, upon the trial of a case in a corporation court, there is a material variance between the allegations in the complaint and the proof offered by the state, or the state has failed to prove a prima facie case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of "not guilty" as in any other criminal case.

[Acts 1969, 61st Leg., p. 1655, ch. 520, § 2, eff. June 10, 1969.]

**Art. 45.04. Service of process**

Sec. 1. All process issuing out of a corporation court may be served and shall be served when directed by the court, by a policeman or marshal of the city, town or village within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court, so far as applicable.

Sec. 2. The policeman or marshal may serve all process issuing out of a corporation court anywhere in the county in which the city, town or village is situated. If the city, town or village is situated in more than one county, the policeman or marshal may serve the process throughout those counties.

Sec. 3. A defendant is entitled to at least one day's notice of any complaint against him, if such time is demanded.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1171, ch. 523, § 1, eff. Aug. 28, 1967.]

#### Art. 45.05. Commitment

When the defendant in such cases is committed to custody, he shall be committed to the custody of the chief of police or city marshal of such city, town or village, to be held by him in accordance with the ordinance providing for the custody of prisoners convicted before such corporation court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 45.06. Fines and special expenses

The governing body of each incorporated city, town or village shall by ordinance prescribe such rules, not inconsistent with any law of this State, as may be proper to enforce, by execution against the property of the defendant, or imprisonment of the defendant, the collection of all fines imposed by such court, and shall also have power to adopt such rules and regulations concerning the practice and procedure in such court as said governing body may deem proper, not inconsistent with any law of this State. All such fines, and the special expenses described in Article 17.04 dealing with the requisites of a personal bond and a special expense for the issuance and service of a warrant of arrest, after due notice, not to exceed \$7.50, shall be paid into the city treasury for the use and benefit of the city, town or village.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 45.07. Collection of costs

No costs shall be provided for by any ordinance of any incorporated city, town, or village, and none shall be collected.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 45.08. Jury fees

The provisions of this Code regulating the amount and collection of jury and witness fees, and for enforcing the attendance of witnesses in criminal cases tried in the justice court shall, so far as applicable, govern such corporation court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 45.09. Officers' fees

Unless provided by special charter, the governing body of each city, town or village by ordinance shall prescribe the compensation and fees which shall be paid to the recorder, city attorney, city secretary and other officers of said court, to be paid out of the municipal treasury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 45.10. Appeal

Appeals from a corporation court shall be heard by the county court except in cases where the county

court has no jurisdiction, in which counties such appeals shall be heard by the proper court. In such appeals the trial shall be de novo. Said appeals shall be governed by the rules of practice and procedure for appeals from justice courts to the county court, as far as applicable.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 45.11. Disposition of fees

The fine imposed on appeal and the costs imposed on appeal shall be collected of the defendant, and such fine of the corporation court when collected shall be paid into the municipal treasury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 45.12. Contempt and bail

The recorder shall have power to admit to bail, and to forfeit bonds under such rules as govern such taking and forfeiture in the county court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 2536, ch. 831, § 5, eff. Aug. 30, 1971.]

#### Art. 45.13. Criminal docket

Each justice of the peace and each recorder shall keep a docket in which he shall enter the proceedings in each trial had before him, which docket shall show:

1. The style of the action;
2. The nature of the offense charged;
3. The date the warrant was issued and the return made thereon;
4. The time when the examination or trial was had, and if a trial, whether it was by a jury or by himself;
5. The verdict of the jury, if any;
6. The judgment and sentence of the court;
7. Motion for new trial, if any, and the decision thereon;
8. If an appeal was taken; and
9. The time when, and the manner in which, the judgment and sentence was enforced.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 45.14. To file transcript of docket

At each term of the district court, each justice of the peace shall, on the first day of the term of said court for their county; file with the clerk of said court a certified transcript of the docket kept by such justice, of all criminal cases examined or tried before him since the last term of such district court; and such clerk shall immediately deliver such transcript to the foreman of the grand jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 45.15. Warrant without complaint

Whenever a criminal offense which a justice of the peace has jurisdiction to try shall be committed within the view of such justice, he may issue his warrant for the arrest of the offender.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.16. Complaint shall be written**

Upon complaint being made before any justice of the peace, or any other officer authorized by law to administer oaths, that an offense has been committed in the county which a justice of the peace has jurisdiction finally to try, the justice or other officer shall reduce the same to writing and cause the same to be signed and sworn to by the complainant. It shall be duly attested by the officer before whom it was made; and when made before such justice, or when returned to him made before any other officer, the same shall be filed by him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.17. What complaint must state**

Such complaint shall state:

1. The name of the accused, if known, and if unknown, shall describe him as accurately as practicable;
2. The offense with which he is charged, in plain and intelligible words;
3. That the offense was committed in the county in which the complaint is made; and
4. It must show, from the date of the offense stated therein, that the offense is not barred by limitation.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.18. Warrant shall issue**

When the requirements of the preceding Article have been complied with, the justice shall issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.19. Requisites of warrant**

Said warrant shall be deemed sufficient if it contains the following requisites:

1. It shall issue in the name of "The State of Texas";
2. It shall be directed to the proper sheriff, constable or some other person specially named therein;
3. It shall command that the body of the accused be taken, and brought before the authority issuing the warrant, at the time and place therein named;
4. It must state the name of the person whose arrest is ordered, if it be known, and if not known, he must be described as in the complaint;
5. It must state that the person is accused of some offense against the laws of the State, naming the offense; and
6. It must be signed by the justice, and his office named in the body of the warrant, or in connection with his signature.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.20. Any person may execute warrant**

A justice of the peace may, when he deems it necessary, authorize any person other than a peace officer to execute a warrant of arrest by naming such person specially in the warrant. In such case, such person shall have the same powers, and shall be subject to the same rules that govern peace officers in like cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.21. Offenses committed in another county**

Whenever complaint is made before any justice of the peace that a felony has been committed in any other than a county in which the complaint is made, such justice shall issue his warrant for the arrest of the accused, directed as in other cases, commanding that the accused be arrested and taken before any magistrate of the county where such felony is alleged to have been committed, forthwith, for examination as in other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.22. Offenses in counties of 225,000; venue; fee of constable; penalties**

Sec. 1. No person shall ever be tried in any justice precinct court unless the offense with which he was charged was committed in such precinct. Provided, however, should there be no duly qualified justice precinct court in the precinct where such offense was committed, then the defendant shall be tried in the justice precinct next adjacent which may have a duly qualified justice court. And provided further, that if the justice of the peace of the precinct in which the offense was committed is disqualified for any reason for trying the case, then such defendant may be tried in some other justice precinct within the county.

Sec. 2. No constable shall be allowed a fee in any misdemeanor case arising in any precinct other than the one for which he has been elected or appointed, except through an order duly entered upon the minutes of the county commissioners court.

Sec. 3. Any justice of the peace, constable or deputy constable violating this Act shall be punished by a fine of not less than \$100 nor more than \$500.

Sec. 4. The provisions of this Article shall apply only to counties having a population of 225,000 or over according to the last preceding federal census.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.23. To try cause without delay**

When the defendant is brought before the justice, he shall proceed to try the cause without delay, unless good ground be shown for a postponement thereof, in which case he may postpone the trial to any time not longer than five days, and may, if he deem proper, require the defendant to give bail for his appearance; and if, when required, he fails to give bail, he shall be kept in custody until the final determination of the cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.24. Defendant may waive jury**

The accused may waive a trial by jury; and in such case, the justice shall hear and determine the cause without a jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.25. Jury summoned**

If the accused does not waive a trial by jury, the justice shall issue a writ commanding the proper officer to summon forthwith a venire from which six qualified persons shall be selected to serve as jurors in the case. Said jurors when so summoned shall remain in attendance as jurors in all cases that may come up for hearing until discharged by the court. Any person so summoned who fails to attend may be fined not exceeding \$20 for contempt.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.26. Complaint read**

If the warrant is issued upon a complaint made to the justice, the complaint shall be read to the defendant. If issued by the justice without previous complaint, he shall state to the defendant the accusation against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.27. Not discharged for informality**

A defendant shall not be discharged by reason of any informality in the complaint or warrant. The proceeding before the justice shall be conducted without reference to technical rules except as provided in Article 4.15.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.28. Challenge of jurors**

In all jury trials in the justice court the State and each defendant in the case shall be entitled to three peremptory challenges, and also to any number of challenges for cause, which cause shall be judged of by the justice.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.29. Other jurors summoned**

If, from challenges or any other cause, a sufficient number of jurors are not in attendance, the justice shall order the proper officer to summon a sufficient number of qualified persons to form the jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.30. Oath to jury**

The justice shall administer the following oath to the jury: "Each of you do solemnly swear that you will well and truly try the cause about to be submitted to you and a true verdict render therein, according to the law and the evidence, so help you God".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.31. Defendant shall plead**

After the jury is impaneled, or after the defendant has waived trial by jury, the defendant may plead guilty or not guilty or may enter a plea of nolo

contendere, or the special plea named in the succeeding Article.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.32. The only special plea**

The only special pleas allowed are those defined in Article 27.05 of this code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 974, ch. 399, § 2(A), eff. Jan. 1, 1974.]

**Art. 45.33. Pleading is oral**

All pleading of the defendant in justice court may be oral or in writing as the defendant may elect. The justice shall note upon his docket the plea offered.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.34. Plea of guilty**

Proof as to the offense may be heard upon a plea of guilty and a plea of nolo contendere and the punishment assessed by the court or jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.35. If defendant refuses to plead**

The justice shall enter a plea of not guilty if the defendant refuses to plead.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.36. Witnesses examined by whom**

The justice shall examine the witnesses if the State is not represented by counsel.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.37. May appear by counsel**

The defendant has a right to appear by counsel as in all other cases. Not more than one counsel shall conduct either the prosecution or defense. State's counsel may open and conclude the argument.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.38. Rules of evidence**

The rules of evidence which govern the trials of criminal actions in the district court shall apply to such actions in justice courts.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.39. Jury kept together**

The jury shall retire in charge of an officer when the cause is submitted to them, and be kept together until they agree to a verdict or are discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.40. Mistrial**

A jury shall be discharged if it fails to agree to a verdict after being kept together a reasonable time. If there be time left on the same day, another jury may be impaneled to try the cause, or the justice may adjourn for not more than two days and again impanel a jury to try such cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.41. Defendant to give bail**

In case of adjournment, the justice shall require the defendant to give bail for his appearance. If he fails to give bail he may be held in custody.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.42. Verdict**

When the jury has agreed upon a verdict, it shall bring the same into court; and the justice shall see that it is in proper form and shall enter it upon his docket and render the proper judgment and sentence thereon.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.43. Defendant placed in jail**

Whenever, by the provisions of this title, the peace officer is authorized to retain a defendant in custody, he may place him in jail or any other place where he can be safely kept.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.44. New trial granted**

A justice may, for good cause shown, grant the defendant a new trial, whenever he considers that justice has not been done the defendant in the trial of such case.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.45. Motion for new trial**

An application for a new trial must be made within one day after the rendition of judgment and sentence, and not afterward; and the execution of the judgment and sentence shall not be stayed until a new trial has been granted.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.46. Only one new trial granted**

Not more than one new trial shall be granted the defendant in the same case. When a new trial has been granted, the justice shall proceed, as soon as practicable, to try the case again.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.47. State not entitled to new trial**

In no case shall the State be entitled to a new trial.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.48. Effect of appeal**

When a defendant files the appeal bond required by law with the justice, all further proceeding in the case in the justice court shall cease.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.49. Judgments in open court**

All judgments and sentences and final orders of the justice shall be rendered in open court and entered upon his docket.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 45.50. The judgment**

(a) The judgment and sentence, in case of conviction in a criminal action before a justice of the peace, shall be that the defendant pay the amount of the fine and costs to the state.

(b) The justice may direct the defendant:

(1) to pay the entire fine and costs when sentence is pronounced; or

(2) to pay the entire fine and costs at some later date; or

(3) to pay a specified portion of the fine and costs at designated intervals.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 2990, ch. 987, § 5, eff. June 15, 1971.]

**Art. 45.51. Capias**

(a) If the defendant is not in custody when the judgment is rendered, the court may order a capias issued for his arrest. The capias shall state the amount of the judgment and sentence, and command the sheriff to bring the defendant before the court or place him in jail until he can be brought before the court.

(b) If the defendant escapes from custody after judgment is rendered, a capias shall issue for his arrest and confinement until he is legally discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 2991, ch. 987, § 6, eff. June 15, 1971.]

**Art. 45.52. Collection of fines**

(a) When a judgment and sentence have been rendered against a defendant for a fine and costs and he defaults in payment, the justice may order him imprisoned in jail until discharged by law. A certified copy of the judgment, sentence, and order is sufficient to authorize such imprisonment.

(b) The justice may order the fine and costs collected by execution against the defendant's property in the same manner as a judgment in a civil suit.  
[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1971, 62nd Leg., p. 2991, ch. 987, § 7, eff. June 15, 1971.]

**Art. 45.53. Discharged from jail**

A defendant placed in jail on account of failure to pay the fine and costs can be discharged on habeas corpus by showing:

1. That he is too poor to pay the fine and costs; and

2. That he has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of \$5 for each day.

But the defendant shall, in no case under this Article, be discharged until he has been imprisoned at least five days; and a justice of the peace may discharge the defendant upon his showing the same cause, by application to such justice; and when such

application is granted, the justice shall note the same on his docket.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

## MISCELLANEOUS PROCEEDINGS

### CHAPTER FORTY-SIX. INSANITY AS DEFENSE

Art.

46.01. Mental illness after conviction.

46.02. Insanity in defense or in bar.

#### Art. 46.01. Mental illness after conviction

Persons not charged with a criminal offense

Sec. 1. A person who has been convicted of a criminal offense and sentenced to a term in an institution operated by the Department of Corrections or the county jail and whose sentence has been probated, or suspended, or served or who is on parole, is not by reason of that offense a person charged with a criminal offense as that phrase is used in Article 1, Sections 15 and 15a of the Constitution of the State of Texas, and such a person who is mentally ill may be hospitalized under the same procedures provided for other persons who are mentally ill.

Transfer from department of corrections to mental hospital

Sec. 2. (a) The Director of the Department of Corrections may transfer a prisoner not under death sentence who is confined in an institution operated by the Department of Corrections to a State mental hospital, or to an agency of the United States operating a mental hospital or to a Veterans' Administration hospital, if a prison physician is of the opinion that the prisoner is mentally ill and would benefit from treatment in a mental hospital and if he is advised by the head of the mental hospital that facilities are available and the prisoner is eligible for treatment.

(b) A prisoner so transferred remains under the jurisdiction of the Department of Corrections.

(c) The Director of the Department of Corrections shall transport the prisoner to and from the mental hospital.

Transfer from county jail to mental hospital

Sec. 3. (a) The county judge may transfer a prisoner who is serving sentence in a county jail to a State mental hospital, or to an agency of the United States operating a mental hospital or to a Veterans' Administration hospital, if the county health officer certifies that the prisoner is mentally ill and would benefit from treatment in a mental hospital and if the judge is advised by the head of the mental hospital that facilities are available and the prisoner is eligible for treatment.

(b) A prisoner so transferred remains under the jurisdiction of the sheriff of the county.

(c) The county from which a prisoner is so transferred shall transport the prisoner to and from the mental hospital, and shall pay the costs of his support, treatment and maintenance while in a State mental hospital as a prisoner.

Confinement in mental hospital

Sec. 4. The head of the mental hospital in which a prisoner is being treated shall take reasonable precaution to prevent the escape of the prisoner and shall not discharge or furlough the prisoner or transfer him to any mental hospital other than a State mental hospital or an agency of the United States operating a mental hospital or a Veterans' Administration hospital during the term of his sentence.

Escape from mental hospital

Sec. 5. The Director of the Department of Corrections or the sheriff from whose custody the prisoner was transferred is responsible for regaining custody of a prisoner who escapes from a mental hospital.

Recovery before expiration of sentence

Sec. 6. When the head of a mental hospital determines that a prisoner whose sentence has not expired no longer requires hospitalization for mental illness or will not benefit from continued hospitalization, he shall so notify the Director of the Department of Corrections or the county judge who transferred the prisoner to the mental hospital. Upon receiving this notice the Director of the Department of Corrections or the county judge shall immediately transport the prisoner from the mental hospital to the Department of Corrections or county jail to serve the unexpired portion of his sentence.

Examination prior to expiration of sentence

Sec. 7. Prior to the date of the expiration of the sentence of a prisoner who is being treated in a mental hospital, the head of the mental hospital shall have the prisoner examined and shall determine whether he requires further hospitalization as a mentally ill person and whether because of his mental illness he is likely to cause injury to himself or others if not restrained.

(a) The head of the mental hospital shall release the prisoner upon receiving notice of his discharge from the Department of Corrections or from jail, unless he determines that the prisoner requires further hospitalization as a mentally ill person and because of his mental illness is likely to cause injury to himself or others if not restrained.

(b) If the head of the hospital determines that the prisoner requires further hospitalization as a mentally ill person and because of his mental illness is likely to cause injury to himself or others if not restrained, he shall cause to be filed in the county court of the county in which the hospital is located a Certificate of Examination for Mental Illness and an Application for Temporary Hospitalization or Petition for Indefinite Commitment and may detain the

person as a patient after his discharge from prison pending order of the court.

(c) If the head of the hospital determines that the prisoner requires further hospitalization as a mentally ill person, he shall so inform a responsible relative of the patient, and may cause an Application for Temporary Hospitalization or Petition for Indefinite Commitment to be filed in the county court of the proper county.

Time credited

Sec. 8. The time a prisoner is confined in a mental hospital for treatment shall be considered time served and shall be credited to the term of his sentence, but he shall not be entitled to any commutation of sentence for good conduct while he is under treatment in a mental hospital.

Discharge from prison

Sec. 9. Upon the expiration of the sentence of a prisoner who is being treated in a mental hospital, he shall receive a discharge from the Department of Corrections or the county jail as in all other cases. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 717 to 719, ch. 299, § 2, eff. Aug. 28, 1967.]

### Art. 46.02. Insanity in defense or in bar

Trial of insanity issue in advance of trial on merits

Sec. 1. The issue of present insanity shall be tried in advance of trial on the merits, upon written application on behalf of the accused. If upon trial of the issue of insanity in advance of trial on the merits, the accused is found to be presently sane, the trial judge shall dismiss the jury which decided the issue of present insanity and empanel a new jury to hear any subsequent trial on the merits.

Procedure at trial

Sec. 2. (a) At the trial on the merits, the trial court shall hear evidence on the issue of present insanity (1) if prior to the offer thereof there be filed on behalf of the defendant's written motion asking the court to hear evidence on such issue and requesting the court to declare a mistrial because of such insanity in the manner and to the extent provided for in this article; or (2) if the defendant or his counsel otherwise asks for a decision or issue thereon, in which event such act of the defendant shall be treated and considered as if the defendant had filed such a motion for mistrial. For purposes of present insanity, the defendant shall be considered presently insane if he is presently incompetent to make a rational defense.

(b) When the issue of present insanity is tried, the following rules shall apply:

(1) The issue of present insanity shall be submitted to the jury only if supported by competent testimony.

(2) (a) Instructions submitting the issue of present insanity shall be framed so as to require the jury to state in its verdict whether defendant is sane or insane at the time of the trial.

(b) If there has been competent medical or psychiatric testimony to the effect that the defendant is presently insane, instructions submitting the issue of present insanity shall require the jury, if it finds the defendant presently insane, to state whether the defendant requires hospitalization in a mental hospital for his own welfare and protection or the protection of others.

(3) The charge shall instruct the jury that if it finds defendant is presently insane it will not consider or deliberate upon any other issues except (a) whether the defendant should be committed to a mental hospital; and (b) whether he was sane or insane as of the time of the alleged offense, if such issue be submitted.

(c) When the issue of insanity as of the time of the alleged offense is tried, the following rules shall apply:

(1) The issue of insanity as of the time of the alleged offense shall be submitted to the jury only if supported by competent evidence tending to show that defendant was insane as of the time of the alleged offense.

(2) Instructions submitting the issue of insanity as of the time of the alleged offense shall be framed so as to require the jury to state in its verdict whether defendant was sane or insane as of the time of the alleged offense.

(3) If the jury finds the defendant to have been insane at the time the offense is alleged to have been committed, the defendant shall stand acquitted of the alleged offense.

(d) The following rules shall apply upon defendant's being acquitted by reason of the jury's returning a finding that he was insane as of the time of the alleged offense:

(1) If the jury finds the defendant to be insane at the time of trial, and if the jury or the court further finds that the defendant should be committed to a mental institution, the court shall enter an order committing the defendant to Rusk State Hospital or to an agency of the United States operating a mental hospital or to a Veterans' Administration hospital, and placing him in the custody of the sheriff for transportation to the mental hospital to be confined therein until he becomes sane. The court shall further order that a transcript of all medical testimony adduced before the jury shall be forthwith prepared by the court reporter and such transcript shall accompany the patient to the mental hospital.

(2) If the jury returns a finding that defendant is sane as of the time of the trial, then the defendant shall be finally discharged.

(3) If there be no jury finding on the issue of present insanity, then the court, if the discharge or going at large of defendant be considered by the court manifestly dangerous to the peace and safety of the people, shall order defendant committed to jail or other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether defendant shall be committed to a mental institution, or the court may give defendant into the care of his friends on their giving satisfactory security for his proper care and protection; otherwise, defendant shall be discharged.

(e) Where the jury finds that the defendant is presently insane, but does not find that he was insane at the time of the offense (either because such issue was not submitted or because the jury failed to find on that issue or because it found that he was not insane at such time), the court shall enter a mistrial as to all issues except the issue of present insanity. If the jury finds that the defendant should be committed to a mental institution, the proper order so committing him shall be entered by the court; provided that if the court enters an order committing the defendant to a state mental hospital the rules set out in Section 2(d)(1) hereof shall be followed in designating the state mental hospital to which the defendant is to be committed.

(f) Evidence. (1) The court may, at its discretion appoint disinterested qualified experts to examine the defendant with regard to his present competency to stand trial and as to his sanity, and to testify thereto at any trial or hearing in connection to the accusation against the accused; provided that the court may not order the defendant to a state mental hospital for such examination without the consent of the head of that state mental hospital.

(2) Such appointed experts shall be paid out of the General Fund of the county where the indictment was found or information was filed. A state mental hospital which accepts a defendant for examination under Section 2(f) hereof shall be reimbursed out of the General Fund of the county where the indictment was found or information was filed for such expenses incurred as are reasonably necessary and incidental to the proper examination of the defendant.

(3) If the defendant is free on bail, the court in its discretion may commit him to custody pending such examination.

(4) No statement made by the defendant during examination into his competency shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding no matter under what circumstances such examination takes place.

(5) Any party may introduce other competent testimony regarding the defendant's competency.

(g) If trial is without a jury. (1) If the trial is before the court without a jury and if, after commencement of a trial on the merits and before the return of a verdict, there arises in the mind of the court from any cause, a reasonable doubt as to the present sanity of the defendant, the court shall suspend the proceedings and shall without unnecessary delay impanel a jury to determine the issue of the present sanity of the defendant.

(2) In such event, the trial before the jury on that issue shall proceed under the same procedure and the jury shall have the same duties and responsibilities with respect to the hearing on the question of present insanity and on the question of hospitalization and related questions, as are set forth in the other portions of this article where the question is raised in a jury trial.

(3) If the jury so impanelled shall determine that the defendant is sane at present, then in such event the court shall resume without unnecessary delay, the trial on the merits at the point where the proceedings were suspended. If the jury so impanelled shall determine that the defendant is not sane at present, then in such event the court shall declare a mistrial of the trial on the merits and shall enter such orders with respect to commitment and other matters as are authorized in accordance with the other portions of this article, and as may be appropriate under the jury findings, the facts and the law.

(4) If the jury so impanelled is unable to agree upon a unanimous verdict after a reasonable opportunity to deliberate, the court shall declare a mistrial of the competency trial, discharge the jury so impanelled and impanel another jury to determine the present mental competency of the defendant.

(h) A mistrial under the provisions of this section shall not serve to bar a subsequent trial and conviction for the same offense, and no jeopardy shall be considered as having attached in the event the defendant is found to be presently insane and a mistrial is declared by reason thereof, irrespective of the manner in which the issue is raised.

(i) The head of the state mental hospital to which a person has been committed under the provisions of Sections 2(d) or 2(e) hereof may, with the permission of the committing court, transfer such person to any other state mental hospital or an agency of the United States operating a mental hospital or a Veterans' Administration hospital.

Status of patient acquitted; post-commitment procedures

Sec. 3. (a) A person committed to a State Mental Hospital or to a mental hospital operated by the United States or the Veteran's Administration under this Article upon a jury finding of insanity at the time of trial who has been acquitted of an alleged offense because of insanity at the time the alleged

offense was committed is not by reason of that offense a person charged with a criminal offense. The procedures set forth in this Section, and no others, shall apply to all post-commitment determinations of the sanity of a person committed to a mental hospital upon a jury finding of insanity at the time of trial who has been acquitted of an alleged offense because of insanity at the time the alleged offense was committed and thereby is not a person charged with a criminal offense.

(b) If the head of mental hospital to which a person has been committed upon a finding of insanity at the time of trial who has been acquitted of the alleged offense, is of the opinion that the person is sane, the head of the mental hospital shall so notify the court which committed the person to the mental hospital. Upon receiving such notice, the judge of the committing court shall within a reasonable length of time impanel a jury to determine whether the person is sane or insane. If the jury finds the person is sane, he shall be ordered released as soon as the judgment on the jury verdict becomes final. If the jury finds the person is insane, the judgment on the jury verdict shall order the person returned to the mental hospital until adjudged to be sane at a subsequent jury trial in the committing court. When the person is so ordered returned to the mental hospital, the head of the mental hospital shall not again notify the committing court that he is of the opinion the person is sane for at least 180 days from the date the judgment of the committing court ordering him returned to the mental hospital on a previous jury finding of insanity has become final.

(c) When a person has been committed to a mental hospital upon a finding of insanity at the time of trial who has been acquitted of the alleged offense, and the person has been so committed for at least one year from the date of the original order so committing the person, and the head of the mental hospital to which he is committed fails or refuses to notify the court which committed the person to the mental hospital that he is of the opinion that the person is sane, then the person so committed may seek a post-commitment determination of his sanity by submitting a written request to the head of the mental hospital to which the person is committed requesting a determination of his sanity by the committing court.

Upon receipt of such a request, the head of the mental hospital shall, provided the person has been committed for at least one year from the date of the original order committing the person to the mental hospital, immediately cause the person to be examined by one or more staff physicians, and shall then immediately certify to the committing court the person's written request, the reports and findings of any examining physicians, and his own findings, if any.

Upon receipt from the head of the mental hospital of the person's written request and accompanying

papers certified to the committing court, the judge of the committing court shall immediately cause the same to be filed with the clerk of the committing court and the judge shall examine such written request and accompanying papers to determine if they reflect probable merit. In the event the judge of the committing court does not believe that the written request and accompanying papers reflect probable merit, the judge shall enter an order denying the person's request, which order shall be appealable to determine whether there was an abuse of discretion in denying the person's request. The committing court may, at its discretion, appoint disinterested qualified experts to examine the person as to the person's mental condition and requirements for hospitalization, in a mental hospital, to report their findings to the committing court, and to testify thereto, and the committing court may, at its discretion, direct the hospital to forward to the court any hospital records pertaining to such person.

If the person's request, accompanying papers and other records or reports, reflect probable merit, the judge of the committing court shall within a reasonable length of time impanel a jury to determine whether the person is sane or insane. If the jury finds the person sane, he shall be ordered released as soon as the judgment on the jury verdict becomes final. If the jury finds the person is insane, the judgment on the jury verdict shall order the person returned to the mental hospital until adjudged to be sane at a subsequent jury trial in the committing court. When a person is so ordered returned to the mental hospital, the person shall not again be permitted to request a post-commitment determination of his sanity for at least one year from the date the judgment of the committing court ordering him returned to the mental hospital on a previous jury finding of insanity has become final.

(d) Whenever a post-commitment jury trial is had in the committing court, whether occasioned by notice from the head of the hospital to which the person is committed as set forth in Section 3(b) hereof, or whether occasioned by the written request of the person committed as set forth in Section 3(c) hereof, the same shall be conducted under the following rules:

(1) The State of Texas shall be represented by the District Attorney or County Attorney of the county from where the person was originally committed. Whenever the committing court determines that the person committed is too poor to employ counsel, the court shall appoint one or more practicing attorneys to represent him and counsel so appointed shall be compensated according to the schedule set forth in Article 26.05, Code of Criminal Procedure.

(2) The Rules of Civil Procedure shall apply to the selection of the jury, the court's charge to the jury and to all other aspects of the proceedings and trial except when inconsistent with the provisions of this Section.

(3) Both parties to such proceedings and jury trial shall have the right to appeal the judgment of the committing court to the appropriate Court of Civil Appeals, and such appeals, if any, shall be controlled by the Rules of Civil Procedure, and the Rules of Civil Procedure shall determine when the committing court's judgment is final.

(4) The burden of proof shall rest on the person committed, by a preponderance of the evidence, and the jury shall be instructed by the court that a person is sane if they believe from a preponderance of the evidence that the person's mental condition is such that the person does not require hospitalization in a mental hospital for the person's own welfare and protection or for the welfare and protection of others.

(5) Both parties to such proceedings and jury trial shall have the same right of subpoena as in criminal cases to compel the attendance of out of county witnesses and such out of county witnesses shall be paid by the state in the same manner and amounts as provided for in Article 35.27 Code of Criminal Procedure.

*Insanity as bar to proceedings*

Sec. 4. If the question of the sanity of the defendant is raised after his conviction and prior to the pronouncement of sentence in a felony case or while an appeal from that conviction is pending, and sufficient proof is shown to satisfy the judge of the convicting court that a reasonable doubt exists as to the sanity of the defendant, the judge shall impanel a jury to determine whether the defendant is sane or insane. If the jury finds the defendant is insane, the court shall enter an order committing the defendant to a State mental hospital and placing him in the custody of the sheriff for transportation to a State mental hospital to be confined therein as a person charged with a criminal offense until he becomes sane. If the jury finds the defendant is sane, the proceedings in the case against him shall continue.

*Insanity as bar to execution of death sentence*

Sec. 5. If the question of the sanity of a person under death sentence is raised and sufficient proof is shown to satisfy the judge of the convicting court or the judge of the district court of the county in which the person is confined that reasonable doubt exists as to his sanity, the judge shall impanel a jury to determine whether the person is sane or insane. If the jury finds the person is insane, the court shall enter an order committing him to a State mental hospital to be confined therein as a person charged with a criminal offense until he becomes sane. If the jury finds the person is sane, the court shall remand him to the proper authority for disposition according to law.

*Suspension of proceedings*

Sec. 6. When a defendant is found to be insane and committed to a State mental hospital under this

Chapter, all further proceedings in the case against him shall be suspended until he becomes sane, except that upon motion of a defendant's counsel an appeal from a conviction may be prosecuted.

*Trial on recovery of sanity*

Sec. 7. (a) If the head of a State mental hospital in which a person charged with a criminal offense is confined under this Chapter is of the opinion that the person is sane, he shall so notify the court which committed the person to the State mental hospital.

(b) Upon receiving this notice, the judge of the committing court shall impanel a jury to determine whether the person is sane or insane. If the jury finds the person sane, the proceedings in the case against him shall continue. If the jury finds the person is insane, the court shall order his return to the State mental hospital until he becomes sane.

*Trial on issue of insanity*

Sec. 8. In a trial under this Chapter, the counsel for the defense has the right to open and conclude the argument on the issue of insanity. If the defendant has no counsel, the court shall appoint counsel to conduct the trial for him.

*Medical testimony required*

Sec. 9. No person shall be committed to a mental hospital under this Chapter except on competent medical or psychiatric testimony.

*Time credited*

Sec. 10. The time a person charged with or convicted of a criminal offense is confined in a State mental hospital under this Chapter pending trial, sentencing or appeal may in the discretion of the court be credited to the term of his sentence upon subsequent sentencing or re-sentencing.

Sec. 11. If at any time a jury or a court finds a defendant to be insane and finds that he requires commitment to a mental hospital or mental institution, and if there has been competent testimony that such defendant is a mentally retarded person, then the court may, in its discretion, in lieu of committing him to a mental hospital or mental institution, commit him to a state school for the mentally retarded. If the crime of which the defendant was accused involved an act of physical violence against the person then such commitment shall be to a state school for the mentally retarded designated by the Texas Department of Mental Health and Mental Retardation as having the capability to provide maximum security. In the event of a commitment to a state school for the mentally retarded, the head of the school shall have the same rights, powers, and duties as are conferred by this Article upon the heads of mental hospitals or mental institutions, and all the other provisions of this Article shall apply to the commitment. In this section, the term "mentally retarded person" means any person other than a mentally disordered person whose mental deficit requires him to have special training, education, supervision, treatment, care, or control.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1748, ch. 659, § 33, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 716, ch. 299, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1698, ch. 554, § 1, eff. June 10, 1969; Acts 1969, 61st Leg., p. 2474, ch. 833, § 1, eff. June 18, 1969; Acts 1971, 62nd Leg., p. 3026, ch. 995, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 3027, ch. 995, § 2, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 658, ch. 275, § 1, eff. June 11, 1973; Acts 1973, 63rd Leg., p. 1274, ch. 468, § 1, eff. Aug. 27, 1973.]

Acts 1969, 61st Leg., p. 2474, ch. 833, which amended section 3 of this article, provided in section 2: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable."

## CHAPTER FORTY-SEVEN. DISPOSITION OF STOLEN PROPERTY

Art.

- 47.01. Subject to order of court.
- 47.02. Restored on trial.
- 47.03. Schedule.
- 47.04. Restored to owner.
- 47.05. Bond required.
- 47.06. Property sold.
- 47.07. Owner may recover.
- 47.08. Written instrument.
- 47.09. Claimant to pay charges.
- 47.10. Charges of officer.
- 47.11. Scope of Chapter.

### Art. 47.01. Subject to order of court

An officer who comes into custody of property alleged to have been stolen must hold it subject to the order of the proper court or magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 47.02. Restored on trial

Upon the trial of any criminal action for theft, or for any other illegal acquisition of property which is by law a penal offense, the court trying the case shall order the property to be restored to the person appearing by the proof to be the owner of the same.

Likewise, the judge of any court in which the trial of any criminal action for theft or any other illegal acquisition of property which is by law a penal offense is pending may, upon hearing, if it is proved to the satisfaction of the judge of said court that any person is a true owner of the property alleged to have been stolen, and which is in possession of a peace officer, by written order, direct the property to be restored to such owner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 47.03. Schedule

When an officer seizes property alleged to have been stolen, he shall immediately file a schedule of the same, and its value, with the magistrate or court having jurisdiction of the case, certifying that the property has been seized by him, and the reason therefor.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 47.04. Restored to owner

Upon an examining trial, if it is proven to the satisfaction of the magistrate that any person is the

true owner of property alleged to have been stolen, and which is in possession of a peace officer, he may upon motion by the state, by written order direct the property to be restored to such owner subject to the conditions that such property shall be made available to the state or by order of any court having jurisdiction over the offense to be used for evidentiary purposes.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 47.05. Bond required

If the magistrate has any doubt as to the ownership of the property, he may require a bond of the claimant for its re-delivery in case it should thereafter be shown not to belong to such claimant; or he may, in his discretion, direct the property to be retained by the sheriff until further orders as to its possession. Such bond shall be in a sum equal to the value of the property, with sufficient security, payable to and approved by the county judge of the county in which the property is in custody. Such bond shall be filed in the office of the county clerk of such county, and in case of a breach thereof may be sued upon in such county by any claimant of the property; or by the county treasurer of such county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 47.06. Property sold

If the property is not claimed within 30 days from the conviction of the person accused of illegally acquiring it, the same procedure for its disposition as set out in Article 18.30 of this Code shall be followed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 47.07. Owner may recover

The real owner of the property sold under the provisions of Article 47.06 may recover such property under the same terms as prescribed in Section 4 of Article 18.30 of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 47.08. Written instrument

If the property is a written instrument, it shall be deposited with the county clerk of the county where the proceedings are had, subject to the claim of any person who may establish his right thereto. The claimant of any such written instrument shall file his written sworn claim thereto with the county judge. If such judge be satisfied that such claimant is the real owner of the written instrument, the same shall be delivered to him. The county judge may, in his discretion, require a bond of such claimant, as in other cases of property claimed under any provision of this Chapter, and may also before such delivery require the written instrument to be recorded in the minutes of his court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 47.09. Claimant to pay charges

The claimant of the property, before he shall be entitled to have the same delivered to him, shall pay

all reasonable charges for the safekeeping of the same while in the custody of the law, which charges shall be verified by the affidavit of the officer claiming the same, and determined by the magistrate of a court having jurisdiction thereof. If said charges are not paid, the property shall be sold as under execution; and the proceeds of sale, after the payment of said charges and costs of sale, paid to the owner of such property.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 47.10. Charges of officer**

When property is sold, and the proceeds of sale are ready to be paid into the county treasury, the amount of expenses for keeping the same and the costs of sale shall be determined by the county judge. The account thereof shall be in writing and verified by the officer claiming the same, with the approval of the county judge thereto for the amount allowed and shall be filed in the office of the county treasurer at the time of paying into his hands the balance of the proceeds of such sale.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 47.11. Scope of Chapter**

Each provision of this Chapter relating to stolen property applies as well to property acquired in any manner which makes the acquisition a penal offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**CHAPTER FORTY-EIGHT. PARDON AND PAROLE**

- Art.
- 48.01. Governor may pardon.
- 48.02. Shall file reasons.
- 48.03. Governor's acts under seal.
- 48.04. Power to remit fines and forfeitures.
- 48.05. Reduction of time.

**Art. 48.01. Governor may pardon**

In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishments and pardons; and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed 30 days; and he shall have power to revoke paroles and conditional pardons. With the advice and consent of the Legislature, the Governor may grant reprieves, commutations of punishment and pardons in cases of treason.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 48.02. Shall file reasons**

When the Governor remits fines or forfeitures, or grants reprieves, commutation of punishment or pardons, he shall file in the office of Secretary of State his reasons therefor.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 48.03. Governor's acts under seal**

All remissions of fines and forfeitures, and all reprieves, commutations of punishment and pardons, shall be signed by the Governor, and certified by the Secretary of State, under the great seal of State, and shall be forthwith obeyed by any officer to whom the same may be presented.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 48.04. Power to remit fines and forfeitures**

The Governor shall have the power to remit forfeitures of bail bonds.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 48.05. Reduction of time**

If a prisoner sentenced to an institution operated by the Department of Corrections is not paroled under the provisions of this title, or if he is only sentenced to serve the minimum term of imprisonment fixed by law, then the general rule shall apply to his sentence, and he is entitled to such reduction of time as provided by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**CHAPTER FORTY-NINE. INQUESTS UPON DEAD BODIES**

- Art.
- 49.01. When held.
- 49.02. Body disinterred or cremated.
- 49.03. Autopsies and tests.
- 49.04. Liability of physician performing autopsy where order invalid.
- 49.05. Consent to autopsy.
- 49.06. Chemical analysis.
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- 49.08. Death in jail.
- 49.09. Subpoenas.
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- 49.12. Hindering proceedings.
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- 49.15. Warrant of arrest.
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- 49.20. Officers shall execute warrant.
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- 49.22. To certify proceedings.
- 49.23. Evidence.
- 49.24. Witnesses to give bail.
- 49.25. Medical examiners.

**Art. 49.01. When held**

It is the duty of the justice of the peace to hold inquests, with or without a jury, within his county in the following cases:

1. When a person dies in prison or in jail;
2. When any person is killed, or from any cause dies an unnatural death, except under sentence of the law; or dies in the absence of one or more good witnesses;
3. When the body of a human being is found, and the circumstances of his death are unknown;

4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means;

5. When any person commits suicide, or the circumstances of his death are such as to lead to suspicion that he committed suicide;

6. When a person dies without having been attended by a duly licensed and practicing physician, and the local health officer or registrar required to report the cause of death under Rule 41a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, General Laws, 46th Legislature, 1939, page 343, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the justice of the peace of the precinct in which the death occurred and request an inquest;

7. When a person dies who has been attended by a duly licensed and practicing physician or physicians, and such physician or physicians are not certain as to the cause of death and are unable to certify with certainty the cause of death as required by Rule 40a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, Chapter 41, Acts, First Called Session, 40th Legislature, 1927, page 116. In case of such uncertainty the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased shall have died, shall so report to the justice of the peace of the precinct in which the death occurred, and request an inquest.

The inquests authorized and required by this Article shall be held by the justice of the peace of the precinct in which the death occurred, but in event the justice of the peace of such precinct is unavailable, or shall fail or refuse to act, then such inquest shall be conducted by the nearest available justice of the peace, corporation court judge, county judge or judge of the county court at law of the county in which the death occurred.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 2123, ch. 727, § 1, eff. Sept. 1, 1969.]

#### Art. 49.02. Body disinterred or cremated

Sec. 1. When a body upon which an inquest ought to have been held has been interred, the justice may cause it to be disinterred for the purpose of holding such inquest.

Sec. 2. Before any body, upon which an inquest is authorized by the provisions of Article 49.01 can lawfully be cremated, an autopsy shall be performed thereon as provided in this Article, or a certificate that no autopsy was necessary shall be furnished by the justice of the peace. Before any dead body can be lawfully cremated, the owner or operator of the crematory shall demand and be furnished with a

certificate, signed by the justice of the peace of the justice precinct in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. No autopsy shall be required by the justice of the peace as a prerequisite to cremation in case death was caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, named in Rule 77, Sanitary Code of Texas, Article 4477, Revised Civil Statutes of Texas, 1925. All certificates furnished the owner or operator of a crematory by any justice of the peace, under the terms of this Article, shall be preserved by such owner or operator of such crematory for a period of two years from the date of the cremation of said body.

Sec. 3. Any person violating any provision of this Article insofar as it relates to the cremation of bodies, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than \$500 and not more than \$1,000, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 49.03. Autopsies and tests

The justice of the peace may in all cases call in the County Health Officer, or if there be none or if his services are not then obtainable, then a duly licensed and practicing physician, and shall procure their opinions and their advice on whether or not to order an autopsy to determine the cause of death. If upon his own determination he deems an autopsy necessary, the justice of the peace shall, by proper order, request the County Health Officer, or if there be none or if it be impracticable to secure his service, then some duly licensed and practicing physician who is trained in pathology to make an autopsy in order to determine the cause of death, and whether death was from natural causes or resulting from violence, and the nature and character of either of them. The county in which such autopsy and inquest is held shall pay the physician making such autopsy a fee of not more than \$300, the amount to be determined by the Commissioners Court after ascertaining the amount and nature of the work performed in making such autopsy. In those cases where a complete autopsy is deemed unnecessary by the justice of the peace to ascertain the cause of death, he may by proper order, order the taking of blood samples or any other samples of fluids, body tissues or organs in order to ascertain the cause of death or whether any crime has been committed. In the case of a body of a human being whose identity is unknown, the justice of the peace may, by proper order, authorize such investigative and laboratory tests and processes as are required to determine the identity as well as the cause of death.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 1845, ch. 618, § 1, eff. June 11, 1969.]

**Art. 49.04. Liability of physician performing autopsy where order invalid**

A physician authorized to practice medicine in this State who performs an autopsy upon an order of a justice of the peace, or a person who makes a test on a body upon an order of a justice of the peace, who does so in the good faith belief that the order is a valid one, shall not be held liable for damages in the event it is determined that the order was for any reason invalid.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 49.05. Consent to autopsy**

Sec. 1. Consent for a licensed physician to conduct an autopsy of the body of a deceased person shall be deemed sufficient when given by the following: In the case of a married person, the surviving spouse, or if no spouse survive him, by any child of such marriage, or in the event of a minor child of such marriage, the guardian of such child if any there be, or in the absence of such guardian, the court having jurisdiction of the person of such minor; in the event that neither spouse nor child survives such deceased, then permission for an autopsy shall be valid when given by a person who would be allowed to give such permission in the case of an unmarried deceased.

If the deceased be unmarried, then permission shall be given by the following for such autopsy, in the order stated: father, mother, guardian, or next of kin, and in the absence of any of the foregoing, by any natural person assuming custody of and responsibility for burial of the body of such deceased. If two or more of the above-named persons assume custody of the body, consent of one of them shall be deemed sufficient.

Sec. 2. For purposes of this Article, "licensed physician" shall be defined as any person duly licensed by the Texas State Board of Medical Examiners, and whose license is current in all respects.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 49.06. Chemical analysis**

If upon such inquest, it becomes necessary to determine whether the death has been produced by poison, the justice of the peace, upon his own determination, or upon request of the physician performing such autopsy, shall call in to his aid, if necessary, some medical expert, chemist, toxicologist or licensed physician practicing pathology, qualified to make an analysis of the stomach and its contents, together with such other portions of the body as may be necessary to be analyzed and tested, for the purpose of determining the presence of poison in such body. The commissioners court shall pay to such expert or specialist such fee as it may determine reasonable not to exceed \$300.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 1845, ch. 618, § 2, eff. June 11, 1969.]

**Art. 49.07. Upon what justice may act**

The justice shall act in such cases upon information given him by any credible person or upon facts within his knowledge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 49.08. Death in jail**

The sheriff and every keeper of any prison shall inform such justice of the death of any person confined therein.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 49.09. Subpoenas**

The justice may issue subpoenas to enforce the attendance of witnesses upon an inquest and may issue attachments for those subpoenaed who fail to attend.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 49.10. Testimony**

Witnesses shall be sworn and examined by the justice and their testimony reduced to writing by or under his direction, and subscribed by them.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 49.11. Private inquest**

Should the justice deem proper, the inquest may be held in private; but in all cases where a person has been arrested, charged with having caused the death of the deceased, such person and his counsel shall have the right to be present at the inquest, and to examine witnesses and introduce evidence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 49.12. Hindering proceedings**

If any other person than the justice, the accused and his counsel, and the counsel for the State, are present at the inquest, they shall not interfere with the proceedings. No questions shall be asked a witness, except by the justice, the accused or his counsel, and the counsel for the State. The justice of the peace may fine any person violating this Article for contempt of court, not exceeding \$20, and may cause such person to be placed in the custody of a peace officer and removed from the presence of the inquest.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 49.13. Inquest record**

The justice shall keep full and complete records properly indexed, of all the proceedings relating to every inquest held by him. The record shall include:

1. The name of the deceased, if known, or if not, as accurate a description of him as can be given;
2. The time, date and place where the body was found, and the time, date and place where the inquest was held;
3. The testimony taken by the justice, and by whom;
4. The full report and detailed findings of the autopsy, if any;

5. The findings by the justice at the inquest;

6. Whether any person was arrested as a suspect before the inquest, and the person's identity, as well as everything material relating to the arrest.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 49.14. In homicide cases

When the justice has knowledge that the killing was the act of any person, or when an affidavit is made that such person has killed the deceased, a warrant may issue for the arrest of the accused before inquest held; and the accused and his counsel shall have the right to be present when the same is held, and to examine the witnesses and introduce evidence before the jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 49.15. Warrant of arrest

Any peace officer to whose hands the justice's warrant of arrest shall come is bound to execute the same without delay, and he shall detain the person arrested until his discharge is ordered by the justice or other proper authority.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 49.16. Commitment of homicide suspect

If it be found by the justice, upon evidence adduced at the inquest, that a person already arrested did in fact kill the deceased, or was a party to the death, the justice may, according to the facts of the case, commit him to jail or require him to execute a bail bond with security for his appearance before the proper court to answer for the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 974, ch. 399, § 2(A), eff. Jan. 1, 1974.]

#### Art. 49.17. Bail

Bail bond taken before a justice shall be sufficient if it state the grade of offense of which the party is accused, be payable to the State of Texas, be dated and signed by the principal and his surety, if any. Bail may be forfeited, and judgment recovered thereon, and the same collected as in the case of any other bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 49.18. Warrant of arrest

When, by the evidence adduced before a justice holding an inquest, it is found that any person not in custody killed the deceased, or was a party to the death, the justice shall forthwith issue his warrant of arrest to the sheriff or other peace officer, commanding him to arrest the person accused, and bring him before such justice, or before some other magistrate named in the writ.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 974, ch. 399, § 2(A), eff. Jan. 1, 1974.]

#### Art. 49.19. Requisites of warrant

A warrant of arrest shall be sufficient if it run in the name of "The State of Texas," give the name of the accused, or describe him when his name is unknown, recite the offense with which he is charged in plain language, and be dated and signed officially by the justice.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 49.20. Officer shall execute warrant

The peace officer into whose hands such warrant may come shall forthwith execute the same by arresting the accused and taking him before the magistrate named in the warrant; and the same proceedings shall be had thereon as in other cases where persons accused of offenses are brought before him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 49.21. Arrest pending inquest

Nothing contained in this title shall prevent proceedings being had for the arrest and examination of an accused before a magistrate, pending the inquest. When a person accused of an offense has been already arrested under a warrant from the justice, he shall not be taken from the hands of the peace officer by a warrant from any other magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 49.22. To certify proceedings

The justice holding an inquest shall certify to the proceedings, and shall enclose in an envelope the testimony taken, the finding of the justice, the bail, if any, and all other papers connected with the inquest, shall seal up such envelope and without delay deliver it properly endorsed to the clerk of the district court, who shall safely keep the same in his office subject to the order of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 49.23. Evidence

The justice shall preserve all evidence that may come to his knowledge and possessions which might in his opinion tend to show the real cause of death or the person who caused such death, and deliver all such evidence to the district clerk, who shall keep the same safely, subject to the order of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 49.24. Witnesses to give bail

The justice, if he deems it proper, may require bail of witnesses examined before the inquest to appear and testify before the next grand jury, or before an examining or other proper court, as in other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 49.25. Medical examiners

Office authorized

Sec. 1. Subject to the provisions of this Act, the Commissioners Court of any county having a population of more than 500,000 and not having a reputable

medical school as defined in Articles 4501 and 4503, Revised Civil Statutes of Texas, shall establish and maintain the office of medical examiner, and the Commissioners Court of any county may establish and provide for the maintenance of the office of medical examiner. Population shall be according to the last preceding federal census.

Multi-county district; joint office

Sec. 1a. (a) The commissioners courts of two or more counties may enter into an agreement to create a medical examiners district and to jointly operate and maintain the office of medical examiner of the district. The district must include the entire area of all counties involved. The counties within the district must, when taken together, form a continuous area.

(b) There may be only one medical examiner in a medical examiners district, although he may employ, within the district, necessary staff personnel. When a county becomes a part of a medical examiners district, the effect is the same within the county as if the office of medical examiner had been established in that county alone. The district medical examiner has all the powers and duties within the district that a medical examiner who serves in a single county has within that county.

(c) The commissioners court of any county which has become a part of a medical examiners district may withdraw the county from the district, but twelve months' notice of withdrawal must be given to the commissioners courts of all other counties in the district.

Appointments and Qualifications

Sec. 2. The commissioners court shall appoint the medical examiner, who shall serve at the pleasure of the commissioners court. No person shall be appointed medical examiner unless he is a physician licensed by the State Board of Medical Examiners. To the greatest extent possible, the medical examiner shall be appointed from persons having training and experience in pathology, toxicology, histology and other medico-legal sciences. The medical examiner shall devote so much of his time and energy as is necessary in the performance of the duties conferred by this Article.

Assistants

Sec. 3. The medical examiner may, subject to the approval of the commissioners court, employ such deputy examiners, scientific experts, trained technicians, officers and employees as may be necessary to the proper performance of the duties imposed by this Article upon the medical examiner.

Salaries

Sec. 4. The commissioners court shall establish and pay the salaries and compensations of the medical examiner and his staff.

Offices

Sec. 5. The commissioners court shall provide the medical examiner and his staff with adequate office space and shall provide laboratory facilities or make arrangements for the use of existing laboratory facilities in the county, if so requested by the medical examiner.

Death Investigations

Sec. 6. Any medical examiner, or his duly authorized deputy, shall be authorized, and it shall be his duty, to hold inquests with or without a jury within his county, in the following cases:

1. When a person shall die within twenty-four hours after admission to a hospital or institution or in prison or in jail;

2. When any person is killed; or from any cause dies an unnatural death, except under sentence of the law; or dies in the absence of one or more good witnesses;

3. When the body of a human being is found, and the circumstances of his death are unknown;

4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means;

5. When any person commits suicide, or the circumstances of his death are such as to lead to suspicion that he committed suicide;

6. When a person dies without having been attended by a duly licensed and practicing physician, and the local health officer or registrar required to report the cause of death under Rule 41a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, General Laws, 46th Legislature, 1939, page 343, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the medical examiner of the county in which the death occurred and request an inquest; and

7. When a person dies who has been attended immediately preceding his death by a duly licensed and practicing physician or physicians, and such physician or physicians are not certain as to the cause of death and are unable to certify with certainty the cause of death as required by Rule 40a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, Chapter 41, Acts, First Called Session, 40th Legislature, 1927. In case of such uncertainty the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased shall have died, shall so report to the medical examiner of the county in which the death occurred, and request an inquest.

The inquests authorized and required by this Article shall be held by the medical examiner of the county in which the death occurred.

In making such investigations and holding such inquests, the medical examiner or an authorized deputy may administer oaths and take affidavits. In the absence of next of kin or legal representatives of the deceased, the medical examiner or authorized deputy shall take charge of the body and all property found with it.

Organ transplant donors; notice; inquests and autopsies

Sec. 6a. (a) When death occurs to an individual designated a prospective organ donor for transplantation by a licensed physician under circumstances requiring the medical examiner of the county in which death occurred, or his duly authorized deputy, to hold an inquest, the medical examiner, or a member of his staff will be so notified by the administrative head of the facility in which the transplantation is to be performed.

(b) When notified pursuant to Subsection (a) of this Section, the medical examiner or his duly authorized deputy shall immediately go to the transplant facility, perform an inquest on the deceased prospective organ donor, and determine if an autopsy is required.

(c) If an autopsy is required, the medical examiner or his duly authorized deputy will examine the organ to be transplanted in its whole state and will examine any other clinical evidence on the condition of the organ.

(d) The organ to be transplanted will then be released to the transplant team for removal and transplantation.

(e) Thereafter, the remainder of the body will be removed to some convenient and suitable area designated by the administrative head of the transplant facility for completion of the autopsy.

Reports of Death

Sec. 7. Any police officer, superintendent of institution, physician, or private citizen who shall become aware of a death under any of the circumstances set out in Section 6 of this Article, shall immediately report such death to the office of the medical examiner or to the city or county police departments; any such report to a city or county police department shall be immediately transmitted to the office of medical examiner.

Removal of Bodies

Sec. 8. When any death under circumstances set out in Section 6 shall have occurred, the body shall not be disturbed or removed from the position in which it is found by any person without authorization from the medical examiner or authorized deputy, except for the purpose of preserving such body from loss or destruction or maintaining the flow of traffic on a highway, railroad or airport.

Autopsy

Sec. 9. If the cause of death shall be determined beyond a reasonable doubt as a result of the investigation, the medical examiner shall file a report thereof setting forth specifically the cause of death with the district attorney or criminal district attorney, or in a county in which there is no district attorney or criminal district attorney with the county attorney, of the county in which the death occurred. If in the opinion of the medical examiner an autopsy is necessary, or if such is requested by the district attorney or criminal district attorney, or county attorney where there is no district attorney or criminal district attorney, the autopsy shall be immediately performed by the medical examiner or a duly authorized deputy. In those cases where a complete autopsy is deemed unnecessary by the medical examiner to ascertain the cause of death, the medical examiner may perform a limited autopsy involving the taking of blood samples or any other samples of body fluids, tissues or organs, in order to ascertain the cause of death or whether a crime has been committed. In the case of a body of a human being whose identity is unknown, the medical examiner may authorize such investigative and laboratory tests and processes as are required to determine its identity as well as the cause of death. In performing an autopsy the medical examiner or authorized deputy may use the facilities of any city or county hospital within the county or such other facilities as are made available. Upon completion of the autopsy, the medical examiner shall file a report setting forth the findings in detail with the office of the district attorney or criminal district attorney of the county, or if there is no district attorney or criminal district attorney, with the county attorney of the county.

Disinterments and Cremations

Sec. 10. When a body upon which an inquest ought to have been held has been interred, the medical examiner may cause it to be disinterred for the purpose of holding such inquest.

Before any body, upon which an inquest is authorized by the provisions of this Article, can be lawfully cremated, an autopsy shall be performed thereon as provided in this Article, or a certificate that no autopsy was necessary shall be furnished by the medical examiner. Before any dead body can be lawfully cremated, the owner or operator of the crematory shall demand and be furnished with a certificate, signed by the medical examiner of the county in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. It shall be the duty of the medical examiner to determine whether or not, from all the circumstances surrounding the death, an autopsy is necessary prior to issuing a certificate under the provisions of this section. No autopsy shall be required by the medical examiner as a prerequisite to cremation in case death is caused by the pestilential diseases of Asiatic cholera, bubon-

ic plague, typhus fever, or smallpox, named in Rule 77, Sanitary Code of Texas, Article 4477, Revised Civil Statutes of Texas, 1925. All certificates furnished to the owner or operator of a crematory by any medical examiner, under the terms of this Article, shall be preserved by such owner or operator of such crematory for a period of two years from the date of the cremation of said body.

Records

Sec. 11. The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. Such records shall be public records.

Transfer of Duties of Justice of Peace

Sec. 12. When the commissioners court of any county shall establish the office of medical examiner, all powers and duties of justices of the peace in such county relating to the investigation of deaths and inquests shall vest in the office of the medical examiner. Any subsequent General Law pertaining to the duties of justices of the peace in death investigations and inquests shall apply to the medical examiner in such counties as to the extent not inconsistent with this Article, and all laws or parts of laws otherwise in conflict herewith are hereby declared to be inapplicable to this Article.

Penalty

Sec. 13. Any person in violation of any provision of this Article, upon conviction, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than thirty days or both such fine and imprisonment. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1969, 61st Leg., p. 1033, ch. 336, § 1, eff. May 27, 1969; Acts 1969, 61st Leg., p. 1619, ch. 500, §§ 1 to 3, eff. June 10, 1969; Acts 1971, 62nd Leg., p. 1165, ch. 270, § 1, eff. Aug. 30, 1971.]

Acts 1969, 61st Leg., p. 1619, ch. 500, amending sections 1, 5 and 12 of this article, provided in section 4: "All laws, or parts of laws, in conflict with the provisions of this Act are hereby repealed to the extent of the conflict only."

## CHAPTER FIFTY. FIRE INQUESTS

Art.

- 50.01. Investigations.
- 50.02. Proceedings.
- 50.03. Verdict in fire inquest.
- 50.04. Witnesses bound over.
- 50.05. Warrant for accused.
- 50.06. Testimony written down.
- 50.07. Compensation.

### Art. 50.01. Investigations

When an affidavit is made by a credible person before any justice of the peace that there is ground to believe that any building has been unlawfully set or attempted to be set on fire, such justice shall cause the truth of such complaint to be investigated. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 50.02. Proceedings

The proceedings in such case shall be governed by the laws relating to inquests upon dead bodies. The officer conducting such investigations shall have the same powers as are conferred upon justices of the peace in the preceding Articles of this Chapter. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 50.03. Verdict

The jury after inspecting the place in question and after hearing the testimony, shall deliver to the justice holding such inquest its written signed verdict in which it shall find and certify how and in what manner such fire happened or was attempted, and all the circumstances attending the same, and who are guilty thereof, and in what manner. If such a jury is unable to so ascertain, it shall find and certify accordingly.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1973, 63rd Leg., p. 975, ch. 399, § 2(A), eff. Jan. 1, 1974.]

### Art. 50.04. Witnesses bound over

If the jury finds that any building has been unlawfully set on fire or has been attempted so to be, the justice holding such inquest shall bind over the witnesses to appear and testify before the next grand jury of the county in which such offense was committed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 50.05. Warrant for accused

If the person charged with the offense, if any, be not in custody, the justice of the peace shall issue a warrant for his arrest, and when arrested, such person shall be dealt with as in other like cases. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 50.06. Testimony written down

In all such investigations, the testimony of all witnesses examined before the jury shall be reduced to writing by or under the direction of the justice and signed by each witness. Such testimony together with the verdict and all bail bonds taken in the case shall be certified to and returned by the justice to the next district or criminal district court of his county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 50.07. Compensation

The pay of the officers and jury making such investigation shall be the same as that allowed for the holding of an inquest upon a dead body, so far as applicable, and shall be paid in like manner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

## CHAPTER FIFTY-ONE. FUGITIVES FROM JUSTICE

- Art.  
 51.01. Delivered up.  
 51.02. To aid in arrest.  
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 51.04. Complaint.  
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### Art. 51.01. Delivered up

A person in any other State of the United States charged with treason or any felony who shall flee from justice and be found in this State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.  
 [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 51.02. To aid in arrest

All peace officers of the State shall give aid in the arrest and detention of a fugitive from any other State that he may be held subject to a requisition by the Governor of the State from which he fled.  
 [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 51.03. Magistrate's warrant

When a complaint is made to a magistrate that any person within his jurisdiction is a fugitive from justice from another State, he shall issue a warrant of arrest directing a peace officer to apprehend and bring the accused before him.  
 [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 51.04. Complaint

The complaint shall be sufficient if it recites:

1. The name of the person accused;
2. The State from which he has fled;
3. The offense committed by the accused;
4. That he has fled to this State from the State where the offense was committed; and
5. That the act alleged to have been committed by the accused is a violation of the penal law of the State from which he fled.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 51.05. Bail or commitment

When the accused is brought before the magistrate, he shall hear proof, and if satisfied that the accused is charged in another State with the offense named in the complaint, he shall require of him bail with sufficient security, in such amount as the magistrate deems reasonable, to appear before such magistrate at a specified time. In default of such bail, he may commit the defendant to jail to await a requisition from the Governor of the State from

which he fled. A properly certified transcript of an indictment against the accused is sufficient to show that he is charged with the crime alleged. One arrested under the provisions of this title shall not be committed or held to bail for a longer time than ninety days.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 51.06. Notice of arrest

The magistrate who held or committed such fugitive shall immediately notify the Secretary of State and the district or county attorney of his county of such fact and the date thereof, stating the name of such fugitive, the State from which he fled, and the crime with which he is charged; and such officers so notified shall in turn notify the Governor of the proper State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 51.07. Discharge

A fugitive not arrested under a warrant from the Governor of this State before the expiration of ninety days from the day of his commitment or the date of the bail shall be discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 51.08. Second arrest

A person who has once been arrested under the provisions of this title and discharged under the provisions of the preceding Article or by habeas corpus shall not be again arrested upon a charge of the same offense, except by a warrant from the Governor of this State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 51.09. Governor may demand fugitive

When the Governor deems it proper to demand a person who has committed an offense in this State and has fled to another State, he may commission any suitable person to take such requisition. The accused, if brought back to the State, shall be delivered up to the sheriff of the county in which it is alleged he has committed the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

### Art. 51.10. Pay of agent; traveling expenses

Sec. 1. The officer or person so commissioned shall receive as compensation the actual and necessary traveling expenses upon requisition of the Governor to be allowed by such Governor and to be paid out of the State Treasury upon a certificate of the Governor reciting the services rendered and the allowance therefor.

Sec. 2. The commissioners court of the county where an offense is committed may in its discretion, on the request of the sheriff and the recommendation of the district attorney, pay the actual and necessary traveling expenses of the officer or person so commissioned out of any fund or funds not otherwise pledged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 51.11. Reward**

The Governor may offer a reward for the apprehension of one accused of a felony in this State who is evading arrest, by causing such offer to be published in such manner as he deems most likely to effect the arrest. The reward shall be paid out of the State Treasury to the person who becomes entitled to it upon a certificate of the Governor reciting the facts which entitle such person to receive it. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 51.12. Sheriff to report**

Each sheriff upon the close of any regular term of the district or criminal district court in his county, or within thirty days thereafter, shall make out and mail to the Director of the Department of Public Safety a certified list of all persons, who, after indictment for a felony, have fled from said county. Such lists shall contain the full name of each such fugitive, the offense with which he is charged, and a description giving his age, height, weight, color and occupation, the complexion of the skin and the color of eyes and hair, and any peculiarity in person, speech, manner or gait that may serve to identify such person so far as the sheriff may be able to give them. The Director of the Department of Public Safety shall prescribe and forward to all sheriffs the necessary blanks upon which are to be made the lists herein required.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 51.13. Uniform Criminal Extradition Act**

Definitions

Sec. 1. Where appearing in this Article, the term "Governor" includes any person performing the functions of Governor by authority of the laws of this State. The term "Executive Authority" includes the Governor, and any person performing the functions of Governor in a State other than this State, and the term "State", referring to a State other than this State, includes any other State organized or unorganized of the United States of America.

Fugitives from justice; duty of Governor

Sec. 2. Subject to the provisions of this Article, the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the Executive Authority of any other State of the United States any person charged in that State with treason, felony, or other crime, who has fled from justice and is found in this State.

Form of Demand

Sec. 3. No demand for the extradition of a person charged with crime in another State shall be recognized by the Governor unless in writing, alleging, except in cases arising under Section 6, that the accused was present in the demanding State at the

time of the commission of the alleged crime, and that thereafter he fled from the State, and accompanied by a copy of an indictment found or by information supported by affidavit in the State having jurisdiction of the crime, or by a copy of an affidavit before a magistrate there, together with a copy of any warrant which issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the Executive Authority of the demanding State that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that State; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the Executive Authority making the demand; provided, however, that all such copies of the aforesaid instruments shall be in duplicate, one complete set of such instruments to be delivered to the defendant or to his attorney.

Governor may investigate case

Sec. 4. When a demand shall be made upon the Governor of this State by the Executive Authority of another State for the surrender of a person so charged with crime, the Governor may call upon the Secretary of State, Attorney General or any prosecuting officer in this State to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

Extradition of persons imprisoned or awaiting trial in another State or who have left the demanding State under compulsion

Sec. 5. When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another State, the Governor of this State may agree with the Executive Authority of such other State for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other State, upon condition that such person be returned to such other State at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the Executive Authority of any other State any person in this State who is charged in the manner provided in Section 23 of this Act with having violated the laws of the State whose Executive Authority is making the demand, even though such person left the demanding State involuntarily.

Extradition of persons not present in demanding State at time of commission of crime

Sec. 6. The Governor of this State may also surrender, on demand of the Executive Authority of any other State, any person in this State charged in such other State in the manner provided in Section 3

with committing an act in this State, or in a third State, intentionally resulting in a crime in the State whose Executive Authority is making the demand, and the provisions of this Article not otherwise inconsistent, shall apply to such cases, even though the accused was not in that State at the time of the commission of the crime, and has not fled therefrom.

Issue of Governor's warrant of arrest; its recitals

Sec. 7. If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

Manner and place of execution

Sec. 8. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the State and to command the aid of all peace officers and other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this Article to the duly authorized agent of the demanding State.

Authority of arresting officer

Sec. 9. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

Rights of accused person; application for writ of habeas corpus

Sec. 10. No person arrested upon such warrant shall be delivered over to the agent whom the Executive Authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this State, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such a writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding State.

Penalty for non-compliance with preceding section

Sec. 11. Any officer who shall deliver to the agent for extradition of the demanding State a person in his custody under the Governor's warrant, in wilful disobedience to Section 10 of this Act, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one thousand dollars or be imprisoned not more than six months, or both.

Confinement in jail, when necessary

Sec. 12. The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding State to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding State to whom a prisoner may have been delivered following extradition proceedings in another State, or to whom a prisoner may have been delivered after waiving extradition in such other State, and who is passing through this State with such a prisoner for the purpose of immediately returning such prisoner to the demanding State may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding State after a requisition by the Executive Authority of such demanding State. Such prisoner shall not be entitled to demand a new requisition while in this State.

Arrest prior to requisition

Sec. 13. Whenever every person within this State shall be charged on the oath of any credible person before any judge or magistrate of this State with the commission of any crime in any other State and except in cases arising under Section 6, with having fled from justice, or with having been convicted of a crime in that State and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this State setting forth on the affidavit of any credible person in another State that a crime has been committed in such other State and that the accused has been charged in such State with the commission of the crime, and except in cases arising under Section 6, has fled from justice, or with having been convicted of a crime in that State and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this State, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this State, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the

arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Arrest without a warrant

Sec. 14. The arrest of a person may be lawfully made also by any peace officer or private person, without a warrant upon reasonable information that the accused stands charged in the courts of a State with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

Commitment to await requisition; bail

Sec. 15. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and except in cases arising under Section 6, that he has fled from justice, the judge or magistrate must, by warrant reciting the accusation, commit him to the county jail for such time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the Executive Authority of the State having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

Bail; in what cases; conditions of bond

Sec. 16. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the State in which it was committed, a judge or magistrate in this State may admit the person arrested to bail by bond, with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the Governor in this State.

Extension of time of commitment; adjournment

Sec. 17. If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in Section 16, but within a period not to exceed sixty days after the date of such new bond.

Forfeiture of bail

Sec. 18. If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and

order his immediate arrest without warrant if he be within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings within this State.

Persons under criminal prosecution in this State at the time of requisition

Sec. 19. If a criminal prosecution has been instituted against such person under the laws of this State and is still pending, the Governor, in his discretion, either may surrender him on demand of the Executive Authority of another State or hold him until he has been tried and discharged or convicted and punished in this State.

Guilt or innocence of accused, when inquired into

Sec. 20. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

Governor may recall warrant or issue alias

Sec. 21. The governor may recall his warrant of the arrest or may issue another warrant whenever he deems proper. Each warrant issued by the Governor shall expire and be of no force and effect when not executed within one year from the date thereof.

Fugitives from this State; duty of Governor

Sec. 22. Whenever the Governor of this State shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this State, from the Executive Authority of any other State, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this State, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this State in which the offense was committed, or in which the prosecution for such offense is then pending.

Application for issuance of requisition; by whom made; contents

Sec. 23. 1. When the return to this State of a person charged with crime in this State is required, the State's attorney shall present to the Governor his written motion for a requisition for the return of the person charged, in which motion shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the State in which he is believed to be, including the location of the accused therein at the time the motion is made and certifying that, in the opinion of the said State's attorney the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.

2. When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement, or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement, or the circumstances of the breach of the terms of his bail, probation or parole, the State in which he is believed to be, including the location of the person therein at the time application is made.

3. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State to remain on record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

*Costs and expenses*

Sec. 24. In all cases of extradition, the commissioners court of the county where an offense is alleged to have been committed, or in which the prosecution is then pending may in its discretion, on request of the sheriff and the recommendation of the prosecuting attorney, pay the actual and necessary expenses of the officer or person commissioned to receive the person charged, out of any county fund or funds not otherwise pledged.

*Immunity from service of process in certain civil cases*

Sec. 25. A person brought into this State by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or if acquitted, until he has had reasonable opportunity to return to the State from which he was extradited.

*Written waiver of extradition proceedings*

Sec. 25a. Any person arrested in this State charged with having committed any crime in another State or alleged to have escaped from confinement, or broken the terms of his bail, probation, or

parole may waive the issuance and service of the warrant provided for in Sections 7 and 8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge or any court of record within this State a writing which states that he consents to return to the demanding State; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in Section 10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this State and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding State, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding State, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding State or of this State.

*Non-waiver by this State*

Sec. 25b. Nothing in this Act contained shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this Article which result, or fail to result in, extradition to be deemed a waiver by this State of any of its rights, privileges or jurisdiction in any way whatsoever.

No right of asylum, no immunity from other criminal prosecutions while in this State

Sec. 26. After a person has been brought back to this State by, or after waiver of extradition proceedings, he may be tried in this State for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

*Interpretation*

Sec. 27. The provisions of this Article shall be interpreted and construed as to effectuate its general purposes to make uniform the law of those States which enact it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**CHAPTER FIFTY-TWO. COURT OF INQUIRY**

*Art.*

52.01. Courts of Inquiry conducted by county and district judges.

52.02. Evidence; deposition; affidavits.

Art.

- 52.03. Subpoenas.
- 52.04. Rights of witnesses.
- 52.05. Witness must testify.
- 52.06. Contempt.
- 52.07. Stenographic record; public hearing.
- 52.08. Criminal prosecutions.
- 52.09. Costs.

#### Art. 52.01. Courts of Inquiry conducted by county and district judges

When a judge of any county or district court of this state, acting in his capacity as magistrate, has good cause to believe that an offense has been committed against the laws of this state, he may summon and examine any witness in relation thereto in accordance with the rules hereinafter provided, which procedure is defined as a "Court of Inquiry". [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1751, ch. 659, § 34, eff. Aug. 28, 1967.]

#### Art. 52.02. Evidence; Deposition; Affidavits

At the hearing at a Court of Inquiry, evidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit. If affidavits are admitted, any witness against whom they may bear has the right to propound written interrogatories to the affiants or to file answering affidavits. The judge in hearing such evidence, at his discretion, may conclude not to sustain objections to all or to any portion of the evidence taken nor exclude same; but any of the witnesses or attorneys engaged in taking the testimony may have any objections they make recorded with the testimony and reserved for the action of any court in which such evidence is thereafter sought to be admitted, but such court is not confined to objections made at the taking of the testimony at the Court of Inquiry. Without restricting the foregoing, the judge may allow the introduction of any documentary or real evidence which he deems reliable, and the testimony adduced before any grand jury. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1751, ch. 659, § 35, eff. Aug. 28, 1967.]

#### Art. 52.03. Subpoenas

The judge or his clerk has power to issue subpoenas which may be served within the same territorial limits as subpoenas issued in felony prosecutions or to summon witnesses before grand juries in this state. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1751, ch. 659, § 36, eff. Aug. 28, 1967.]

#### Art. 52.04. Rights of Witnesses

All witnesses testifying in any Court of Inquiry have the same rights as to testifying as do defendants in felony prosecutions in this state. Before any witness is sworn to testify in any Court of Inquiry, he shall be instructed by the judge that he is entitled to counsel; that he cannot be forced to testify against himself; and that such testimony may be

taken down and used against him in a later trial or trials ensuing from the instant Court of Inquiry. Any witness or his counsel has the right to fully cross-examine any of the witnesses whose testimony bears in any manner against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1751, ch. 659, § 37, eff. Aug. 28, 1967.]

#### Art. 52.05. Witness must testify

A person may be compelled to give testimony or produce evidence when legally called upon to do so at any Court of Inquiry; however, if any person refuses or declines to testify or produce evidence on the ground that it may incriminate him under laws of this state, then the judge may, in his discretion, compel such person to testify or produce evidence but the person shall not be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may be compelled to testify or produce evidence at such Court of Inquiry.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1751, ch. 659, § 38, eff. Aug. 28, 1967.]

#### Art. 52.06. Contempt

Contempt of court in a Court of Inquiry may be punished by a fine not exceeding One Hundred Dollars (\$100.00) and any witness refusing to testify may be attached and imprisoned until he does testify.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 52.07. Stenographic Record; Public Hearing

All evidence taken at a Court of Inquiry shall be transcribed by the court reporter and all proceedings shall be open to the public.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 52.08. Criminal Prosecutions

If it appear from a Court of Inquiry or any testimony adduced therein, that an offense has been committed, the Judge shall issue a warrant for the arrest of the offender as if complaint had been made and filed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

#### Art. 52.09. Costs

All costs incurred in conducting a Court of Inquiry shall be borne by the county in which said Court of Inquiry is conducted; provided, however, that where the Attorney General of Texas has submitted a request in writing to the judge for the holding of such Court of Inquiry, then and in that event the costs shall be borne by the State of Texas and shall be taxed to the attorney general and paid in the same and from the same funds as other court costs. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 1752, ch. 659, § 39, eff. Aug. 28, 1967.]

## CHAPTER FIFTY-THREE. COSTS AND FEES

Art.

- 53.01. Peace officers.
- 53.02. Fees of peace officers.
- 53.03. Fee of State's attorney.
- 53.04. Officers in examining court.
- 53.05. In district and county courts.
- 53.06. Trial fee.
- 53.07. Justice of peace salary.

**Art. 53.01. Peace Officers**

The following fees shall be allowed the sheriff, or other peace officer performing the same services in misdemeanor cases, to be taxed against the defendant on conviction:

1. For executing each warrant of arrest or *capias*, or making arrest without warrant, \$3.00.
2. For summoning each witness, \$1.00.
3. For serving any writ not otherwise provided for, \$2.00.
4. For taking and approving each bond, and returning the same to the courthouse, when necessary, \$2.00.
5. For each commitment or release, \$2.00.
6. Jury fee, in each case where a jury is actually summoned, \$2.00.
7. For attending a prisoner on *habeas corpus*, when such prisoner, upon a hearing, has been remanded to custody or held to bail, for each day's attendance, \$4.00.
8. For conveying a witness attached by him to any court out of his county, \$5.00 for each day or fractional part thereof, and his actual necessary expenses by the nearest practicable public conveyance, the amount to be stated by said officer, under oath, and approved by the judge of the court from which the attachment issued.
9. For conveying a prisoner after conviction to the county jail, for each mile, going and coming, by the nearest practicable route by private conveyance, fifteen cents per mile, or by railway, fifteen cents per mile.
10. For conveying a prisoner arrested on a warrant or *capias* issued from another county to the court or jail of the county from which the process was issued, for each mile traveled, going and coming, by the nearest practicable route, fifteen cents.
11. For each mile he may be compelled to travel in executing criminal process and summoning or attaching witness, fifteen cents. For traveling in the service of process not otherwise provided for, the sum of fifteen cents for each mile going and returning. If two or more persons are mentioned in the same writ, or two or more writs in the same case, he shall charge only for the distance actually and necessarily traveled in the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 53.02. Fees of Peace Officers**

Constables, marshals or other peace officers who execute process and perform services for justices in criminal actions, shall receive the same fees allowed to sheriffs for the same services.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 53.03. Fee of State's Attorney**

The attorney representing the state before a justice court shall receive no fee for his appearance before said court in a case involving the violation of any penal statute or of the Uniform Act Regulating Traffic on Highways.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 53.04. Officers in Examining Court**

Sheriffs and constables serving process and attending any examining court in the examination of a misdemeanor case shall be entitled to such fees as are allowed by law for similar services in the trial of such cases, not to exceed \$3.00 in any one case, to be paid by the defendant in case of final conviction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 53.05. In District and County Courts**

In each criminal action tried by a jury in the district or county court, or county court at law, a jury fee of \$5.00 shall be taxed against the defendant if he is convicted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 53.06. Trial Fee**

In each case of conviction in a county court or a county court at law, whether by a jury or by a court, there shall be taxed against the defendant or against all defendants, when several are held jointly, a trial fee of \$5.00, the same to be collected and paid over in the same manner as in the case of a jury fee; and there shall be no trial fee allowed in a justice court in a case involving the violation of any penal statute or of the Uniform Act Regulating Traffic on Highways.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 53.07. Justice of Peace Salary**

(a) Every justice of the peace in the State of Texas shall be compensated by salary, the amount of which shall be determined by the commissioners court.

(b) All fines imposed by justices of the peace and all trial fees and other fees which justices of the peace are required by law to collect shall be deposited to the credit of the Officers' Salary Fund of the county, or whichever fund is used to pay the salaries of district, county or precinct officers.

(c) This Article shall not affect the salary of any justice of the peace who received compensation on a salary basis before the effective date of this Code, but such justices of the peace shall continue to receive the salary provided by law.

(d) All justices of the peace compensated on a fee basis before the effective date of this Code shall

receive a salary to be determined by the commissioners court of each county, not to exceed the maximum amount of fees which they were entitled by law to retain before the effective date of this Code. [Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**CHAPTER FIFTY-FOUR. MISCELLANEOUS PROVISIONS**

Art.

- 54.01. Severability clause.
- 54.02. Repealing clause.
- 54.03. Emergency clause.

**Art. 54.01. Severability Clause**

If any provision, section or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision, section or clause, and to this end the provisions of this Act are declared to be severable.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 54.02. Repealing Clause**

Sec. 1. (a) Except as otherwise provided in this Article 54.02, all laws relating to criminal procedure in this State that are not embraced, incorporated, or included in this Act and that have not been enacted during the Regular Session of the 59th Legislature are repealed.

(b) None of the following articles of the Code of Criminal Procedure of Texas, 1925, in force on the effective date of this Act, is repealed: 52; 52-1 through 52-161, both inclusive; 367D through 367K, both inclusive; 781B-1, 781B-2; 944 through 951, both inclusive; 1009 through 1035, both inclusive; 1037 through 1056, both inclusive; 1058 through 1064, both inclusive; and 1075 through 1082, both inclusive.

Sec. 2. (a) All laws and parts of laws relating to criminal procedure omitted from this Act have been intentionally omitted, and all additions to and

changes in such procedure have been intentionally made. This Act shall be construed to be an independent Act of the Legislature, enacted under its caption, and the articles contained in this Act, as revised, rewritten, changed, combined, and codified, may not be construed as a continuation of former laws except as otherwise provided in this Act. The existing statutes of the Revised Civil Statutes of Texas, 1925, as amended, and of the Penal Code of Texas, 1925, as amended, which contain special or specific provisions of criminal procedure covering specific instances are not repealed by this Act.

(b) A person under recognizance or bond on the effective date of this Act continues under such recognizance or bond pending final disposition of any action pending against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

**Art. 54.03. Emergency Clause**

The fact that the laws relating to criminal procedure in this State have not been completely revised and re-codified in more than a century past and the further fact that the administration of justice, in the field of criminal law, has undergone changes, through judicial construction and interpretation of constitutional provisions, which have been, in certain instances, modified or nullified, as the case may be, necessitates important changes requiring the revision or modernization of the laws relating to criminal procedure, and the further fact that it is desirable and desirable to strengthen, and to conform, various provisions in such laws to current interpretation and application, emphasizes the importance of this legislation and all of which, together with the crowded condition of the calendar in both Houses, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days be suspended, and said Rule is hereby suspended, and that this Act shall take effect and be in force and effect from and after 12 o'clock Meridian on the 1st day of January, Anno Domini, 1966, and it is so enacted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

## CROSS REFERENCE TABLE

### CODE OF CRIMINAL PROCEDURE, 1925 TO CODE OF CRIMINAL PROCEDURE, 1965

Showing where the subject matter of articles in the Code of Criminal Procedure of 1925 is covered in the Code of Criminal Procedure of 1965.

1925 C.C.P. Article	1965 C.C.P. Article	1925 C.C.P. Article	1965 C.C.P. Article	1925 C.C.P. Article	1965 C.C.P. Article	1925 C.C.P. Article	1965 C.C.P. Article
1	1.03	41	2.17	80	7.03	121	11.09
2	1.04	42	2.18	81	7.04	122	11.10
3	1.05	43	2.19	82	7.05	123	11.11
4	1.06	44	2.20	83	7.06	124	11.12
5	1.07	45	2.21	84	7.07	125	11.13
6	1.08	46	2.22	85	7.08	126	11.14
7	1.09	47	2.23	86	7.09	127	11.15
8	1.10	48	3.01	87	7.10	128	11.16
9	1.11	49	3.02	88	7.11	129	11.17
10	1.12	50	3.03	89	7.12	130	11.18
10a	1.13	51	4.01	90	7.13	131	11.19
11	1.14	52	4.02	91	7.14	132	11.20
12	1.15	53	4.03	92	7.15	133	11.21
13	1.16	53a	4.04	93	7.16	134	11.22
14	1.17	54	4.05	94	7.17	135	11.23
15	1.18	55	4.06	95	8.01	136	11.24
16	1.19	56	4.07	96	8.02	137	11.25
17	1.20	57	4.08	97	8.03	138	11.26
18	1.21	58	4.09	98	8.04	139	11.27
19	1.22	59	4.10	99	8.05	140	11.28
20	1.23	60	4.11	100	8.06	141	11.29
21	1.24	60a	4.12	101	8.07	142	11.30
22	1.25	61	4.13	102	8.08	143	11.31
23	1.26	62	4.14	103	8.09	144	11.32
24	1.27	63	4.15	104	9.01	145	11.33
25	2.01	64	4.16	105	9.02	146	11.34
26	2.02	65	5.01	106	9.03	147	11.35
27	2.03	66	5.02	107	9.04	148	11.36
28	2.04	67	5.03	108	9.05	149	11.37
29	2.05	68	5.04	109	9.06	150	11.38
30	2.06	69	5.05	110	10.01	151	11.39
31	2.07	70	5.06	111	10.02	152	11.40
32	2.08	71	5.07	112	10.03	153	11.41
33	2.09	72	6.01	113	11.01	154	11.42
34	2.10	73	6.02	114	11.02	155	11.43
35	2.11	74	6.03	115	11.03	156	11.44
36	2.12	75	6.04	116	11.04	157	11.45
37	2.13	76	6.05	117	11.05	158	11.46
38	2.14	77	6.06	118	11.06	159	11.47
39	2.15	78	6.07	119	11.07	160	11.48
40	2.16	79	7.01	120	11.08	161	11.49

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1925 C.C.P. Article	1965 C.C.P. Article	1925 C.C.P. Article	1965 C.C.P. Article	1925 C.C.P. Article	1965 C.C.P. Article	1925 C.C.P. Article	1965 C.C.P. Article
162	11.50	227	15.10	295	17.29	357	19.26
163	11.51	228	15.11	296	17.30	358	19.27
164	11.52	229	15.12	297	17.31	359	19.28
165	11.53	230	15.13	298	17.32	360	19.29
166	11.54	231	15.14	300	17.34	361	19.30
167	11.55	232	15.15	301	17.35	362	19.31
168	11.56	233	15.16	302	17.36	363	19.32
169	11.57	235	15.18	303	17.37	364	19.33
170	11.58	236	15.19	304	18.01	365	19.34
171	11.59	237	15.20	305	18.02	366	19.35
172	11.60	238	15.21	306	18.03	367b	19.36
173	11.61	239	15.22	307	18.04	368	19.37
174	11.62	240	15.23	308	18.05	369	19.38
175	11.63	241	15.24	309	18.06	370	19.39
176	11.64	242	15.25	310	18.07	371	19.40
177	12.01	243	15.26	311	18.08	372	19.41
178	12.02	244	15.27	312	18.09	373	20.01
179	12.03	245	16.01	313	18.10	374	20.02
180	12.04	246	16.02	314	18.11	375	20.03
181	12.05	247	16.03	315	18.12	376	20.04
182	12.06	248	16.04	316	18.13	377	20.05
183	12.07	249	16.05	317	18.14	378	20.06
184	12.08	250	16.06	318	18.15	379	20.07
185	12.09	251	16.07	319	18.16	380	20.08
186	13.01	252	16.08	320	18.17	381	20.09
187	13.02	253	16.09	321	18.18	382	20.10
188	13.03	254	16.10	322	18.19	383	20.11
189	13.04	255	16.11	323	18.20	384	20.12
190	13.05	256	16.12	324	18.21	385	20.13
191	13.06	257	16.13	325	18.22	386	20.14
192	13.07	258	16.14	326	18.23	387	20.15
193	13.08	259	16.15	327	18.24	388	20.16
194	13.09	260	16.16	328	18.25	391	20.19
195	13.10	261	16.17	329	18.26	392	20.20
196	13.11	262	16.18	330	18.27	393	20.21
197	13.12	263	16.19	331	18.28	394	20.22
198	13.13	264	16.20	332	18.29	395	21.01
199	13.14	265	16.21	332a	18.30	396	21.02
200	13.15	267	17.01	333	19.01	397	21.03
201	13.16	269	17.02	334	19.02	398	21.04
202	13.17	270	17.05	335	19.03	399	21.05
203	13.18	271a	17.06	336	19.04	400	21.06
204	13.19	271b	17.07	337	19.05	401	21.07
205	13.20	273	17.08	338	19.06	402	21.08
206	13.21	274	17.38	338a	19.07	403	21.09
207	13.22	275a	17.09	339	19.08	404	21.10
208	13.23	276	17.10	340	19.09	405	21.11
209	13.24	277	17.11	341	19.10	406	21.12
210	13.25	278	17.12	342	19.11	407	21.13
211	13.26	279	17.13	343	19.12	408	21.14
212	14.01	280	17.14	344	19.13	408a	21.15
213	14.02	281	17.15	345	19.14	409	21.16
214	14.03	282	17.16	346	19.15	410	21.17
215	14.04	283	17.17	347	19.16	411	21.18
216	14.05	284	17.18	348	19.17	412	21.19
217	14.06	285	17.19	349	19.18	413	21.20
218	15.01	286	17.20	350	19.19	414	21.21
219	15.02	287	17.21	351	19.20	415	21.22
220	15.03	288	17.22	352	19.21	416	21.23
221	15.04	289	17.23	353	19.22	417	21.24
222	15.05	290	17.24	354	19.23	408a	21.24
223	15.06	291	17.25	355	19.24	418	21.25
224	15.07	292	17.26	356	19.25	419	21.26
225	15.08	293	17.27			420	21.27
226	15.09	294	17.28				

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1925 C.C.P. Article	1965 C.C.P. Article	1925 C.C.P. Article	1965 C.C.P. Article	1925 C.C.P. Article	1965 C.C.P. Article	1925 C.C.P. Article	1965 C.C.P. Article
421	21.28	489	25.03	555	30.04	652	36.10
422	21.29	490	25.04	556	30.05	655	36.11
423	21.30	491	26.01	557	30.06	656	36.12
424	22.01	492	26.02	558	30.07	657	36.13
425	22.02	493	26.03	559	30.08	658	36.14
426	22.03	494	26.04	560	31.01	659	36.15
427	22.04	494a	26.05	561	31.02	660	36.16
428	22.05	494b	26.06	562	31.03	661	36.17
429	22.06	495	26.07	567	31.04	665	36.18
430	22.07	496	26.08	570	31.05	666	36.19
431	22.08	497	26.09	573	31.06	667	36.20
432	22.09	498	26.10	575	31.07	670	36.21
433	22.10	499	26.11	576	32.01	671	36.22
434	22.11	500	26.12	577	32.02	672	36.23
435	22.12	501	26.13	578	33.01	673	36.24
436	22.13	502	26.14	579	33.02	674	36.25
437	22.14	503	26.15	580	33.03	675	36.26
438	22.15	504	27.01	581	33.04	676	36.27
439	22.16	505	27.02	582	33.05	678	36.28
440	22.17	506	27.03	583	33.06	681	36.30
441	23.01	507	27.04	584	33.07	682	36.31
442	23.02	508	27.05	585	33.08	683	36.32
445	23.05	509	27.06	586	33.08	684	36.33
446	23.06	510	27.07	587	34.01	686	37.01
447	23.07	511	27.08	591	33.09	688	37.02
448	23.08	512	27.09	596	34.02	689	37.03
449	23.09	513	27.10	597	34.01	690	37.04
450	23.10	514	27.11	601	34.04	691	37.05
451	23.11	515	27.12	601a	34.01	692	37.06
452	23.12	517	27.13	602	35.01	693	37.07
453	23.13	518	27.14	603	35.02	694	37.08
454	23.14	519	27.15	604	35.03	695	37.09
455	23.15	520	27.16	605	35.04	696	37.10
456	23.16	521	27.17	606	35.05	697	37.11
457	23.17	522	28.01	607	35.06	698	37.12
460	23.18	524	28.02	608	35.07	701	37.13
461	24.01	525	28.12	609	35.08	702	37.14
462	24.02	526	28.03	610	35.09	703	38.01
463	24.03	527	28.04	611	35.10	704	38.02
464	24.04	528	28.05	612	35.12	705	38.03
465	24.05	529	28.06	613	35.13	706	38.04
466	24.06	530	28.07	614	35.14	707	38.05
467	24.07	531	28.08	615	35.15	708	38.06
468	24.08	532	28.09	616	35.16	709	38.07
469	24.09	533	28.10	617	35.18	710	38.08
470	24.10	534	28.11	619	35.19	712	38.09
471	24.11	535	28.12	620	35.20	713	38.10
472	24.12	536	28.13	621	35.21	714	38.11
473	24.14	537	28.14	622	35.22	715	38.12
474	24.15	538	29.01	623	35.23	717	38.13
475	24.16	539	29.02	625	35.24	718	38.14
476	24.17	540	29.03	626	33.09	720	38.15
477	24.18	541	29.04	634	35.15	721	38.16
478	24.19	542	29.05	635	35.15	722	38.17
479	24.20	543	29.06	636	35.25	723	38.18
480	24.21	544	29.07	637	35.26	724	38.19
481	24.22	545	29.08	642	36.01	725	38.20
482	24.23	547	29.09	643	36.02	726	38.21
483	24.24	548	29.10	644	36.03	727	38.22
484	24.25	549	29.11	645	36.04	727a	38.23
485	24.26	550	29.12	646	36.05	728	38.24
486	24.27	551	29.13	647	36.06	729	38.25
486a	24.28	552	30.01	648	36.07	730	38.26
487	25.01	553	30.02	649	36.08	731	38.27
488	25.02	554	30.03	650	36.09	732	38.28

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1925 C.C.P. Article	1965 C.C.P. Article	1925 C.C.P. Article	1965 C.C.P. Article	1925 C.C.P. Article	1965 C.C.P. Article	1925 C.C.P. Article	1965 C.C.P. Article
732a	38.29	801	43.17	871	45.05	941	47.09
733	38.30	802	43.18	872	45.06	942	47.10
733a	38.31	803	43.19	873	45.07	943	47.11
734	39.01	804	43.20	874	45.08	952	48.01
735	39.02	805	43.21	875	45.09	954	48.04
736	39.03	806	43.22	876	45.10	957	48.02
737	39.03	807	43.23	877	45.11	958	48.03
737	39.04	808	43.24	878	45.12	967	48.05
737	39.09	809	43.25	879	45.13	968	49.01
738	39.03	811	43.26	880	45.14	969	49.02
738	39.09	812	44.01	881	45.15	970	49.03
740	39.05	813	44.02	882	45.16	970a	49.04
742	39.06	814	44.03	883	45.17	970b	49.05
743	39.07	815		884	45.18	971	49.06
744	39.08	to		885	45.19	972	49.07
748	39.10	818	44.04	888	45.20	973	49.08
749	39.12	819	44.05	889	45.21	974	49.09
751	40.01	820	44.06	889a	45.22	975	49.10
752	40.02	821	44.07	890	45.23	976	49.11
753	40.03	822	44.08	891	45.24	977	49.12
754	40.04	824	44.09	892	45.25	978	49.13
755	40.05	825	44.10	893	45.26	979	49.14
757	40.06	827	44.08	894	45.27	980	49.15
758	40.07	828	44.11	895	45.28	981	49.16
759	40.08	832	44.12	896	45.29	982	49.17
760c	40.10	833	44.13	897	45.30	983	49.18
761	41.01	834	44.14	898	43.03	984	49.19
762	41.02	835	44.15	898	45.31	985	49.20
763	41.03	836	44.16	899	45.32	986	49.21
764	41.04	837	44.17	900	45.33	987	49.22
765	41.05	838	44.18	901	45.34	988	49.23
766	42.01	839	44.19	902	45.35	989	49.24
767	42.02	840	44.20	903	45.36	989a	49.25
768	42.03	844	44.21	904	45.37	990	50.01
769	42.04	845	44.22	905	45.38	991	50.02
772	42.06	846	44.23	906	45.39	992	50.03
773	42.07	847	44.24	907	45.40	993	50.04
774	42.08	848	44.25	908	45.41	994	50.05
775	42.09	849	44.26	909	45.42	995	50.06
781a	42.10	850	44.27	910	45.43	996	50.07
781c	42.11	851	44.28	911	45.44	997	51.01
781d	42.12	852	44.29	912	45.45	998	51.02
782	42.14	853	44.30	913	45.46	999	51.03
783	42.15	854	44.31	914	45.47	1000	51.04
784	42.16	855	44.32	915	45.48	1001	51.05
785	43.01	856	44.33	916	45.49	1002	51.06
786	43.02	857	44.34	917	45.50	1003	51.07
788	43.04	857a	44.35	918	45.51	1004	51.08
789	43.05	858	44.36	919	45.52	1005	51.09
790	43.06	859	44.37	920	45.53	1006	51.10
791	43.07	860	44.38	932-1	46.01	1007	51.11
792	43.08	861	44.39	932b	46.02	1008	51.12
793	43.09	862	44.40	933	47.01	1008a	51.13
794	43.10	863	44.41	934	47.02	1036	53.27
795	43.11	864	44.42	935	47.03	1065	53.01
796	43.12	865	44.43	936	47.04	1067	53.02
797	43.13	866	44.44	937	47.05	1068	53.03
798	43.14	867	45.01	938	47.06	1072	53.04
799	43.15	868	45.02	939	47.07	1073	53.05
800	43.16	869	45.03	940	47.08	1074	53.06
		870	45.04				

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# WATER CODE

Acts 1971, 62nd Leg., Ch. 58.

Effective August 30, 1971

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## TITLE 1. GENERAL PROVISIONS

### CHAPTER 1. GENERAL PROVISIONS

#### SUBCHAPTER A. PURPOSE AND POLICY

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1.002. Construction of Code.	
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#### SUBCHAPTER B. DEFINITIONS

1.011, 1.012. Repealed.

#### SUBCHAPTER A. PURPOSE AND POLICY

##### § 1.001. Purpose of Code

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

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

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

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

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

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

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

(d) Laws of a local or special nature, such as statutes creating various kinds of conservation and reclamation districts, are not included in, or affected by, this code. The legislature believes that persons interested in these local and special laws may rely on the session laws and on compilations of these laws. [Acts 1971, 62nd Leg., p. 110, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 1.002. Construction of Code**

The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code. [Acts 1971, 62nd Leg., p. 111, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 1.003. Public Policy**

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

- (1) the control, storage, preservation, and distribution of the state's storm and flood waters and the waters of its rivers and streams for irrigation, power, and other useful purposes;
- (2) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of the state's overflowed land and other land needing drainage;
- (4) the conservation and development of its forest, water, and hydroelectric power; and
- (5) the navigation of the state's inland and coastal waters.

[Acts 1971, 62nd Leg., p. 111, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 1.004 to 1.010 reserved for expansion]

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**§§ 1.011, 1.012. Repealed by Acts 1971, 62nd Leg., p. 1769, ch. 518, § 10, eff. May 31, 1971**  
[Chapters 2 to 4 reserved for expansion]

**TITLE 2. STATE WATER ADMINISTRATION**

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SUBCHAPTER A. GENERAL PROVISIONS

**§ 5.001. Vested Rights Not Affected**

(a) Nothing in this code affects vested private rights to the use of water, except to the extent that provisions of Subchapter G of this chapter might affect these rights.

(b) This code does not recognize any riparian right in the owner of any land the title to which passed out of the State of Texas after July 1, 1895.

[Acts 1971, 62nd Leg., p. 112, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.002. Definitions**

In this chapter and in Chapter 6 of this code, unless the context requires a different definition:

(1) "commission" means the Texas Water Rights Commission;

(2) "board" means the Texas Water Development Board;

(3) "beneficial use" means use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose;

(4) "water right" means a right acquired under the laws of this state to impound, divert, or use state water; and

(5) "appropriator" means a person who has made beneficial use of any water, in a lawful manner, under the provisions of any act of the legislature before the enactment of Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended, and who has filed with the State Board of Water Engineers a record of his appropriation as required by the 1913 act, as amended; or a person who makes or has made beneficial use of any water within the limitations of a permit lawfully issued by the Texas Water Rights Commission or one of its predecessors.

[Acts 1971, 62nd Leg., p. 112, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.003. Streams that Form Boundaries Included**

This chapter applies to all streams or other sources of water supply lying upon or forming a part of the boundaries of this state.

[Acts 1971, 62nd Leg., p. 112, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.004. Commission to Receive Certified Copies of Judgments, Etc.**

When any court of record renders a judgment, decree, or order affecting the title to any water right, claim, appropriation, or irrigation facility, or

affecting any matter over which the commission is given supervision by law, the clerk of the court shall immediately transmit to the commission a certified copy of the judgment, decree, or order.

[Acts 1971, 62nd Leg., p. 112, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.005. Applicability to Works under Federal Reclamation Act**

This chapter applies to the construction, maintenance, and operation of irrigation works constructed in this state under the Federal Reclamation Act, as amended (43 U.S.C. Sec. 371 et seq.),<sup>1</sup> to the extent that this chapter is not inconsistent with the federal act or the regulations made under that act by the secretary of the interior.

[Acts 1971, 62nd Leg., p. 113, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> 43 U.S.C.A. § 371 et seq.

[Sections 5.006 to 5.020 reserved for expansion]

**SUBCHAPTER B. RIGHTS IN STATE WATER**

**§ 5.021. State Water**

(a) The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state is the property of the state.

(b) Water which is imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state is the property of the state.

[Acts 1971, 62nd Leg., p. 113, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.022. Acquisition of Right to Use State Water**

The right to the use of state water may be acquired by appropriation in the manner and for the purposes provided in this chapter. When the right to use state water is lawfully acquired, it may be taken or diverted from its natural channel.

[Acts 1971, 62nd Leg., p. 113, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.023. Purposes for Which Water May Be Appropriated**

(a) State water may be appropriated, stored, or diverted for:

- (1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;
- (2) industrial uses, being processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;
- (3) irrigation;
- (4) mining and recovery of minerals;
- (5) hydroelectric power;
- (6) navigation;

(7) recreation and pleasure;

(8) stock raising;

(9) public parks; and

(10) game preserves.

(b) State water also may be stored or diverted for any other beneficial use.

(c) Unappropriated storm water and floodwater may be appropriated to recharge underground freshwater bearing sands and aquifers in the portion of the Edwards underground reservoir located within Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties if it can be established by expert testimony that an unreasonable loss of state water will not occur and that the water can be withdrawn at a later time for application to a beneficial use. The normal or ordinary flow of a stream or watercourse may never be appropriated, diverted, or used by a permittee for this recharge purpose.

(d) When it is put or allowed to sink into the ground, water appropriated under Subsection (b) of this section loses its character and classification as storm water or floodwater and is considered percolating groundwater.

(e) The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated for that purpose, subject to the preferences prescribed in Section 5.024 of this code.

(f) The water of any arm, inlet, or bay of the Gulf of Mexico may be changed from salt water to sweet or fresh water and held or stored by dams, dikes, or other structures, and may be taken or diverted for any purpose authorized by this chapter.

[Acts 1971, 62nd Leg., p. 113, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.024. Appropriation: Preferences**

In order to conserve and properly utilize state water, the public welfare requires not only recognition of beneficial uses but also a constructive public policy regarding the preferences between these uses; and it is therefore declared to be the public policy of this state that, in appropriating state water, preference shall be given to the following uses in the order named:

- (1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;
- (2) industrial uses, being processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;
- (3) irrigation;
- (4) mining and recovery of minerals;
- (5) hydroelectric power;
- (6) navigation;
- (7) recreation and pleasure; and
- (8) other beneficial uses.

[Acts 1971, 62nd Leg., p. 114, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.025. Scope of Appropriative Right**

A right to use state water under a permit or a certified filing is limited not only to the amount specifically appropriated but also to the amount which is being or can be beneficially used for the purposes specified in the appropriation, and all water not so used is considered not appropriated. [Acts 1971, 62nd Leg., p. 114, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.026. Perfection of an Appropriation**

No right to appropriate water is perfected unless the water has been beneficially used for a purpose stated in the original declaration of intention to appropriate water or stated in a permit issued by the commission or one of its predecessors. [Acts 1971, 62nd Leg., p. 114, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.027. Rights Between Appropriators**

As between appropriators, the first in time is the first in right. [Acts 1971, 62nd Leg., p. 115, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.028. Exception**

Any appropriation made after May 17, 1931, for any purpose other than domestic or municipal use, is subject to the right of any city or town to make further appropriations of the water for domestic or municipal use without paying for the water. However, this section does not apply to any stream which constitutes or defines the international boundary between the United States of America and the Republic of Mexico. [Acts 1971, 62nd Leg., p. 115, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.029. Title to Appropriation by Limitation**

When an appropriator from a source of water supply has used water under the terms of a certified filing or a permit for a period of three years, he acquires title to his appropriation by limitation against any other claimant of water from the same source of water supply and against any riparian owner on the same source of water supply. [Acts 1971, 62nd Leg., p. 115, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.030. Forfeiture of Appropriation**

If any lawful appropriation or use of state water is wilfully abandoned during any three successive years, the right to use the water is forfeited and the water is again subject to appropriation. [Acts 1971, 62nd Leg., p. 115, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.031. Annual Report**

(a) Not later than March 1 of every year, every person who takes water during the preceding calendar year from a stream or reservoir shall submit a written report to the commission on a form prescribed by the commission. The report shall contain all information required by the commission to aid in

administering the water law and in making inventory of the state's water resources. However, with the exception of public utilities and political subdivisions which furnish water for municipal uses, no report is required of persons who take water solely for domestic or livestock purposes.

(b) A person who fails to file an annual report with the commission as required by this section is liable to a penalty of \$25, plus \$1 per day for each day he fails to file the statement after March 1. However, the maximum penalty under this section is \$150. The state may sue to recover the penalty. [Acts 1971, 62nd Leg., p. 115, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.032. Records**

(a) A person who owns and operates a system of waterworks used for a purpose authorized by this code shall keep a detailed record of daily operations so that the quantity of water taken or diverted each calendar year can be determined.

(b) If the water is used for irrigation, the record must show the number of acres irrigated, the character of the crops grown, and the yield per acre. No survey is required to determine the exact number of acres irrigated. [Acts 1971, 62nd Leg., p. 115, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.033. Eminent Domain**

The right to take water necessary for domestic and municipal supply purposes is primary and fundamental, and the right to recover from other uses water which is essential to domestic and municipal supply purposes is paramount and unquestioned in the policy of the state. All political subdivisions of the state and constitutional governmental agencies exercising delegated legislative powers have the power of eminent domain, to be exercised as provided by law, for domestic, municipal, and manufacturing uses, and for other purposes authorized by this code, including the irrigation of lands for all requirements of agricultural employment. [Acts 1971, 62nd Leg., p. 116, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.034. Reservoir Site: Land and Rights-of-Way**

An appropriator who is authorized to construct a dam or reservoir is granted the right-of-way, not to exceed 100 feet wide, and the necessary area for the site, over any public school land, university land, or asylum land of this state, and the use of the rock, gravel, and timber on the site and right-of-way for construction purposes, after paying compensation as determined by the commission. An appropriator may acquire the reservoir site and rights-of-way over private land by contract. [Acts 1971, 62nd Leg., p. 116, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.035. Condemnation of Private Property**

(a) An appropriator may obtain rights-of-way over private land and may obtain the land necessary for pumping plants, intakes, headgates, and storage reservoirs by condemnation.

(b) The party obtaining private property by condemnation shall cause damages to be assessed and paid for as provided by the statutes of this state relating to eminent domain.

(c) If the party exercising the power granted by this section is not a corporation, district, city, or town, he shall apply to the commission for the condemnation.

(d) The commission shall investigate the proposed condemnation. After its investigation the commission may give notice to the party owning the land proposed to be condemned and hold a hearing on the proposed condemnation.

(e) If after a hearing the commission determines that the condemnation is necessary, the commission may institute condemnation proceedings in the name of the State of Texas for the use and benefit of the party who applied for the condemnation and all others similarly situated.

(f) The parties at whose instance a condemnation suit is instituted shall pay the costs of the suit and condemnation in proportion to the benefits received by each party as fixed by the commission. Before using any of the condemned rights or property, a party receiving the rights or property shall pay the amount of costs fixed by the commission.

(g) If, after the costs of the condemnation proceedings have been paid, a party seeks to take the benefits of the condemnation proceedings, he shall apply to the commission for the benefits. The commission may grant the application and fix the fees and charges to be paid by the applicant.

[Acts 1971, 62nd Leg., p. 116, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.036. Conserved or Stored Water: Supply Contract**

(a) A person, association of persons, corporation, or water improvement or irrigation district having in possession and control any storm water, floodwater, or rainwater that is conserved or stored as authorized by this chapter may contract to supply the water to any person, association of persons, corporation, or water improvement or irrigation district having the right to acquire use of the water.

(b) The price and terms of the contract shall be just and reasonable and without discrimination; and the contract is subject to the same revision and control as provided in this code for other water rates and charges. If any person uses the stored or conserved water without first entering into a contract with the party that conserved or stored it, the user shall pay for the use at a rate determined by the commission to be just and reasonable, subject to court review as in other cases.

[Acts 1971, 62nd Leg., p. 117, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.037. Water Suppliers: Rules and Regulations**

Every person, association of persons, corporation, or irrigation district conserving or supplying water for any of the purposes authorized by this chapter

shall make and publish reasonable rules and regulations relating to:

- (1) the method of supply;
- (2) the use and distribution of the water; and
- (3) the procedure for applying for the water and paying for it.

[Acts 1971, 62nd Leg., p. 117, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.038. Rights of Owners of Land Adjoining Canal, Etc.**

(a) A person who owns or holds a possessory interest in land adjoining or contiguous to a canal, ditch, flume, lateral, dam, reservoir, or lake, constructed and maintained under the provisions of this chapter, and who has secured a right to the use of water in the canal, ditch, flume, lateral, dam, reservoir, or lake, is entitled to be supplied from the canal, ditch, flume, lateral, dam, reservoir, or lake with water for irrigation of the land, and for mining, milling, manufacturing, development of power, and stock raising, in accordance with the terms of his contract.

(b) If the person, association of persons, or corporation owning or controlling the water, and the person who owns or holds a possessory interest in the adjoining land cannot agree on a price for a permanent water right, or for the use of enough water for irrigation of the person's land, or for mining, milling, manufacturing, development of power, or stock raising, then the party owning or controlling the water, if he has any water not contracted to others, shall furnish the water necessary for these purposes at reasonable and nondiscriminatory prices.

[Acts 1971, 62nd Leg., p. 117, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.039. Distribution of Water During Shortage**

(a) If a shortage of water in a water supply results from drouth, accident, or other cause, the water to be distributed shall be divided among all customers pro rata, according to the amount each may be entitled to, so that preference is given to no one and everyone suffers alike.

(b) Nothing in Subsection (a) of this section precludes the person, association of persons, or corporation owning or controlling the water from supplying water to a person who has a prior vested right to the water under the laws of this state.

[Acts 1971, 62nd Leg., p. 117, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.040. Permanent Water Right**

(a) A permanent water right is an easement and passes with the title to land.

(b) A written instrument conveying a permanent water right may be recorded in the same manner as any other instrument relating to a conveyance of land.

(c) The owner of a permanent water right is entitled to use water according to the terms of his contract. If there is no contract, the owner is entitled to use water at a just, reasonable, and nondiscriminatory price.

[Acts 1971, 62nd Leg., p. 118, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.041. Denial of Water: Complaint**

(a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake, or from any conserved or stored supply may present to the commission a written petition showing:

(1) that he is entitled to receive or use the water;

(2) that he is willing and able to pay a just and reasonable price for the water;

(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just, or is discriminatory.

(b) If the petition is accompanied by a deposit of \$25, the commission shall make a preliminary investigation of the complaint and determine whether or not there is probable ground for the complaint.

(c) If, after preliminary investigation, the commission determines that probable grounds exist for the complaint, the commission shall enter an order setting a time and place for a hearing on the petition.

(d) The commission may require the complainant to make an additional deposit or execute a bond satisfactory to the commission, in an amount fixed by the commission, conditioned on the payment of all costs of the proceeding.

(e) At least 20 days before the date set for the hearing, the commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. On completion of the hearing, the commission shall render a written decision.

(g) If, after its preliminary investigation, the commission determines that no probable ground exists for the complaint, the commission shall dismiss the complaint. The commission may either return the deposit or pay it into the state treasury.

[Acts 1971, 62nd Leg., p. 118, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.042. Delivering Water Down Banks and Beds**

Under rules prescribed by the commission, a person, association of persons, corporation, or water improvement or irrigation district supplying stored or conserved water under contract as provided in this chapter may use the bank and bed of any flowing natural stream in the state to convey the water from the place of storage to the place of use, or to the diversion plant of the appropriator. The commission shall prescribe rules for this purpose.

[Acts 1971, 62nd Leg., p. 119, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.043. Recordation of Conveyance of Irrigation Work**

(a) A conveyance of a ditch, canal, or reservoir, or other irrigation work, or an interest in such an irrigation work must be executed and acknowledged in the same manner as a conveyance of real estate. Such a conveyance must be recorded in the deed records of the county in which the ditch, canal, or reservoir is located.

(b) If a conveyance of property covered by Subsection (a) of this section is not made in the prescribed manner, it is null and void against subsequent purchasers in good faith and for valuable consideration.

[Acts 1971, 62nd Leg., p. 119, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.044. Roads and Highways**

(a) An appropriator has the right to construct ditches, canals, or other conveyances along or across all roads and highways necessary for the construction of waterworks. Bridges, culverts, or siphons shall be constructed at all road and highway crossings as necessary to prevent any impairment of the uses of the road or highway.

(b) If any public road, highway, or public bridge is located on the ground necessary for a damsite, reservoir, or lake, the commissioners court shall change the road and remove the bridge so that it does not interfere with the construction of the proposed dam, reservoir, or lake. The party desiring to construct the dam, reservoir, or lake shall pay the expense of moving the bridge or roadway.

[Acts 1971, 62nd Leg., p. 119, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.045. Ditches and Canals**

An appropriator is entitled to construct ditches and canals along or across any stream of water.

[Acts 1971, 62nd Leg., p. 119, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.046. Return Unused Water**

A person who takes or diverts water from a running stream for the purposes authorized by this code shall conduct surplus water back to the stream from which it was taken if the water can be returned by gravity flow and it is reasonably practicable to do so.

[Acts 1971, 62nd Leg., p. 119, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.047. Failure to Fence**

If a person, association of persons, corporation, or water improvement or irrigation district that owns or controls a ditch, canal, reservoir, dam, or lake does not keep it securely fenced, there is no cause of action against the owner of livestock that trespass.

[Acts 1971, 62nd Leg., p. 119, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.048. Cost of Maintaining Irrigation Ditch**

(a) If an irrigation ditch is owned or used by two or more persons, mutual or cooperative companies, or corporations, each party who has an interest in the ditch shall pay his proportionate share of the cost of operating and maintaining the ditch.

(b) If a person who owns a joint interest in a ditch refuses to do or to pay for his proportionate share of the work that is reasonably necessary for the proper maintenance and operation of the ditch, the other owners may, after giving him 10 days' written notice, proceed themselves to do his share of the necessary work and recover from him the reasonable expense or value of the work or labor performed. The action for the cost of the work may be brought in any court having jurisdiction over the amount in controversy.

[Acts 1971, 62nd Leg., p. 119, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.049. Examination and Survey**

A person may make any necessary examination and survey in order to select the most advantageous sites for a reservoir and rights-of-way to be used for any of the purposes authorized by this chapter; and for this purpose a person may enter the land or water of any other person.

[Acts 1971, 62nd Leg., p. 120, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.050. Tidewater Gates, Etc.**

(a) An appropriator authorized to take water for irrigation may, subject to the laws of the United States and the regulations made under its authority, construct gates, or breakwaters, dams, or dikes with gates, in waters wholly in this state, as necessary to prevent pollution of the fresh water of any river, bayou, or stream due to the ebb and flow of the tides of the Gulf of Mexico.

(b) The work shall be one in such a manner that navigation of vessels on the stream is not obstructed; and where any gate is used, the appropriator shall at all times keep a competent person at the gate to allow free navigation.

(c) A dam, dike, or breakwater constructed under this section may not be placed at any point except where Gulf tides ebb and flow, and may not be constructed so as to obstruct the flow of fresh water to any appropriator or riparian owner downstream.

[Acts 1971, 62nd Leg., p. 120, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.051. Irrigation: Lien on Crops**

(a) A person who constructs a ditch, canal, dam, lake, or reservoir for the purpose of irrigation and who leases, rents, furnishes, or supplies water to any person for irrigation, with or without a contract, has a preference lien superior to every other lien on the irrigated crops. However, when any irrigation district or conservation and reclamation district obtains a water supply under contract with the United States, the board of directors of the district, by resolution entered in its minutes, with the consent of the secretary of the interior, may waive the preference lien in whole or in part.

(b) To enforce the lien, the lienholder has all the rights and remedies prescribed by Articles 5222-5239, Revised Civil Statutes of Texas, 1925.

[Acts 1971, 62nd Leg., p. 120, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.052. Activities under the Federal Reclamation Act**

The Secretary of the Interior of the United States is authorized to conduct any activities in this state necessary to perform his duties under the Federal Reclamation Act, as amended (43 U.S.C. Sec. 371 et seq.).<sup>1</sup>

[Acts 1971, 62nd Leg., p. 120, ch. 58, § 1, eff. Aug. 30, 1971.]  
<sup>1</sup> 43 U.S.C.A. § 371 et seq.

[Sections 5.053 to 5.080 reserved for expansion]

**SUBCHAPTER C. UNLAWFUL USE, DIVERSION, WASTE, ETC.**

**§ 5.081. Unlawful Use of State Water**

(a) No person may wilfully take, divert, or appropriate any state water for any purpose without first complying with all applicable requirements of this chapter.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100 or by confinement in the county jail for not more than six months or by both.

(c) A person commits a separate offense each day he continues to take, divert, or appropriate water in violation of this section.

(d) Possession of state water when the right to its use has not been acquired according to the provisions of this chapter is prima facie evidence of a violation of this section.

[Acts 1971, 62nd Leg., p. 121, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.082. Unlawful Use: Civil Penalty**

(a) A person who wilfully takes, diverts, or appropriates state water without complying with the applicable requirements of this chapter is also liable to a penalty of not to exceed \$100 per day for each day he continues the taking, diversion, or appropriation.

(b) The state may recover the penalties prescribed in Subsection (a) of this section by suit brought for that purpose in a court of competent jurisdiction.

(c) An action to collect the penalty provided in this section must be brought within one year from the date of the alleged violation.

[Acts 1971, 62nd Leg., p. 121, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 2636, ch. 867, § 1, eff. June 9, 1971.]

**§ 5.083. Other Unlawful Taking**

(a) No person may wilfully open, close, change, or interfere with any headgate or water box without lawful authority.

(b) No person may wilfully use water or conduct water through his ditch or upon his land unless he is entitled to do so.

(c) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor

more than \$1,000 or by confinement in the county jail for not more than six months.

(d) The possession or use of water on his land by a person not entitled to the water by the provisions of this code is prima facie evidence of a violation of this section.

[Acts 1971, 62nd Leg., p. 121, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.084. Sale of Permanent Water Right Without a Permit

(a) No person may sell or offer to sell a permanent water right unless he has perfected a right to appropriate state water by a certified filing, or unless he has obtained a permit from the commission, authorizing the use of the water for the purposes for which the permanent water right is conveyed.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year or by both.

[Acts 1971, 62nd Leg., p. 121, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.085. Interwatershed Transfers

(a) No person may take or divert any of the water of the ordinary flow, underflow, or storm flow of any stream, watercourse, or watershed in this state into any other natural stream, watercourse, or watershed to the prejudice of any person or property situated within the watershed from which the water is proposed to be taken or diverted.

(b) No person may transfer water from one watershed to another without first applying for and receiving a permit from the commission to do so. Before issuing such a permit, the commission shall hold a hearing to determine the rights that might be affected by the transfer. The commission shall give notice and hold the hearing in the manner prescribed by its rules.

(c) A person who takes or diverts water in violation of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$500 or by confinement in the county jail for not more than six months.

(d) A person commits a separate offense each day he continues to take or divert water in violation of this section.

[Acts 1971, 62nd Leg., p. 122, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.086. Overflow Caused by Diversion of Water

(a) No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.

(b) A person whose property is injured by an overflow of water caused by an unlawful diversion or impounding has remedies at law and in equity and may recover damages occasioned by the overflow.

(c) The prohibition of Subsection (a) of this section does not in any way affect the construction and maintenance of levees and other improvements to control floods, overflows, and freshets in rivers, creeks, and streams, or the construction of canals for conveying water for irrigation or other purposes authorized by this code. However, this subsection does not authorize any person to construct a canal, lateral canal, or ditch that obstructs a river, creek, bayou, gully, slough, ditch, or other well-defined natural drainage.

(d) Where gullies or sloughs have cut away or intersected the banks of a river or creek to allow floodwaters from the river or creek to overflow the land nearby, the owner of the flooded land may fill the mouth of the gullies or sloughs up to the height of the adjoining banks of the river or creek without liability to other property owners.

[Acts 1971, 62nd Leg., p. 122, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.087. Diversion of Water on International Stream

(a) When storm water or floodwater is released from a dam or reservoir on an international stream, and the water is designated for use or storage downstream by a specified user who is legally entitled to receive it, no other person may store, divert, appropriate, or use the water, or interfere with its passage downstream.

(b) The commission may make and enforce regulations and orders to implement the provisions of this section, including regulations and orders designed to:

- (1) establish an orderly system for water releases and diversions, in order to protect vested rights and to avoid the loss of released water;
- (2) prescribe the time that releases of water may begin and end;
- (3) determine the proportionate quantities of the released water in transit and the water that would have been flowing in the stream without the addition of the released water;
- (4) require each owner or operator of a dam or reservoir on the stream between the point of release and the point of destination to allow free passage of the released water in transit; and
- (5) establish other requirements the commission considers necessary to effectuate the purposes of this section.

(c) Orders made by the commission to effectuate its regulations under this section need not be published, but the commission shall transmit a copy of every such order by certified mail to each diverter of water and to each reservoir owner on the stream between the point of release and the point of destination of the released water, as shown by the records of the commission.

(d) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100 or by confinement in the county jail for not more than

six months or by both. A person commits a separate offense each day he continues to violate this section. [Acts 1971, 62nd Leg., p. 122, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.088. Destruction of Waterworks**

(a) No person may wilfully cut, dig, break down, destroy, or injure, or open a gate, bank, embankment, or side of any ditch, canal, reservoir, flume, tunnel or feeder, pump or machinery, building, structure, or other work which is the property of another, or in which another owns an interest, or which is lawfully possessed or being used by another, and which is used for irrigation, milling, mining, manufacturing, the development of power, domestic purposes, or stock raising, with intent to:

(1) maliciously injure a person, association, corporation, water improvement or irrigation district;

(2) gain advantage for himself; or

(3) take or steal water, or cause water to run out or waste out of the ditch, canal, or reservoir, feeder, or flume for his own advantage, or to the injury of a person lawfully entitled to the use of the water or the use or management of the ditch, canal, tunnel, reservoir, feeder, flume, machine, structure, or other irrigation work.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$1,000 or by confinement in the county jail for not more than two years or by both. [Acts 1971, 62nd Leg., p. 123, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.089. Johnson Grass or Russian Thistle**

(a) No person who owns, leases, or operates a ditch, canal, or reservoir, or who cultivates land abutting a reservoir, ditch, flume, canal, wasteway, or lateral, may permit Johnson grass or Russian thistle to go to seed on the waterway within 10 feet of the high-water line, if the waterway crosses or lies on the land owned or controlled by him.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$500 or by confinement in the county jail for not less than 30 days nor more than six months or by both.

(c) The provisions of this section are not applicable in Tom Green, Sterling, Irion, Schleicher, McCullough, Brewster, Menard, Maverick, Kinney, Val Verde, and San Saba counties. [Acts 1971, 62nd Leg., p. 124, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.090. Polluting and Littering**

(a) No person may deposit in any canal, lateral, reservoir, or lake, used for a purpose named in this chapter, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, baling or barbed wire, earth, offal, or refuse of any character, or any other article which might pollute the water or obstruct the flow of a canal or similar structure.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$100 or by confinement in the county jail for not more than six months or by both. [Acts 1971, 62nd Leg., p. 124, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.091. Interference with Delivery of Water under Contract**

(a) No person may wilfully take, divert, appropriate, or interfere with the delivery of conserved or stored water under Section 5.042 of this code.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100 or by confinement in the county jail for not more than six months or by both.

(c) A person commits a separate offense each day he continues to violate this section.

(d) On the petition of any interested party, the district court of any county through which the water may pass shall enjoin any actual or threatened act prohibited by this section. [Acts 1971, 62nd Leg., p. 124, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.092. Wasteful Use of Water**

A person who owns or has a possessory right to land contiguous to a canal or irrigation system and who acquires the right by contract to use the water from it commits waste if he:

(1) permits the excessive or wasteful use of water by any of his agents or employees; or

(2) permits the water to be applied to anything but a beneficial use. [Acts 1971, 62nd Leg., p. 124, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.093. Abatement of Waste as Public Nuisance**

(a) A person who permits an unreasonable loss of water through faulty design or negligent operation of any waterworks using water for a purpose named in this chapter commits waste; and the commission may declare the works causing the waste to be a public nuisance. The commission may take the necessary action to abate the nuisance. Also, any person who may be injured by the waste may sue in the district court having jurisdiction over the works causing the waste to have the operation of the works abated as a public nuisance.

(b) In case of a wasteful use of water prohibited by Section 5.092 of this code, the commission shall declare the use to be a public nuisance and shall act to abate the nuisance by directing the person supplying the water to close the water gates of the person wasting the water and to keep them closed until the commission determines that the unlawful use of water is corrected. [Acts 1971, 62nd Leg., p. 124, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.094. Penalty for Use of Works Declared Public Nuisance**

(a) No person may operate or attempt to operate any waterworks or irrigation system or use any

water under contract with any waterworks or irrigation system that has been previously declared to be a public nuisance.

(b) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$1,000 or by confinement in the county jail for not more than one year or by both.

[Acts 1971, 62nd Leg., p. 125, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.095. Penalty for Waste

A person who wilfully or knowingly commits waste as provided in Section 5.092 or 5.093(a) of this code is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500 or by confinement in the county jail for not more than 90 days or by both.

[Acts 1971, 62nd Leg., p. 125, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.096. Obstruction of Navigable Streams

(a) No person may obstruct the navigation of any stream which can be navigated by steamboats, keelboats, or flatboats, by cutting and felling trees or by building on or across the stream any dike, mill dam, bridge, or other obstruction.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$500.

[Acts 1971, 62nd Leg., p. 125, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 5.097 to 5.120 reserved for expansion]

### SUBCHAPTER D. PERMITS TO USE STATE WATER

#### § 5.121. Permit Required

Except as provided in Section 5.140 of this code, no person may appropriate any state water, or begin construction of any work designed for the storage, taking, or diversion of water, without first obtaining a permit from the commission to make the appropriation.

[Acts 1971, 62nd Leg., p. 125, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.122. Permit Preferences

The commission shall give preference to applications in the order declared in Section 5.024 of this code and to applications which will effectuate the maximum utilization of water and are calculated to prevent the escape of water without contribution to a beneficial public service.

[Acts 1971, 62nd Leg., p. 126, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.123. Application for Permit

(a) An application to appropriate unappropriated state water must:

- (1) be in writing and sworn to;
- (2) contain the name and post-office address of the applicant;

(3) identify the source of water supply;

(4) state the nature and purposes of the proposed use and the amount of water to be used for each purpose;

(5) state the location and describe the proposed facilities;

(6) state the time within which the proposed construction is to begin; and

(7) state the time required for the application of water to the proposed use.

(b) If the proposed use is irrigation, the application must also contain:

(1) a description of the land proposed to be irrigated; and

(2) an estimate of the total acreage to be irrigated.

(c) If the application is for a seasonal permit, under the provisions of Section 5.136 of this code, the application must also state the months or seasons of the year the water is to be used.

(d) If the application is for a temporary permit, under the provisions of Section 5.137 of this code, the application must also state the period of the proposed temporary use.

[Acts 1971, 62nd Leg., p. 126, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.124. Map or Plat

(a) The application must be accompanied by a map or plat drawn on tracing linen, on a scale not less than one inch equals 2,000 feet.

(b) The map or plat must show substantially:

(1) the location and extent of the proposed facilities;

(2) the location of the headgate, intake, pumping plant, or point of diversion by course and distance from permanent natural objects or landmarks;

(3) the location of the main ditch or canal and the locations of the laterals or branches of the main ditch or canal;

(4) the course of the water supply;

(5) the position, waterline, and area of all lakes, reservoirs, or basins intended to be used or created;

(6) the point of intersection of the proposed facilities with any other ditch, canal, lateral, lake, or reservoir; and

(7) the location of any ditch, canal, lateral, reservoir, lake, dam, or other similar facility already existing in the area, drawn in a different colored ink than that used to represent the proposed facilities, and the name of the owner of the existing facility.

(c) The map or plat must also contain:

(1) the name of the proposed facility or enterprise;

(2) the name of the applicant; and

(3) a certificate of the surveyor, giving the date of his survey, his name and post-office address, and the date of the application which the certificate accompanies.

[Acts 1971, 62nd Leg., p. 126, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.125. Commission Requirements**

(a) If the proposed taking or diversion of water for irrigation exceeds nine cubic feet per second, the commission may require additional information as prescribed by this section.

(b) The commission may require a continuous longitudinal profile, cross-sections of the proposed channel, and the detail plans of any proposed structure, on any scales and with any definition the commission considers necessary or expedient.

(c) If the application proposes construction of a dam greater than six feet in height, either for diversion or storage, the commission may also require filing a copy of all plans and specifications and a copy of the engineer's field notes of any survey of the lake or reservoir. No work on the project shall proceed until approval of the plans is obtained.

(d) If the applicant is a corporation, the commission may require filing a certified copy of its articles of incorporation, a statement of the names and addresses of its directors and officers, and a statement of the amount of its authorized capital stock and its paid-up capital stock.

(e) If the applicant is not a corporation, the commission may require filing a sworn statement showing the name and address of each person interested in the appropriation, the extent of his interest, and his financial condition.

[Acts 1971, 62nd Leg., p. 127, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.126. Additional Requirements: Drainage Plans**

If the commission believes that the efficient operation of any existing or proposed irrigation system may be adversely affected by lack of adequate drainage facilities incident to the work proposed to be done by an applicant, the commission may require the applicant to submit plans for drainage adequate to guard against any injury which the proposed work may entail.

[Acts 1971, 62nd Leg., p. 127, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.127. Payment of Fee**

If the applicant is not exempted from payment of the filing fee under Section 6.069 of this code, he shall pay the filing fee prescribed by Section 6.068(b) of this code at the time he files the application. The commission shall not record, file, or consider the application until the fee is paid.

[Acts 1971, 62nd Leg., p. 127, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.128. Review of Application; Amendment**

The commission shall determine whether the application, maps, and other materials comply with the requirements of this chapter and the regulations of the commission. The commission may require

amendment of the application, maps, or other materials to achieve necessary compliance.

[Acts 1971, 62nd Leg., p. 127, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.129. Recording Applications**

(a) The commission shall record all applications for appropriations in a well-bound book kept for that purpose in the commission's office.

(b) The commission shall index the applications alphabetically in the name of:

- (1) the applicant;
- (2) the stream or source from which the appropriation is sought to be made; and
- (3) the county in which the appropriation is sought to be made.

[Acts 1971, 62nd Leg., p. 127, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.130. Examination and Denial of Application Without Hearing**

(a) The commission shall make a preliminary examination of the application and, if it appears that there is no unappropriated water in the source of supply or that the proposed appropriation should not be allowed for other reasons, the commission may deny the application.

(b) If the commission denies the application under this section and the applicant elects not to proceed further, the commission may return to the applicant any part of the fee submitted with the application.

[Acts 1971, 62nd Leg., p. 128, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.131. Notice of Hearing**

(a) The commission shall give notice of the hearing on the application as prescribed by this section.

(b) In the notice the commission shall:

- (1) state the name and address of the applicant;
- (2) state the date the application was filed;
- (3) state the purpose and extent of the proposed appropriation of water;
- (4) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;
- (5) specify the time and place of the hearing; and
- (6) give any additional information the commission considers necessary.

(c) If the proposed use is for irrigation, the commission shall include in the notice a general description of the location and area of the land to be irrigated.

(d) The notice shall be published once a week for two consecutive weeks before the date stated in the notice for the hearing in some newspaper having a general circulation in the section of the state where the source of water is located.

(e) The commission shall also mail a copy of the notice by first-class mail, postage prepaid, to each claimant or appropriator of water from the source of water supply, the record of whose claim or appropri-

ation has been filed in the office of the commission. The notice shall also be mailed by first-class mail, postage prepaid, to all navigation districts within the watershed concerned. The inadvertent failure of the commission to mail a notice to a navigation district which is not a claimant or appropriator of water does not prevent the hearing on the application.

(f) The notice shall be mailed and first published not less than 20 days before the date set for the hearing.

[Acts 1971, 62nd Leg., p. 128, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 5.132. Hearing

At the time and place stated in the notice, the commission shall hold a hearing on the application. Any person may appear at the hearing, in person or by attorney, or may enter his appearance in writing. Any person who appears may present objection to the issuance of the permit. The commission may receive evidence, orally or by affidavit, in support of or in opposition to the issuance of the permit, and it may hear arguments.

[Acts 1971, 62nd Leg., p. 128, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 5.133. Action on Application

(a) After the hearing the commission shall make a written decision granting or denying the application. The application may be granted or denied in whole or in part.

(b) The commission shall grant the application only if:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;

(2) unappropriated water is available in the source of supply; and

(3) the proposed appropriation:

(A) contemplates the application of water to any beneficial use;

(B) does not impair existing water rights or vested riparian rights; and

(C) is not detrimental to the public welfare.

[Acts 1971, 62nd Leg., p. 129, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 5.134. Issuance of Permit

(a) On approval of an application, the commission shall issue a permit to the applicant. The applicant's right to take and use water is limited to the extent and purposes stated in the permit.

(b) The permit shall be in writing and attested by the seal of the commission, and it shall contain substantially the following information:

(1) the name of the person to whom the permit is issued;

(2) the date the permit is issued;

(3) the date the original application was filed;

(4) the use or purpose for which the appropriation is to be made;

(5) the amount or volume of water authorized to be appropriated for each purpose;

(6) a general description of the source of supply from which the appropriation is proposed to be made;

(7) the time within which construction or work must begin and the time within which it must be completed; and

(8) any other information the commission prescribes.

(c) If the appropriation is for irrigation, the commission shall also place in the permit a description and statement of the approximate area of the land to be irrigated.

[Acts 1971, 62nd Leg., p. 129, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 5.135. Recording of Permit

(a) The commission shall transmit the permit by registered mail to the county clerk of the county in which the appropriation is to be made.

(b) When the county clerk receives the permit and is paid the recording fee (as prescribed by Article 3930, Revised Civil Statutes of Texas, 1925, as amended), he shall file and record the permit in a well-bound book kept for that purpose. He shall index the permit alphabetically in the name of the applicant and of the stream or source of water supply. After he has recorded the permit, the county clerk shall deliver the permit, on demand, to the applicant.

(c) When the permit is filed in the office of the county clerk, it is constructive notice of:

(1) the filing of the application;

(2) the issuance of the permit; and

(3) all the rights arising under the filing of the application and the issuance of the permit.

[Acts 1971, 62nd Leg., p. 129, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 5.136. Seasonal Permits

(a) The commission may issue seasonal permits in the same manner that it issues regular permits. The provisions of this chapter governing issuance of regular permits apply to issuance of seasonal permits.

(b) The right to take, use, or divert water under seasonal permit is limited to the portion or portions of the calendar year stated in the permit.

(c) In a seasonal permit the commission shall specify the conditions necessary to fully protect prior appropriations or vested rights on the stream.

[Acts 1971, 62nd Leg., p. 130, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 5.137. Temporary Permits

(a) The commission may issue temporary permits for beneficial purposes to the extent that they do not interfere with or adversely affect prior appropriations or vested rights on the stream. The provisions of this chapter governing issuance of regular permits apply to issuance of temporary permits.

(b) The commission may prescribe rules governing notice and procedure for the issuance of temporary permits.

(c) As between temporary permits, the one applied for first has priority.

(d) The commission may not issue a temporary permit for a period exceeding three calendar years.

(e) A temporary permit does not vest in its holder a permanent right to the use of water.

(f) A temporary permit expires and shall be cancelled by the commission in accordance with the terms of the permit.

(g) The commission may prescribe by rule the fees to be paid for issuance of temporary permits, but no fee for issuance or extension of a temporary permit shall exceed \$500.

[Acts 1971, 62nd Leg., p. 130, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.1371. Emergency Permits**

(a) As part of its administrative authority, the commission may grant an emergency permit for the diversion and use of water for a period of not more than 30 days if it finds that emergency conditions exist which threaten the public health, safety, and welfare and which override the necessity to comply with established statutory procedures.

(b) An emergency permit may be granted for a period of not more than 30 days and no extension or additional emergency permit may be granted at the expiration of the original permit.

(c) An emergency permit may be granted under this section without the necessity to comply with statutory and other procedures required for granting other permits issued by the commission.

(d) The commission may prescribe rules and regulations and adopt fees which are necessary to carry out the provisions of this section.

(e) An emergency permit does not vest in the permittee any right to the diversion and use of water and shall expire and be cancelled in accordance with its terms.

[Acts 1971, 62nd Leg., p. 1974, ch. 612, art. 1, § 1, eff. Sept. 1, 1971.]

**§ 5.138. Permits for Storage for Project Development**

The commission may issue permits for storage solely for the purpose of optimum development of projects. The commission may convert these permits to permits for beneficial use if application to have them converted is made to the commission.

[Acts 1971, 62nd Leg., p. 130, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.139. Date of Priority**

When the commission issues a permit, the priority of the appropriation of water and the claimant's right to use the water dates from the date of filing of the application.

[Acts 1971, 62nd Leg., p. 130, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.140. Domestic and Livestock Reservoir—Permit Exemption**

Without obtaining a permit, a person may construct on his own property a dam or reservoir to

impound or contain not more than 200 acre-feet of water for domestic and livestock purposes.

[Acts 1971, 62nd Leg., p. 131, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.141. Domestic and Livestock Reservoir—Use for Other Purposes**

(a) The owner of a dam or reservoir exempted under Section 5.140 of this code who desires to use water from the dam or reservoir for purposes other than domestic or livestock use shall obtain a permit to do so. He may obtain a regular permit, a seasonal permit, or a permit for a term of years. He may elect to obtain the permit by proceeding under this section or under the other provisions of this chapter governing issuance of permits.

(b) If the applicant elects to proceed under this section, he shall submit to the commission a sworn application, on a form furnished by the commission, containing the following information:

(1) the name and post-office address of the applicant;

(2) the nature and purpose of the use and the amount of water to be used annually for each purpose;

(3) the major watershed and the tributary (named or unnamed) on which the dam or reservoir is located;

(4) the county in which the dam or reservoir is located;

(5) the approximate distance and direction from the county seat of the county to the location of the dam or reservoir;

(6) the survey or the portion of the survey on which the dam or reservoir is located and, to the best of the applicant's knowledge and belief, the distance and direction of the midpoint of the dam or reservoir from a corner of the survey, which information the commission may require to be marked on an aerial photograph or map furnished by the commission;

(7) the approximate surface area, to the nearest acre, of the reservoir when it is full, and the average depth in feet when it is full; and

(8) the approximate number of square miles in the drainage area above the dam or reservoir.

(c) If the permit is sought for irrigation, the application must also specify:

(1) the total number of irrigable acres in the area;

(2) the number of acres to be irrigated within the area in any one year; and

(3) the approximate distance and direction of the land to be irrigated from the midpoint of the dam or reservoir.

(d) Before the commission may approve the application and issue the permit, it shall give notice and hold a hearing as prescribed by this section.

(e) In the notice the commission shall:

(1) state the name and post-office address of the applicant;

- (2) state the date the application was filed;
- (3) state the purpose and extent of the proposed appropriation of water;
- (4) identify the source of supply and the place where the water is stored; and
- (5) specify the time and place of the hearing.

(f) The notice shall be published only once, at least 20 days before the date stated in the notice for the hearing on the application, in a newspaper having general circulation in the county where the dam or reservoir is located. At least 15 days before the date set for the hearing, the commission shall transmit a copy of the notice by first-class mail to each person whose claim or appropriation has been filed with the commission and whose diversion point is downstream from that described in the application.

(g) The applicant shall pay the filing fee prescribed by Section 6.068(b) of this code at the time he files the application.

(h) The commission shall approve the application and issue the permit as applied for, in whole or in part, if it determines that:

- (1) there is unappropriated water in the source of supply;
- (2) the applicant has met the requirements of this section;
- (3) the water is to be used for a beneficial purpose;
- (4) the proposed use is not detrimental to the public welfare or to the welfare of the locality; and
- (5) the proposed use will not impair existing water rights.

[Acts 1971, 62nd Leg., p. 131, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.142. Approval for Alterations

All holders of permits and certified filings shall obtain the approval of the commission before making any alterations, enlargements, extensions, or other changes to any reservoir, dam, main canal, or diversion work upon which a permit has been granted or a certified filing recorded. A detailed statement and plans for alterations or changes shall be filed with and approved by the commission before the alterations or changes are made. This section does not apply to the ordinary maintenance or emergency repair of the facility.

[Acts 1971, 62nd Leg., p. 132, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.143. When Construction Must Begin

(a) If a person's permit is for appropriation by direct diversion, he shall begin construction of the proposed facilities within 90 days after the date his permit is issued. He shall work diligently and continuously to the completion of the construction. The commission may, by entering an order of record, extend the time for beginning construction for a period not to exceed 12 months after the date the permit was issued.

(b) If the permit contemplates construction of a storage reservoir, construction shall begin within the

time fixed by the commission, not to exceed two years after the date the permit is issued. The commission, by entering an order of record, may extend the time for beginning construction. The commission may fix fees, not to exceed \$1,000, for extending the time to begin construction of reservoirs.

[Acts 1971, 62nd Leg., p. 132, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.144. Forfeitures and Cancellation of Permit for Inaction

(a) If a permittee fails to begin construction within the time specified in Section 5.143 of this code, he forfeits all rights to the permit, subject to notice and hearing as prescribed by this section.

(b) After beginning construction, if the appropriator fails to work diligently and continuously to the completion of the work, the appropriation is subject to cancellation in whole or in part, subject to notice and hearing as prescribed by this section.

(c) If the commission believes that an appropriation or permit should be declared forfeited under this section or any other sections of this code, it should give the appropriator or permittee 30 days' notice and provide him with an opportunity to be heard.

(d) After the hearing the commission, by entering an order of record, may cancel the appropriation in whole or in part. The commission shall immediately transmit a certified copy of the cancellation order by certified mail to the county clerk of the county in which the permit is recorded. The county clerk shall record the cancellation order.

(e) If a permit has been issued for the use of water, the water is not subject to a new appropriation until the permit has been cancelled in whole or in part as provided by this section.

(f) Except as provided by Subchapter (e) of this chapter, none of the provisions of this code may be construed as intended to impair, cause, or authorize or may impair, cause, or authorize the forfeiture of any rights acquired by any declaration of appropriation or by any permit if the appropriator has begun or begins the work and development contemplated by his declaration of appropriation or permit within the time provided by the law under which the declaration of appropriation was made or the permit was granted and has prosecuted or continues to prosecute it with all reasonable diligence toward completion.

[Acts 1971, 62nd Leg., p. 133, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 5.145 to 5.170 reserved for expansion]

#### SUBCHAPTER E. CANCELLATION OF PERMITS FOR NONUSE

#### § 5.171. Definitions

As used in this subchapter:

- (1) "other interested person" means any person, other than a record holder, who is interest-

ed in the permit or certified filing, or any person whose interest would be served by the cancellation of the permit or certified filing in whole or in part; and

(2) "certified filing" means a declaration of appropriation or affidavit that was filed with the State Board of Water Engineers under the provisions of Section 14, Chapter 171, General Laws, Acts of the 33rd Legislature, 1913.<sup>1</sup>

[Acts 1971, 62nd Leg., p. 133, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Acts 1913, 33rd Leg., p. 358, ch. 171, § 14 (repealed).

**§ 5.172. General Principle**

A permit or certified filing is subject to cancellation in whole or in part for 10 years' nonuse as provided by this subchapter.

[Acts 1971, 62nd Leg., p. 133, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.173. Cancellation in Whole**

If no part of the water authorized to be appropriated under a permit or certified filing has been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the appropriation is presumed to have been wilfully abandoned, and the permit or certified filing is subject to cancellation in whole as provided by this subchapter.

[Acts 1971, 62nd Leg., p. 134, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.174. Commission to Initiate Proceedings**

When the commission finds that its records do not show that any water has been beneficially used under a permit or certified filing during the past 10 years, it shall initiate proceedings, terminated by public hearing, to cancel the permit or certified filing.

[Acts 1971, 62nd Leg., p. 134, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.175. Notice**

(a) At least 30 days before the date of the hearing, the commission shall send notice of the hearing to the holder of the permit or certified filing as shown by the records of the commission. Notice shall be sent by certified mail, return receipt requested, to the last address shown by the records of the commission. The commission shall also send notice by regular mail to all other holders of permits and certified filings in the same watershed.

(b) The commission shall also have the notice of the hearing published once a week for two consecutive weeks, at least 30 days before the date of the hearing, in a newspaper published in each county in which diversion of water from the source of supply was authorized or proposed to be made, and in each county in which the water was authorized or proposed to be used, as shown by the records of the commission. If in any such county no newspaper is published, then the notice may be published in a newspaper having general circulation in the county.

[Acts 1971, 62nd Leg., p. 134, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.176. Hearing**

The commission shall hold a hearing and shall give the holder of the permit or certified filing and other interested persons an opportunity to be heard and to present evidence that water has, or has not, been beneficially used for the purposes authorized by the permit or certified filing during the 10-year period.

[Acts 1971, 62nd Leg., p. 134, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.177. Commission Finding; Action**

At the conclusion of the hearing, if the commission finds that no water has been beneficially used for authorized purposes during the 10-year period, the appropriation is deemed to have been wilfully abandoned, and the commission shall cancel the permit or certified filing.

[Acts 1971, 62nd Leg., p. 134, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.178. Cancellation in Part**

If some part of the water authorized to be appropriated under a permit or certified filing has not been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the permit or certified filing is subject to partial cancellation, as provided by this subchapter, to the extent of the 10 years' nonuse.

[Acts 1971, 62nd Leg., p. 134, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.179. Commission May Initiate Proceedings**

When the commission finds that its records do not show proof that some portion of the water has been used during the past 10 years, it may initiate proceedings, terminated by public hearing, to cancel the permit or certified filing in part.

[Acts 1971, 62nd Leg., p. 135, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.180. Notice**

The commission shall give notice of the hearing as provided by Section 5.175 of this code.

[Acts 1971, 62nd Leg., p. 135, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.181. Hearing**

The commission shall hold a hearing and shall give the holder of the permit or certified filing and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

[Acts 1971, 62nd Leg., p. 135, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.182. Commission Finding; Action**

(a) At the conclusion of the hearing, the commission shall cancel the permit or certified filing to the extent that it finds that:

(1) any portion of the water appropriated under the permit or certified filing has not been put to an authorized beneficial use during the 10-year period;

(2) the holder has not used reasonable diligence in applying the unused portion of the water to an authorized beneficial use; and

(3) the holder has not been justified in the nonuse or does not then have a bona fide intention of putting the unused water to an authorized beneficial use within a reasonable time after the hearing.

(b) In determining what constitutes a reasonable time as used in Subsection (a)(3) of this section, the commission shall give consideration to:

(1) the expenditures made or obligations incurred by the holder in connection with the permit or certified filing;

(2) the purpose to which the water is to be applied;

(3) the priority of the purpose; and

(4) the amount of time usually necessary to put water to a beneficial use for the same purpose when diligently developed.

[Acts 1971, 62nd Leg., p. 135, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.183. Reservoir

If the holder of a permit or certified filing has facilities for the storage of water in a reservoir, the commission shall allow him to retain a water appropriation to the extent of the conservation storage capacity of the reservoir.

[Acts 1971, 62nd Leg., p. 135, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.184. Municipal Permit

Regardless of other provisions of this subchapter, no portion of a certified filing held by a city, town, village, or municipal water district, authorizing the use of water for municipal purposes, shall be cancelled if water has been put to use under the certified filing for municipal purposes at any time during the 10-year period immediately preceding the institution of cancellation proceedings.

[Acts 1971, 62nd Leg., p. 136, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.185. Effect of Commission Inaction

Failure of the commission to initiate cancellation proceedings under this subchapter does not validate or improve the status of any permit or certified filing in whole or in part.

[Acts 1971, 62nd Leg., p. 136, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.186. Subsequent Proceedings on Same Permit

Once cancellation proceedings have been initiated against a particular permit or certified filing and a hearing has been held, the commission shall not initiate further cancellation proceedings against the same permit or certified filing within the five-year period immediately following the date of the hearing.

[Acts 1971, 62nd Leg., p. 136, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 5.187 to 5.200 reserved for expansion]

### SUBCHAPTER F. ARTESIAN WELLS

#### § 5.201. Artesian Well Defined

An artesian well is an artificial water well in which the water, when properly cased, will rise by

natural pressure above the first impervious stratum below the surface of the ground.

[Acts 1971, 62nd Leg., p. 136, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.202. Right to Drill Artesian Well

A person is entitled to drill an artesian well on his own land for domestic purposes or for stock raising without complying with the general provisions of this code regulating the use of water. However, he shall have the well properly and securely cased; and when water is reached containing mineral or other substances injurious to vegetation or agriculture, he shall have the well securely capped, or its flow controlled so as not to injure another person's land, or shall fill the well so as to prevent the water from rising above the first impervious stratum below the surface of the ground.

[Acts 1971, 62nd Leg., p. 136, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.203. Artesian Well: Drilling Record

(a) A person who drills an artesian well or has one drilled shall keep a complete and accurate record of the depth, thickness, and character of the different strata penetrated and, when the well is completed, shall transmit a copy of the record to the commission by registered mail.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1971, 62nd Leg., p. 136, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.204. Report of New Artesian Well

Within one year after an artesian well is drilled, the owner or operator shall transmit to the commission a sworn report stating the result of the drilling operation, the use to which the water will be applied, and the contemplated extent of the use.

[Acts 1971, 62nd Leg., p. 137, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.205. Wasting Water from Artesian Well

(a) Unless the water from an artesian well is used for a purpose and in a manner in which it may be lawfully used on the owner's land, it is waste to wilfully cause or knowingly permit the water to run off the owner's land or to percolate through the stratum above which the water is found.

(b) It is not waste to use water from an artesian well, if suitable, for proper irrigation of trees on a street, road, or highway, or for ornamental ponds or fountains, or for the propagation of fish.

(c) A person who commits waste as defined in this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500 or by confinement in the county jail for not more than 90 days or by both.

[Acts 1971, 62nd Leg., p. 137, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.206. Improperly Cased Well: Nuisance

An artesian well that is not tightly cased, capped, and furnished with mechanical appliances that readi-

ly and effectively prevent water from flowing out of the well and running over the surface of the ground about the well, or wasting through the strata through which it passes, is a public nuisance and subject to abatement by the commission.

[Acts 1971, 62nd Leg., p. 137, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.207. Annual Report**

(a) Not later than March 1 of each year, a person who, during any part of the preceding calendar year, owned or operated an artesian well for any purpose other than domestic use, shall file a report to the commission on a form supplied by the commission.

(b) The report shall state:

- (1) the quantity of water which was obtained from the well;
- (2) the nature of the uses to which the water was applied;
- (3) the change in the level of the well's water table; and
- (4) other information required by the commission.

(c) If water from the well was used for irrigation, the report shall also state the acreage and yield of each crop irrigated.

[Acts 1971, 62nd Leg., p. 137, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 5.208 to 5.300 reserved for expansion]

**SUBCHAPTER G. WATER RIGHTS  
ADJUDICATION ACT**

**§ 5.301. Short Title**

This subchapter may be cited as the Water Rights Adjudication Act.

[Acts 1971, 62nd Leg., p. 137, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.302. Declaration of Policy**

The conservation and best utilization of the water resources of this state are a public necessity, and it is in the interest of the people of the state to require recordation with the commission of claims of water rights which are presently unrecorded, to limit the exercise of these claims to actual use, and to provide for the adjudication and administration of water rights to the end that the surface-water resources of the state may be put to their greatest beneficial use. Therefore, this subchapter is in furtherance of the public rights, duties, and functions mentioned in this section and in response to the mandate expressed in Article XVI, Section 59, of the Texas Constitution, and is in the exercise of the police powers of the state in the interest of the public welfare.

[Acts 1971, 62nd Leg., p. 137, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.303. Recordation and Limitation of Certain Water Rights Claims**

(a) This section applies to:

- (1) claims of riparian water rights;
- (2) claims under Section 5.141 of this code to impound, divert, or use state water for other

than domestic or livestock purposes, for which no permit has been issued;

(3) claims of water rights under the Irrigation Acts of 1889 and 1895<sup>1</sup> which were not filed with the State Board of Water Engineers in accordance with the Irrigation Act of 1913,<sup>2</sup> as amended; and

(4) other claims of water rights except claims under permits or certified filings.

(b) Any claim to which this section applies shall be recognized only if valid under existing law and only to the extent of the maximum actual application of water to beneficial use without waste during any calendar year from 1963 to 1967, inclusive. However, in any case where a claimant of a riparian right has prior to August 28, 1967, commenced or completed the construction of works designed to apply a greater quantity of water to beneficial use, the right shall be recognized to the extent of the maximum amount of water actually applied to beneficial use without waste during any calendar year from 1963 to 1970, inclusive.

(c) On or before September 1, 1969, every person claiming any water right to which this section applies shall file with the commission a statement setting forth:

- (1) the name and address of the claimant;
- (2) the location and the nature of the right claimed;
- (3) the stream or watercourse and the river basin in which the right is claimed;
- (4) the date of commencement of works;
- (5) the dates and volumes of use of water; and
- (6) other information the commission may require to show the nature and extent of the claim.

(d) A person who files a statement as provided in this section shall certify under oath that the statements made in support of his claim are true and correct to the best of his knowledge and belief.

(e) A claimant who desires recognition of a right based on use from 1968 to 1970, inclusive, as provided in Subsection (b) of this section, shall file an additional sworn statement on or before July 1, 1971.

(f) The commission shall prescribe forms for the sworn statements required by this section, but use of the commission forms is not mandatory.

(g) On or before January 1, 1968, and June 1, 1969, the commission shall cause notice of the requirements of this section to be published once each week for two consecutive weeks in newspapers having general circulation in each county of the state and by first-class mail to each user of surface water who has filed a report of water use with the commission.

(h) On sworn petition, notice, and hearing as prescribed for applications for permits, and upon finding of extenuating circumstances and good cause shown for failure to timely file, the commission may

authorize the filing of the sworn statement or statements required by this section until entry of a preliminary determination of claims of water rights, in accordance with Section 5.309 of this code, which includes the area described in the petition, or, if a preliminary determination has not been entered, until September 1, 1974.

(i) Since the filing of all claims to use public water is necessary for the conservation and best utilization of the water resources of the state, failure to file a sworn statement in substantial compliance with this section extinguishes and bars any claim of water rights to which this section applies.

(j) A sworn statement submitted under this section is binding on the person submitting it and his successors in interest, but is not binding on the commission or any other person in interest.

(k) Nothing in this section shall be construed to recognize any water right which did not exist before August 28, 1967.

(l) This section does not apply to use of water for domestic or livestock purposes.

[Acts 1971, 62nd Leg., p. 138, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Acts 1889, 21st Leg., p. 100, ch. 88; Acts 1895, 24th Leg., p. 21, ch. 21.  
<sup>2</sup> Acts 1913, 33rd Leg., p. 358, ch. 171.

#### § 5.304. Adjudication of Water Rights

The water rights in any stream or segment of a stream may be adjudicated as provided in this subchapter:

- (1) on the commission's own motion;
- (2) on petition to the commission signed by 10 or more claimants of water rights from the source of supply; or
- (3) on petition of the Texas Water Development Board.

[Acts 1971, 62nd Leg., p. 139, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.305. Investigation

(a) Promptly after a petition is filed under Section 5.304 of this code, the commission shall investigate the facts and conditions necessary to determine whether the adjudication would be in the public interest. If the commission finds that an adjudication would be in the public interest, it shall enter an order to that effect, designating the stream or segment to be adjudicated and directing an investigation to be made of the area involved in order to gather relevant data and information essential to the proper understanding of the claims of water rights involved. The results of the investigation shall be reduced to writing and made a matter of record in the commission's office.

(b) In connection with the investigation, the commission shall make a map or plat showing with substantial accuracy the course of the stream or segment and the location of reservoirs, diversion works, and places of use, including lands which are being irrigated or have facilities for irrigation.

[Acts 1971, 62nd Leg., p. 139, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.306. Notice of Adjudication

(a) The commission shall prepare a notice of adjudication which describes the stream or segment to be adjudicated and the date by which all claims of water rights in the stream or segment shall be filed with the commission. The date shall not be less than 90 days after the date the notice is issued.

(b) The notice shall be published once a week for two consecutive weeks in one or more newspapers having general circulation in the counties in which the stream or segment is located.

(c) The notice shall also be sent by certified mail to each claimant of water rights whose diversion is within the stream or segment to be adjudicated, to the extent that the claimants can reasonably be ascertained from the records of the commission.

[Acts 1971, 62nd Leg., p. 139, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.307. Filing of Sworn Claims

(a) Every person claiming a water right of any nature, except for domestic or livestock purposes, from the stream or segment under adjudication, shall file a sworn claim with the commission within the time prescribed in the notice of adjudication, including any extensions of the prescribed time, setting forth:

- (1) the name and post-office address of the claimant;
- (2) the location and nature of the right claimed, including a description of any permit or certified filing under which the claim is made;
- (3) the purpose of the use;
- (4) a description of works and irrigated land; and
- (5) all other information necessary to show the nature and extent of the claim.

(b) The commission shall prescribe forms for claims, but use of the commission forms is not mandatory.

[Acts 1971, 62nd Leg., p. 140, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.308. Hearings on Claims; Notice

The commission shall set a time and a place for hearing all claims. Not less than 30 days before commencement of the hearings, the commission shall give notice of the hearings by certified mail to all persons who have filed claims in accordance with Section 5.307 of this code; or this notice may be included in the notice of adjudication provided in Section 5.306 of this code. The hearings shall be conducted as provided in Section 5.337 of this code.

[Acts 1971, 62nd Leg., p. 140, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.309. Preliminary Determination of Claims

(a) On completion of the hearings, the commission shall make a preliminary determination of the claims to water rights under adjudication.

(b) One copy of the preliminary determination shall be furnished without charge to each person who filed a claim in accordance with Section 5.307 of

this code. Additional copies of the preliminary determination shall be made available for public inspection at convenient locations throughout the river basin, as designated by the commission. Copies shall also be made available to other interested persons at a reasonable price, based on the cost of reproduction. [Acts 1971, 62nd Leg., p. 140, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.310. Evidence Open to Inspection**

All evidence presented to or considered by the commission shall be open to public inspection for a period of not less than 60 days, as fixed by the commission, after the notice prescribed in Section 5.312 of this code is issued.

[Acts 1971, 62nd Leg., p. 141, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.311. Date for Filing Contests**

The commission shall set a date for filing contests on the preliminary determination, which date shall not be less than 30 days after the period for public inspection of the evidence has closed.

[Acts 1971, 62nd Leg., p. 141, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.312. Notice of Preliminary Determination; Copies**

(a) Promptly after the preliminary determination is made as provided in Section 5.309 of this code, the commission shall publish notice of the determination once a week for two consecutive weeks in one or more newspapers having general circulation in the river basin in which the stream or segment that is the subject of the adjudication is located.

(b) The commission shall also send notice by certified mail to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission.

(c) Each notice shall state:

(1) the place and the period of time that the preliminary determination and evidence presented to or considered by the commission will be open for public inspection;

(2) the locations throughout the river basin where copies of the preliminary determination will be available for public inspection;

(3) the method of ordering copies of the preliminary determination, and the charge for copies;

(4) the date by which contests on the preliminary determination must be filed.

[Acts 1971, 62nd Leg., p. 141, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.313. Filing Contests**

(a) Any water right claimant affected by the preliminary determination, including any claimant to water rights within the river basin but outside the stream or segment under adjudication, who disputes the preliminary determination, may, within the time for filing contests prescribed by the commission in the notice, including any extension of the time, file a written contest with the commission, stating with reasonable certainty the grounds of his contest.

(b) The statement filed to contest a preliminary determination must be verified by an affidavit of the contestant, his agent, or his attorney.

(c) If the contest is directed against the preliminary determination of the water rights of other claimants, a copy shall be served on each of these claimants or his attorney by certified mail, and proof of service shall be filed with the commission.

[Acts 1971, 62nd Leg., p. 141, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.314. Hearing on Contest; Notice**

After the time for filing contests has expired, the commission shall prepare a notice setting forth the part of the preliminary determination to which each contest is directed and the time and place of a hearing on the contest. The notice shall be sent to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission. The hearing shall be conducted as provided in Section 5.337 of this code.

[Acts 1971, 62nd Leg., p. 141, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.315. Final Determination**

On completion of the hearings on all contests, the commission shall make a final determination of the claims to water rights under adjudication. The commission shall send a copy of the final determination, and any modification of the final determination, to each claimant whose rights are adjudicated and to each contesting party.

[Acts 1971, 62nd Leg., p. 142, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.316. Application for Rehearing**

Within 30 days from the date of the final determination, any affected party may apply to the commission for a rehearing. Applications for rehearing which in the opinion of the commission are without merit may be denied without notice to other parties, but no application for rehearing shall be granted without notice to each claimant whose rights are adjudicated and to each contesting party.

[Acts 1971, 62nd Leg., p. 142, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.317. Filing Final Determination with District Court**

(a) As soon as practicable after the disposition of all applications for rehearing, the commission shall file a certified copy of the final determination, together with all evidence presented to or considered by the commission, in a district court of any county in which the stream or segment under adjudication is located. However, if the stream or segment under adjudication includes all or parts of three or more counties and if 10 or more affected persons who appeared in the proceedings petition the commission to do so, the commission shall file the action in a convenient district court of a judicial district which is not within the river basin of the stream or segment under adjudication.

(b) The commission shall obtain an order from the court fixing a time not less than 30 days from the date of the order for the filing of exceptions to the final determination and also fixing a time not less than 60 days from the date of the order for the commencement of hearings on exceptions.

(c) The commission shall immediately give written notice of the court order by certified mail to all parties who appeared in the proceedings before the commission. The commission shall file proof of the service with the court.

[Acts 1971, 62nd Leg., p. 142, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.318. Exceptions to Final Determination

(a) Any affected person who appeared in the proceeding before the commission may file exceptions to the final determination. An exception must state with a reasonable degree of certainty the grounds for the exception and must specify the particular paragraphs and pages of the determination to which the exception is taken.

(b) Three copies of the exceptions shall be filed in court, and a copy shall be served on the commission. The commission shall make copies of all exceptions available at a reasonable price, based on the cost of reproduction.

[Acts 1971, 62nd Leg., p. 142, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.319. Hearings on Exceptions

(a) The court shall hear any exceptions that have been filed. The commission and all affected persons who appeared in the proceedings before the commission are entitled to appear and be heard on the exceptions. The court may permit other parties in interest to appear and be heard for good cause shown.

(b) The court may conduct nonjury hearings and proceedings at any convenient location within the state. Actual expenses incurred by the court outside its judicial district shall be taxed as costs.

[Acts 1971, 62nd Leg., p. 143, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.320. Scope of Judicial Review

(a) In passing on exceptions, the court shall determine all issues of law and fact independently of the commission's determination. The substantial evidence rule shall not be used. The court shall not consider any exception which was not brought to the commission's attention by application for rehearing. The court shall not consider any issue of fact raised by an exception unless the record of evidence before the commission reveals that the question was genuinely in issue before the commission.

(b) A party in interest may demand a jury trial of any such issue of fact, but the court may in its discretion have a separate trial with a separate jury of any such issue.

(c) The legislature declares that the provisions of this section are not severable from the remainder of this subchapter, and that this subchapter would not have been passed without the inclusion of this sec-

tion. If this section is for any reason held invalid, unconstitutional, or inoperative in any way, the holding applies to the entire subchapter so that the entire subchapter is null and void.

[Acts 1971, 62nd Leg., p. 143, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.321. Evidence

Any exception heard by the court without a jury may be resolved on the record of evidence before the commission, or the court may take additional evidence or direct that additional evidence be heard by the commission.

[Acts 1971, 62nd Leg., p. 143, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.322. Final Decree

(a) After the final hearing, the court shall enter a decree affirming or modifying the order of the commission.

(b) The court may assess the costs as it deems just.

(c) An appeal may be taken from the decree of the court in the same manner and with the same effect as in other civil cases.

(d) The final decree in every water right adjudication is final and conclusive as to all existing and prior rights and claims to the water rights in the adjudicated stream or segment of a stream. The decree is binding on all claimants to water rights outside the adjudicated stream or segment of a stream.

(e) Except for domestic and livestock purposes or rights subsequently acquired by permit, a water right is not recognized in the adjudicated stream or segment of a stream unless the right is included in the final decree of the court.

[Acts 1971, 62nd Leg., p. 143, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.323. Certificate of Adjudication

(a) When a final determination of the rights to the waters of a stream has been made in accordance with the procedure provided in this subchapter and the time for a rehearing has expired, the commission shall issue to each person adjudicated a water right a certificate of adjudication, signed by the chairman and bearing the seal of the commission.

(b) In the certificate the commission shall include:

(1) a reference to the final decree;

(2) the name and post-office address of the holder of the adjudicated right;

(3) the priority, extent, and purpose of the adjudicated right; and if the right is for irrigation, a description of the irrigated land; and

(4) all other information in the decree relating to the adjudicated right.

[Acts 1971, 62nd Leg., p. 144, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.324. Recordation of Certificate

(a) The commission shall transmit the certificate of adjudication or a true copy to the county clerk of each county in which the appropriation is made.

(b) On receipt of the recording fee from the holder of the certificate, the county clerk shall file and record the certificate in a well-bound book provided and kept for that purpose only. The clerk shall index the certificate alphabetically under the name of the holder of the certificate of adjudication and under the name of the stream or source of water supply.

(c) When a certificate of adjudication is filed and recorded as provided in this section, the county clerk shall deliver the certificate, on demand, to the holder.

[Acts 1971, 62nd Leg., p. 144, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.325. Water Divisions**

The commission shall divide the state into water divisions for the purpose of administering adjudicated water rights. Water divisions may be created from time to time as the necessity arises. The divisions shall be constituted to secure the best protection to the holders of water rights and the most economical supervision on the part of the state.

[Acts 1971, 62nd Leg., p. 144, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.326. Appointment of Watermaster**

(a) The commission may appoint one watermaster for each water division.

(b) A watermaster holds office until a successor is appointed. The commission may remove a watermaster at any time.

(c) The commission may employ assistant watermasters and other employees necessary to aid a watermaster in the discharge of his duties.

(d) In a water division in which the office of watermaster is vacant, the commission has the powers of a watermaster.

(e) The commission shall supervise and generally direct the watermaster in the performance of his duties. A watermaster is responsible to the commission for the proper performance of his duties.

(f) A person dissatisfied with any action of a watermaster may apply to the commission for relief.

[Acts 1971, 62nd Leg., p. 144, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.327. Duties of Watermaster**

(a) A watermaster shall divide the water of the streams or other sources of supply of his division in accordance with the adjudicated water rights.

(b) A watermaster shall regulate or cause to be regulated the controlling works of reservoirs and diversion works in time of water shortage, as is necessary because of the rights existing in the streams of his division, or as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled.

(c) A watermaster may regulate the distribution of water from any system of works that serves users whose rights have been separately determined.

[Acts 1971, 62nd Leg., p. 145, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.328. Watermaster's Notice Posted**

If, in the performance of his duties, a watermaster regulates diversion works or the controlling works of reservoirs, he shall attach to the works a written notice, properly dated and signed, stating that the works have been properly regulated and are wholly under his control. The notice is legal notice to all parties interested in the diversion and distribution of the water served by the diversion works or reservoir.

[Acts 1971, 62nd Leg., p. 145, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.329. Compensation and Expenses of Watermaster**

(a) The commission shall pay the compensation and necessary expenses of a watermaster, assistant watermasters, and other necessary employees, but the holders of water rights that have been determined or adjudicated and are to be administered by the watermaster shall reimburse the commission for the compensation and expenses.

(b) After the adjudication decree becomes final, the commission shall notify each holder of water rights under the decree of the amount of compensation and expenses that will be required annually for the administration of the water rights so determined.

(c) The commission shall hold a public hearing to determine the apportionment of the costs of administration of adjudicated water rights among the holders of the rights. After a public hearing the commission shall issue an order assessing the annual cost against the holders of water rights to whom the water will be distributed under the final decree. The commission shall equitably apportion the costs. The commission may provide for payments in installments and shall specify the dates by which payments shall be made to the commission.

(d) The commission shall transmit all collections under this section to the state treasurer.

(e) No water shall be diverted, taken, or stored by, or delivered to, any person while he is delinquent in the payment of his assessed costs.

(f) An order of the commission assessing costs remains in effect until the commission issues a further order. The commission may modify, revoke, or supersede an order assessing costs with a subsequent order. The commission may issue supplementary orders from time to time to apply to new diversions.

[Acts 1971, 62nd Leg., p. 145, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.330. Outlet for Free Passage of Water**

The owner of any works for the diversion or storage of water shall maintain to the satisfaction of the commission a substantial headgate at the point of diversion, or a gate on each discharge pipe of a pumping plant, constructed so that it can be locked at the proper place by the watermaster, or a suitable outlet in a dam to allow the free passage of water that the owner of the dam is not entitled to divert or impound, the suitability of the outlet to be determined by the commission.

[Acts 1971, 62nd Leg., p. 146, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.331. Measuring Devices**

The commission may require the owner of any works for the diversion, taking, storage, or distribution of water to construct and maintain suitable measuring devices at points that will enable the watermaster to determine the quantities of water to be diverted, taken, stored, released, or distributed, in order to satisfy the rights of the respective users. [Acts 1971, 62nd Leg., p. 146, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.332. Installation of Flumes**

The commission may order flumes to be installed along the line of any ditch if necessary for the protection of water rights or other property. [Acts 1971, 62nd Leg., p. 146, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.333. Failure to Comply with Commission Directions**

If the owner of waterworks using state water refuses or neglects to comply with the directions of the commission given pursuant to Section 5.330, 5.331, or 5.332 of this code, the commission, after 10 days' notice or after a period of additional time that is reasonable under the circumstances, may order the watermaster to make adjustments of the control works to prevent the owner of the works from diverting, taking, storing, or distributing any water until he has fully complied with the order of the commission. [Acts 1971, 62nd Leg., p. 146, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.334. Suit Against Commission for Injury**

Any person who is injured by an act of the commission under this subchapter may bring suit against the commission to review the action or to obtain an injunction. If the water right involved has been adjudicated as provided in this subchapter, the court shall issue an injunction only if it shown that the commission has failed to carry into effect the decree adjudicating the water right. [Acts 1971, 62nd Leg., p. 146, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.335. Administration of Water Rights Not Adjudicated**

(a) If any area in which water rights of record in the office of the commission have not been adjudicated, the claimants of the rights and the commission may enter into a written agreement for their administration.

(b) An agreement made under authority of this section shall provide:

(1) the basis and manner of distribution of the waters to which the agreement relates;

(2) the services of a special watermaster, and assistants if necessary, to carry out the agreement; and

(3) the allocation, collection, and payment of the annual costs of administration.

(c) An agreement to administer unadjudicated water rights shall be recorded in the offices of the commission and of the county clerk of each county in

which any of the works or lands affected by the agreement are located.

(d) The administration of water rights by agreement is governed by the provisions of this subchapter except as regards allocation and payment of the expenses of the administration.

(e) No agreement authorized by this section impairs any vested right to the use of water or creates any additional rights to the use of water. [Acts 1971, 62nd Leg., p. 146, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.336. Administration of Permits Issued After Adjudication**

Permits, other than temporary permits, that are issued by the commission to appropriate water from an adjudicated stream or segment are subject to administration in the same manner as is provided in this subchapter for adjudicated water rights. [Acts 1971, 62nd Leg., p. 147, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.337. Hearings: Notice and Procedure**

(a) The commission shall give notice of a hearing or other proceeding it orders under this subchapter in the manner prescribed in the rules and regulations of the commission, unless this subchapter specifically provides otherwise.

(b) In any proceeding in any part of the state, the commission may

(1) take evidence, including the testimony of witnesses;

(2) administer oaths;

(3) issue subpoenas and compel the attendance of witnesses in the same manner as subpoenas are issued out of the courts of the state;

(4) compel witnesses to testify and give evidence; and

(5) order the taking of depositions and issue commissions for the taking of depositions in the same manner as depositions are obtained in civil actions.

(c) Evidence may be taken by a duly appointed reporter before the commission or before an authorized representative who has the power to administer oaths.

(d) Repealed by Acts 1971, 62nd Leg., p. 1769, ch. 518, § 10, eff. May 31, 1971.

(e) If a person neglects or refuses to comply with an order or subpoena issued by the commission, or refuses to testify on any matter about which he may be lawfully interrogated, the commission may apply to a district court of the county in which the proceeding is held to punish him in the manner provided by law for such disobedience in civil actions.

(f) The commission may adjourn its proceedings from time to time and from place to place.

(g) When a proceeding before the commission is concluded, the commission shall render a decision as

to the matters concerning which the proceeding was held.

[Acts 1971, 62nd Leg., p. 147, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1769, ch. 518, § 10, eff. May 31, 1971.]

**§ 5.338. Cancellation of Water Rights**

Nothing in this subchapter recognizes any abandoned or cancelled water right or impairs in any way the power of the commission under general law to forfeit, cancel, or find abandoned any water right, including adjudicated water rights.

[Acts 1971, 62nd Leg., p. 148, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.339. Underground Water Not Affected**

This subchapter does not apply to underground water as defined in Section 3c, Chapter 25, Acts of the 39th Legislature, 1925, as amended (Article 7880-3c, Vernon's Texas Civil Statutes).<sup>1</sup>

[Acts 1971, 62nd Leg., p. 148, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Repealed. See, now, § 52.001 et seq. of this code.

**§ 5.340. Abatement of Certain Civil Suits**

(a) Nothing in this subchapter prevents or precludes a person who claims the right to divert water from a stream from filing and prosecuting to a conclusion a suit against other claimants of the right to divert or use water from the same stream. However, if the commission has ordered a determination of water rights as provided in this subchapter, or if the commission orders such a determination within 90 days after notice of the filing of a suit, the suit shall be abated on the motion of the commission or any party in interest as to any issues involved in the water rights determination.

(b) If a suit is abated as provided in Subsection (a) of this section, the court may grant or continue any temporary relief necessary to preserve the status quo pending a final determination of the water rights involved.

[Acts 1971, 62nd Leg., p. 148, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.341. Saving Clause**

This subchapter does not affect any action or proceeding instituted before August 28, 1967,<sup>1</sup> or any right accrued before that date except those specifically provided for in this subchapter.

[Acts 1971, 62nd Leg., p. 148, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Effective date of source statute: Acts 1967, 60th Leg., p. 86, ch. 45.

[Sections 5.342 to 5.400 reserved for expansion]

**SUBCHAPTER H. COURT-APPOINTED WATERMASTER**

**§ 5.401. Scope of Subchapter**

The provisions of this subchapter apply to a suit if:

- (1) the state is a party;
- (2) the purpose of the suit is to determine the right of the parties to divert or use water of a surface stream; and
- (3) rights are asserted to use water in, or divert water to, not more than four counties.

[Acts 1971, 62nd Leg., p. 148, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.402. Appointment and Authority of Watermaster**

(a) A court having jurisdiction over a suit described in Section 5.401 of this code may appoint a watermaster with power to allocate and distribute, under the supervision of the court, the water taken into judicial custody.

(b) The court may not appoint a watermaster with authority to act both upstream and downstream from an existing reservoir on any surface stream of the state. However, once a watermaster is appointed, the construction of a new reservoir does not invalidate his appointment or restrict his authority over that portion of the stream contemplated by the original order of appointment.

(c) Under terms and conditions prescribed by the court, the watermaster may incur necessary expenses, appoint necessary deputies and assistants, and perform duties and assume responsibilities delegated to him by the court.

[Acts 1971, 62nd Leg., p. 148, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.403. Compensation of Watermaster**

The court shall fix the compensation of the watermaster and his staff.

[Acts 1971, 62nd Leg., p. 149, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.404. Expenses and Assessment of Costs of Watermaster**

(a) The trial court shall assess the costs and expenses of the watermaster and his staff against all persons receiving an allocation of the water in judicial custody. The court shall assess the costs and expenses monthly or at other time intervals ordered by the court.

(b) The court shall assess the costs and expenses on the basis of:

- (1) acreage;
- (2) acre-feet of allocated water;
- (3) per capita; or
- (4) any other formula the court, after notice and hearing, determines to be the most equitable.

(c) During the pendency of an appeal, the trial court, in its discretion, may assess costs against some parties on one basis and against other parties on another basis.

(d) The costs and expenses are not to be taxed as ordinary court costs, but are to be considered costs necessary to protect the rights and privileges of the parties receiving allocations of water during the litigation and are to be paid by those parties.

[Acts 1971, 62nd Leg., p. 149, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 5.405. Failure to Pay Assessed Costs**

If the costs and expenses assessed are not paid within the time prescribed by the court, the court after notice and hearing may withdraw or limit allocations of water to any party failing or refusing

to pay his share until all costs and expenses assessed against him are paid in full.

[Acts 1971, 62nd Leg., p. 149, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.406. Judicial Custody of Water During Appeal

If a party appeals the judgment of the trial court, that court may retain custody of the water which it has previously taken into judicial custody and over which it has appointed a watermaster. Until final judgment is entered in the case, the trial court has exclusive jurisdiction to administer, allocate, and distribute the water retained in its custody, as provided in Section 5.407 of this code.

[Acts 1971, 62nd Leg., p. 149, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.407. Allocation and Distribution of Water During Appeal

During the pendency of an appeal, the trial court shall limit the allocation and distribution of the water in its custody to the parties adjudicated to have a valid right to use the water. However, if any party prosecutes an appeal and files a supersedeas bond, the trial court shall make any necessary adjustments in the water allocations and allocate to that party the same amount of water that he received during the proceedings in the trial court.

[Acts 1971, 62nd Leg., p. 150, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.408. Retention of Watermaster During Appeal

During the pendency of an appeal, the trial court may retain the watermaster in office with the same authority he had during the trial proceedings.

[Acts 1971, 62nd Leg., p. 150, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 5.409. Violations of Court Orders

If a party violates any order of the trial court, either during trial proceedings or during an appeal, the trial court may limit or withdraw his allocation of water until he corrects the violation to the satisfaction of the court.

[Acts 1971, 62nd Leg., p. 150, ch. 58, § 1, eff. Aug. 30, 1971.]

### CHAPTER 6. WATER RIGHTS COMMISSION

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#### SUBCHAPTER A. GENERAL PROVISIONS

#### § 6.001. Definitions

The definitions contained in Chapter 5, Subchapter A, of this code apply to this chapter.

[Acts 1971, 62nd Leg., p. 150, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 6.002 to 6.010 reserved for expansion]

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

#### § 6.011. Texas Water Rights Commission

The Texas Water Rights Commission is an agency of the state.

[Acts 1971, 62nd Leg., p. 150, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 6.012. Members of Commission; Appointment

The commission is composed of three members who are appointed by the governor with the advice and consent of the senate. The governor shall make the appointments in such a manner that each member is from a different section of the state.

[Acts 1971, 62nd Leg., p. 150, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.013. Terms of Office**

(a) The members of the commission hold office for staggered terms of six years; and each member shall serve until his successor is appointed and has qualified.

(b) On February 1 of each odd-numbered year, the term of one commissioner expires.

[Acts 1971, 62nd Leg., p. 150, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.014. Qualifications**

To be qualified for appointment as a member of the commission, a person must have some knowledge of water law.

[Acts 1971, 62nd Leg., p. 151, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.015. Oath and Bond**

A newly appointed member qualifies to take office by taking the official oath of office and executing an official bond, payable to the State of Texas, in the sum of \$10,000, in accordance with the State Employee Bonding Act (Article 6003b, Vernon's Texas Civil Statutes).

[Acts 1971, 62nd Leg., p. 151, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.016. Officer of the State**

Each member is an officer of the state as that term is used in the constitution.

[Acts 1971, 62nd Leg., p. 151, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.017. Full-time Service**

Each member shall serve on a full-time basis.

[Acts 1971, 62nd Leg., p. 151, ch. 58, § 1, eff. Aug. 30, 1971.]

**6.018. Officers; Meetings**

(a) The governor shall designate the chairman of the commission. He shall serve as chairman until the governor designates a different chairman.

(b) The chairman may designate another commissioner to act for him in his absence.

(c) The chairman shall preside at the meetings of the commission.

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

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

(f) The chairman shall issue notice of public hearings held under the authority of the commission.

[Acts 1971, 62nd Leg., p. 151, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.019. Office Space**

The State Board of Control shall furnish the commission with an office in Austin, Texas, equipped with necessary furniture and supplies, to be paid for on order of the commission.

[Acts 1971, 62nd Leg., p. 151, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.020. Executive Director**

(a) The commission shall employ an executive director to serve at the will of the commission.

(b) The executive director is the chief administrative officer of the commission.

(c) The executive director is entitled to receive the same payment for necessary travel expenses that a member receives.

(d) The executive director is entitled to receive an annual salary as provided by the general appropriations act.

[Acts 1971, 62nd Leg., p. 151, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.021. Legal Services**

(a) The attorney general is the legal advisor of the commission. He shall represent the commission in litigation in which it is a party.

(b) The chairman of the commission, with the written consent of the attorney general, may employ other legal counsel regularly or temporarily.

[Acts 1971, 62nd Leg., p. 152, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.022. Employees**

The executive director shall employ the full-time and part-time employees, including hydrologists and other specialists in the field of water rights administration, that the commission decides are necessary to assist it in carrying out its powers, duties, and functions.

[Acts 1971, 62nd Leg., p. 152, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.023. Administrative Organization**

The commission may organize and reorganize its administrative divisions and services to achieve administrative efficiency.

[Acts 1971, 62nd Leg., p. 152, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.024. Reports to the Governor**

(a) The commission shall make biennial written reports to the governor.

(b) The commission shall include in the biennial reports:

- (1) data on its activities;
- (2) suggestions for amending existing laws; and
- (3) suggestions for new laws that should be enacted.

[Acts 1971, 62nd Leg., p. 152, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.025. Fiscal reports**

The commission shall file with the comptroller of public accounts full, detailed, and verified monthly and annual reports of all its receipts and expenditures.

[Acts 1971, 62nd Leg., p. 152, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.026. Seal**

The commission shall have a seal and shall prescribe its form.

[Acts 1971, 62nd Leg., p. 152, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 6.027 to 6.050 reserved for expansion]

## SUBCHAPTER C. POWERS AND DUTIES

**§ 6.051. Scope of Subchapter**

The powers and duties enumerated in this subchapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of this code.

[Acts 1971, 62nd Leg., p. 152, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.052. Commission to be Knowledgeable**

The commission shall be knowledgeable of the water courses of the state and of the needs of the state concerning the use, storage, and conservation of water.

[Acts 1971, 62nd Leg., p. 152, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.053. Conservation of Water**

The commission shall administer the law so as to promote the judicious use and the maximum conservation of water.

[Acts 1971, 62nd Leg., p. 153, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.054. Use of Board Surveys; Policy**

The commission shall make use of surveys, studies, and investigations conducted by the Texas Water Development Board in order to ascertain the character of the principal requirements of the district regional division of the watershed areas of the state for beneficial uses of water, to the end that distribution of the right to take and use state water may be more equitably administered in the public interest, that privileges granted for recognized uses may be economically coordinated so as to achieve the maximum of public value from the state's water resources, and that the distinct regional necessities for water control and conservation and for control of harmful floods may be recognized.

[Acts 1971, 62nd Leg., p. 153, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.055. Rule-making**

(a) The commission shall adopt reasonable rules relating to the conduct of its affairs, including rules describing the procedure to be followed in a commission hearing or in any other administrative action.

(b) The commission may make reasonable rules to provide for enforcement of the provisions of this code which are subject to administration by the commission.

(c) The commission shall have the rules printed and shall furnish copies of them to all interested persons who apply for them. The commission may charge a reasonable amount for copies of the rules.

(d) No new rule or amendment of an existing rule is effective until at least 30 days have elapsed since the date a copy of the new or amended rule was filed with the secretary of state.

[Acts 1971, 62nd Leg., p. 153, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.056. Rate-fixing Power**

The commission shall fix reasonable rates for the furnishing of water for any purpose mentioned in Chapter 5 or 6 of this code.

[Acts 1971, 62nd Leg., p. 153, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.057. Permit Applications**

The commission shall receive, administer, and act on all applications for permits and permit amendments:

(1) to appropriate public water for beneficial use or storage; or

(2) to construct works for the impoundment, storage, diversion, or transportation of public water.

[Acts 1971, 62nd Leg., p. 153, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.058. Hearings: Recess, Etc.**

The commission may recess any hearing or examination from time to time and from place to place.

[Acts 1971, 62nd Leg., p. 153, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.059. Power to Administer Oaths**

Each member of the commission and its secretary may administer oaths in any examination or hearing before the commission.

[Acts 1971, 62nd Leg., p. 154, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.060. Witnesses**

(a) In any proceeding held before it, the commission may issue subpoenas compelling the attendance of witnesses according to rules prescribed by the commission.

(b) A witness at a hearing before the commission is entitled to receive the same fees and mileage as a witness in a civil action. The party calling a witness shall pay the fees and mileage. Fees and mileage of a witness called by the commission shall be paid out of funds made available to the commission by the legislature.

[Acts 1971, 62nd Leg., p. 154, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1767, ch. 518, § 2, eff. May 31, 1971.]

**§ 6.061. Injunctions**

(a) The commission may enforce its rules by injunction or other appropriate remedy in a court of competent jurisdiction.

(b) The commission may enforce the terms and conditions of any permit or certified filing by injunction or other appropriate remedy in a court of competent jurisdiction.

[Acts 1971, 62nd Leg., p. 154, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.062. Venue in Commission Suits**

Except as provided in Section 5.317(a) of this code, a suit instituted by or for the commission may be brought in a court of competent jurisdiction in any county where all or part of the land involved in the controversy is located.

[Acts 1971, 62nd Leg., p. 154, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.063. Power to Condemn Works**

(a) The commission may condemn existing works if their existence or operation may, in the judgment of the commission, become a public menace or dangerous to life and property.

(b) In all cases of proposed condemnation, the commission shall notify the interested party of the contemplated action and shall specify a time for him to appear and be heard.

[Acts 1971, 62nd Leg., p. 154, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.064. Power to Inspect**

The commission or its authorized agent may inspect any impounding, diversion, or distribution works during construction to determine whether or not they are being constructed in a safe manner and whether or not they are being constructed according to the order of the commission.

[Acts 1971, 62nd Leg., p. 154, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.065. Power to Enter Land**

Any member or employee of the commission may enter any person's land, natural waterway, or artificial waterway for the purpose of making an investigation that would, in the judgment of the commission, assist the commission in the discharge of its duties.

[Acts 1971, 62nd Leg., p. 154, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.066. Agency Cooperation**

In performing its duties, the commission may cooperate with any person.

[Acts 1971, 62nd Leg., p. 155, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.067. Evaluation of Outstanding Permits**

The commission shall actively and continually evaluate outstanding permits and certified filings and shall carry out measures to cancel wholly or partially the certified filings and permits that are subject to cancellation.

[Acts 1971, 62nd Leg., p. 155, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.068. Fees**

(a) The commission shall charge and collect the fees prescribed by this section. The commission shall make a record of fees prescribed when due, and shall render an account to the person charged with the fees. Each fee is a separate charge and is in addition to other fees unless provided otherwise.

(b) The fee for filing an application or petition is \$25 plus the cost of required notice.

(c) The fee for recording an instrument in the office of the commission is \$1.00 per page.

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

(e) The fee for the use of water for a steam or gas power plant, or for cooling, condensing, or steam purposes is \$1.00 for each indicated horsepower.

(f) The fee for impounding water, except under Section 5.140 of this code, is fifty cents (50¢) per

acre-foot of storage, based on the total holding capacity of the reservoir at normal operating level, provided that no additional fee shall be charged for recreational use for any impoundments of water now or hereafter permitted by the State, or exempted from permit by statute.

(g) The fee for other uses of water not specifically named in this section is \$1.00 per acre-foot.

(h) A fee charged under this section for one use of water under a permit from the commission may not exceed \$5,000. The fee for each additional use of water under a permit for which the maximum fee is paid may not exceed \$1,000.

(i) The fees prescribed by Subsections (d) through (g) of this section are one-time fees, payable when the application for an appropriation is made. However, if the total fee for a permit exceeds \$1,000, the applicant shall pay one-tenth of the fee when the application is filed, one-tenth within 30 days after notice is mailed to him that the permit is granted, and the balance before he begins to use water under the permit. If the applicant does not pay all of the amount owed before he begins to use water under the permit, his permit is annulled.

[Acts 1971, 62nd Leg., p. 155, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1619, ch. 447, § 1, eff. May 26, 1971.]

**§ 6.069. Fees: Exemptions**

The Texas Water Development Board and the Texas Parks and Wildlife Commission are exempted from payment of any filing, recording, or use fees required by this code.

[Acts 1971, 62nd Leg., p. 155, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.070. Disposition of Fees, Etc.**

(a) The commission shall immediately deposit the fees and charges it collects in the state treasury.

(b) The commission shall deposit all costs collected under Chapter 5, Subchapter F of this code in the state treasury to the credit of the water rights administration fund, from which the commission shall pay all expenses necessary to efficiently administer and perform the duties described in Sections 5.325-5.335 of this code.

[Acts 1971, 62nd Leg., p. 156, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.071. Disposition of Fees Pending Determination**

The commission shall hold all fees, except filing fees, which are paid with an application until the commission finally determines whether the application should be granted. If the application is not granted, the commission shall return the fees to the applicant.

[Acts 1971, 62nd Leg., p. 156, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.072. Certified Copies**

(a) On application and payment of the fees prescribed by commission rule, the commission shall furnish certified copies of

(1) any of its proceedings;

(2) any other official act of record; or

(3) any paper, map, or document filed in the office of the commission in connection with the appropriation of water or the determination or administration of water rights.

(b) The certified copy is admissible as evidence in any court or administrative proceeding if it is:

(1) signed by the chairman, a person designated by the chairman, the executive director, or the secretary; and

(2) issued under the seal of the commission.

[Acts 1971, 62nd Leg., p. 156, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1768, ch. 518, § 3, eff. May 31, 1971.]

### § 6.073. Federal Projects

(a) In this section:

(1) "federal project" means an engineering undertaking or work to construct, enlarge, or extend a dam, lake, reservoir, or other water-storage or flood-control work, or a drainage, reclamation, or canalization undertaking, or any combination of these, financed in whole or in part with funds of the United States;

(2) "engineering report" means the plans, data, profiles, maps, estimates, and drawings prepared in connection with a federal project; and

(3) "federal agency" means the Corps of Engineers of the United States Army, the Bureau of Reclamation of the Department of Interior, the Soil Conservation Service of the Department of Agriculture, the United States Section of the International Boundary and Water Commission, or any other agency of the United States, the function of which includes the conservation, development, retardation by impounding, control, or study of the water resources of Texas or the United States.

(b) When the governor receives an engineering report submitted by a federal agency seeking the governor's approval of a federal project, he shall immediately forward the report to the commission for its study concerning the feasibility of the federal project.

(c) The commission shall hold a public hearing to receive the views of persons and groups who might be affected by the proposed federal project. The commission shall publish notice of the time, date, place, nature, and purpose of the public hearing, once each week for two consecutive weeks before the date stated in the notice, in a newspaper having general circulation in the section of the state where the federal project is to be located or the work done.

(d) The commission shall conduct the hearing in the same manner that it conducts a hearing on an application for a permit to appropriate state water. After hearing all the evidence both for and against approval of the federal project, the commission shall enter its order approving or disapproving the feasibility of the federal project, and the order shall

include the commission's reasons for approval or disapproval.

(e) In determining feasibility the commission shall consider, among other relevant factors:

(1) the effect of the federal project on water users on the stream;

(2) the public interest to be served;

(3) the development of damsites to the optimum potential for water conservation;

(4) the integration of the federal project with other water conservation activities;

(5) the protection of the state's interests in its water resources; and

(6) the engineering practicality of the federal project, including cost of construction, operation, and maintenance.

(f) The commission shall forward to the governor a certified copy of its order. The commission's finding that the federal project is either feasible or not feasible is final and the governor shall notify the federal agency that the federal project has been either approved or disapproved.

(g) The provisions of this section do not apply to the state soil conservation board as long as that board is designated by the governor as the authorized state agency having supervisory responsibility to approve or disapprove of projects designed to effectuate watershed-protection and flood-prevention programs initiated in cooperation with the United States Department of Agriculture.

[Acts 1971, 62nd Leg., p. 156, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 6.0731. Dam Safety

(a) The commission shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of dams located in this state.

(b) Rules and orders made by the commission shall be made after proper notice and hearing as provided in the rules of the commission.

(c) If the owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) above, wilfully fails or refuses to comply within the 30-day period following the date of the commission's order to do so, or if a person wilfully fails to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order, he is liable to a penalty of not more than \$1,000 a day for each day he continues to violate this section. The state may recover the penalty by suit brought for that purpose in the district court of Travis County.

(d) Nothing in this section or in rules or orders made by the commission shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to ownership or operation.

[Acts 1973, 63rd Leg., p. 1280, ch. 473, § 1, eff. June 14, 1973.]

**§ 6.074. Continuing Right of Supervision of Districts Created Under Article III, Section 52 and Article XVI, Section 59, of the Texas Constitution**

(a) The powers and duties of all districts and authorities created under Article III, Section 52, and Article XVI, Section 59, of the Texas Constitution, are subject to the continuing right of supervision of the State of Texas, by and through the Texas Water Rights Commission or its successor and this supervision may include but is not limited to the authority to:

- (1) inquire into the competence, fitness, and reputation of the officers and directors of any district;
- (2) require, on its own motion or on complaint by any person, audits or other financial information, inspections, evaluations, and engineering reports;
- (3) issue subpoenas for witnesses to carry out its authority under this subsection;
- (4) institute investigations and hearings using examiners appointed by the commissioner; and
- (5) issue rules necessary to supervise the districts.

(b) The provisions of this section shall not apply to any river authority encompassing 10 or more counties which was not subject to the continuing right of supervision of the State of Texas, by and through the Texas Water Rights Commission or its predecessors, on June 10, 1969.

[Acts 1971, 62nd Leg., p. 157, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1532, ch. 555, § 1, eff. June 15, 1973.]

**§ 6.075. Duty to Investigate Fresh Water Supply District Projects**

(a) In this section:

- (1) "district" means fresh water supply district; and
- (2) "designated agent" means any licensed engineer selected by the commission to perform the functions specified in this section.

(b) The commission shall investigate and report on the organization and feasibility of all districts created under Chapter 53 of this code which issue bonds under the provisions of that chapter.

(c) A district that wants to issue bonds for any purpose shall submit to the commission a written application for investigation, together with a copy of the engineer's report and a copy of the data, profiles, maps, plans, and specifications made in connection with the engineer's report.

(d) The commission or its designated agent shall examine the application and other information and shall visit the project and carefully inspect it. The commission or its designated agent may ask for and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements.

(e) The commission or its designated agent shall file in the commission office written suggestions for changes and improvements and shall furnish a copy of the suggestions to the board of the district. If the commission finally approves or refuses to approve the project, or the issuance of bonds for the improvements, it shall make a full written report, file it in its office, and furnish a copy of the report to the board of the district.

(f) During the course of construction of the project and improvements, no substantial alterations shall be made in the plans and specifications without the approval of the commission. The commission or its designated agent has full authority to inspect the improvements at any time during construction to determine if the project is being constructed in accordance with the plans and specifications approved by the commission.

(g) If the commission finds that the project is not being constructed in accordance with the approved plans and specifications, it immediately shall notify in writing by certified mail each member of the board of the district and its manager. If, within 10 days after the notice is mailed, the board of the district does not take steps to insure that the project is being constructed in accordance with the approved plans and specifications, the commission shall give written notice of that fact to the attorney general.

(h) After the attorney general receives the notice, he may bring an action for injunctive relief, or he may bring quo warranto proceedings against the directors. Venue for either of these actions is exclusively in the district court of Travis County.

[Acts 1971, 62nd Leg., p. 158, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 6.076. Violations of Rules, Regulations, Orders, Certified Filings, and Permits**

(a) Any person, association of persons, corporation, water improvement district, or irrigation district, or any agent, officer, employee, or representative of any of these named entities who shall wilfully violate any of the rules, regulations, or orders promulgated by the commission or any of the terms and conditions contained in declarations of appropriations (certified filings) and permits to appropriate water is liable to a civil penalty of not more than \$100 a day for each day that the violation continues to take place.

(b) An action to collect the penalty provided in this section must be brought within two years from the date of the alleged violation.

[Acts 1971, 62nd Leg., p. 2609, ch. 856, § 1, eff. June 9, 1971.]

[Sections 6.077 to 6.100 reserved for expansion]

SUBCHAPTER D. JUDICIAL REVIEW

**§ 6.101. Judicial Review of Commission Acts**

(a) A person affected by a ruling, order, decision, or other act of the commission may file a petition to

review, set aside, modify, or suspend the act of the commission.

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

[Acts 1971, 62nd Leg., p. 159, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 6.102. Remedy for Commission Inaction

A person affected by the failure of the commission to act in a reasonable time on an application to appropriate water, or to perform any other duty with reasonable promptness, may file a petition to compel the commission to show cause why it should not be directed by the court to take immediate action.

[Acts 1971, 62nd Leg., p. 159, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 6.103. Diligent Prosecution of Suit

The plaintiff shall prosecute with reasonable diligence any suit brought under Section 6.101 or 6.102 of this code. If the plaintiff does not secure proper service of process, or does not prosecute his suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff after receiving due notice can show good and sufficient cause for the delay.

[Acts 1971, 62nd Leg., p. 159, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 6.104. Venue

A suit instituted under Section 6.101 or 6.102 of this code must be brought in the district court of Travis County.

[Acts 1971, 62nd Leg., p. 159, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 6.105. Appeal of District Court Judgment

A judgment or order of a district court in a suit brought for or against the commission is appealable as are other civil cases in which the district court has original jurisdiction.

[Acts 1971, 62nd Leg., p. 159, ch. 58, § 1, eff. Aug. 30, 1971.]

[Chapters 7 to 10 reserved for expansion]

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SUBCHAPTER A. GENERAL PROVISIONS

§ 11.001. Definitions

In this chapter, unless the context requires a different definition:

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

(2) "Chairman" means the chairman of the Texas Water Development Board.

(3) "Executive director" means the executive director of the Texas Water Development Board.

(4) "Political subdivision" means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, and including any interstate compact commission to which the state is a party.

(5) "Project" means any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plans including any system necessary to transport water from storage to points of distribution, or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers, by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods.

(6) "Weighted average effective interest rate" means the rate of interest computed by dividing the total value of all coupons attached to the pertinent bonds issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond previously issued.

(7) "Bonds" means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

(8) "Waste" has the same meaning as provided in Section 21.003 of this code.

(9) "Water development bonds" means the Texas Water Development Bonds authorized by Section 49-c, as amended, and Section 49-d, as amended, of Article III of the Texas Constitution.

(10) "Water quality enhancement bonds" means the Texas Water Development Bonds authorized by Section 49-d-1, as amended, of Article III of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 159, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1773, ch. 518, § 21, eff. May 31, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

[Sections 11.002 to 11.010 reserved for expansion]

#### SUBCHAPTER B. ADMINISTRATION PROVISIONS

##### § 11.011. Texas Water Development Board

The Texas Water Development Board is an agency of the state.

[Acts 1971, 62nd Leg., p. 160, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 11.012. Members of Board; Appointment

(a) The board is composed of six members, who are appointed by the governor with the advice and consent of the senate.

(b) The governor shall make the appointments in such a manner that:

(1) one member is from the field of engineering, one is from the field of public or private finance, one is a lawyer, one is a farmer or rancher, and two are from the public at large;

(2) each member is from a different section of the state; and

(3) each member before appointment has had at least 10 years of successful business or professional experience.

[Acts 1971, 62nd Leg., p. 160, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 11.013. Officers of State; Oath

Each member of the board is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

[Acts 1971, 62nd Leg., p. 161, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 11.014. Terms of Office

The members of the board hold office for staggered terms of six years, with the terms of two members expiring every two years. Each member holds office until his successor is appointed and has qualified.

[Acts 1971, 62nd Leg., p. 161, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 11.015. Board Officers

(a) The governor shall designate one member as chairman of the board to serve at the will of the governor.

(b) The members shall elect a vice chairman every two years. The board shall fill a vacancy in the office of vice chairman for the remainder of the unexpired term.

[Acts 1971, 62nd Leg., p. 161, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 11.016. Board Meetings

(a) The board shall meet once each month on a day and at a place selected by it, subject to recesses at the discretion of the board. The chairman may call a special meeting at any time by giving reasonable notice to the other members.

(b) The chairman, or in his absence the vice chairman, shall preside at all meetings of the board.

(c) A majority of the members constitutes a quorum to transact business.

[Acts 1971, 62nd Leg., p. 161, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 11.017. Compensation; Expenses

A member is entitled to receive not more than \$25 for each day he serves in the performance of his duties, together with travel and other necessary expenses.

[Acts 1971, 62nd Leg., p. 161, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 11.018. Administrative Organization

The board may organize and reorganize its administrative sections and divisions to achieve efficiency.

[Acts 1971, 62nd Leg., p. 161, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 11.019. Executive Director

The board shall employ an executive director to serve at the will of the board.

[Acts 1971, 62nd Leg., p. 161, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 11.020. Development Fund Manager

The executive director, with the approval of the board, shall appoint the development fund manager, who shall perform all duties required by this chapter and by the board.

[Acts 1971, 62nd Leg., p. 161, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 11.021. Travel Expenses

The executive director, chief engineer, development fund manager, and the general counsel are entitled to receive necessary travel expenses in the same manner as members of the board.

[Acts 1971, 62nd Leg., p. 162, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.022. Compensation of Employees**

The executive director and the other employees of the board are entitled to compensation as provided by the general appropriations act.

[Acts 1971, 62nd Leg., p. 162, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.023. Seal**

The board shall have a seal bearing the words "Texas Water Development Board" encircling the oak and olive branches common to other official seals.

[Acts 1971, 62nd Leg., p. 162, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.024. Attorney General's Approval of Contracts, Etc.**

The board shall obtain the approval of the attorney general as to the legality of:

(1) the resolution of the board authorizing state ownership in a project; and

(2) all contracts authorized in Subchapters H and I of this chapter to which the board is a party.

[Acts 1971, 62nd Leg., p. 162, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.025. Rules and Regulations**

(a) The board shall make rules prescribing the form and content of applications for financial assistance.

(b) The board and the commission, separately or jointly, may make reasonable and necessary rules and regulations to implement and effectuate the provisions of this chapter.

(c) These rules and regulations, and any amendments to them, shall be submitted to the attorney general for his approval and shall be filed with the secretary of state.

[Acts 1971, 62nd Leg., p. 162, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.026. Reports to Governor**

The board shall make biennial reports in writing to the governor. Each report shall include data on the activities of the board and shall recommend any legislation the board considers necessary or desirable.

[Acts 1971, 62nd Leg., p. 162, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 11.027 to 11.060 reserved for expansion]

**SUBCHAPTER C. DUTIES OF EXECUTIVE DIRECTOR AND STAFF**

**§ 11.061. Responsibility of Executive Director**

The executive director, under the policies of the board, shall manage the administrative affairs of the board, serve as chief administrative officer for the board, and employ necessary personnel. In addition to other duties and assignments made by the board, the executive director is responsible to the board for the performance by the staff of the duties described in this subchapter.

[Acts 1971, 62nd Leg., p. 162, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.062. Studies, Investigations, Surveys**

(a) The staff shall make studies, investigations, and surveys of the occurrence, quantity, quality, and availability of the surface water and groundwater of this state. For these purposes the staff shall collect, receive, analyze, and process basic data concerning the water resources of the state.

(b) The staff shall:

(1) determine suitable locations for future water facilities including reservoir sites;

(2) locate land best suited for irrigation;

(3) make estimates of the cost of proposed irrigation works and the improvement of reservoir sites; and

(4) examine and survey reservoir sites.

(c) The staff shall keep full and proper records of its work, observations, data, and calculations, all of which are the property of the state.

(d) In performing its duties under this section, the staff shall assist the commission in carrying out the purposes and policies stated in Section 6.054 of this code.

[Acts 1971, 62nd Leg., p. 163, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.063. Engineering, Hydrologic, and Geologic Functions**

The staff shall advise and assist the board with regard to engineering, hydrologic, and geologic matters concerning the water resources of the state. The staff shall evaluate, prepare, and publish engineering, hydrologic, and geologic data, information, and reports relating to the water resources of the state.

[Acts 1971, 62nd Leg., p. 163, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.064. Silt Load of Streams, Etc.**

The staff shall determine the silt load of streams, make investigations and studies of the duty of water, and make surveys to determine the water needs of the distinct regional divisions of the watershed areas of the state.

[Acts 1971, 62nd Leg., p. 163, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.065. Studies of Underground Water Supply**

The staff may make studies and investigations of the physical characteristics of water-bearing formations and of the sources, occurrence, quantity, and quality of the underground water supply of the state; and the staff may study and investigate feasible methods to conserve, preserve, improve, and supplement this supply. The work shall first be undertaken in areas where, in the judgment of the board, the greatest need exists; and in determining the need the board shall consider all beneficial uses essential to the general welfare of the state. Water-bearing formations may be explored by coring or other mechanical or electrical means when the area to be investigated has more than a local influence on water resources.

[Acts 1971, 62nd Leg., p. 163, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.066. Pollution of Red River Tributaries**

Within the limits of available money and facilities, the staff shall study salt springs, gypsum beds, and other sources of natural pollution of the tributaries of the Red River, and shall study means of eliminating this natural pollution and preventing it from reaching the Red River.

[Acts 1971, 62nd Leg., p. 164, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.067. Topographic and Geologic Mapping**

The staff shall carry out the program for topographic and geologic mapping of the state.

[Acts 1971, 62nd Leg., p. 164, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.068. Soil Resource Planning**

The staff may contract with the State Soil Conservation Board for joint investigation and research in the field of soil resource planning. The State Soil Conservation Board may appoint a representative to advise and work with the Texas Water Development Board and its staff.

[Acts 1971, 62nd Leg., p. 164, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.069. Cooperative Agreements**

With the approval of the board, the staff may negotiate and execute contracts with persons or with federal, state, or local agencies for joint or cooperative studies and investigations of the occurrence, quantity, and quality of the surface water and groundwater of the state; the topographical mapping of the state; and the collection, processing, and analysis of other basic data relating to the development of the water resources of the state and for the administration and performance of these contracts.

[Acts 1971, 62nd Leg., p. 164, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.070. Centralized Data Bank**

The staff shall create a centralized data bank incorporating all hydrological data collected by state agencies.

[Acts 1971, 62nd Leg., p. 164, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.071. Appearance at Hearings**

Designated staff members may appear and present evidence at public hearings held by the commission and by federal, state, and local agencies on matters affecting the public interest in the state's water resources. The staff shall receive and examine all engineering plans and proposals coming before the commission and may appear before the commission at any hearing concerning these plans or proposals.

[Acts 1971, 62nd Leg., p. 164, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.072. Master Plans of Districts, Etc.**

The staff shall review and analyze master plans and other reports of conservation districts, river authorities, and state agencies, and shall make its recommendations to the board in all cases where

approval of the board is required by law or is requested by a district, authority, or agency.

[Acts 1971, 62nd Leg., p. 164, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 11.073 to 11.100 reserved for expansion]

**SUBCHAPTER D. PLANNING****§ 11.101. State Water Plan**

(a) The board shall prepare, develop, and formulate a comprehensive state water plan.

(b) The board shall define and designate river basins and watersheds as separate units for the purpose of water development and interwatershed transfers.

(c) The board shall be governed in its preparation of the plan by a regard for the public interest of the entire state. The board shall direct its efforts toward the orderly development and management of water resources in order that sufficient water will be available at a reasonable cost to further the economic development of the entire state.

(d) The board shall also give consideration in the plan to the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico, and to the effect of the plan on navigation.

[Acts 1971, 62nd Leg., p. 165, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.102. Interbasin Water Transfer**

The board shall not prepare or formulate a plan which contemplates or results in the removal of surface water from the river basin of origin if the water supply involved will be required for reasonably foreseeable water supply requirements within the river basin of origin during the next ensuing 50-year period, except on a temporary, interim basis.

[Acts 1971, 62nd Leg., p. 165, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.103. Hearing on Preliminary Plan**

(a) After the board completes its preliminary planning of the water resources development within a river basin, the board, or the executive director at the direction of the board, shall hold a public hearing, after notice, at some central location within the river basin. If the proposed plan involves the transfer of water from one basin to another, the hearing shall be held at some location convenient to the areas affected.

(b) The board shall present its proposed plan of development and hear evidence for and against the plan.

(c) After the hearing the board shall consider the effect the plan will have on the present and future development, economy, general welfare, and water requirements of the river basin or the areas affected.

[Acts 1971, 62nd Leg., p. 165, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.104. Hearing on Completed State Water Plan**

When the board has prepared and examined the completed plan, the commission, at the request of the board, shall hold a public hearing on the plan to

determine whether or not it gives adequate consideration to the protection of existing water rights in this state and whether or not it takes into account modes and procedures for the equitable adjustment of water rights affected by the plan. After the hearing and on notification of affirmative findings by the commission, the board shall formally adopt the state water plan. A majority vote is necessary for adoption.

[Acts 1971, 62nd Leg., p. 165, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.105. Effect of Plan**

(a) The state water plan, as formally adopted by the board, shall be a flexible guide to state policy for the development of water resources in this state.

(b) The commission shall take the plan into consideration in matters coming before it but is not bound by the plan.

(c) Nothing in the state water plan or any amendment or modification of the plan affects any vested right existing before August 30, 1965.<sup>1</sup>

[Acts 1971, 62nd Leg., p. 166, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Effective date of source statute: Acts 1965, 59th Leg., p. 587, ch. 297.

**§ 11.106. Amendment of Plan**

(a) The board shall amend or modify the plan as experience and changed conditions require. The commission, when requested to do so by the board, shall hold a public hearing on any amendment or modification in the manner and for the purposes provided by Section 11.104 of this code.

(b) Any amendment or modification adopted by the board becomes a part of the plan.

[Acts 1971, 62nd Leg., p. 166, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.107. Federal Assistance in Financing Plan**

The board may take all necessary action to qualify for federal assistance in financing the development and improvement of the plan.

[Acts 1971, 62nd Leg., p. 166, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 11.108 to 11.140 reserved for expansion]

**SUBCHAPTER E. WATER DEVELOPMENT BONDS**

**§ 11.141. Issuance of Water Development Bonds**

*[Text as amended by Acts 1973, 63rd Leg., p. 429, ch. 194, § 1]*

The board, by resolution, from time to time may provide for the issuance of negotiable bonds in an aggregate amount not to exceed \$400 million pursuant to the provisions of Article III, Section 49-c, and Section 49-d, as amended, of the Texas Constitution. Upon direction by the Texas Water Quality Board, the board, by resolution, from time to time shall provide for the issuance of additional negotiable bonds in an aggregate amount not to exceed \$100 million, pursuant to the provisions of Article III, Section 49-d-1, as amended, of the Texas Constitution. Texas Water Development Bonds now or hereafter authorized by the Texas Constitution, in-

cluding bonds authorized by Section 49-c, 49-d and 49-d-1, as amended, of Article III of the Texas Constitution, are hereinafter referred to in this subchapter as "bonds."

[Acts 1971, 62nd Leg., p. 166, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

*For text as amended by Acts 1973, 63rd Leg., p. 1779, ch. 653, § 2, see § 11.141, post.*

**§ 11.141. Issuance of Water Development Bonds**

*[Text as amended by Acts 1973, 63rd Leg., p. 1779, ch. 653, § 2]*

Under Article III, Section 49-c, of the Texas Constitution, the board may provide by resolution for the issuance of negotiable bonds in the aggregate amount of not more than \$200 million and under Article III, Section 49-d, of the Texas Constitution, the board by resolution may issue additional negotiable bonds in the aggregate amount of not more than \$200 million.

[Acts 1971, 62nd Leg., p. 166, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1779, ch. 653, § 2, eff. June 16, 1973.]

*For text as amended by Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, see § 11.141, ante.*

**§ 11.1411. Bond Purposes**

(a) All of the proceeds from the sale of the additional \$200 million of Texas Water Development Bonds authorized by Section 1, Chapter 1011, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8280-9a.1, Vernon's Texas Civil Statutes), may be used for the purposes set forth in Article III, Sections 49-c and 49-d, of the Texas Constitution, as those sections and enabling legislation now provide or may provide.

(b) Any proceeds from the sale of Texas Water Development Bonds initially authorized by Article III, Section 49-c, of the Texas Constitution, may also be used for the purposes set forth in Article III, Section 49-d, of the Texas Constitution, as that section and enabling legislation now provides or may provide.

[Acts 1973, 63rd Leg., p. 1779, ch. 653, § 3, eff. June 16, 1973.]

**§ 11.142. Description of Bonds**

The bonds shall be on a parity and shall be called Texas Water Development Bonds. The board may issue them in one or several installments and shall date the bonds of each issue.

[Acts 1971, 62nd Leg., p. 166, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.143. Sale Price of Bonds**

The board may not sell an installment or series of bonds for an amount less than the face value of all of the bonds comprising the installment or series with accrued interest from their date of issuance.

[Acts 1971, 62nd Leg., p. 166, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.144. Interest on Bonds**

The bonds of each issue shall bear interest payable annually or semiannually at the option of the board. [Acts 1971, 62nd Leg., p. 167, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.145. Form, Denomination, Place of Payment**

The board shall:

- (1) determine the form of the bonds, including the form of any interest coupons to be attached;
- (2) fix the denomination of the bonds; and
- (3) fix the places of payment of the principal and interest.

[Acts 1971, 62nd Leg., p. 167, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.146. Maturity of Bonds**

The bonds of each issue shall mature, serially or otherwise, not more than 50 years from their date of issuance.

[Acts 1971, 62nd Leg., p. 167, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.147. Redemption Before Maturity**

In the resolution providing for the issuance of bonds, the board may fix the price, terms, and conditions for redemption of bonds before maturity. [Acts 1971, 62nd Leg., p. 167, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.148. Registered and Bearer Bonds**

The resolution may provide for registration of the bonds as to ownership, successive conversion and reconversion from registered to bearer bonds, and successive conversion and reconversion from bearer to registered bonds.

[Acts 1971, 62nd Leg., p. 167, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.149. Notice of Bond Sale**

After the board decides to call for bids for the sale of bonds, the board shall publish an appropriate notice of the sale at least one time in one or more recognized financial publications of general circulation published within the state and one or more recognized financial publications published outside the state.

[Acts 1971, 62nd Leg., p. 167, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1773, ch. 518, § 21, eff. May 31, 1971.]

**§ 11.150. Competitive Bids**

The board shall sell the bonds only after competitive bidding to the highest and best bidder. The board may reject any or all bids.

[Acts 1971, 62nd Leg., p. 167, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.151. Security for Bids**

The board shall require every bidder, except administrators of state funds, to include with the bid an exchange or cashier's check for a sum the board considers adequate as a forfeit guaranteeing accept-

ance of and payment for all bonds covered by the bids and accepted by the board.

[Acts 1971, 62nd Leg., p. 167, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1774, ch. 518, § 21, eff. May 31, 1971.]

**§ 11.152. Approval of Bonds; Registration**

Before bonds are delivered to the purchasers, the bonds and the record pertaining to their issuance shall be submitted to the attorney general for his approval. When the attorney general's approval is obtained, the bonds shall be registered in the office of the state comptroller.

[Acts 1971, 62nd Leg., p. 168, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.153. Execution of Bonds**

The bonds shall be executed on behalf of the board as general obligations of the state in the following manner: The chairman of the board and the development fund manager shall sign the bonds; the board shall impress its seal on the bonds; the governor shall sign the bonds; and the secretary of state shall attest the bonds and impress on them the state seal.

[Acts 1971, 62nd Leg., p. 168, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.154. Facsimile Signatures and Seals**

The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which the board, in executing the bonds and appurtenant coupons, may use facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals. Interest coupons may be signed by the facsimile signatures of the chairman of the board and the development fund manager.

[Acts 1971, 62nd Leg., p. 168, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.155. Signature of Former Officer**

If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on any coupon ceases to be an officer before the bond is delivered, the signature is valid and sufficient for all purposes as if he had remained in office until the delivery had been made.

[Acts 1971, 62nd Leg., p. 168, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.156. Bonds Incontestable**

After approval by the attorney general, registration by the comptroller, and delivery to the purchasers, the bonds are incontestable and constitute general obligations of the state.

[Acts 1971, 62nd Leg., p. 168, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.157. Payment by Treasurer**

The state treasurer shall pay the principal on the bonds as they mature and the interest as it becomes payable.

[Acts 1971, 62nd Leg., p. 168, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.158. Payment Enforceable by Mandamus**

Payment of the bonds and performance of official duties prescribed by Article III, Section 49-c, Section 49-d, as amended, and Section 49-d-1, as

amended, of the Texas Constitution and by the provisions of this subchapter may be enforced in any court of competent jurisdiction by mandamus or other appropriate proceeding.

[Acts 1971, 62nd Leg., p. 168, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

**§ 11.159. Refunding Bonds**

The board may provide by resolution for the issuance of refunding bonds to refund outstanding bonds issued under this chapter and their accrued interest. The board may sell these bonds and use the proceeds to retire the outstanding bonds issued under this chapter or the board may exchange the refunding bonds for the outstanding bonds. The issuance of the refunding bonds, their maturity, the rights of the bondholders, and the duties of the board with respect to refunding bonds are governed by the provisions of this chapter relating to original bonds, to the extent that they may be made applicable.

[Acts 1971, 62nd Leg., p. 169, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.160. Bonds Negotiable Instruments**

The bonds issued under the provisions of this chapter are negotiable instruments under the laws of this state.

[Acts 1971, 62nd Leg., p. 169, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.161. Bonds not Taxable**

Bonds issued under this chapter, the income from the bonds, and the profit made on their sale are free from taxation within the state.

[Acts 1971, 62nd Leg., p. 169, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.162. Authorized Investments**

Bonds issued under this chapter are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) building and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and
- (9) sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

[Acts 1971, 62nd Leg., p. 169, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.163. Security for Deposit of Funds**

Bonds issued under this chapter, when accompanied by all appurtenant unmatured coupons, are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or any other agency or political subdivision of the state, at the par value of the bonds.

[Acts 1971, 62nd Leg., p. 169, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.164. Mutilated, Lost, Destroyed Bonds**

The board may provide for the replacement of any mutilated, lost, or destroyed bond.

[Acts 1971, 62nd Leg., p. 169, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 11.165 to 11.200 reserved for expansion]

SUBCHAPTER F. FUNDING PROVISIONS

**§ 11.201. Disposition of Money Received**

All money received by the board shall be deposited in the state treasury and credited to the proper special fund as provided in this subchapter.

[Acts 1971, 62nd Leg., p. 170, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.202. Water Development Fund**

(a) The Texas Water Development Fund, referred to as the "development fund," is a special revolving fund in the state treasury.

(b) All proceeds from the sale of water development bonds (except accrued interest) shall be deposited in a special account in the development fund designated "water development account," and other money for deposit therein as provided in this chapter, shall be credited to the water development account.

(c) The water development account may be used for any project and in any manner consistent with the provisions of the constitution, but the development fund may not be used for retail distribution or for transportation of water solely to retail purchasers.

(d) All proceeds from the sale of water quality enhancement bonds (except accrued interest) shall be deposited in a special account in the development fund designated "water quality enhancement account," and other money for deposit therein as provided in this chapter shall be credited to the water quality enhancement account.

(e) The water quality enhancement account may be used for construction of treatment works in any manner consistent with the provisions of the constitution and this code.

[Acts 1971, 62nd Leg., p. 170, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

**§ 11.203. Water Development Clearance Fund**

The Texas Water Development Clearance Fund, referred to as the "clearance fund," is a special fund in the state treasury. Transfers shall be made from this fund as provided by this subchapter.

[Acts 1971, 62nd Leg., p. 170, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.204. Interest and Sinking Fund**

The Texas Water Development Bonds Interest and Sinking Fund, referred to as the "interest and sinking fund," is a special fund in the state treasury into which there shall be paid, from sources specified in this chapter, amounts sufficient to:

- (1) pay the interest coming due on all outstanding bonds during the ensuing fiscal year;

(2) pay the principal on all bonds that mature during the ensuing fiscal year, plus collection charges and exchanges on the bonds; and

(3) establish a reserve equal to the average annual principal and interest requirements on all outstanding bonds.

[Acts 1971, 62nd Leg., p. 170, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

#### § 11.205. Administrative Fund

The Texas Water Development Board Administrative Fund, referred to as the "administrative fund," is a special fund in the state treasury. From sources specified in this chapter, money shall be credited to this fund in amounts sufficient to pay the administrative expenses of the board as authorized by legislative appropriation.

[Acts 1971, 62nd Leg., p. 170, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.206. Combined Facilities Operation and Maintenance Fund

(a) The Combined Facilities Operation and Maintenance Fund is a special fund in the state treasury.

(b) Money received from the sale of water, standby service, and the lease of land needed for operation and maintenance of facilities shall be credited to this fund. Any of the money which is not needed for operation and maintenance of facilities may be credited to the interest and sinking fund or used to meet contractual obligations incurred by the board in acquiring facilities.

[Acts 1971, 62nd Leg., p. 171, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.207. Credits to Clearance Fund

Except for proceeds from the sale of bonds and proceeds from the sale of bonds of political subdivisions as provided by Sections 11.415 and 11.610 of this code, all money received by the board in any fiscal year, including all amounts received as repayment of loans to political subdivisions and interest on those loans, shall be credited to the clearance fund. Money in the clearance fund may be transferred at any time to the interest and sinking fund until the reserve in that fund is equal to the average annual principal and interest requirements on all outstanding bonds.

[Acts 1971, 62nd Leg., p. 171, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

#### § 11.208. Transfers at End of Fiscal Year

Not later than 15 days after the end of each fiscal year, any money credited to the clearance fund at the end of the fiscal year shall be transferred to the other special funds as prescribed by Sections 11.209–11.212 of this code.

[Acts 1971, 62nd Leg., p. 171, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.209. Transfers to Interest and Sinking Fund

(a) The board shall determine:

(1) the amount of interest coming due on all bonds outstanding;

(2) the amount of principal of bonds maturing and becoming payable during the fiscal year; and

(3) the average annual principal and interest requirements on all outstanding bonds.

(b) The comptroller shall transfer to the interest and sinking fund, after taking into account any money and securities on deposit in the interest and sinking fund, an amount necessary to pay:

(1) all principal and interest maturing on the bonds during the fiscal year;

(2) all collection charges and exchanges on the bonds; and

(3) the money sufficient to establish and maintain an additional reserve equal to the average annual principal and interest requirements on all outstanding bonds.

[Acts 1971, 62nd Leg., p. 171, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.210. Additional Funds for Payment of Bonds

If the amount transferred from the clearance fund plus the money and securities in the interest and sinking fund are insufficient to pay the interest coming due and the principal maturing on the bonds during the fiscal year, then after the transfer to the interest and sinking fund of as much money as is available in the clearance fund, the state treasurer shall transfer out of the first money coming into the treasury, not otherwise appropriated by the constitution, the amount required to pay principal and interest on the bonds during the fiscal year.

[Acts 1971, 62nd Leg., p. 171, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.211. Transfers to Administrative Fund

If money remains in the clearance fund after making the transfers provided in Section 11.209 of this code, then to the extent possible the comptroller shall transfer to the administrative fund an amount sufficient to cover the legislative appropriation for administrative expenses of the board for the fiscal year.

[Acts 1971, 62nd Leg., p. 172, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.212. Transfers to Development Fund

If money remains in the clearance fund after making the transfers provided in Sections 11.209 and 11.211 of this code, the comptroller shall transfer the balance to the appropriate account in the development fund at the end of each fiscal year to be used for any purpose for which proceeds of bonds in such account may be used.

[Acts 1971, 62nd Leg., p. 172, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

#### § 11.213. Investment of Reserve Money

The board may invest any money credited to the reserve portion of the interest and sinking fund in:

(1) direct obligations of the United States;

(2) other obligations unconditionally guaranteed by the United States;

(3) bonds of the State of Texas; and

(4) bonds of counties, cities, and other political subdivisions of the state, except bonds issued by a political subdivision to finance a project described by this chapter or to finance treatment works described in Chapter 21 of this code.

[Acts 1971, 62nd Leg., p. 172, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

**§ 11.214. Limitation on Board Investment**

The board is bound to the extent that the resolution authorizing the issuance of the bonds further restricts the investment of money in bonds of the United States.

[Acts 1971, 62nd Leg., p. 172, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.215. Interest and Sinking Fund Investments**

The board may invest the money in the interest and sinking fund, except the money in the reserve portion of the fund, only in direct obligations of the United States or obligations unconditionally guaranteed by the United States that are scheduled to mature prior to the date the board must have money available for its intended purpose.

[Acts 1971, 62nd Leg., p. 172, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.216. Development Fund Investments**

Surplus money in the development fund that is not needed for at least 90 days shall be invested in direct obligations of the United States or in other obligations unconditionally guaranteed by the United States maturing on or before the contemplated date on which the money will be needed.

[Acts 1971, 62nd Leg., p. 173, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.217. Sale of Securities**

All of the bonds and obligations owned in the interest and sinking fund or in the development fund are defined as securities. The board may sell securities owned in the interest and sinking fund or in any account in the development fund at the governing market price.

[Acts 1971, 62nd Leg., p. 173, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

**§ 11.218. Transfers to be Made by Comptroller**

The comptroller shall make the transfers required by this subchapter.

[Acts 1971, 62nd Leg., p. 173, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 11.219 to 11.250 reserved for expansion]

SUBCHAPTER G. COOPERATION WITH FEDERAL GOVERNMENT

**§ 11.251. Designation of Board**

The board is designated as the state agency to cooperate with the Corps of Engineers of the United States Army and the Bureau of Reclamation of the United States Department of the Interior in the planning of water resource development projects in this state.

[Acts 1971, 62nd Leg., p. 173, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.252. Local Sponsors for Projects**

(a) When a project is proposed for planning or development by the board, the Corps of Engineers of the United States Army, or the Bureau of Reclamation of the United States Department of the Interior, any political subdivision may apply to the commission for designation as the cooperating local sponsor of the project.

(b) In the application the applicant shall:

(1) describe the purposes of the project;

(2) state the reasons for the application, the contemplated use of water the applicant might derive from the project if a permit for the use is subsequently granted by the commission; and

(3) cite the contributions the applicant is prepared to make to the planning or development of the project.

(c) No application for designation as a local sponsor shall cover more than one proposed project.

(d) The commission shall prescribe the form to be used in applications for designation as cooperating local sponsor. Before accepting the application, the commission may require that the applicant complete the prescribed form.

(e) Before making any designation of local sponsorship, the commission shall set the application for hearing and give public notice of the hearing. Any interested party may appear and be heard for or against the designation of the applicant as project sponsor.

(f) More than one cooperating local sponsor may be designated for each project, but each applicant must comply with the provisions of this section.

(g) After a public hearing, the commission, by written order, shall grant or reject the application and shall state its reasons. The commission may set a reasonable time period for any sponsorship designation.

(h) In granting any future permit for use of water stored in a project for which it has designated a local sponsor, the commission shall fully recognize that sponsor's contributions to the planning and development of the project.

(i) To the extent that no local cooperator is prepared to undertake local sponsorship of a federal project in whole or in part, or to the extent that the board has an interest in the project, the board may be designated as sponsor of the project or as an additional cooperating sponsor.

[Acts 1971, 62nd Leg., p. 173, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 11.253 to 11.300 reserved for expansion]

SUBCHAPTER H. ACQUISITION AND DEVELOPMENT OF FACILITIES

**§ 11.301. Authorized Projects**

The board may use the water development account for projects including the design, acquisition, lease, construction, reconstruction, develop-

ment, or enlargement, in whole or in part, of any existing or proposed project.

[Acts 1971, 62nd Leg., p. 174, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

#### § 11.302. Joint Ventures

The board may act singly or in a joint venture in partnership with any person or entity, including any agency or political subdivision of this state, or with another state or its political subdivisions, or with the United States, or with a foreign nation, to the extent permitted by law.

[Acts 1971, 62nd Leg., p. 174, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.303. Permits Required

The board shall obtain permits from the commission for the storage, transportation, and application to beneficial use of water in reservoirs and associated works constructed by the board.

[Acts 1971, 62nd Leg., p. 174, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.304. Storing Water

The board may use any reservoir acquired, leased, constructed, reconstructed, developed, or enlarged by it under this chapter to store unappropriated state water and other water acquired by the state.

[Acts 1971, 62nd Leg., p. 174, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.305. Board Findings

Before acquiring storage facilities in any reservoir, the board shall find affirmatively that:

(1) it is reasonable to expect that the state will recover its investment in the facilities;

(2) the cost of the facilities exceeds the current financing capabilities of the area involved, and the facilities cannot be reasonably financed by local interests without state participation;

(3) the public interest will be served by acquisition of the facilities; and

(4) the facilities, to be constructed or reconstructed, contemplate the optimum development of the site which is reasonably reserved under all existing circumstances of the site.

[Acts 1971, 62nd Leg., p. 174, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.306. Facilities Wanted by Political Subdivision

The board shall not acquire any facility to the extent that a political subdivision:

(1) is willing and reasonably able to finance the acquisition of the facility;

(2) has qualified by obtaining the necessary permit; and

(3) has proposals that are consistent with the objectives of the state water plan.

[Acts 1971, 62nd Leg., p. 175, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.307. Contracts: General Authority

The board may execute contracts to the full extent that contracts are constitutionally authorized

and not limited, for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, operation, or maintenance, singularly or in any combination, of any existing or proposed project.

[Acts 1971, 62nd Leg., p. 175, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.308. Specific Contracts Authorized

Contracts authorized by Section 11.307 of this code shall include, but are not limited to, the following:

(1) contracts secured by the general credit of the state which shall constitute general obligations of the state in the same manner and with the same effect as water development bonds and principal and interest on these contracts shall be paid in the manner provided for payment of principal and interest on state bonds by the constitution;

(2) federal grants or grants from other sources;

(3) contracts which may be fully or partially secured by water purchase or repayment contracts executed by political subdivisions of the state for purchase of water and facilities necessary to supply present and future regional and local water requirements;

(4) contracts with any person, including but not limited to the United States, local public agencies, power cooperatives, and investor-owned utilities, for financing, constructing, and operating facilities to operate and deliver pumping energy required for projects; and

(5) contracts for goods and services necessary for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, implementation, operation, or maintenance, of any existing or proposed project or portion of the project.

[Acts 1971, 62nd Leg., p. 175, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.309. Contracts: Facilities Acquired for a Term of Years

If facilities are acquired for a term of years, the board may include in the contract provisions for renewal that will protect the state's investment.

[Acts 1971, 62nd Leg., p. 176, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.310. Maintenance Contracts

The board may execute contracts for the operation and maintenance of the state's interest in any project and may agree to pay reasonable operation and maintenance charges allocable to the state interest.

[Acts 1971, 62nd Leg., p. 176, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.311. Recreational Facilities

The board may execute contracts with the United States, and with state agencies and political subdivisions, and with others to the extent authorized, for the development and operation of recreational facilities at any project in which the state has acquired an

interest. Income received by the board under these contracts may be used for the same purposes as income from the sale of water. The legislature may appropriate money for the development and operation of recreational facilities at projects in which the state has acquired an interest.

[Acts 1971, 62nd Leg., p. 176, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 11.312 to 11.350 reserved for expansion]

SUBCHAPTER I. SALE OR LEASE OF FACILITIES

§ 11.351. Board May Sell or Lease Projects

The board may sell, transfer, or lease, to the extent of its ownership, a project acquired, constructed, reconstructed, developed, or enlarged with money from the water development account.

[Acts 1971, 62nd Leg., p. 176, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

§ 11.352. Permit Required

Before the board grants the application to buy, receive, or lease the facilities, the applicant shall first secure a permit for water use from the commission. If the facilities are to be leased, the permit may be for a term of years.

[Acts 1971, 62nd Leg., p. 176, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 11.353. Permit: Paramount Consideration of Commission

In passing on an application for a permit under this subchapter, whether it proposes a use of water inside or outside the watershed of the impoundment, the commission shall give paramount consideration to recouping the state's investment in order to protect the public interest and promote the general welfare.

[Acts 1971, 62nd Leg., p. 176, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 11.354. Contract Must Be Negotiated

The commission shall not issue the permit until the applicant has executed a contract with the board for acquisition of the facilities.

[Acts 1971, 62nd Leg., p. 177, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 11.355. Reservoir Land

The board may lease acquired reservoir land until construction of the dam is completed without the necessity of a permit issued by the commission.

[Acts 1971, 62nd Leg., p. 177, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 11.356. Price of Sale

The price of the sale or transfer of a state facility, other than a facility acquired under a contract, shall be the sum of the direct cost of acquisition, plus an interest charge computed at a rate of one-half of one percent a year from the date of purchase or acquisition by the board to the date of sale, plus interest annually at the cumulative average effective rate on all water development bonds sold up to the date of the sale, plus the board's cost of operating and

maintaining the facility from the date of acquisition to the date of sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

[Acts 1971, 62nd Leg., p. 177, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 11.357. Price of Sale: Facilities Acquired under Contracts

(a) The price of the sale or transfer of a facility acquired under a contract shall be the sum of the direct cost of acquisition, plus an interest charge computed at a rate of one-half of one percent per year from the date of acquisition of the facility to the date of sale or transfer, plus interest at the cumulative average effective rate on all water development bonds sold up to the date of the sale or transfer for each year or portion of a year for which the board paid interest to the other party to the contract, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

(b) If, in transferring any contract, the board remains in any way directly, conditionally, or contingently liable for the performance of any part of the contract, then the transferee, in addition to the payments prescribed by Subsection (a) of this section, shall pay to the board annually one-half of one percent of the remaining amount owed to the other party to the contract, and shall continue these payments until the board is fully released from the contract.

[Acts 1971, 62nd Leg., p. 177, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 11.358. Costs Defined

With reference to the sale of a state facility, "direct cost of acquisition" means the principal amount the board has paid or agreed to pay for on the facility up to the date of the sale.

[Acts 1971, 62nd Leg., p. 177, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 11.359. Lease Payments

In leasing a state facility for a term of years, the board shall require annual payments not less than the total of:

(1) the annual principal and interest requirements applicable to the debt incurred by the state in acquiring the facility; and

(2) the state's annual cost for operation, maintenance, and rehabilitation of the facility.

[Acts 1971, 62nd Leg., p. 178, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 11.360. Sale or Lease: Condition Precedent

(a) No sale, transfer, or lease of a state facility is valid unless the board first makes the following affirmative findings:

(1) that the applicant has a permit granted by the commission;

(2) that the sale, transfer, or lease will contribute to the conservation and development of the water resources of the state; and

(3) that the consideration for the sale, transfer, or lease is fair, just, and reasonable and in full compliance with the law.

(b) The consideration for any such sale or transfer may be either money or revenue bonds, which revenue bonds, for the purposes hereof, shall be deemed the same as money.

(c) The amount of money shall be equal to the price for purchasing the facilities as prescribed by the provisions of Section 11.357 of this code, or if revenue bonds shall constitute the consideration, the principal amount of such revenue bonds shall be equal to the price for purchasing the facilities as prescribed by the provisions of Section 11.357 of this code and such revenue bonds shall bear interest at the rate prescribed in Section 11.409 of this code with regard to bonds purchased with the proceeds of the Texas Water Development Fund.

[Acts 1971, 62nd Leg., p. 178, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1974, ch. 612, art. 1, § 2, eff. Sept. 1, 1971.]

#### § 11.361. Disposition of Proceeds

(a) The money received from any sale, transfer, or lease of facilities as cash, or in the case of a sale or transfer involving revenue bonds, the money received as matured interest or principal on the bonds shall be used to pay the principal of and interest on water development bonds or to meet contractual obligations incurred by the board. The money shall be collected and credited to the proper special fund as is money received in payment of principal and interest on loans to political subdivisions under this chapter, taking into consideration the manner in which the facilities were acquired.

(b) When enough money has been collected to pay all outstanding indebtedness, including the principal of all state bonds and contractual obligations and the full amount of interest to accrue on these debts, the board may use any further amounts received from the sale, transfer, or lease of facilities to acquire additional facilities or to provide assistance to political subdivisions for water supply projects.

[Acts 1971, 62nd Leg., p. 178, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1975, ch. 612, art. 1, § 2, eff. Sept. 1, 1971.]

#### § 11.362. Sale of Stored Water

The board may sell any unappropriated public water of the state and other water acquired by the state that is stored by or for it. The price will be determined by the board.

[Acts 1971, 62nd Leg., p. 178, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.363. Permit

(a) The board may not sell the water stored in a facility to any person who has not obtained a permit from the commission. The rights of the applicant in the water are governed by the terms and conditions of the permit. The permit may be for a term of years.

(b) Whether the application for a permit involves a proposed use of water inside or outside the watershed of the impoundment, the commission shall give paramount consideration to recouping the state's investment in order to protect the public interest and promote the general welfare.

(c) The permit shall be conditioned on continued payment of the obligations assumed under the contract with the board and may provide for cancellation at any time on breach of the contract.

[Acts 1971, 62nd Leg., p. 178, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.364. Sale Contract: Provisions, Limitations

(a) The board may determine the consideration and other provisions to be included in water sale contracts, but the consideration and other provisions shall be fair, reasonable, and nondiscriminatory. The board may include charges for standby service, which means holding water and conservation storage space for use and for actual delivery of water.

(b) The board shall make the same determinations with respect to the sale of water as are required in Section 11.360 of this code with respect to the sale or lease of facilities.

(c) The board shall not compete with any political subdivision in the sale of water when this competition jeopardizes the ability of the political subdivision to meet obligations incurred to finance its own water supply projects.

[Acts 1971, 62nd Leg., p. 179, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.365. Emergency Releases of Water

Unappropriated water and other water of the state stored in any facility acquired by and under the control of the board may be released without charge to relieve any emergency condition arising from drought, severe water shortage, or public calamity, if the Texas Water Rights Commission first determines the existence of the emergency and requests the board to release water.

[Acts 1971, 62nd Leg., p. 179, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.366. Preferences

The board shall give political subdivisions a preferential right, but not an exclusive right, to purchase, acquire, or lease facilities, and to purchase water from facilities. Preferences shall be given in these respects in accord with the provisions of Section 5.122 of this code relating to preferences in the appropriation and use of state water. The board and the Texas Water Rights Commission shall coordinate their efforts to meet these objectives and to assure that the public water of this state, which is held in trust for the use and benefit of the public, will be conserved, developed, and utilized in the greatest practicable measure for the public welfare.

[Acts 1971, 62nd Leg., p. 179, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.367. Lease of Land Prior to Project Construction**

The board may lease tracts of land acquired for project purposes for a term of years for any purpose not inconsistent with ultimate project construction. The lease shall be scheduled to expire before initiation of project construction.

[Acts 1971, 62nd Leg., p. 179, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.368. Lease Contributions Equivalent to Taxes**

The lease may provide for contribution by the lessee to units of local government of amounts equivalent to ad valorem taxes or special assessments.

[Acts 1971, 62nd Leg., p. 179, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 11.369 to 11.400 reserved for expansion]

**SUBCHAPTER J. ASSISTANCE TO POLITICAL SUBDIVISIONS**

**§ 11.401. Financial Assistance**

The water development account may be used by the board to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of projects, but to the extent that financial assistance is given by the board to an applicant for construction, acquisition, or improvement of any waste water treatment plant, the financial assistance shall be considered as state matching funds for obtaining maximum federal grants for construction of treatment works.

[Acts 1971, 62nd Leg., p. 180, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1744, ch. 518, § 21, eff. May 31, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

**§ 11.402. Application for Assistance**

(a) In an application to the board for financial assistance, the applicant shall include:

- (1) the name of the political subdivision and its principal officers;
- (2) a citation of the law under which the political subdivision operates and was created;
- (3) the total cost of the project;
- (4) the amount of state financial assistance requested;
- (5) the plan for repaying the total cost of the project; and
- (6) any other information the board requires in order to perform its duties and to protect the public interest.

(b) The board may not accept an application for financial assistance unless it is submitted in affidavit form by the officials of the political subdivision. The board shall prescribe the affidavit form in its rules. The rules do not restrict or prohibit the board from requiring additional factual material from an applicant.

[Acts 1971, 62nd Leg., p. 180, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.403. Certificate of Commission or Approval by Texas Water Quality Board**

(a) Except as provided in Subsection (b) of this section, the board shall not deliver funds pursuant to an application for financial assistance until the political subdivision has furnished the board a resolution adopted by the Texas Water Rights Commission certifying:

- (1) that an applicant proposing surface water development has the necessary water right authorizing it to appropriate and use the water which the project will provide; or
- (2) that an applicant proposing underground water development has the right to use water that the project will provide.

(b) If an application includes a proposal for a waste water treatment plant, the part of the application relating to the waste water treatment plant does not need to be certified by the Texas Water Rights Commission, but the board may not deliver funds for the waste treatment plant until the political subdivision has furnished the board written evidence of approval of the plans for the waste water treatment plant by the Texas Water Quality Board or the executive director when authorized by the Texas Water Quality Board.

[Acts 1971, 62nd Leg., p. 180, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1774, ch. 518, § 21, eff. May 31, 1971.]

**§ 11.404. Considerations in Passing on Application**

In passing on an application from a political subdivision for financial assistance, the board shall consider:

- (1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;
- (2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the project, including interest;
- (3) whether the political subdivision can reasonably finance the project without assistance from the state;
- (4) the relationship of the project to the overall, statewide water needs; and
- (5) the relationship of the project to the state water plan.

[Acts 1971, 62nd Leg., p. 180, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.405. Approval of Application**

The board by resolution may approve an application if, after considering the factors listed in Section 11.404 of this code and any other relevant factors, the board finds:

- (1) that the public interest requires state participation in the project;

(2) that the political subdivision cannot reasonably finance the project without state assistance in the amount finally approved by the board; and

(3) that in its opinion the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision during the succeeding period of not more than 50 years.

[Acts 1971, 62nd Leg., p. 181, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.406. Method of Financial Assistance

The board may provide financial assistance by using money in the water development account to purchase bonds or other securities issued by the political subdivision to finance the project. The board may purchase bonds or securities that are secondary or subordinate to other bonds or securities issued by the political subdivision to finance the same project. The board may purchase outstanding prior lien bonds previously issued by the political subdivision when this will avoid or reduce the necessity for issuing junior lien bonds for subsequent sale to the board. However, the security for both prior lien and junior lien bonds shall be pledged from substantially the same sources of revenue.

[Acts 1971, 62nd Leg., p. 181, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

#### § 11.407. Bond Maturity

The board may not purchase bonds or other securities which have a maturity date more than 50 years from the date of issuance.

[Acts 1971, 62nd Leg., p. 181, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.408. Repealed by Acts 1971, 62nd Leg., p. 1984, ch. 612, art. 1, § 11.

#### § 11.409. Interest Rate

(a) Except as provided in Subsection (b) of this section, bonds and securities purchased by the board with money in the water development account shall bear the weighted average effective interest rate on all water development bonds previously sold, plus one-half of one percent. The bonds shall bear coupons evidencing interest at a rate or combination of rates that will approximate the effective rate as nearly as the board deems practicable. The effective rate shall be determined by the payment of premiums or the deduction of discounts as necessary.

(b) Outstanding prior lien bonds purchased by the board under Section 11.406 of this code need not bear the interest rate provided in Subsection (a) of this section, but the board may pay such price or prices for outstanding prior lien bonds which in its discretion will accomplish the objective of Section 11.406.

[Acts 1971, 62nd Leg., p. 181, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1766, ch. 518, § 1, eff. May 31, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

#### § 11.410. Approval and Registration

The board shall not purchase any bonds or securities that have not been approved by the attorney general and registered by the comptroller.

[Acts 1971, 62nd Leg., p. 182, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.411. Bonds Incontestable

The bonds or other securities issued by a political subdivision are valid, binding, and incontestable after:

(1) approval by the attorney general;

(2) registration by the comptroller; and

(3) purchase by and delivery to the board.

[Acts 1971, 62nd Leg., p. 182, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

#### § 11.412. Security for Bonds

(a) Bonds purchased by the board shall be supported by:

(1) all or part of the net revenue from the operation of the project;

(2) taxes levied by the political subdivision for the purpose; or

(3) a combination of taxes and net revenue, and revenue from other available sources.

(b) The board may require that the bonds be supported both by taxes and by net revenue from the operation of the project, in any ratio the board considers necessary to fully secure the investment. The board shall establish other conditions and requirements it considers to be consistent with sound investment practices and in the public interest.

(c) As used in this section, "net revenue" means gross revenue less the amount necessary to provide for principal, interest, and reserve requirements of bonds superior to those purchased by the board and the amount necessary to pay the cost of maintaining and operating the project.

[Acts 1971, 62nd Leg., p. 182, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 11.413. Default

(a) In the event of a default in payment of the principal of or interest on bonds purchased by the board, or any other default as defined in the proceedings or indentures authorizing the issuance of the bonds, the attorney general shall institute appropriate proceedings by mandamus or other legal remedies to compel the political subdivision or its officers, agents, and employees to cure the default by performing those duties which they are legally obligated to perform. These proceedings shall be brought and venue shall be in a district court of Travis County.

(b) The provisions of this section are cumulative of any other rights or remedies to which the bondholders may be entitled.

[Acts 1971, 62nd Leg., p. 182, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1774, ch. 518, § 22, eff. May 13, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

**§ 11.414. Sale of Bonds by Board**

(a) The board may sell or dispose of bonds purchased with money in the water development account. The board may not sell the bonds for less than amortized value and accrued interest.

(b) The board shall first offer the bonds at their amortized value plus accrued interest to the issuing political subdivision at least 30 days before the date of requesting competitive bids.

(c) If the political subdivision fails to give notice to the board of its desire to acquire the bonds at amortized value and accrued interest within the 30-day period, then the board shall give notice of the sale of the bonds, receive competitive bids, and conduct the sale, all in the manner provided for the sale of bonds, except the board may waive any requirement for good faith checks.

[Acts 1971, 62nd Leg., p. 183, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

**§ 11.415. Proceeds From Sale**

The proceeds from the sale of political subdivision bonds held by the board shall be credited to the water development account, except that accrued interest shall be credited to the interest and sinking fund.

[Acts 1971, 62nd Leg., p. 183, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

**§ 11.416. Construction Contract Requirements**

The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of a project:

(1) that payment be made in partial payments as the work progresses;

(2) that each partial payment shall not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project; and

(3) that payment of the 10 percent remaining due upon completion of the contract shall be made only after:

(A) approval by the engineer for the political subdivision as required under the bond proceedings; and

(B) certification by the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices.

[Acts 1971, 62nd Leg., p. 183, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 429, ch. 194, § 1, eff. May 25, 1973.]

**§ 11.417. Filing Construction Contract**

The political subdivision shall file in the office of the board a certified copy of each construction contract it enters into for the construction of all or part of a project. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

[Acts 1971, 62nd Leg., p. 183, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.418. Board Inspection of Projects**

(a) The board may inspect the construction of a project at any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the board does not subject the state to any civil liability.

[Acts 1971, 62nd Leg., p. 183, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.419. Alteration of Plans**

After board approval of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the board authorizes the alteration.

[Acts 1971, 62nd Leg., p. 184, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.420. Certificate of Approval**

The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the project according to the plans as the board approved them or altered with the board's approval;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any term of the contract.

[Acts 1971, 62nd Leg., p. 184, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 11.421 to 11.450 reserved for expansion]

**SUBCHAPTER K. IMPROVEMENTS**

**§ 11.451. Purpose of Subchapter**

The chief purpose of this subchapter is to provide for planning and marking out upon the ground all improvements necessary to reclaim for agricultural use all overflowed land, swampland, and other land in this state that is not suitable for agricultural use because of temporary or permanent excessive accumulation of water on or contiguous to the land.

[Acts 1971, 62nd Leg., p. 184, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.452. Surveys; Planning**

The board shall perform all preliminary work required in the process of planning or marking out upon the ground the most practical, permanent, economical, and equitable improvements or systems of improvements including levees, dikes, dams, canals, drains, waterways, reservoirs, and other improvements incidental to them. This work includes investigations, estimates, surveys, maps, reports, and publications, and any other work which is incidental to this.

[Acts 1971, 62nd Leg., p. 184, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.453. Design of Improvements or System of Improvements**

As far as possible, the improvements shall be designed with primary consideration to the topographic and hydrographic conditions, and in such a manner that each division of a project shall be a complete, united project forming a coordinate part of an ultimately finished series of projects, so constituted that the successful operation of each united project shall coordinate with the successful operation of other projects within the same hydraulic influence.

[Acts 1971, 62nd Leg., p. 184, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.454. Location of Projects; Reports**

The board may determine the location of the improvements or systems of improvements and the time and manner of making the results public. The board shall make records or publish reports describing the improvements or systems of improvements, and shall file in its office all final results that are of value to the state.

[Acts 1971, 62nd Leg., p. 184, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.455. Cooperation with Other Agencies**

In performing its functions, the board may confer with federal and state agencies and with political subdivisions and may execute cooperative agreements with them. The board may cancel any such agreement on 10 days' notice to the other party.

[Acts 1971, 62nd Leg., p. 185, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.456. Advice to Districts**

The board shall confer with districts requesting its technical advice on the adequate execution of proposed levee and drainage improvements.

[Acts 1971, 62nd Leg., p. 185, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.457. Districts to File Information with Board**

Immediately before having its bonds approved by the attorney general, each drainage district and levee improvement district shall file with the board, on forms furnished by the board, a complete record showing each step in the organization of the district, the amount of bonds to be issued, and a description of the area and boundaries of the district, accompanied by plans, maps, and profiles of improvements and the district engineer's estimates and reports on them.

[Acts 1971, 62nd Leg., p. 185, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.458. Construction of Levee without Approval of Plans**

(a) No person, corporation or levee improvement district may construct, attempt to construct, cause to be constructed, maintain, or cause to be maintained, any levee or other such improvement on, along, or near any stream of this state that is subject to floods, freshets, or overflows, so as to control, regulate, or otherwise change the floodwater of the stream, without first obtaining approval of the plans by the board.

(b) Any person, corporation, or levee improvement district who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100.

(c) At the request of the board, the attorney general shall file suit in a district court of Travis County to enjoin any violation or threatened violation of this section.

(d) This section does not apply to structures authorized by the Texas Water Rights Commission.

[Acts 1971, 62nd Leg., p. 185, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 11.459 to 11.500 reserved for expansion]

SUBCHAPTER L. NAVIGATION FACILITIES

**§ 11.501. Improvement of Streams and Canals and Construction of Facilities within Cypress Creek Drainage Basin**

The board may improve streams and canals and construct all waterways and other facilities necessary to provide for navigation within the Cypress Creek drainage basin which is located in the north-east portion of the state.

[Acts 1971, 62nd Leg., p. 185, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.502. Long-term Contracts with the United States**

The board may execute long-term contracts with the United States or any of its agencies for the acquisition and development of improvements and facilities under Section 11.501 of this code.

[Acts 1971, 62nd Leg., p. 186, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 11.503. Temporary Authority to Act for District**

The board may act in behalf of a local district or districts until they can take over the project or projects in accordance with the board's agreement with the district or districts in acting as the sponsor.

[Acts 1971, 62nd Leg., p. 186, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 11.504 to 11.600 reserved for expansion]

SUBCHAPTER M. ASSISTANCE TO POLITICAL SUBDIVISIONS FOR CONSTRUCTION OF TREATMENT WORKS

**§ 11.601. Financial Assistance**

The board shall use funds in the water quality enhancement account to provide financial assistance through the purchase of bonds or other obligations of political subdivisions pursuant to an application for financial assistance approved by the Texas Water Quality Board, in accordance with the provisions of Chapter 21, Water Code,<sup>1</sup> and the provisions of this subchapter.

[Acts 1973, 63rd Leg., p. 433, ch. 194, § 2, eff. May 25, 1973.]

<sup>1</sup> Section 21.001 et seq.

**§ 11.602. Other Financial Assistance**

The board may purchase bonds or other obligations that are secondary or subordinate to other bonds or obligations issued by the political subdivision, including outstanding prior lien bonds previously issued by the political subdivision when this will avoid or reduce the necessity for issuing junior lien bonds for subsequent sale to the board. However, the security for both prior lien and junior lien bonds shall be pledged from substantially the same sources of revenue.

[Acts 1973, 63rd Leg., p. 433, ch. 194, § 2, eff. May 25, 1973.]

**§ 11.603. Bond Maturity**

The board may not purchase bonds or other obligations which have a maturity date more than 50 years from the date of issuance.

[Acts 1973, 63rd Leg., p. 433, ch. 194, § 2, eff. May 25, 1973.]

**§ 11.604. Interest Rate**

(a) The bonds and other obligations purchased by the board with money in the water quality enhancement account pursuant to Subchapter I, Chapter 21, of this code,<sup>1</sup> shall bear the weighted average effective interest rate on all water quality enhancement bonds previously sold. The bonds shall bear coupons evidencing interest at a rate or combination of rates that will approximate the effective rate as nearly as the board deems practicable. The effective rate shall be determined by the payment of premiums or the deduction of discounts as necessary.

(b) Except as provided in Subsection (c) of this section, bonds and other obligations purchased by the board with money in the water quality enhancement account pursuant to Subchapter J, Chapter 21 of this code,<sup>2</sup> shall bear the weighted average effective interest rate on all water quality enhancement bonds previously sold, plus one-half of one percent. The bonds shall bear coupons evidencing interest at a rate or combination of rates that will approximate the effective rate as nearly as the board deems practicable. The effective rate shall be determined by the payment of premiums or the deduction of discounts as necessary.

(c) Outstanding prior lien bonds purchased by the board under Section 11.602 of this code need not bear the interest rate provided in Subsection (b) of this section, but may be purchased for such price or prices as will accomplish the objectives of Section 11.602.

[Acts 1973, 63rd Leg., p. 433, ch. 194, § 2, eff. May 25, 1973.]

<sup>1</sup> Section 21.601 et seq.

<sup>2</sup> Section 21.701 et seq.

**§ 11.605. Approval and Registration**

The board shall not purchase any bonds or other obligations that have not been approved by the attorney general and registered by the comptroller.

[Acts 1973, 63rd Leg., p. 433, ch. 194, § 2, eff. May 25, 1973.]

**§ 11.606. Bonds Incontestable**

The bonds or other obligations issued by a political subdivision are valid, binding and incontestable after:

- (1) approval by the attorney general;
- (2) registration by the comptroller; and
- (3) purchase by and delivery to the board.

[Acts 1973, 63rd Leg., p. 433, ch. 194, § 2, eff. May 25, 1973.]

**§ 11.607. Security for Bonds**

(a) Bonds or other obligations purchased by the board under this subchapter shall be supported by:

- (1) all or part of the net revenue from the operation of the treatment works;
- (2) taxes levied by the political subdivision for the purpose; or
- (3) a combination of taxes and net revenue, and revenue from other available sources.

(b) As used in this section, "net revenue" means gross revenue less the amount necessary to provide for principal, interest and reserve requirements of bonds, if any, superior to those purchased by the board and the amount necessary to pay the cost of maintaining and operating the treatment works.

(c) The board has the exclusive responsibility to specify terms and conditions of the financial assistance, including all maturity schedules, which are necessary, in the opinion of the board, to achieve the best security for the state which the applicant is reasonably capable of providing. No term or condition shall be specified by the board which would prevent financial assistance from being available to an applicant for construction of treatment works approved by the Texas Water Quality Board.

[Acts 1973, 63rd Leg., p. 433, ch. 194, § 2, eff. May 25, 1973.]

**§ 11.608. Default**

(a) In the event of a default in payment of the principal of or interest on bonds or other obligations purchased by the board, or of a default in payment of amounts due under a loan agreement executed under the provisions of Subchapters I and J of Chapter 21 of this code,<sup>1</sup> or of a failure to perform any term or condition agreed to or of any other default as defined in the proceedings or indentures authorizing the issuance of the bonds or in any other obligation or loan agreement, the attorney general shall institute appropriate proceedings by mandamus or other legal remedies to compel the political subdivision or its officers, agents and employees to cure the default by performing those duties which they are legally obligated to perform. These proceedings shall be brought and venue shall be in a district court of Travis County.

(b) The provisions of this section are cumulative of any other rights or remedies to which the bondholders may be entitled.

[Acts 1973, 63rd Leg., p. 433, ch. 194, § 2, eff. May 25, 1973.]

<sup>1</sup> Sections 21.601 et seq., 21.701 et seq.

**§ 11.609. Sale of Bonds by Board**

(a) The board may sell or dispose of bonds or other obligations purchased with money in the water quality enhancement account at not less than amortized value and accrued interest.

(b) The board shall first offer the bonds or other obligations at their amortized value plus accrued interest to the issuing political subdivision at least 30 days before the date of requesting competitive bids.

(c) If the political subdivision fails to give notice to the board of its desire to acquire the bonds or other obligations at amortized value and accrued interest within the 30-day period, then the board shall give notice of the sale of the bonds, receive competitive bids and conduct the sale of such bonds or other obligations so purchased all in the manner provided for the sale of bonds, except the board may waive any requirement for good faith checks.

[Acts 1973, 63rd Leg., p. 433, ch. 194, § 2, eff. May 25, 1973.]

**§ 11.610. Proceeds From Sale**

The proceeds from the sale of such political subdivision bonds or other obligations held by the board shall be credited to the water quality enhancement account, except that accrued interest shall be credited to the interest and sinking fund.

[Acts 1973, 63rd Leg., p. 433, ch. 194, § 2, eff. May 25, 1973.]

## CHAPTER 12. TEXAS OFFSHORE TERMINAL COMMISSION

### SUBCHAPTER A. GENERAL PROVISIONS

## Section

- 12.001. Policy.  
12.002. Definitions.

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 12.011. Texas Offshore Terminal Commission.  
12.012. Members of Commission; Appointment.  
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12.017. Compensation and Expenses.  
12.018. Executive Director.  
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- 12.061. In General.  
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12.066. Completion of Plan; Adoption by Commission; Submission to Legislature.  
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### SUBCHAPTER A. GENERAL PROVISIONS

**§ 12.001. Policy**

It is the determination, policy and intent of the Legislature that the first priority of the Texas Offshore Terminal Commission is to develop a plan including the site location for an offshore terminal to accommodate supertankers at the earliest possible time.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.002. Definitions**

In this chapter:

(1) Terminal means a structure, series of structures, or facility of any type located on the continental shelf off the coast, within or without the State of Texas and designed to accommodate deep draft vessels carrying petroleum products whose draft is greater than the depths of the present United States' harbors and waterways commonly used by ocean-going traffic, and includes all functionally related structures and facilities which are necessary or useful to the operation of the terminal whether landward or seaward of the main structure or facility.

(2) "Commission" means the Texas Offshore Terminal Commission.

(3) "Executive director" means the executive director of the Texas Offshore Terminal Commission.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

**§ 12.011. Texas Offshore Terminal Commission**

The Texas Offshore Terminal Commission is created as an agency of the state.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.012. Members of Commission; Appointment**

(a) The commission is composed of nine members, who are appointed by the governor with the advice and consent of the Senate.

(b) Included on the commission shall be:

(1) three persons who have demonstrated leadership in business;

(2) three persons who have served on the board of directors or board of supervisors of a port authority or navigation district in Texas;

(3) two persons from organized labor; and

(4) one person who is a recognized authority on environmental aspects of the Texas Gulf Coast and contiguous offshore areas.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.013. Terms of Office**

(a) Except for the initial appointees, each member of the commission holds office for a staggered term of six years and until his successor is appointed and has qualified.

(b) On the initial commission, one business leader, one former port authority board member or district director, and one person from organized labor designated by the governor shall serve until January 31, 1974; one business leader, one former port authority board member or district director, and one person from organized labor designated by the governor shall serve until January 31, 1976; and the remaining business leader, former port authority board member or district director, and one person who is a recognized authority on environmental aspects of the Texas Gulf Coast and contiguous offshore areas shall serve until January 31, 1978.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.014. Vacancies**

Any vacancy which occurs on the commission shall be filled for the unexpired term in the manner provided in Section 12.012 of this code for making the original appointment.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.015. Commission Officers**

(a) Before February 10 of each even-numbered year the governor shall designate one member of the commission to serve as chairman, except for the initial appointment which shall be made immediately after the effective date of this chapter.

(b) The vice-chairman of the commission shall be selected by the members of the commission before February 10 of each even-numbered year, except for the initial selection which shall be made at the time the initial commission members are appointed.

(c) The term of both the chairman and vice-chairman shall expire on January 31 of even-numbered years, or at the time their successors are selected or appointed.

(d) Any vacancy in the office of chairman or vice-chairman shall be filled for the unexpired term in the manner provided for the original appointment or selection.

(e) The commission may select other officers as are appropriate for the fulfillment of the commission's activities.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.016. Commission Meetings**

(a) The commission shall meet at least once each month and may hold special meetings at the call of the chair or of three of its members.

(b) The chairman, or in his absence the vice-chairman, shall preside at all meetings.

(c) A majority of the members of the commission constitutes a quorum for the transaction of business.

(d) All meetings of the commission shall be subject to the provisions of Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.017. Compensation and Expenses**

All members of the commission are entitled to receive reimbursement for travel and other necessary expenses resulting from the performance of their powers and duties under this chapter, and all members of the commission, except persons who are officers or employees of another state agency or a local government or political subdivision of the state, are entitled to receive as compensation \$50 a day for each day actually engaged in the work of the commission.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.018. Executive Director**

The commission shall employ an executive director to serve at the will of the commission.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.019. Duties of Executive Director**

The executive director, under policies adopted by the commission, shall manage the executive and administrative functions of the commission and the commission's general operations and shall serve as chief administrative officer of the commission.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.020. Employees**

The executive director shall employ necessary engineers, attorneys, accountants, technical personnel, and other employees necessary to carry out the provisions of this chapter.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.021. Compensation of Employees**

The executive director and other employees of the board are entitled to compensation as provided by the commission until the Legislature establishes the state classifications applicable to such employees.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.022. Seal**

The commission shall have a seal bearing the words "Texas Offshore Terminal Commission" encircling the oak and olive branches common to other official seals.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.023. Minutes; Records, Etc.**

(a) The executive director shall keep full and accurate minutes of all transactions and proceedings of the commission.

(b) The executive director shall be the custodian of all the files and records of the commission.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.024. Offices**

The commission shall maintain an office in Austin, Texas.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.025. Rules**

After proper notice and hearing, the commission shall adopt rules for its operations and to carry out its powers, duties, and responsibilities.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.026. Gifts and Grants**

The commission may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out its duties.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.027. Documents, Etc., State Property; Open for Inspection**

All information, documents and data collected by the commission in the performance of its duties are the property of the state. All records are open to inspection by any person during regular office hours.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**SUBCHAPTER C. POWERS AND DUTIES****§ 12.061. In General**

The commission shall formulate general policy to govern the agency and its activities. The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.062. Development of Plan**

(a) The commission shall develop a plan leading to the development of deep draft harbors or terminals, either by the State of Texas, private interests or by a combination of public and private entities. The plan shall contain specific means by which the terminals may be financed and shall provide for cost studies as to the optimum development. The plan shall further contain, but not be limited to proposals for the use of facilities developed; sites considered for the facilities; design of the facilities; proposals for operating the facilities and for the maintenance of the facilities. The plan shall also contain a separate proposal for steps to be taken to insure the optimum protection of the environment. The plan

shall include consideration of the legal jurisdiction for construction, maintenance and operation of the terminal facility; the legal aspects of financing and ownership of the facility; determination of responsibility and limits of liability for spills, pollution and other involvements resulting from operation of the terminal; necessary legislation to create an offshore terminal authority or other entity as a vehicle for the operation of the terminal; and any other important legal problems and considerations which must be answered before such an offshore terminal should be constructed. The plan shall also include socio-economic data to determine what this facility will do for the State's economy, what will happen to the economy of the State if the port is not built, and what will be the dollars-and-cents benefits that the facility will bring about and how these will compare to its cost.

(b) The commission may contract with local governments, regional planning commissions, planning agencies, and shall contract with colleges and universities in the state in preference to other sources when such colleges or universities have a better or equal capacity to render the service; and may further consider and contract with any other qualified and competent persons to assist the commission in developing and preparing the plan, but design and construction of the offshore port would reside within the private sector. This philosophy is in keeping with the legislative intent expressed in HCR 138, 62nd Legislature, Regular Session, 1971.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.063. Research; Investigations**

The commission shall conduct, or have conducted, any research and investigations it considers advisable and necessary for the discharge of its duties under this chapter.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.064. Cooperation**

(a) The commission shall proceed in the development of the plan in such a manner that there will be full coordination and cooperation between agencies and groups that have complementing or overlapping interests.

(b) The commission shall take affirmative steps to fully coordinate all aspects of the development of the plan with other federal, state and local agencies charged with the development and interest of the coastal zone of the state.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.065. Contracts; Instruments**

The commission may make contracts and execute instruments that are necessary or convenient to the exercise of its powers or the performance of its duties.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.066. Completion of Plan; Adoption by Commission; Submission to Legislature**

(a) When the commission has prepared and examined the completed plan it shall hold such public hearings as may be necessary concerning the plan to determine if all aspects have been given adequate consideration. After the hearing the commission may amend the plan if in its opinion there is a necessity for such action and shall formally adopt the plan.

(b) The commission shall present the plan to the first session of the Legislature occurring after the adoption of the plan. The commission shall also cause to be prepared such suggested legislation as may be necessary and desirable for the implementation of the plan.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

**§ 12.067. Savings Clause**

Nothing herein shall be construed in any way to limit, impair, change or curtail the power, authority and activities of existing port authorities, harbor authorities or navigation districts in the State of Texas, but all power, authority and activities now held and exercised by those various authorities or districts in the State of Texas are hereby specifically reserved to them; and none of the statutory law pertaining to those existing authorities or districts is amended, changed or repealed by the provisions hereof.

[Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, eff. Jan. 16, 1973.]

[Chapter 13 reserved for expansion]

**CHAPTER 14. WEATHER MODIFICATION**

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**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 14.001. Short Title**

This chapter may be cited as the Weather Modification Act.

[Acts 1971, 62nd Leg., p. 186, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.002. Definitions**

As used in this chapter, unless the context requires a different definition:

- (1) "board" means the Texas Water Development Board;
- (2) "weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms which occur in the troposphere;
- (3) "operation" means the performance of weather modification and control activities entered into for the purpose of producing, or attempting to produce, a certain modifying effect within one geographical area over one continuing time interval not exceeding one year; and
- (4) "research and development" means theoretical analysis, exploration, experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

[Acts 1971, 62nd Leg., p. 186, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 14.003 to 14.010 reserved for expansion]

**SUBCHAPTER B. POWERS AND DUTIES OF BOARD**

**§ 14.011. Regulations—In General**

The board may make regulations necessary to the exercise of its powers and the performance of its duties under this chapter.

[Acts 1971, 62nd Leg., p. 186, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.012. Regulations—Licenses and Permits**

In order to effectuate the purposes of this chapter, the board may make regulations establishing procedures and conditions for the issuance of licenses and permits.

[Acts 1971, 62nd Leg., p. 187, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.013. Regulations—Safety**

The board may, by regulation or order, establish any standards and instructions to govern the carrying out of research or projects in weather modification and control that the board considers necessary or desirable to minimize danger to health or property.

[Acts 1971, 62nd Leg., p. 187, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.014. Studies; Investigations; Hearings**

The board may make any studies or investigations, obtain any information, and hold any hearings the board considers necessary or proper to assist it in exercising its power or administering or enforcing this chapter or any regulations or orders issued under this chapter.

[Acts 1971, 62nd Leg., p. 187, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.015. Advisory Committees**

The board may establish advisory committees to advise the board and to make recommendations to the board concerning legislation, policies, administration, research, and other matters.

[Acts 1971, 62nd Leg., p. 187, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.016. Personnel**

The board may, as provided by the general appropriations act, appoint and fix the compensation of any personnel, including specialists and consultants, necessary to perform its duties and functions under this chapter.

[Acts 1971, 62nd Leg., p. 187, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.017. Materials and Equipment**

The board may acquire, in the manner provided by law, any materials, equipment, and facilities necessary to perform its duties and functions under this chapter.

[Acts 1971, 62nd Leg., p. 187, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.018. Interstate Compacts**

The board may represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control.

[Acts 1971, 62nd Leg., p. 187, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.019. Contracts, Cooperative Agreements, Etc.**

(a) The board may cooperate with public or private agencies to promote the purposes of this chapter.

(b) The board may enter into cooperative agreements with the United States or any of its agencies, or with counties and cities of this state, or with any

private or public agencies, for conducting weather modification or cloud-seeding operations.

(c) The board may represent the state, counties, cities, and public and private agencies in contracting with private concerns for the performance of weather modification or cloud-seeding operations.

[Acts 1971, 62nd Leg., p. 187, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.020. Promotion of Research and Development**

(a) In order to assist in expanding the theoretical and practical knowledge of weather modification and control, the board shall promote continuous research and development in:

(1) the theory and development of methods of weather modification and control, including processes, materials, and devices related to these methods;

(2) the utilization of weather modification and control for agricultural, industrial, commercial, and other purposes; and

(3) the protection of life and property during research and operational activities.

(b) The board may conduct and may contract for research and development activities relating to the purposes of this section.

[Acts 1971, 62nd Leg., p. 188, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.021. Grants, Gifts, Etc.**

Subject to any limitations imposed by law, the board may accept federal grants, private gifts, and donations from any other source. Unless the use of the money is restricted or subject to any limitations provided by law, the board may spend it for the administration of this chapter or may, by grant, contract, or cooperative arrangement, use the money to encourage research and development by a public or private agency.

[Acts 1971, 62nd Leg., p. 188, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.022. Disposition of License and Permit Fees**

The board shall deposit all license and permit fees in the state treasury.

[Acts 1971, 62nd Leg., p. 188, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.023. Oaths of Witnesses; Subpoenas**

(a) In conducting any hearing, the board or a representative designated by it may administer oaths and examine witnesses.

(b) The board or a representative designated by it may issue subpoenas to compel the attendance of witnesses and the production of books, records, documents, and instruments.

[Acts 1971, 62nd Leg., p. 188, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 14.024 to 14.040 reserved for expansion]

**SUBCHAPTER C. LICENSES AND PERMITS****§ 14.041. License and Permit Required**

Except as provided by regulation of the board under Section 14.042 of this code, no person may

engage in activities for weather modification and control:

(1) without a weather modification license and a weather modification permit issued by the board; or

(2) in violation of any term or condition of the license or the permit.

[Acts 1971, 62nd Leg., p. 188, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.042. Exemptions**

The board, to the extent it considers exemptions practical, shall provide by regulation for exempting the following activities from the license and permit requirements of this chapter:

(1) research, development, and experiments conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations;

(2) laboratory research and experiments;

(3) activities of an emergent nature for protection against fire, frost, sleet, or fog; and

(4) activities normally conducted for purposes other than inducing, increasing, decreasing, or preventing precipitation or hail.

[Acts 1971, 62nd Leg., p. 189, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.043. Issuance of License**

(a) The board, in accordance with its regulations, shall issue a weather modification license to each applicant who:

(1) pays the license fee; and

(2) demonstrates, to the satisfaction of the board, competence in the field of meteorology which is reasonably necessary to engage in weather modification and control activities.

(b) If the applicant is an organization, the competence must be demonstrated by the individual or individuals who are to be in control and in charge of the operation for the applicant.

[Acts 1971, 62nd Leg., p. 189, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.044. License Fee**

The fee for an original or renewal license is \$50.  
[Acts 1971, 62nd Leg., p. 189, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.045. Expiration Date**

Each original or renewal license expires at the end of the state fiscal year for which it was issued.  
[Acts 1971, 62nd Leg., p. 189, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.046. Renewal License**

At the expiration of the license period, the board shall issue a renewal license to each applicant who pays the license fee and who has the qualifications necessary for issuance of an original license.

[Acts 1971, 62nd Leg., p. 189, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 14.047 to 14.060 reserved for expansion]

**§ 14.061. Issuance of Permit**

The board, in accordance with its regulations, shall issue a weather modification permit to each applicant who:—

(1) holds a valid weather modification license;

(2) pays the permit fee;

(3) publishes a notice of intention and submits proof of publication as required by this chapter; and

(4) furnishes proof of financial responsibility.

[Acts 1971, 62nd Leg., p. 189, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1767, ch. 518, § 1, eff. May 31, 1971.]

**§ 14.062. Permit Fee**

The fee for each permit is \$25.

[Acts 1971, 62nd Leg., p. 190, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.063. Scope of Permit**

A separate permit is required for each operation. If an operation is to be conducted under contract, a permit is required for each separate contract. The board shall not issue a permit for a contracted operation unless it covers a continuous period not to exceed one year.

[Acts 1971, 62nd Leg., p. 190, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.064. Application and Notice of Intention**

Before undertaking any operation, a licensee shall file an application for a permit and shall have a notice of intention published as required by this chapter.

[Acts 1971, 62nd Leg., p. 190, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.065. Content of Notice**

In the notice of intention the applicant shall include:

(1) the name and address of the licensee;

(2) the nature and object of the intended operation and the person or organization on whose behalf it is to be conducted;

(3) the area in which and the approximate time during which the operation is to be conducted;

(4) the area which is intended to be affected by the operation; and

(5) the materials and methods to be used in conducting the operation.

[Acts 1971, 62nd Leg., p. 190, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.066. Publication of Notice**

The notice of intention shall be published at least once a week for three consecutive weeks in a newspaper of general circulation published in each county in which the operation is to be conducted and in each county which includes any part of the affected area. If in any county no newspaper of general circulation

is published, then publication shall be made in a newspaper having general circulation in the county. [Acts 1971, 62nd Leg., p. 190, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.067. Proof of Publication; Affidavit**

The applicant shall file proof of the publication, together with the publishers' affidavits, with the board during the 15-day period immediately following the date of the last publication.

[Acts 1971, 62nd Leg., p. 190, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.068. Proof of Financial Responsibility**

Proof of financial responsibility is made by showing, to the satisfaction of the executive director of the board, that the licensee has the ability to respond in damages for liability which might reasonably result from the operation for which the permit is sought.

[Acts 1971, 62nd Leg., p. 190, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.069. Modification of Permit**

The board may modify the terms and conditions of a permit if:

(1) the licensee is first given notice and a reasonable opportunity for a hearing on the need for a modification; and

(2) it appears to the board that a modification is necessary to protect the health or property of any person.

[Acts 1971, 62nd Leg., p. 190, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.070. Scope of Activity**

Once a permit is issued, the licensee shall confine his activities substantially within the limits of time and area specified in the notice of intention, except to the extent that the limits are modified by the board. He shall also comply with any terms and conditions of the permit as originally issued or as subsequently modified by the board.

[Acts 1971, 62nd Leg., p. 191, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.071. Records and Reports**

(a) A licensee shall keep a record of each operation conducted under permit, showing:

(1) the method employed;

(2) the type of equipment used;

(3) the kind and amount of each material used;

(4) the times and places the equipment is operated;

(5) the name and post-office address of each individual, other than the licensee, who participates or assists in the operation; and

(6) other information required by the board.

(b) The board shall require written reports covering each operation, whether it is exempt or conducted under a permit.

(c) At the time and in the manner required by the board, a licensee shall submit a written report containing the information described in Subsection (a) of this section.

(d) All information on an operation shall be submitted to the board before it is released to the public.

(e) The reports and records in the custody of the board shall be kept open for public inspection.

[Acts 1971, 62nd Leg., p. 191, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 14.072 to 14.090 reserved for expansion]

SUBCHAPTER D. SANCTIONS

**§ 14.091. Suspension; Revocation; Refusal to Renew**

(a) The board may suspend or revoke a license or permit if it appears that the licensee:

(1) no longer has the qualifications necessary for the issuance of an original license or permit; or

(2) has violated any provision of this chapter.

(b) The board may refuse to renew the license of, or to issue another permit to, any applicant who has failed to comply with any provision of this chapter.

[Acts 1971, 62nd Leg., p. 191, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.092. Hearing Required**

The board may not suspend or revoke a license or permit without first giving the licensee notice and a reasonable opportunity to be heard with respect to the grounds for the board's proposed action.

[Acts 1971, 62nd Leg., p. 191, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.093. Record of Hearing**

The board shall have a record made of all proceedings at each hearing held under Section 14.092 of this code, and shall have the record filed with its findings and conclusions.

[Acts 1971, 62nd Leg., p. 192, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 14.094 to 14.100 reserved for expansion]

**§ 14.101. Immunity of State**

The state and its officers and employees are immune from liability for all weather modification and control activities conducted by private persons and groups.

[Acts 1971, 62nd Leg., p. 192, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 14.102. Private Legal Relationships**

(a) This chapter does not affect private legal relationships, except that an operation conducted under the license and permit requirements of this chapter is not an ultrahazardous activity which makes the participants subject to liability without fault.

(b) The fact that a person holds a license or permit under this chapter, or that he has complied with this chapter or the regulations issued under this chapter, is not admissible as evidence in any legal proceeding brought against him.

[Acts 1971, 62nd Leg., p. 192, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 14.103 to 14.110 reserved for expansion]

§ 14.111. Penalty

(a) A person who violates any provision of this chapter or any valid regulation or order issued under this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000, or by confinement in the county jail for not more than 10 days, or by both.

(b) A separate offense is committed each day a violation continues.

[Acts 1971, 62nd Leg., p. 192, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 14.112. Enforcement by Board

(a) Whenever it appears that a person has violated or is violating, or is threatening to violate, any provision of this chapter or any regulation, license, permit, or order of the board, then the board, or the executive director when authorized by the board, may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any regulation, license, permit, or order of the board, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the board, or the executive director when authorized by the board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

[Acts 1971, 62nd Leg., p. 1769, ch. 518, § 11, eff. May 31, 1971.]

[Chapters 15 to 20 reserved for expansion]

SUBTITLE C. WATER QUALITY CONTROL

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## SUBCHAPTER A. GENERAL PROVISIONS

## § 21.001. Short Title

This chapter may be cited as the Texas Water Quality Act.

[Acts 1971, 62nd Leg., p. 192, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 21.002. Policy

It is the policy of this state and the purpose of this chapter to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state; to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

[Acts 1971, 62nd Leg., p. 192, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 21.003. Definitions

As used in this chapter:

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

(2) "Executive director" means the executive director of the Texas Water Quality Board.

(3) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(4) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

(5) "Sewage" means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(6) "Municipal waste" means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

(7) "Recreational waste" means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

(8) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation, agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural prod-

ucts. The term "agricultural waste" does not include tail water or runoff water from irrigation, or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

(9) "Industrial waste" means waterborne liquid, gaseous, or solid substance that results from any process of industry, manufacturing, trade, or business.

(10) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste, that may cause impairment of the quality of water in the state. "Other waste" also includes tail water or runoff water from irrigation, or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland that may cause impairment of the quality of the water in the state.

(11) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(12) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(13) "Treatment facility" means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

(14) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

(15) "Local government" means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

(16) "Permit" means an order issued by the board in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water, and specifying the conditions under which the discharge may be made.

(17) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or

otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions. [Acts 1971, 62nd Leg., p. 193, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.004. Ownership of Underground Water**

Nothing in this chapter affects ownership rights in underground water. [Acts 1971, 62nd Leg., p. 194, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.005. Prior Actions of Pollution Control Board**

(a) All permits, orders, rules, regulations, water quality criteria, water quality standards, water quality requirements, and other actions taken, performed, or established by the Texas Water Pollution Control Board under Chapter 42, Acts of the 57th Legislature, 1st Called Session, 1961, as amended (Article 7621d, Vernon's Texas Civil Statutes),<sup>1</sup> are validated and remain in effect unless and until amended or superseded by order of the Texas Water Quality Board, and are administered by and under the jurisdiction of the Texas Water Quality Board.

(b) Where the Texas Water Pollution Control Board is referred to in any statute, rule, or regulation, the reference shall be construed to mean the Texas Water Quality Board.

[Acts 1971, 62nd Leg., p. 194, ch. 58, § 1, eff. Aug. 30, 1971.]  
<sup>1</sup> Repealed by Acts 1967, 60th Leg., p. 758, ch. 313, which enacted Civil Statutes, Art. 7621d-1 (repealed).

**§ 21.006. Repeal of Other Laws**

All general, local, and special laws enacted before September 1, 1969,<sup>1</sup> are repealed to the extent that those laws give local governments the authority to set and enforce water quality standards other than those adopted by the board under this chapter.

[Acts 1971, 62nd Leg., p. 195, ch. 58, § 1, eff. Aug. 30, 1971.]  
<sup>1</sup> Effective date of source statute: Acts 1969, 61st Leg., p. 2229, ch. 760.

[Sections 21.007 to 21.020 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**§ 21.021. Texas Water Quality Board**

The Texas Water Quality Board is an agency of the state. [Acts 1971, 62nd Leg., p. 195, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.022. Members of Board**

The board is composed of seven members, chosen as follows: Three are appointed by the governor with the advice and consent of the senate; and the other four are the executive director of the Texas Water Development Board, the state commissioner of health, the executive director of the Parks and Wildlife Department, and the chairman of the Texas Railroad Commission. Each of the latter four shall perform the duties of a member of the board as additional duties required of his other office.

[Acts 1971, 62nd Leg., p. 195, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.023. Terms of Appointed Members**

The members appointed by the governor hold office for staggered terms of six years, with the term of one member expiring on the first day of September in each odd-numbered year. Each of these members holds office until his successor is appointed and has qualified.

[Acts 1971, 62nd Leg., p. 195, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.024. Qualification by Members**

A member appointed by the governor while the senate is in session is qualified to serve on the board after his nomination has been confirmed by the senate and on taking the constitutional oath of office. A member appointed by the governor while the senate is not in session is qualified to serve on taking the constitutional oath of office, and serves until the expiration of his term or until his nomination is rejected by the senate, or is not confirmed by the senate at the next regular or special session.

[Acts 1971, 62nd Leg., p. 195, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.025. Record of Appointments**

The official records of the board shall reflect the date each member's certificate of appointment was issued by the secretary of state, the date he took the oath of office, the person who administered the oath, the date the appointive term began, and the date the term expires.

[Acts 1971, 62nd Leg., p. 196, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.026. Per Diem; Expenses**

(a) A member of the board is not entitled to a salary for duties performed as a member of the board; but each member appointed by the governor is entitled to \$25 for each day he is in attendance at meetings, hearings, or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing, or other authorized business.

(b) Each member of the board appointed by the governor is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties, as evidenced by vouchers approved by the executive director of the board. Each of the other members is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties for the board, out of funds made available for those purposes to the state agency of the member.

[Acts 1971, 62nd Leg., p. 196, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.027. Personal Representatives**

(a) The executive director of the Texas Water Development Board, the executive director of the Parks and Wildlife Department, the state commissioner of health, and the chairman of the Texas Railroad Commission may each delegate to a personal representative from his office the authority and duty to represent him on the board; but by this delegation a member is not relieved of responsibility for the acts and decisions of his representative.

(b) While engaged in performing official board duties as authorized by a member, a personal representative stands in the place of the member for the purpose of participating in and voting on matters at board meetings and hearings, and performing other business of the board. He has all the powers and duties of the member, including the power to take testimony at board hearings.

(c) A personal representative may serve as either chairman or vice chairman of the board.

(d) A personal representative is entitled to reimbursement for travel and other necessary expenses to the same extent and in the same manner as the member he represents.

[Acts 1971, 62nd Leg., p. 196, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.028. Board Officers**

The board shall elect a chairman and a vice chairman to serve two-year terms beginning on February 1 of each odd-numbered year.

[Acts 1971, 62nd Leg., p. 196, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.029. Board Meetings**

(a) The chairman, or in his absence the vice chairman, shall preside at all meetings of the board. In the absence of both the chairman and the vice chairman from any meeting of the board, the members present may select one of their number to serve as chairman for the meeting.

(b) The board shall have regular meetings at times specified by a majority vote of the board.

(c) The chairman may call special meetings at any time. He shall call a special meeting on written request signed by at least two members of the board.

(d) A majority of the board constitutes a quorum to transact business.

[Acts 1971, 62nd Leg., p. 196, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.030. Executive Director**

The board shall employ an executive director. The executive director is the chief administrative officer of the board. In addition to his other duties, he shall keep full and accurate minutes of all transactions and proceedings of the board; and he is the custodian of all the files and records of the board.

[Acts 1971, 62nd Leg., p. 197, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.031. Deputy Director; Staff**

(a) The executive director shall employ a deputy director, subject to the approval of the board. In the absence of the executive director, the deputy director shall assume his duties and functions.

(b) The executive director shall employ the staff authorized by the board. In addition to its own staff, the board may by interagency contract utilize, and upon the request of the board shall receive, the assistance of any state-supported educational institution, experimental station, or other state agency.

[Acts 1971, 62nd Leg., p. 197, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.032. Employee Moving Expense**

When provided by legislative appropriation, the board may pay the costs of transporting and delivering the household goods and effects of employees transferred by the board from one permanent station to another when, in the judgment of the board, the transfer will serve the best interest of the state. [Acts 1971, 62nd Leg., p. 197, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.033. Funds from Other State Agencies**

Any state agency that has statutory responsibilities for water pollution or water quality control and that receives a legislative appropriation for these purposes may transfer to the board any amount mutually agreed on by the board and the agency, subject to the approval of the governor. [Acts 1971, 62nd Leg., p. 197, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.034. Gifts and Grants**

The board may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out its duties. [Acts 1971, 62nd Leg., p. 197, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.035. Special Fund**

Money received by the board under Section 21.033 or 21.034 of this code shall be deposited in the state treasury and credited to a special fund. The board may use this fund for salaries, wages, professional and consulting fees, planning and construction grants, loans and contracts, travel expenses, equipment, and other necessary expenses incurred in carrying out its duties under this chapter, as provided by legislative appropriation. [Acts 1971, 62nd Leg., p. 197, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.036. Copies of Documents, Proceedings, Etc.**

Subject to the limitations of Section 21.264 of this code, on the application of any person, the board shall furnish certified or other copies of any proceeding or other official act of record, or of any map, paper, or document filed with the board. A certified copy with the seal of the board and the signature of the chairman or the executive director is admissible as evidence in any court or administrative proceeding. [Acts 1971, 62nd Leg., p. 198, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.037. Fees for Copies**

The board shall prescribe in its rules the fees which shall be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the board, except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in Article 3913, Revised Civil Statutes of Texas, 1925, as amended. [Acts 1971, 62nd Leg., p. 198, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.038. Documents, Etc., State Property; Open for Inspection**

All information, documents, and data collected by the board in the performance of its duties are the property of the state. Subject to the limitations of Section 21.264 of this code, all records are open to inspection by any person during regular office hours. [Acts 1971, 62nd Leg., p. 198, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.039. Biennial Reports**

The board shall make biennial written reports to the governor and to the legislature and shall include in each report a statement of its activities. [Acts 1971, 62nd Leg., p. 198, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.040. Seal**

The board shall adopt a seal. [Acts 1971, 62nd Leg., p. 198, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 21.041 to 21.060 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

**§ 21.061. In General**

The board shall administer the provisions of this chapter and shall establish the level of quality to be maintained in, and shall control the quality of, the water in this state as provided by this chapter. Waste discharges or impending waste discharges covered by the provisions of this chapter are subject to reasonable rules, regulations, or orders adopted or issued by the board in the public interest. The board has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities. [Acts 1971, 62nd Leg., p. 198, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.062. State Water Quality Plan**

The board shall prepare and develop a general, comprehensive plan for the control of water quality in the state. [Acts 1971, 62nd Leg., p. 199, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.063. Research, Investigations**

The board shall conduct, or have conducted, any research and investigations it considers advisable and necessary for the discharge of its duties under this chapter. [Acts 1971, 62nd Leg., p. 199, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.064. Power to Enter Property**

The members, employees, and agents of the board are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state. Members, employees, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management, or the person

then in charge, of his presence and shall exhibit proper credentials. If any member, employee, or agent of the board is refused the right to enter in or on public or private property under this authority, the board may invoke the remedies authorized in Section 21.253 of this code.

[Acts 1971, 62nd Leg., p. 199, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.065. Power to Examine Records

The members, employees, and agents of the board may examine during regular business hours any records or memoranda pertaining to the operation of any sewer system, disposal system, or treatment facility, or pertaining to any discharge of waste.

[Acts 1971, 62nd Leg., p. 199, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.066. Enforcement Proceedings

The board, or the executive director when authorized by the board, may institute court proceedings to compel compliance with the provisions of this chapter or the rules, orders, permits, or other decisions of the board.

[Acts 1971, 62nd Leg., p. 199, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.067. Cooperation

The board shall:

(1) encourage voluntary cooperation by the people, cities, industries, associations, agricultural interests, and representatives of other interests in preserving the greatest possible utility of water in the state;

(2) encourage the formation and organization of cooperative groups, associations, cities, industries, and other water users for the purpose of providing a medium to discuss and formulate plans for attainment of water quality control;

(3) establish policies and procedures for securing close cooperation among state agencies that have water quality control functions; and

(4) cooperate with the governments of the United States and other states, and with official or unofficial agencies and organizations, with respect to water quality control matters and with respect to formulation of interstate water quality control compacts or agreements; and when representation of state interests on a basin planning agency for water quality purposes is required under Section 3(c) of the Federal Water Pollution Control Act (33 U.S.C. Sec. 466 et seq.),<sup>1</sup> or other federal legislation having a similar purpose, the representation shall include an officer or employee of the board.

[Acts 1971, 62nd Leg., p. 199, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Transferred to 33 U.S.C.A. §§ 1151 et seq., 1153(c).

#### § 21.068. Contracts, Instruments

The board may make contracts and execute instruments that are necessary or convenient to the exercise of its powers or the performance of its duties.

[Acts 1971, 62nd Leg., p. 200, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.069. Rule-making

The board shall make and enforce rules reasonably required to effectuate the provisions of this chapter, including rules governing procedure and practice before the board. The board may amend any rule it makes. In making and amending rules, the board shall comply, as appropriate, with the requirements of Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes).

[Acts 1971, 62nd Leg., p. 200, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.070. Orders

(a) The board is authorized to issue orders and make determinations necessary to effectuate the purposes of this chapter.

(b) The board shall set forth the findings on which it bases any order granting or denying special relief requested of the board, or involving a determination following a hearing on an alleged violation of Section 21.251 of this code, or directing a person to perform or refrain from performing a certain act or activity.

(c) The executive director shall attest the orders of the board.

[Acts 1971, 62nd Leg., p. 200, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.071. Temporary Orders Prior to Notice and Hearing

(a) The board, or the executive director when authorized by the board, may issue temporary orders relating to the discharge of waste without notice and hearing, or with such notice and hearing as the board or the executive director considers practicable under the circumstances, when this is necessary to enable action to be taken more expeditiously than is otherwise provided by this chapter to effectuate the policy and purposes of this chapter.

(b) If the board or the executive director issues a temporary order under this authority without a hearing before the board, the order shall fix a time and place for a hearing to be held before the board, which shall be held as soon after the temporary order is issued as is practicable.

(c) At the hearing, the board shall affirm, modify, or set aside the temporary order. If the nature of the board's action requires, further proceedings shall be conducted as appropriate under other applicable provisions of this chapter.

(d) The requirements of Section 21.074 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to such a hearing, but such general notice of the hearing shall be given as the board or the executive director considers practicable under the circumstances.

[Acts 1971, 62nd Leg., p. 200, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.072. Hearing Powers

The board may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoe-

nas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this chapter or the rules, orders, or other actions of the board.

[Acts 1971, 62nd Leg., p. 201, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.073. Delegation of Hearing Powers**

(a) Except for those hearings required to be held before the board under Section 21.071(b) of this code, the board may authorize the executive director to call and hold hearings on any subject on which the board may hold a hearing.

(b) The board may also authorize the executive director to delegate to one or more employees of the board, or to professional or technical personnel under contract to the board, the authority to hold any hearing called by the executive director. The board may establish the qualifications required of the persons who may be delegated the authority by the executive director to hold hearings.

(c) At any hearing called by the executive director, he or the person delegated the authority by him to hold the hearing is empowered to administer oaths and receive evidence.

(d) The individual or individuals holding a hearing under the authority of this section shall report the hearing in the manner prescribed by the board. [Acts 1971, 62nd Leg., p. 201, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.074. Notice of Hearings; Continuance**

(a) Except as otherwise provided in Sections 21.071 and 21.356 of this code, the provisions of this section apply to all hearings conducted in compliance with this chapter.

(b) Notice of the hearing shall describe briefly and in summary form the purpose of the hearing and the date, time, and place of the hearing.

(c) Notice of the hearing shall be published at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, the board has reason to believe persons reside who may be affected by the action that may be taken as a result of the hearing. The date of the publication shall be not less than 20 days before the date set for the hearing.

(d) If notice of the hearing is required by this chapter to be given to a person, the notice shall be served personally or mailed not less than 20 days before the date set for the hearing to the person at his last address known to the board. If the party is not an individual, the notice may be given to any officer, agent, or legal representative of the party.

(e) The individual or individuals holding the hearing (hereinafter in this subsection called the hearing body) shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing a new notice.

(f) If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the person conducting the hearing at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed in Subsection (d) of this section at a reasonable time before the new setting, but it is not necessary to publish a newspaper notice of the new setting.

[Acts 1971, 62nd Leg., p. 201, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 443, ch. 194, § 9, eff. May 25, 1973.]

**§ 21.075. Water Quality Standards**

The board, by order, shall set water quality standards for the water in the state, and may amend the standards from time to time. The board has the sole and exclusive authority to set water quality standards for all water in the state.

[Acts 1971, 62nd Leg., p. 202, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.076. Hearings on Standards; Consultation**

Before setting or amending water quality standards, the board shall:

(1) hold public hearings at which any person may appear and present evidence, under oath, pertinent for consideration by the board; and

(2) consult with the Texas Water Development Board and the Texas Water Rights Commission to insure that the proposed standards are not inconsistent with the objectives of the state water plan.

[Acts 1971, 62nd Leg., p. 202, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.077. Hearings on Standards: Notice to Whom**

Notice of a hearing under Section 21.076 of this code shall be given to each of the following that the board believes may be affected:

(1) each local government whose boundary is contiguous to the water in question, or whose boundaries contain all or part of the water, or through whose boundaries the water flows;

(2) the holders of rights to appropriate water from the water in question, as shown by the records of the Texas Water Rights Commission; and

(3) the holders of permits from the board to discharge waste into or adjacent to the water in question.

[Acts 1971, 62nd Leg., p. 202, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.078. Standards to be Published**

The board shall publish its water quality standards and amendments and shall make copies available to the public on written request.

[Acts 1971, 62nd Leg., p. 202, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.079. Board May Issue Permits**

(a) The board may issue permits and amendments to permits for the discharge of waste into or adjacent to water in the state.

(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the board containing all information reasonably required by the board or the executive director.

(c) A person may not commence construction of a treatment facility until the board has issued a permit to authorize the discharge of waste from the facility, except with the approval of the board.

[Acts 1971, 62nd Leg., p. 203, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 443, ch. 194, § 9, eff. May 25, 1973.]

#### § 21.080. Action on Application

(a) Except as provided in Subsection (b) of this section, a public hearing shall be held on an application for a permit or to amend a permit. Notice of the hearing shall be given to the persons who in the judgment of the board may be affected.

(b) An application to amend a permit to improve the quality of waste authorized to be discharged may be set for consideration and may be acted on by the board at a regular meeting without the necessity of holding a public hearing if the applicant does not seek to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge. Notice of the application shall be mailed to the mayor and health authorities for the city or town, and the county judge and health authorities for the county, in which the waste is or will be discharged, at least 10 days before the board meeting, and they may present information to the board on the application.

[Acts 1971, 62nd Leg., p. 203, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.081. Conditions of Permit; Amendment; Revocation and Suspension

(a) In each permit the board shall prescribe the conditions on which it is issued, including:

- (1) the duration of the permit;
- (2) the location of the point of discharge of the waste;
- (3) the maximum quantity of waste that may be discharged under the permit at any time and from time to time;
- (4) the character and quality of waste that may be discharged under the permit; and
- (5) any monitoring and reporting requirements prescribed by the board for the permittee.

(b) After a public hearing, notice of which shall be given to the permittee, the board may require the permittee, from time to time, for good cause, to conform to new or additional conditions. The board shall allow the permittee a reasonable time to conform to the new or additional conditions, and on application of the permittee, the board may grant additional time.

(c) A permit does not become a vested right in the permittee. After a public hearing, notice of which shall be given to the permittee, the board may

revoke or suspend a permit for good cause on any of the following grounds:

- (1) the permittee has failed or is failing to comply with the conditions of the permit;
- (2) the permit is subject to cancellation or suspension under Section 21.204 of this code;
- (3) the permit or operations under the permit have been abandoned; or
- (4) the permit is no longer needed by the permittee.

(d) The notice required by Subsections (b) and (c) of this section shall be sent to the permittee at his last known address as shown by the records of the board.

[Acts 1971, 62nd Leg., p. 203, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 443, ch. 194, § 9, eff. May 25, 1973.]

#### § 21.082. Permit: Effect on Recreational Water

In considering the issuance of a permit to discharge effluent into any body of water having an established recreational standard, the board shall consider any unpleasant odor quality of the effluent and the possible adverse effect that it might have on the receiving body of water; and the board may consider the odor as one of the elements of the water quality of the effluent.

[Acts 1971, 62nd Leg., p. 204, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.083. Private Sewage Facilities

(a) As used in this Section and Section 21.084 of this code "private sewage facilities" means septic tanks, pit privies, cesspools, sewage holding tanks, injection wells used to dispose of sewage, chemical toilets, treatment tanks, and all other facilities, systems, and methods used for the disposal of sewage other than disposal systems operated under a permit issued by the board.

(b) Whenever it appears that the use of private sewage facilities in an area is causing or may cause pollution, or is injuring or may injure the public health, the board may hold a public hearing in or near the area to determine whether an order should be entered controlling or prohibiting the installation or use of private sewage facilities in the area.

(c) Before entering such an order, the board shall consult with the State Commissioner of Health for recommendations concerning the impact of the use of private sewage facilities in the area on public health.

(d) If the board finds after the hearing that the use of private sewage facilities in an area is causing or may cause pollution, or is injuring or may injure the public health, the board may enter an order adopting such regulations on private sewage facilities as it may consider appropriate to abate or prevent pollution or injury to public health.

(e) The regulations so ordered may, without limitation, do one or more of the following:

- (1) limit the number and kind of private sewage facilities which may be used in the area;

(2) prohibit the installation and use of additional private sewage facilities or kinds of private sewage facilities in the area;

(3) require modifications or improvements to existing private sewage facilities or impose limitations on their use; and

(4) provide for a gradual and systematic reduction of the number or kinds of private sewage facilities in the area.

(f) The board may provide in the regulations for a system of licensing of private sewage facilities in the area, including procedures for cancellation of a license for violation of this Act, the license, or the orders or regulations of the board. The board may also provide in the system of licensing for periodic renewal of the licenses, but this may not be required more frequently than once a year.

(g) The board may delegate the licensing function and the administration of the licensing system to the executive director or to any local government whose boundaries include the area or which has been designated by the board under Sections 21.201–21.205 of this code as the agency to develop a regional waste disposal system which includes the area.

(h) The board also may prescribe and require the payment of reasonable license fees by an applicant for a license, including fees for periodic renewal of a license. The board may change the amount of the license fees from time to time. The amount of the fees shall be based on the reasonable cost of performing the licensing function and administering the licensing system, including, where applicable, costs of soil percolation and other tests to determine the suitability of using a particular type or types of private sewage facilities in the area or at any location within the area, field inspections, travel, and other costs directly attributable to performing the licensing function and administering the licensing system.

(i) If the board or the executive director has the responsibility for performing the licensing function, the license fees shall be paid to the board. Those fees shall not be deposited in the general revenue fund of the state, but shall be deposited in a special fund for use by the board in performing the licensing function and administering the licensing system, and the fees so deposited are hereby appropriated to the board to use for those purposes only.

(j) If a local government has the responsibility for performing the licensing function, the fees shall be paid to the local government.

[Acts 1971, 62nd Leg., p. 204, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1975, ch. 612, art. 1, § 3, eff. Sept. 1, 1971.]

**§ 21.084. Control by Counties**

(a) Whenever it appears to the commissioners court of any county that the use of private sewage facilities in an area within the county is causing or may cause pollution, or is injuring or may injure the public health, the county may proceed in the same

manner and in accordance with the same procedures as the board to hold a public hearing and enter an order, resolution, or other regulation as it may consider appropriate to abate or prevent pollution or injury to public health.

(b) The order, resolution, or other regulation may provide the same restrictions and requirements as are authorized for an order of the board entered under this section.

(c) Before the order, resolution, or other regulation becomes effective, the county shall submit it to the board and obtain the board's written approval.

(d) In the event of any conflict within an area between an order adopted by the board and an order, resolution, or other regulation adopted by a county under this section, the order of the board shall take precedence.

(e) Where a system of licensing has been ordered by the board or the commissioners court of a county, no person may install or use private sewage facilities required to be licensed thereunder without obtaining such a license.

[Acts 1971, 62nd Leg., p. 204, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1976, ch. 612, art. 1, § 3, eff. Sept. 1, 1971.]

**§ 21.085. Rating of Waste Disposal Systems**

(a) After consultation with the State Department of Health, the board shall provide by rule for a system of approved ratings for municipal waste disposal systems and other waste disposal systems which the board may designate.

(b) The owner or operator of a municipal waste disposal system which attains an approved rating has the privilege of erecting signs of a design approved by the board on highways approaching or inside the boundaries of the municipality, subject to reasonable restrictions and requirements which may be established by the Texas Highway Department.

(c) In addition, the owner or operator of any waste disposal system, including a municipal system, which attains an approved rating has the privilege of erecting signs of a design approved by the board at locations which may be approved or established by the board, subject to such reasonable restrictions and requirements which may be imposed by any governmental entity having jurisdiction.

(d) If the waste disposal system fails to continue to achieve an approved rating, the board may revoke the privilege. On due notice from the board, the owner or operator of the system shall remove the signs.

[Acts 1971, 62nd Leg., p. 205, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.086. Approval of Disposal System Plans**

(a) This section applies to all sewer systems, treatment facilities, and disposal systems, except those public sewage disposal systems for which plans are subject to review and approval by the State Department of Health or by the Texas Water Rights Commission under statutes pertaining to water districts.

(b) Before beginning construction, every person who proposes to construct or materially alter the efficiency of any sewer system, treatment facility, or disposal system to which this section applies shall submit completed plans and specifications to and obtain the approval of the plans by the board or, when authorized by the board, the executive director.

(c) The board, or the executive director when authorized by the board, shall approve the plans and specifications if they conform to the waste discharge requirements and water quality standards established by the board.

[Acts 1971, 62nd Leg., p. 205, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 21.087. Federal Grants

The board may execute agreements with the Department of the Interior, the Federal Water Pollution Control Administration,<sup>1</sup> or any other federal agency that administers programs providing federal cooperation, assistance, grants, or loans for research, development, investigation, training, planning, studies, programming, and construction related to methods, procedures, and facilities for the collection, treatment, and disposal of waste or other water quality control activities. The board may accept federal funds for these purposes and for other purposes consistent with the objectives of this chapter, and may use the funds as prescribed by law or as provided by agreement.

[Acts 1971, 62nd Leg., p. 205, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Name changed to "Federal Water Quality Administration". See 33 U.S.C.A. § 1152 et seq.

### § 21.088. Water Quality Management Plans

(a) The board may develop and prepare, and from time to time revise, comprehensive water quality management plans for the different areas of the state, as designated by the board.

(b) The board may contract with local governments, regional planning commissions, planning agencies, other state agencies, colleges and universities in the state, and any other qualified and competent person to assist the board in developing and preparing, and from time to time revising, water quality management plans for areas designated by the board.

(c) With funds provided for the purpose by legislative appropriation, the board may make grants or interest-free loans to, or contract with, local governments, regional planning commissions, and planning agencies to pay administrative and other expenses of such entities for developing and preparing, and from time to time revising, water quality management plans for areas designated by the board. The period of time for which funding under this provision may be provided for developing and preparing, or for revising, a plan may not exceed three consecutive years in each instance. Any loan made pursuant to this subsection shall be repaid when the construction of any project included in the plan is begun.

(d) Any person developing or revising a plan shall, during the course of the work, consult with the board, and with local governments and other federal, state, and local governmental agencies which in the judgment of the board or the executive director may be affected by or have a legitimate interest in the plan.

(e) Insofar as may be practical, the water quality management plans shall be reasonably compatible with the other governmental plans for the area, such as area or regional transportation, public utility, zoning, public education, recreation, housing, and other related development plans.

[Acts 1971, 62nd Leg., p. 206, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1976, ch. 612, art. 1, § 4, eff. Sept. 1, 1971.]

### § 21.089. Approval of Plans

(a) After a water quality management plan has been prepared or significantly revised, as authorized in Section 21.088 of this code, it shall be submitted to the board and to such local governments and other federal, state, and local governmental agencies as in the judgment of the board or the executive director may be affected by or have a legitimate interest in the plan.

(b) After a reasonable period of time as determined by the board for the persons to whom the plan was submitted to review and consult on the plan, a public hearing shall be held on whether the plan should be approved or whether the plan should be modified in any way. Notice of the hearing shall be given to the person or persons who prepared or revised the plan and to the persons to whom the plan was submitted for review.

(c) After the public hearing if the board finds that the plan complies with the policy and purpose of this chapter and the rules and policies of the board, it shall approve the plan. If the board does not so find, it may disapprove the plan, modify the plan as necessary so that it will comply, or return it for further development and later resubmission to the board, in accordance with the procedure in Section 21.088 and this code.

(d) When a water quality management plan has been approved as provided in this section, the plan may be furnished to the Federal Environmental Protection Agency,<sup>1</sup> the Federal Water Quality Administration,<sup>2</sup> or any other federal official or agency in fulfillment of any federal water quality management planning requirement specified for any purpose by the federal government.

(e) The board may use an approved water quality management plan, or a plan in progress but not completed or approved, in reviewing and making determinations on applications for permits and on applications for financial assistance for construction of treatment works.

[Acts 1971, 62nd Leg., p. 207, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1977, ch. 612, art. 1, § 4, eff. Sept. 1, 1971.]

<sup>1</sup> See 42 U.S.C.A. § 4321 (note).

<sup>2</sup> See 33 U.S.C.A. § 1152 et seq.

§ 21.0891. Repealed by Acts 1973, 63rd Leg., p. 437, ch. 194, § 5, eff. May 25, 1973

§ 21.090. **Fiscal Control on Water Quality Management Planning**

In administering the program for making grants and loans to and contracting with local governments, regional planning commissions, and planning agencies, as authorized in Subsection (c) of Section 21.088 of this code, the board shall adopt rules and procedures for the necessary engineering review and supervision, fiscal control, and fund accounting. The fiscal control and fund accounting procedures are supplemental to other procedures prescribed by law. [Acts 1971, 62nd Leg., p. 207, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1978, ch. 612, art. 1, § 4, eff. Sept. 1, 1971.]

§ 21.091. **Accidental Discharges and Spills**

(a) As used in this section:

(1) "Accidental discharge" means an act or omission through which waste or other substances are inadvertently discharged into water in the state.

(2) "Spill" means an act or omission through which waste or other substances are deposited where, unless controlled or removed, they will drain, seep, run, or otherwise enter water in the state.

(3) "Other substances" means substances which may be useful or valuable and therefore are not ordinarily considered to be waste, but which will cause pollution if discharged into water in the state.

(b) Whenever an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the office of the board as soon as possible and not later than 24 hours after the occurrence.

(c) Activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances, and which pose serious or significant threats of pollution, are subject to reasonable rules or orders establishing safety and preventive measures which the board may adopt or issue. The safety and preventive measures which may be required shall be commensurate with the potential harm which could result from the escape of the waste or other substances.

(d) The provisions of this section are cumulative of the other provisions in this chapter relating to waste discharges, and nothing in this section exempts any person from complying with or being subject to any other provision of this chapter.

[Acts 1971, 62nd Leg., p. 207, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 21.092. **Control of Certain Waste Discharges by Rule**

Whenever the board determines that the quality of water in an area is adversely affected or threat-

ened by the combined effects of several relatively small-quantity discharges of wastes being made for which it is not practical to issue individual permits, or that the general nature of a particular type of activity which produces a waste discharge is such that requiring individual permits is unnecessarily burdensome both to the waste discharger and the board, the board may, by rule, regulate and set the requirements and conditions for the discharges of waste.

[Acts 1971, 62nd Leg., p. 208, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 21.093. **Health Hazards**

The board may use any means provided by this chapter to prevent a discharge of waste that is injurious to public health.

[Acts 1971, 62nd Leg., p. 208, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 21.094. **Monitoring and Reporting**

The board may prescribe reasonable requirements for a person making waste discharges to monitor and report on his waste collection, treatment, and disposal activities. When in the judgment of the board significant water quality management benefits will result or water quality management needs justify, the board may also prescribe reasonable requirements for any person or persons making waste discharges to monitor and report on the quality of any water in the state which the board has reason to believe may be materially affected by the waste discharges.

[Acts 1971, 62nd Leg., p. 208, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 21.095. **The State of Texas Water Pollution Control Compact**

(a) The legislature recognizes that various river authorities (as defined in Article 7621g, Vernon's Texas Civil Statutes<sup>1</sup> and/or Chapter 25 of this code) and municipal water districts and authorities of the state have signed, and that others are authorized to sign and may sign, a document entitled "The State of Texas Water Pollution Control Compact," (hereinafter called the "Compact") which was approved by Order of the Texas Water Quality Board on March 26, 1971, and which is now on file in the official records of said board, wherein each of the signatories is by law an official agency of the state, created pursuant to Article XVI, Section 59 of the Texas Constitution, and operating on a multiple county or regional basis, and that collectively those signatories constitute an agency of the state authorized to agree to pay, and to pay, for and on behalf of the state, not less than twenty-five per centum of the estimated costs of all water pollution control projects in the state, wherever located, for which federal grants are to be made pursuant to clause (7) of subsection (b) of Section 1158 of Title 33 of the United States Code (the Federal Water Pollution Control Act), as amended,<sup>2</sup> or any similar law, in accordance with and subject to the terms and conditions of the Compact. The Compact provides a method for taking advantage of increased federal

grants for water pollution control projects by virtue of the state payment, which will be made from the proceeds from the sale of bonds by the signatories to the Compact. The Compact is hereby ratified and approved, and it is hereby provided that Section 4a of Article 7621g, Vernon's Texas Civil Statutes and/or Section 25.026 of this code shall not constitute a limitation or restriction on any signatory, with respect to any contract entered into pursuant to the Compact or with respect to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made, and such signatory shall not be required to obtain the consent of any other river authority or conservation and reclamation district, which is not a signatory, with respect to any such contract or project. Each signatory to the Compact is empowered and authorized to do any and all things, and to take any and all action, and to execute any and all contracts and documents, which are necessary or convenient in carrying out the purposes and objectives of the Compact and issuing bonds pursuant thereto, with reference to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made.

(b) It is further found, determined, and enacted that all bonds issued pursuant to said Compact, and all bonds issued to refund or refinance same, are and will be for water quality enhancement purposes, within the meaning of Article III, Section 49-d-1, of the Texas Constitution, and any and all bonds issued by a signatory to said Compact to pay for all or any part of a project pursuant to the Compact, and any bonds issued to refund or refinance any such bonds, may be purchased by the Texas Water Development Board, upon the direction of the Texas Water Quality Board, with money received from the sale of Texas Water Development Board bonds pursuant to said Article III, Section 49-d-1 of the Texas Constitution. Said bonds or refunding bonds shall be purchased directly from any such signatory at such price as is necessary to provide the state payment and any other part of the cost of the project, or necessary to accomplish the refunding; and all such purchases shall constitute loans for water quality enhancement. Said bonds or refunding bonds shall have the characteristics and be issued upon such terms and conditions as are acceptable to the Texas Water Quality Board. The proceeds received by any such signatory from the sale of any such bonds shall be used to provide the state payment pursuant to the Compact and any other part of the cost of the project; and the proceeds from the sale of any such refunding bonds to refund any outstanding bonds issued pursuant to the Compact shall be used to pay off and retire the bonds being refunded thereby.

(c) It is further enacted and provided that the provisions of the foregoing paragraphs (a) and (b) shall be effective immediately upon enactment, notwithstanding the fact that other provisions of this code will not become effective until September 1, 1971.

(d) This subsection is not intended to interfere in any way with the operation of Article III, Section 49-d-1 of the Texas Constitution or the enabling legislation enacted pursuant thereto, and the aforesaid Compact shall constitute merely a complementary or supplemental method for providing the state payment solely in instances that it is deemed necessary or advisable by the Texas Water Quality Board, particularly during the initial period while the procedures for implementing Article III, Section 49-d-1 are being established and put into effective operation.

[Acts 1971, 62nd Leg., p. 1771, ch. 518, § 20, eff. May 31, 1971.]

<sup>1</sup> Repealed by Acts 1971, 62nd Leg., p. 658, ch. 58, § 2. See, now, §§ 25.001 et seq., 25.003(4).

<sup>2</sup> 33 U.S.C.A. § 1158(b)(7).

#### § 21.096 [Blank]

#### § 21.097. Disposal of Boat Sewage

(a) As used in this section, "boat" means any vessel or other watercraft, whether moved by oars, paddles, sails, or other power mechanism, inboard or outboard, or any other vessel or structure floating on water in this state, whether or not capable of self-locomotion, including, but not limited to cabin cruisers, houseboats, barges, marinas, and similar floating objects.

(b) Within twelve months after this section takes effect the board shall issue regulations concerning the disposal of sewage from boats located or operated on inland fresh waters in this state. The regulations of the board take effect six months after they are issued unless an earlier effective date is specified in the regulations. The regulations of the board shall include, but not be limited to, provisions for the establishment of standards for sewage disposal devices, the certification of sewage disposal devices, including on-shore pump out facilities, and the visible and conspicuous display of evidence of certification of sewage disposal devices on each boat equipped with such device and on each on-shore pump out device.

(c) The board may delegate the administration and performance of the certification function to the executive director or to any other governmental entity. The board may prescribe and require the payment, by applicants for certification, of reasonable fees based on the cost of administering and performing the certification function. All certification fees shall be paid to the entity performing the certification function. All fees collected by any state agency shall be deposited in a special fund for use by that agency in administering and performing the certification function and shall not be deposited in the general revenue fund of the state.

(d) Before issuing any regulations under Subsection (b) of this section, the board, or any person authorized by it under Section 21.073 of this code, shall hold hearings thereon in Austin, Texas, and in five other locations in the state in order to provide the best opportunity for all citizens of the state to appear and present evidence to the board.

(e) Notice of each hearing shall describe briefly in summary form the purpose of the hearing and the date, time, and place of the hearing. Notice of the hearing in Austin shall be published at least once in one or more newspapers having general circulation in the state. Notice of each of the other hearings shall be published at least once in one or more newspapers having general circulation in the region in which each hearing is to be held.

(f) Copies of each regulation issued by the board under this section shall be filed in the offices of the board in Austin, Texas, in the office of the Secretary of State in Austin, Texas, and the office of the County Clerk in each county in the state. The board shall provide for publication of notice of each regulation issued under this section in at least one newspaper of general circulation in each county of the state and shall furnish the County Judge of each county of the state, a copy of such regulations.

[Acts 1973, 63rd Leg., p. 1686, ch. 612, § 1, eff. June 15, 1973.]

[Sections 21.098 to 21.200 reserved for expansion]

SUBCHAPTER D. REGIONAL AND AREA-WIDE SYSTEMS

§ 21.201. Regional or Area-wide Systems; General Policy

(a) The legislature finds and declares that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.

(b) Within any standard metropolitan statistical area in the state, the board is authorized to implement this policy in the manner and in accordance with the procedure provided in Sections 21.201-21.205 of this code.

(c) In those portions of the state which are not within a standard metropolitan statistical area, the board shall observe this state policy by encouraging interested and affected persons to cooperate in developing and using regional and area-wide systems. The board may not use the procedure specified in Sections 21.201-21.205 of this code in these areas to implement this policy. However, this does not affect or diminish any authority which the board may otherwise have and exercise under other provisions of this chapter.

(d) The term "standard metropolitan statistical area," as used in this section, means an area consisting of a county or one or more contiguous counties which is officially designated as such by the United States Bureau of the Budget or its successor in this function.

[Acts 1971, 62nd Leg., p. 208, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 21.202. Hearing to Define Area of Regional or Area-wide Systems

(a) Whenever it appears to the board that because of the existing or reasonably foreseeable residential, commercial, industrial, recreational, or other economic development in an area a regional or area-wide waste collection, treatment, or disposal system or systems are necessary to prevent pollution or maintain and enhance the quality of the water in the state, the board may hold a public hearing in or near the area to determine whether the policy stated in Section 21.201 of this code should be implemented in that area.

(b) Notice of the hearing shall be given to the local governments which in the judgment of the board may be affected.

(c) If after the hearing the board finds that a regional or area-wide system or systems are necessary or desirable to prevent pollution or maintain and enhance the quality of the water in the state, the board may enter an order defining the area in which such a system or systems are necessary or desirable.

[Acts 1971, 62nd Leg., p. 209, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 21.203. Hearing to Designate Systems to Serve the Area Defined; Order; Etc.

(a) At the hearing held under Section 21.202 of this code, or at a subsequent hearing held in or near an area defined under Section 21.202 of this code, the board may consider whether to designate the person to provide a regional or area-wide system or systems to serve all or part of the waste collection, treatment, or disposal needs of the area defined.

(b) Notice of the hearing shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the board may be affected.

(c) If after the hearing the board finds that there is an existing or proposed system or systems then capable, or which in the reasonably foreseeable future will be capable, of serving the waste collection, treatment, or disposal needs of all or part of the area defined, and that the owners or operators of the system or systems are agreeable to providing the services, the board may enter an order designating the person to provide the waste collection, treatment, or disposal system or systems to serve all or part of the area defined.

[Acts 1971, 62nd Leg., p. 209, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 21.204. Actions Available to Board After Designating Systems

(a) After the board has entered an order as authorized in Section 21.203 of this chapter, the board may, after public hearing and after giving notice of the hearing to the persons who in the judgment of the board may be affected, take any one or more of the following actions:

- (1) enter an order requiring any person discharging or proposing to discharge waste into or adjacent to the water in the state in an area

defined in an order entered under Section 21.202 of this code to use a regional or area-wide system designated under Section 21.203 of this code for the disposal of his waste;

(2) refuse to grant any permits for the discharge of waste, or to approve any plans for the construction or material alteration of any sewer system, treatment facility, or disposal system in an area defined in an order entered under Section 21.202 of this code unless the permits or plans comply and are consistent with any orders entered under Sections 21.201–21.205 of this code; or

(3) cancel or suspend any permit, or amend any permit in any particular, which authorizes the discharge of waste in an area defined in an order entered under Section 21.202 of this code.

(b) Before exercising the authority granted in this section, the board shall find affirmatively:

(1) that there is an existing or proposed regional or area-wide system designated under Section 21.203 of this code which is capable, or which in the reasonably foreseeable future will be capable, of serving the waste collection, treatment, or disposal needs of the person or persons who are the subject of an action taken by the board under this section;

(2) that the owner or operator of the designated regional or area-wide system is agreeable to providing the service; and

(3) that it is feasible for the service to be provided on the basis of waste collection, treatment and disposal technology, engineering, financial, and related considerations existing at the time, exclusive of any loss of revenue from any existing or proposed waste collection, treatment, or disposal systems in which the person or persons who are the subject of an action taken under this section have an interest.

[Acts 1971, 62nd Leg., p. 209, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.205. Rates for Services by Designated Systems

(a) On motion of any interested party and after a public hearing, the board may set reasonable rates for the furnishing of waste collection, treatment, or disposal services to any person by a regional or area-wide system designated under Section 21.203 of this code.

(b) Notice of the hearing shall be given to the owner or operator of the designated regional or area-wide system, the person requesting the hearing, and any other person who, in the judgment of the board, may be affected by the action taken by the board as a result of the hearing.

(c) After the hearing the board shall enter an order setting forth its findings and the rates which may be charged for the services by the owner or operator of the designated regional or area-wide system.

[Acts 1971, 62nd Leg., p. 210, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 21.206 to 21.250 reserved for expansion]

### SUBCHAPTER E. PROHIBITION AGAINST POLLUTION; ENFORCEMENT

#### § 21.251. Unauthorized Discharges Prohibited

(a) Except as authorized by a rule, regulation, permit, or other order issued by the board, or the executive director when authorized by the board, no person may:

(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

(2) discharge other waste into or adjacent to any water in the state which in itself, or in conjunction with any other discharge or activity, causes, continues to cause, or will cause pollution of any of the water in the state; or

(3) commit any other act or engage in any other activity, which in itself, or in conjunction with any other discharge or activity, causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Texas Railroad Commission, in which case this Subdivision (3) does not apply.

(b) In the enforcement of Subdivisions (2) and (3) of Subsection (a) of this section, consideration shall be given to the state of existing technology, economic feasibility, and the water quality needs of the waters that might be affected.

(c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any rule, regulation, permit, or other order of the board. [Acts 1971, 62nd Leg., p. 211, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.252. Civil Penalty

A person who violates any provision of this chapter or any rule, regulation, permit, or other order of the board is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, to be recovered as provided in this subchapter.

[Acts 1971, 62nd Leg., p. 211, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.253. Enforcement by Board

(a) Whenever it appears that a person has violated or is violating, or is threatening to violate, any provision of this chapter, or any rule, regulation, permit, or other order of the board, then the board, or the executive director when authorized by the board, may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, permit, or other order of the board, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the board, or the executive director when authorized by the board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

[Acts 1971, 62nd Leg., p. 211, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.254. Enforcement by Others**

(a) Whenever it appears that a violation or threat of violation of any provision of Section 21.251 of this code or any rule, regulation, permit, or other order of the board has occurred or is occurring within the jurisdiction of a local government, exclusive of its extra-territorial jurisdiction, the local government, in the same manner as the board, may have a suit instituted in a district court through its own attorney for the injunctive relief or civil penalties or both, as authorized in Subsection (a) of Section 21.253 of this code, against the person who committed, or is committing or threatening to commit, the violation. This power may not be exercised by a local government unless its governing body adopts a resolution authorizing the exercise of the power. In a suit brought by a local government under this section, the board is a necessary and indispensable party.

(b) Whenever it appears that a violation or a threat of violation of any provision of Section 21.251 of this code or any rule, regulation, permit, or other order of the board has occurred or is occurring that affects aquatic life or wildlife, the Parks and Wildlife Department, in the same manner as the board, may have a suit instituted in a district court for injunctive relief or civil penalties or both, as authorized in Section 21.253(a) of this code, against the person who committed or is committing, or is threatening to commit, the violation. The suit shall be brought in the name of the State of Texas through the county attorney or the district attorney, as appropriate, of the county where the defendant resides or in the county where the violation or threat of violation occurs.

[Acts 1971, 62nd Leg., p. 212, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.255. Venue and Procedure**

(a) A suit for injunctive relief or recovery of a civil penalty or for both injunctive relief and penalty may be brought either in the county in which the defendant resides or in the county in which the violation or threat of violation occurs.

(b) In any suit brought to enjoin a violation or threat of violation of this chapter or any rule, regulation, permit, or other order of the board, the court may grant the board, the Parks and Wildlife Department,

or the local government, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

(c) A suit brought under this chapter shall be given precedence over all other cases of a different nature on the docket of the trial or appellate court.

(d) Either party may appeal from a final judgment of the court as in other civil cases.

[Acts 1971, 62nd Leg., p. 212, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.256. Disposition of Civil Penalties**

(a) All civil penalties recovered in suits instituted by the State of Texas under this chapter through the board or the Parks and Wildlife Department shall be paid to the General Revenue Fund of the State of Texas.

(b) All civil penalties recovered in suits instituted by a local government or governments under this chapter shall be equally divided between the State of Texas and the local government or governments first instituting the suit, with 50 percent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 percent paid equally to the local government or governments first instituting the suit.

[Acts 1971, 62nd Leg., p. 213, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.257. Board as Principal Authority**

The Texas Water Quality Board is the principal authority in the state on matters relating to the quality of the water in the state. The board has the responsibility for establishing a water quality sampling and monitoring program for the state. All other state agencies engaged in water quality or water pollution control activities shall coordinate those activities with the board.

[Acts 1971, 62nd Leg., p. 213, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.258. Water Development Board: Groundwater Quality**

The Texas Water Development Board shall investigate all matters concerning the quality of groundwater in the state and shall report its findings and recommendations to the Texas Water Quality Board.

[Acts 1971, 62nd Leg., p. 213, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.259. Duty of Parks and Wildlife Department**

The Parks and Wildlife Department and its authorized employees shall enforce the provisions of this chapter to the extent that any violation affects aquatic life and wildlife as provided in Section 21.254(b) of this code.

[Acts 1971, 62nd Leg., p. 213, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.260. Duty of Health Department**

The State Department of Health shall continue to apply the authority vested in it by Chapter 178, Acts

of the 49th Legislature, 1945, as last amended by Chapter 446, Acts of the 57th Legislature, Regular Session, 1961 (Article 4477-1, Vernon's Texas Civil Statutes), in the abatement of nuisances resulting from pollution not otherwise covered by this chapter. The State Department of Health shall investigate and make recommendations to the board concerning the health aspects of matters related to the quality of the water in the state.

[Acts 1971, 62nd Leg., p. 213, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.261. Duties of Railroad Commission

The Texas Railroad Commission is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from activities associated with the exploration, development, and production of oil or gas. The commission may issue permits for the discharge of waste resulting from these activities; and discharge of waste into water in this state resulting from these activities shall meet the water quality standards established by the board.

[Acts 1971, 62nd Leg., p. 213, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.262. Act of God, War, Etc.

Any pollution, or any discharge of waste without a permit or in violation of a permit, caused by an act of God, war, strike, riot, or other catastrophe is not a violation of this chapter.

[Acts 1971, 62nd Leg., p. 214, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.263. Effect on Private Remedies

Nothing in this chapter affects the right of any private corporation or individual to pursue any available common-law remedy to abate a condition of pollution or other nuisance or to recover damages.

[Acts 1971, 62nd Leg., p. 214, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.264. Secret Processes, Etc.

Nothing in this chapter requires any person to disclose any classified data of the federal government or any confidential information relating to secret processes or economics of operation.

[Acts 1971, 62nd Leg., p. 214, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.265. Effect on Other Laws

(a) Nothing in this chapter affects the powers and duties of the Texas Water Quality Board and the Texas Railroad Commission with respect to injection wells as provided in Chapter 22 of this code.

(b) The Texas Water Development Board and the Texas Water Well Drillers Board shall continue to exercise the authority granted to them in Chapter 264, Acts of the 59th Legislature, Regular Session, 1965 (Article 7621e, Vernon's Texas Civil Statutes).

[Acts 1971, 62nd Leg., p. 214, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 21.266 to 21.350 reserved for expansion]

### SUBCHAPTER F. AUTHORITY OF LOCAL GOVERNMENTS

#### § 21.351. Inspection of Public Water

A local government may inspect the public water in its area and determine whether or not:

(1) the quality of the water meets the state water quality standards adopted by the board;

(2) persons discharging effluent into the public water located in the areas of which the local government has jurisdiction have obtained permits for discharge of the effluent; and

(3) persons who have permits are making discharges in compliance with the requirements of the permits.

[Acts 1971, 62nd Leg., p. 214, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.352. Recommendations to Board

A local government may make written recommendations to the board as to what in its judgment the water quality standards should be for any public water within its territorial jurisdiction.

[Acts 1971, 62nd Leg., p. 215, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.353. Power to Enter Property

(a) A local government has the same power as the board has under Section 21.064 of this code to enter public and private property within its territorial jurisdiction to make inspections and investigations of conditions relating to water quality. The local government in exercising this power is subject to the same provisions and restrictions as the board.

(b) When requested by the board, the result of any inspection or investigation made by the local government shall be transmitted to the board for its consideration.

[Acts 1971, 62nd Leg., p. 215, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.354. Enforcement Action

A local government may bring an enforcement action under this chapter in the manner provided in Subchapter E of this chapter for local governments.

[Acts 1971, 62nd Leg., p. 215, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.355. Cooperative Agreements

(a) A local government may execute cooperative agreements with the board or other local governments:

(1) to provide for the performance of water quality management, inspection, and enforcement functions and to provide technical aid and educational services to any party to the agreement; and

(2) for the transfer of money or property from any party to the agreement to another party to the agreement for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construc-

tion, ownership, purchase, maintenance, and operation of disposal systems.

(b) Whenever in the opinion of the board it would facilitate and enhance the performance by a local government of its water quality management, inspection, and enforcement functions pursuant to a cooperative agreement between the local government and the board, as authorized in Subsection (a) of this section, the board may assign and delegate to the local government during the period of the agreement such of the pertinent powers and functions vested in the board under this chapter as in the judgment of the board may be necessary or helpful to the local government in performing those management, inspection, and enforcement functions.

(c) At any time and from time to time, prior to the termination of the cooperative agreement, the board may modify or rescind any such assignment or delegation.

(d) The board shall notify immediately a local government to whom it assigns or delegates any powers and functions pursuant to Subsections (b) and (c) of this section or as to when it modifies or rescinds any such assignment or delegation.

[Acts 1971, 62nd Leg., p. 215, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1978, ch. 612, art. 1, § 5, eff. Sept. 1, 1971.]

**§ 21.356. Disposal System Rules**

(a) Every local government which owns or operates a disposal system is empowered to and shall, except as authorized in Subsection (c) of this section, enact and enforce rules, regulations, ordinances, orders, or resolutions, referred to in this section as rules, to control and regulate the type, character, and quality of waste which may be discharged to the disposal system and, where necessary, to require pretreatment of waste to be discharged to the system, so as to protect the health and safety of personnel maintaining and operating the disposal system and to prevent unreasonable adverse effects on the disposal system.

(b) The local government in its rules may establish the charges and assessments which may be made to and collected from all persons who discharge waste to the disposal system or who have conduits or other facilities for discharging waste connected to the disposal system, referred to in this subsection as "users." The charges and assessments shall be equitable as between all users and shall correspond as near as can be practically determined to the cost of making the waste disposal services available to all users and of treating the waste of each user or class of users. The charges and assessments may include user charges, connection fees, or any other methods of obtaining revenue from the disposal system available to the local government. In establishing the charges and assessments, the local government shall take into account:

- (1) the volume, type, character, and quality of the waste of each user or class of users;
- (2) the techniques of treatment required;

(3) any capital costs and debt retirement expenses of the disposal system required to be paid for from the charges and assessments;

(4) the costs of operating and maintaining the system to comply with this chapter and the permits, rules, and orders of the board; and

(5) any other costs directly attributable to providing the waste disposal service under standard, accepted cost-accounting practices.

(c) A local government may apply to the board for an exception from the requirements of Subsections (a) and (b) of this section or for a modification of those requirements. The application shall contain the exception or modifications desired, the reasons the exception or modifications are needed, and the grounds authorized in this subsection on which the board should grant the application. A public hearing on the application shall be held in or near the territorial area of the local government and notice of the hearing shall be given to the local government. If after the hearing the board in its judgment determines that the volume, type, character, and quality of the waste of the users of the system, or of a particular user or class of users of the system, do not warrant the enactment and enforcement of rules containing the requirements prescribed in Subsections (a) and (b) of this section, or that the enactment and enforcement of the rules would be impractical or unreasonably burdensome on the local government in relation to the public benefit to be derived, then the board in its discretion may enter an order granting an exception to those requirements or modifying those requirements in any particular in response to circumstances shown to exist.

(d) At any time and from time to time, as circumstances may require, the board may amend or revoke any order it enters pursuant to Subsection (c) of this section. Before the board amends or revokes such an order, a public hearing shall be held in or near the territorial area of the local government in question, and notice of the hearing shall be given to the local government. If after the hearing the board in its judgment determines that the circumstances on which it based the order have changed significantly or no longer exist, the board may revoke the order or amend it in any particular in response to the circumstances then shown to exist.

(e) In the event of any conflict between the provisions of this section and any other laws or parts of laws, the provisions of this section shall control. [Acts 1971, 62nd Leg., p. 1978, ch. 612, art. 1, § 6, eff. Sept. 1, 1971.]

**§ 21.357. Water Pollution Control Duties of Cities**

(a) Every city in this state having a population of 5,000 or more inhabitants shall, and any city of this state may, establish a water pollution control and abatement program for the city. The city shall employ or retain an adequate number of personnel, on either a part-time or full-time basis as the needs and circumstances of the city may require, who by virtue of their training or experience are qualified to

perform the water pollution control and abatement functions required to enable the city to carry out its duties and responsibilities under this section.

(b) The water pollution control and abatement program of a city shall encompass the entire city and may include areas within its extraterritorial jurisdiction which in the judgment of the city should be included to enable the city to achieve the objectives of the city for the area within its territorial jurisdiction. The city shall include in the program the services and functions which, in the judgment of the city or as may be reasonably required by the board, will provide effective water pollution control and abatement for the city, including the following services and functions:

(1) the development and maintenance of an inventory of all significant waste discharges into or adjacent to the water within the city and, where the city so elects, within the extraterritorial jurisdiction of the city, without regard to whether or not the discharges are authorized by the board;

(2) the regular monitoring of all significant waste discharges included in the inventory prepared pursuant to Subdivision (1) of this subsection;

(3) the collecting of samples and the conducting of periodic inspections and tests of the waste discharges being monitored to determine whether the discharges are being conducted in compliance with this chapter and any applicable permits, orders or regulations of the board, and whether they should be covered by a permit from the board;

(4) in cooperation with the board, a procedure for obtaining compliance by the waste dischargers being monitored, including where necessary the use of legal enforcement proceedings; and

(5) the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rain-water.

[Acts 1971, 62nd Leg., p. 1980, ch. 612, art. 1, § 7, eff. Sept. 1, 1971.]

[Sections 21.358 to 21.450 reserved for expansion]

#### SUBCHAPTER G. JUDICIAL REVIEW

##### § 21.451. Appeal of Board Action

(a) Except as provided in Subsection (g) below, a person affected by any ruling, order, decision, or other act of the board may appeal by filing a petition in a district court of Travis County.

(b) The petition must be filed within 30 days after the date of the board's action, or, in case of a ruling, order, or decision, within 30 days after its effective date.

(c) Service of citation on the board must be accomplished within 30 days after the date the petition is filed. Citation may be served on the executive director or the deputy director.

(d) The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within 18 months after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(e) In an appeal of a board action other than cancellation or suspension of a permit, the issue is whether the action is invalid, arbitrary, or unreasonable.

(f) An appeal of the cancellation or suspension of a permit shall be tried in the same manner as appeals from the justice court to the county court.

(g) Orders, decisions or other actions of the board pursuant to Subchapters I and J of this chapter<sup>1</sup> are not subject to appeal.

[Acts 1971, 62nd Leg., p. 215, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 443, ch. 194, § 9, eff. May 25, 1973.]

<sup>1</sup> Sections 21.601 et seq., 21.701 et seq.

[Sections 21.452 to 21.550 reserved for expansion]

#### SUBCHAPTER H. CRIMINAL PROSECUTION

##### § 21.551. Definitions

As used in this subchapter:

(1) "Water" includes both surface and subsurface water; and "water in the state" means any water within the jurisdiction of the state.

(2) "Water pollution" means the alteration of the physical, chemical, or biological quality of, or the contamination of, any of the water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or public enjoyment of the water for any lawful or reasonable purpose.

(3) "Person" means an individual or private corporation.

(4) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste defined in this section.

(5) "Sewage" means waterborne human or animal wastes from residences, buildings, industrial establishments, cities, towns, or other places together with groundwater infiltration and surface water with which it is commingled.

(6) "Municipal waste" means waterborne liquid, gaseous, solid, or other waste substances or a combination of these that result from any discharge arising within or emanating from, or subject to the control of any municipal corporation, city, town, village, or municipality.

(7) "Recreational waste" means waterborne liquid, gaseous, solid, or other waste substances or a combination of these that arise within or emanate from any public or private park, beach, or recreational area.

(8) "Agricultural waste" means waterborne liquid, gaseous, solid, or other waste substance that arises from any type of public or private agricultural activity, including poisons and insecticides used in agricultural activities.

(9) "Industrial waste" means waterborne liquid, gaseous, solid, or other waste substances or a combination of these that result from any process of industry, manufacturing, trade, or business.

(10) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste, that may cause the quality of water in the state to be impaired.

(11) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of.

[Acts 1971, 62nd Leg., p. 216, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.552. Criminal Offense**

(a) No person may discharge, or cause or permit the discharge of, any waste into or adjacent to any water in the state which causes or which will cause water pollution unless the waste is discharged in compliance with a permit or other order issued by the Texas Water Quality Board, the Texas Water Development Board, or the Texas Railroad Commission.

(b) No person to whom the Texas Water Quality Board has issued a permit or other order authorizing the discharge of any waste at a particular location may discharge, or cause or permit the discharge of, the waste in violation of the requirements of the permit or order.

[Acts 1971, 62nd Leg., p. 217, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.553. Criminal Penalty**

A person who violates the provisions of Section 21.552 of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$1,000. Each day that a violation occurs constitutes a separate offense.

[Acts 1971, 62nd Leg., p. 217, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.554. Peace Officers**

For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are constituted peace officers. These agents and employees are empowered to enforce the provisions of this subchapter the same as any other peace officer, and for such purpose shall have the

powers and duties of peace officers as set forth in the Code of Criminal Procedure.

[Acts 1971, 62nd Leg., p. 217, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.555. Act of God, War, Etc.**

Any waste discharge otherwise punishable under this subchapter which is caused by an act of God, war, riot, or other catastrophe, is not a violation of this subchapter.

[Acts 1971, 62nd Leg., p. 217, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.556. Venue**

Venue for prosecution of any alleged violation is in the county court, the county criminal court, or the county court-at-law of the county in which the violation is alleged to have occurred.

[Acts 1971, 62nd Leg., p. 217, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.557. Allegations**

In alleging the name of a defendant private corporation, it is sufficient to state in the complaint, indictment, or information the corporate name, or to state any name or designation by which the corporation is known or may be identified. It is not necessary to allege that the defendant was lawfully incorporated.

[Acts 1971, 62nd Leg., p. 217, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.558. Summons and Arrest**

(a) After a complaint is filed or an indictment or information presented against a private corporation under the provisions of this subchapter, the court or clerk shall issue a summons to the corporation. The summons shall be in the same form as a *capias* except that:

(1) it shall summon the corporation to appear before the court named at the place stated in the summons;

(2) it shall be accompanied by a certified copy of the complaint, indictment, or information; and

(3) it shall provide that the corporation appear before the court named at or before 10 a. m. of the Monday next after the expiration of 20 days after it is served with summons, except when service is made upon the secretary of state, in which instance the summons shall provide that the corporation appear before the court named at or before 10 a. m. of the Monday next after the expiration of 30 days after the secretary of state is served with summons.

(b) No individual may be arrested upon a complaint, indictment, or information against a private corporation.

[Acts 1971, 62nd Leg., p. 218, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 21.559. Service of Summons**

(a) A peace officer shall serve a summons on a private corporation by personally delivering a copy of it to the corporation's registered agent for service. If a registered agent has not been designated or

cannot, with reasonable diligence, be found at the registered office, the peace officer shall serve the summons by personally delivering a copy of it to the president or a vice president of the corporation.

(b) If the peace officer certifies on the return that he diligently but unsuccessfully attempted to effect service under Subsection (a) of this section, or if the corporation is a foreign corporation that has no certificate of authority, he shall serve the summons on the secretary of state by personally delivering a copy of it to him, or to the assistant secretary of state, or to any clerk in charge of the corporation department of his office. On receipt of the summons copy, the secretary of state shall immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered office or, if it is a foreign corporation, at its principal office in the state or country under whose law it was incorporated.

(c) The secretary of state shall keep a permanent record of the date and time of receipt and his disposition of each summons served under Subsection (b) of this section together with the return receipt.

[Acts 1971, 62nd Leg., p. 218, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.560. Arraignment and Pleadings

In all criminal actions instituted against a private corporation under the provisions of this subchapter:

(1) appearance is for the purpose of arraignment; and

(2) the corporation has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

[Acts 1971, 62nd Leg., p. 218, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.561. Appearance

(a) A defendant private corporation appears through counsel or its representative.

(b) If a private corporation does not appear in response to summons, or appears but fails or refuses to plead, it is considered to be present in person for all purposes, and the court shall enter a plea of not guilty in its behalf, and may proceed with trial, judgment, and sentencing.

(c) After appearing and entering a plea in response to summons, if a private corporation is absent without good cause at any time during later proceedings, it is considered to be present in person for all purposes, and the court may proceed with trial, judgment, or sentencing.

[Acts 1971, 62nd Leg., p. 219, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.562. Fine Treated as Judgment in Civil Action

If a private corporation is found guilty of a violation of this subchapter and a fine imposed, the fine shall be entered and docketed by the clerk of the court as a judgment against the corporation, and the fine shall be of the same force and effect and be enforced against the corporation in the same manner as if the judgment were recovered in a civil action.

[Acts 1971, 62nd Leg., p. 219, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.563. Cumulative Provisions

Nothing in this subchapter repeals or amends any of the provisions of Subchapters A through F of this chapter, Chapter 22 of this code, or Article 6029a, Revised Civil Statutes, 1925, as added; but this subchapter is cumulative of those acts and they remain in full force and effect.

[Acts 1971, 62nd Leg., p. 219, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 21.564. Effect on Certain Other Laws

To the extent that any general or special law, including Article 695, Penal Code of Texas, 1925, makes an act or omission a criminal offense, and which act or omission also constitutes a criminal offense under this subchapter, the other general or special law is repealed, but only to that extent.

[Acts 1971, 62nd Leg., p. 219, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 21.565 to 21.600 reserved for expansion]

### SUBCHAPTER I. FINANCIAL ASSISTANCE FOR USE AS STATE MATCHING FUNDS IN CONSTRUCTION OF TREATMENT WORKS

#### § 21.601. Purpose

The purpose of this subchapter is to provide for making loans of water quality enhancement funds authorized by Article III, Section 49-d-1, of the Texas Constitution, to political subdivisions of the state for use as state matching funds for obtaining maximum federal grants for the construction of treatment works.

[Acts 1971, 62nd Leg., p. 1980, ch. 612, art. 1, § 8, eff. Sept. 1, 1971.]

#### § 21.602. Definitions

In this subchapter:

(1) "Water quality enhancement" means the construction of treatment works by political subdivisions with loans provided under this subchapter.

(2) "Treatment works" means any devices and systems used in the storage, treatment, recycling and reclamation of waste to implement this chapter, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as stand-by treatment units and clear well facilities; and any works, including site acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste or

facilities to provide for the collection, control, and disposal of waste heat.

(3) "Construction" means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, title, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, the expense of any condemnation or other legal proceeding, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(4) "Water quality enhancement funds" means the proceeds from the sale of Texas Water Development Bonds issued under the authority of Article III, Section 49-d-1, of the Texas Constitution.

(5) "Political subdivision" means the state, a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, and including any interstate compact commission to which the state is a party.

(6) "Loan" means purchase by the state of the bonds or other obligations of a political subdivision with water quality enhancement funds, or entry by the state into a loan agreement with any political subdivision for a direct loan of water quality enhancement funds.

(7) "Financial assistance" means any loan of water quality enhancement funds made to a political subdivision for the construction of treatment works through the purchase of bonds or other obligations of the political subdivision or pursuant to a loan agreement.

[Acts 1971, 62nd Leg., p. 1981, ch. 612, art. 1, § 8, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 435, ch. 194, § 4, eff. May 25, 1973.]

**§ 21.603. Financial Assistance**

The board may use water quality enhancement funds to provide financial assistance to political subdivisions for purposes of water quality enhancement. [Acts 1971, 62nd Leg., p. 1981, ch. 612, art. 1, § 8, eff. Sept. 1, 1971.]

**§ 21.604. Authority of Political Subdivision**

(a) A political subdivision may apply to the board for financial assistance and may use water quality enhancement funds to pay for construction of treatment works in the manner provided in this subchapter.

(b) A political subdivision may exercise any power necessary to apply for, receive, use, and repay water quality enhancement funds including the power to enter into loan contracts and agreements and to use any of its income and revenues to repay the loan. [Acts 1971, 62nd Leg., p. 1981, ch. 612, art. 1, § 8, eff. Sept. 1, 1971.]

**§ 21.605. Application for Assistance**

In an application to the board for financial assistance, the applicant shall include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision operates and was created;

(3) the total cost of the treatment works;

(4) the amount of state financial assistance requested;

(5) the method for obtaining the financial assistance, whether by purchase of bonds or other obligations of the political subdivision, by direct loan, or by a combination of these two methods;

(6) the plan for repaying the financial assistance; and

(7) any other information the board or the executive director requires to have an adequate understanding of proposals made in the application.

[Acts 1971, 62nd Leg., p. 1981, ch. 612, art. 1, § 8, eff. Sept. 1, 1971.]

**§ 21.606. Action on Application**

(a) After an application is received for financial assistance, the executive director shall make application available for inspection by the Texas Water Development Board and shall submit the application to the board together with his comments and recommendations and the comments and recommendations of the development fund manager relating to the best method for making the financial assistance available.

(b) The board may grant the application in whole or in part or may deny the application.

(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided and, in consultation with and pursuant to agreement with the political subdivision, shall determine the location, time, design, scope, and all other aspects of the construction to be performed.

(d) The board shall review and approve plans and specifications for all treatment works for which financial assistance is requested. The provisions of Section 12, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945, as amended (Article 4477-1, Vernon's Texas Civil Statutes), do not apply to treatment works approved under this Act.

(e) Except as specifically provided in this Act, the deliberations, proposals, decisions, and other actions of the board under this subchapter do not require the concurrence or approval of any other governmental agency, board, commission, council, political subdivision, or other governmental entity.

[Acts 1971, 62nd Leg., p. 1982, ch. 612, art. 1, § 8, eff. Sept. 1, 1971.]

**§ 21.607. Considerations in Passing on Application**

In passing on an application from a political subdivision for financial assistance, the board shall consider:

- (1) the public benefit to be derived from the project and the propriety of state participation; and
- (2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the project, including interest.

[Acts 1971, 62nd Leg., p. 1982, ch. 612, art. 1, § 8, eff. Sept. 1, 1971.]

**§ 21.608. Conditions for Obtaining Financial Assistance**

Before financial assistance is provided to a political subdivision, the following conditions must be met:

- (1) the project must be approved by the board and, if applicable, the appropriate federal agency;
- (2) the political subdivision must adopt any necessary ordinance, rule, order, or resolution which in the judgment of the board is necessary to comply with the contract and requirements of the federal government.

[Acts 1971, 62nd Leg., p. 1982, ch. 612, art. 1, § 8, eff. Sept. 1, 1971.]

**§ 21.609. Providing Financial Assistance**

If the board grants an application in whole or in part, financial assistance shall be funded by the Texas Water Development Board in accordance with Subchapter M, Chapter 11 of this code and the provisions of this chapter.<sup>1</sup>

[Acts 1971, 62nd Leg., p. 1982, ch. 612, art. 1, § 8, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 435, ch. 194, § 4, eff. May 25, 1973.]

<sup>1</sup> Section 11.601 et seq.

**§ 21.610. Direct Loans**

(a) If a political subdivision in the judgment of the board is unable to issue bonds or other obligations for a project in the state for which a federal grant is to be made under the Federal Water Pollution Control Act, as amended,<sup>1</sup> then the board may provide financial assistance to the political subdivision by agreeing to pay from water quality enhancement funds the amount required by federal law of the estimated reasonable cost of the project.

(b) Before the delivery of any water quality enhancement funds to the political subdivision, the board with the advice of the development fund manager and the political subdivision shall execute a loan agreement which shall provide that the political subdivision shall pay into the appropriate account not less than the amount necessary to repay the principal of and interest on the loan over the period of time and under the terms and conditions which are mutually agreeable to the Texas Water Development Board and the political subdivision. The contract may also include any other terms and conditions which the board may require.

<sup>1</sup> West's Tex.Stats. & Codes—84

(c) Each political subdivision may charge and collect necessary fees, rentals, rates, and charges for the use, occupancy, and availability of its treatment works and any of its other properties, buildings, structures, operations, utilities, systems, activities, and facilities, so that it may make all payments required by its loan agreement. The political subdivision shall pledge such amounts to make those payments.

(d) Also, the political subdivision may pledge its ad valorem taxes, if any, and levy and collect the taxes for the purpose of making all or any part of the payments required by its loan agreement. The taxes shall be in addition to all other ad valorem taxes permitted by law, but may not exceed, together with other ad valorem taxes, any maximum imposed by the Texas Constitution.

(e) Each loan agreement executed pursuant to this Act, and the appropriate proceedings authorizing its execution, shall be submitted to the attorney general for examination before the delivery of the money to the political subdivision. If he finds that the loan agreement has been authorized and executed in accordance with law, that the provisions are valid, and that the political subdivision has demonstrated to his reasonable satisfaction that the payments required by the agreement can be made from the sources pledged, he may approve the agreement.

[Acts 1971, 62nd Leg., p. 1983, ch. 612, art. 1, § 8, eff. Sept. 1, 1971.]

<sup>1</sup> 23 U.S.C.A. § 1151 et seq.

**§ 21.611. Rules and Regulations**

The board and the Texas Water Development Board may adopt any rules and regulations necessary to carry out the purpose provided in this subchapter and may cooperate in adopting any joint rules and regulations necessary to carry out the provisions of this chapter.

[Acts 1971, 62nd Leg., p. 1984, ch. 612, art. 1, § 8, eff. Sept. 1, 1971.]

**§ 21.612. Use of Funds; Federal Requirement Satisfied**

When bonds or other obligations are purchased or a loan agreement is approved by the attorney general, water quality enhancement funds shall be delivered to the political subdivisions entitled to receive them and shall be used only to pay for construction costs of treatment works approved as provided in this subchapter. The purchase of bonds and other obligations as provided in this code and the making of direct loans as provided in Section 21.610 of this code together constitute payment by the state of the amount required by federal law of the estimated reasonable construction costs of all projects in the state for which federal grants are to be made under the Federal Water Pollution Control Act, as amended,<sup>1</sup> or any similar law.

[Acts 1971, 62nd Leg., p. 1984, ch. 612, art. 1, § 8, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 435, ch. 194, § 4, eff. May 25, 1973.]

<sup>1</sup> 33 U.S.C.A. § 1151 et seq.

**§ 21.613. Construction Contract Requirements**

(a) In contracts for the construction of treatment works, the governing body of each political subdivision receiving financial assistance shall require

(1) payment to be made in partial payments as the work progresses;

(2) each bidder to furnish a bid guarantee equivalent to 5 percent of the bid price;

(3) each contractor awarded either a design/construct contract or construction contract to furnish performance and payment bonds, each of which must include without limitation guarantees that work done under the contract will be completed and performed

(A) according to approved plans and specifications; and

(B) in accordance with sound construction principles and practices.

(b) Each bond must

(1) be in an amount of not less than 100 percent of the contract price; and

(2) remain in effect for one year beyond the date of approval by the engineer of the political subdivision.

(c) No valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

(d) With the approval of its governing body, a political subdivision in addition to the other requirements of this section may require in a contract for construction of treatment works that

(1) partial payment not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project; and

(2) that payment of the 10 percent remaining due upon completion of the contract shall be made only after approval by:

(A) the engineer for the political subdivision as required under the bond proceedings; and

(B) the governing body of the political subdivision by a resolution or other formal action.

[Acts 1973, 63rd Leg., p. 437, ch. 194, § 6, eff. May 25, 1973.]

**§ 21.614. Filing Construction Contract**

The political subdivision shall file in the office of the board and with the development fund manager a certified copy of each construction contract it enters into for the construction of all or part of the treatment works. Each contract shall contain or have attached to it the specifications, plans and details of all work included in the contract.

[Acts 1973, 63rd Leg., p. 437, ch. 194, § 6, eff. May 25, 1973.]

**§ 21.615. Board Inspection**

(a) The board may inspect the construction of treatment works at any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the treatment works as submitted when approval of the feasibility of the treatment works was sought; and

(2) the contractor is constructing the treatment works in accordance with sound construction principles.

(b) Inspection of treatment works by the board does not subject the state to any civil liability. [Acts 1973, 63rd Leg., p. 437, ch. 194, § 6, eff. May 25, 1973.]

**§ 21.616. Alteration of Plans**

After board approval of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the executive director or the board authorizes the alteration.

[Acts 1973, 63rd Leg., p. 437, ch. 194, § 6, eff. May 25, 1973.]

**§ 21.617. Certificate of Approval**

The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the treatment works according to the plans as the board approved them or altered with the board's approval;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any term of the contract.

[Acts 1973, 63rd Leg., p. 437, ch. 194, § 6, eff. May 25, 1973.]

[Sections 21.618 to 21.700 reserved for expansion]

**SUBCHAPTER J. FINANCIAL ASSISTANCE FOR CONSTRUCTION OF TREATMENT WORKS**

**§ 21.701. Purpose**

The purpose of this subchapter is to provide for making loans of water quality enhancement funds authorized by Article III, Section 49-d-1, as amended, of the Texas Constitution to political subdivisions of the state for the construction of treatment works.

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]

**§ 21.702. Definitions**

In this subchapter:

(1) "Water quality enhancement" means the construction of treatment works by political subdivisions with loans provided with water quality enhancement funds.

(2) "Treatment works" means any devices and systems used in the storage, treatment, recycling and reclamation of waste to implement this chapter, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power

and other equipment and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as stand-by treatment units and clear well facilities; and any works, including sites therefor and acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; or facilities to provide for the collection, control, and disposal of waste heat.

(3) "Construction" means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, title, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, the expense of any condemnation or other legal proceeding, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(4) "Water quality enhancement funds" means the proceeds from the sale of Texas Water Development Bonds issued under the authority of Article III, Section 49-d-1, as amended, of the Texas Constitution.

(5) "Political subdivision" means the state, a county, city or other body politic or corporate of the state, including any district or authority created under Article III, Section 52, as amended, or Article XVI, Section 59, as amended, of the Texas Constitution, and including any interstate compact commission to which the state is a party.

(6) "Loan" means purchase by the state of the bonds or other obligations of a political subdivision with water quality enhancement funds.

(7) "Financial assistance" means any loan of water quality enhancement funds made to a political subdivision for the construction of treatment works through the purchase of bonds or other obligations of the political subdivision.

[Acts 1973, 63rd Leg., p. 439, ch. 194, § 7, eff. May 25, 1973.]

#### § 21.703. Financial Assistance

The board may use water quality enhancement funds to provide financial assistance to political subdivisions for purposes of water quality enhancement.

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]

#### § 21.704. Authority of Political Subdivision

A political subdivision may apply to the board for financial assistance and may use water quality en-

hancement funds for construction of treatment works in the manner provided in this subchapter. [Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May, 25, 1973.]

#### § 21.705. Application for Assistance

In an application to the board for financial assistance, the applicant shall include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision operates and was created;

(3) the estimated total cost of construction of the treatment works;

(4) the amount of state financial assistance requested;

(5) the method for obtaining the financial assistance, whether by purchase of bonds or purchase of other obligations of the political subdivision;

(6) the plan for repaying the financial assistance; and

(7) any other information the board or the executive director requires.

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]

#### § 21.706. Considerations in Passing on Application

In passing on an application from a political subdivision for financial assistance, the board shall consider:

(1) the water quality needs of the waters into which effluent from the treatment works will be discharged and the benefit of the treatment works to such water quality needs in relation to the needs of other waters requiring state assistance in any manner and the benefits of those treatment works to the other waters;

(2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the treatment works, including interest;

(3) whether the political subdivision can reasonably finance the treatment works without assistance from the state;

(4) the relationship of the treatment works to the overall, statewide water quality needs; and

(5) the relationship of the treatment works to water quality planning for the state.

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]

#### § 21.707. Action on Application

(a) After an application is received for financial assistance, the executive director shall make the application available to the Texas Water Development Board and shall submit the application to the board together with his comments and recommendations and any available comments and recommendations of the Texas Water Development Board concerning the best method of making financial assistance available.

(b) The board may grant the application in whole or in part or may deny the application.

(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided, the amount of any such assistance, and, in consultation with and pursuant to agreement with the political subdivision, the board shall determine the location, time, design, scope and all other aspects of the construction of treatment works to be performed.

(d) The board shall review and approve plans and specifications for all treatment works for which financial assistance is provided in any amount from water quality enhancement funds or funds granted under the Federal Water Pollution Control Act, as amended (23 U.S.C.A. § 1151 et seq.). The Texas State Department of Health shall review and approve plans in those cases where such assistance has not been requested except when notice of intention to apply for the financial assistance has been given to the board in which case the board shall perform review and approval functions. Duplicate review and approval will not be performed and actions on review and approval shall be fully interchangeable between the board and the Texas State Department of Health.

(e) The deliberations, proposals, decisions and other actions of the board under this subchapter do not require the concurrence or approval of any other governmental agency, board, commission, council, political subdivision or other governmental entity.

(f) If the board grants an application in whole or in part, financial assistance shall be funded by the Texas Water Development Board in accordance with Subchapter M, Chapter 11 of this code.<sup>1</sup>

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]  
<sup>1</sup> Section 11.601 et seq.

**§ 21.708. Approval of Application**

The board by resolution may approve an application if, after considering the factors listed in Section 21.706 of this code and any other relevant factors, the board finds:

(1) that the public interest will benefit from state participation in the financing of the treatment works; and

(2) that the political subdivision cannot reasonably finance the treatment works without state assistance in the amount finally approved by the board.

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]

**§ 21.709. Construction Contract Requirements**

(a) In contracts for the construction of treatment works, the governing body of each political subdivision receiving financial assistance shall require

(1) payment to be made in partial payments as the work progresses;

(2) each bidder to furnish a bid guarantee equivalent to 5 percent of the bid price;

(3) each contractor awarded either a design/construct contract or construction contract

to furnish performance and payment bonds, each of which must include without limitation guarantees that work done under the contract will be completed and performed

(A) according to approved plans and specifications; and

(B) in accordance with sound construction principles and practices.

(b) Each bond must

(1) be in an amount of not less than 100 percent of the contract price; and

(2) remain in effect for one year beyond the date of approval by the engineer of the political subdivision.

(c) No valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

(d) With the approval of its governing body, a political subdivision in addition to the other requirements of this section may require in a contract for construction of treatment works that

(1) partial payment not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project; and

(2) that payment of the 10 percent remaining due upon completion of the contract shall be made only after approval by:

(A) the engineer for the political subdivision as required under the bond proceedings; and

(B) the governing body of the political subdivision by a resolution or other formal action.

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]

**§ 21.710. Filing Construction Contract**

The political subdivision shall file in the office of the board a certified copy of each construction contract it enters into for the construction of all or part of the treatment works. Each contract shall contain or have attached to it the specifications, plans and details of all work included in the contract.

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]

**§ 21.711. Board Inspection**

(a) The board may inspect the construction of treatment works at any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the treatment works as submitted when approval of the feasibility of the treatment works was sought; and

(2) the treatment works are being constructed in accordance with sound construction principles.

(b) Inspection of treatment works by the board does not subject the state to any civil liability.

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]

### § 21.712. Alteration of Plans

After board approval of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the executive director or the board authorizes the alteration.

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]

### § 21.713. Certificate of Approval

The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the treatment works according to the plans as the board approved them or altered with the board's approval;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any term of the contract.

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]

### § 21.714. Rules and Regulations

The board may adopt any rules and regulations it deems necessary or convenient to carry out the purposes provided in this subchapter.

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]

### § 21.715. Obtaining Financial Assistance

(a) In order to obtain financial assistance under this subchapter, a political subdivision may authorize and issue revenue bonds for the purpose of constructing treatment works and sell such bonds to the Texas Water Development Board in such amounts as may be determined by the governing body of the political subdivision and approved by the board.

(b) Notwithstanding the provisions of Article 1112, Revised Civil Statutes of Texas, 1925, as amended, or any other general or special law or charter provisions to the contrary, a political subdivision may authorize, issue and sell such revenue bonds as provided herein and create any encumbrance in connection therewith, by a majority vote of the governing body of the political subdivision without the necessity of any election.

[Acts 1973, 63rd Leg., p. 438, ch. 194, § 7, eff. May 25, 1973.]

## CHAPTER 22. DISPOSAL WELLS

### SUBCHAPTER A. GENERAL PROVISIONS

#### Section

- 22.001. Short Title.  
22.002. Definitions.

### SUBCHAPTER B. INDUSTRIAL AND MUNICIPAL WASTE

- 22.011. Permit from Board.  
22.012. Application for Permit.  
22.013. Information Required of Applicant.  
22.014. Application Fee.  
22.015. Letter from Railroad Commission.  
22.016. Inspection of Well Location.  
22.017. Recommendations from Other Agencies.  
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### SUBCHAPTER C. OIL AND GAS WASTE

#### Section

- 22.031. Permit from Commission.  
22.032. Information Required of Applicant.  
22.033. Letter from Water Quality Board.  
22.034. Commission Rules, Etc.

### SUBCHAPTER D. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

- 22.051. Issuance of Permit.  
22.052. Copies of Permit; Filing Requirements.  
22.053. Record of Strata.  
22.054. Electric or Drilling Log.  
22.055. Casing Requirements.  
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### SUBCHAPTER E. CIVIL AND CRIMINAL REMEDIES

- 22.101. Civil Penalty.  
22.102. Injunction, Etc.  
22.103. Procedure.  
22.104. Effect of Permit on Civil Liability.

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 22.001. Short Title

This chapter may be cited as the Disposal Well Act.

[Acts 1971, 62nd Leg., p. 219, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 22.002. Definitions

In this chapter:

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

(2) "Commission" means the Texas Railroad Commission.

(3) "Pollution" means the alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(4) "Industrial and municipal waste" means any liquid, gaseous, solid, or other waste substance, or combination of these substances, which may cause or might reasonably be expected to cause pollution of fresh water and which result from

(A) processes of industry, manufacturing, trade, or business;

(B) development or recovery of natural resources other than oil or gas; or

(C) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, and other municipal corporations.

(5) "Oil and gas waste" means waste arising out of or incidental to drilling for or producing of oil or gas which includes, but is not limited to, salt water, brine, sludge, drilling mud, and other liquid or semiliquid waste material.

(6) "Fresh water" means water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(7) "Casing" means material lining used to seal off strata at and below the earth's surface.

(8) "Disposal well" means an artificial excavation or opening in the ground made by digging, boring, drilling, jetting, driving, or some other method, and used to inject, transmit, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well initially drilled to produce oil and gas which is used to transmit, inject, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; but the term does not include any surface pit, surface excavation, or natural depression used to dispose of industrial and municipal waste or oil and gas waste.

[Acts 1971, 62nd Leg., p. 219, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 22.003 to 22.010 reserved for expansion]

SUBCHAPTER B. INDUSTRIAL AND MUNICIPAL WASTE

§ 22.011. Permit from Board

No person may begin drilling a disposal well or converting an existing well into a disposal well to dispose of industrial and municipal waste without first obtaining a permit from the Texas Water Quality Board.

[Acts 1971, 62nd Leg., p. 220, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 22.012. Application for Permit

The board shall prescribe forms for application for a permit and shall make the forms available on request without charge.

[Acts 1971, 62nd Leg., p. 220, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 22.013. Information Required of Applicant

The board shall require an applicant to furnish any information the board considers necessary to discharge its duties under this chapter.

[Acts 1971, 62nd Leg., p. 221, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 22.014. Application Fee

With each application, the board shall collect a fee of \$25 for the benefit of the state.

[Acts 1971, 62nd Leg., p. 221, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 22.015. Letter from Railroad Commission

A person making application to the board for a permit under this chapter shall submit with the application a letter from the commission stating that drilling the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any oil or gas formation.

[Acts 1971, 62nd Leg., p. 221, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 22.016. Inspection of Well Location

On receiving an application for a permit, the board shall have an inspection made of the location of the proposed disposal well to determine the local conditions and the probable effect of the well, and shall determine the requirements for the setting of casing, as provided in Sections 22.051, 22.055, and 22.056 of this code.

[Acts 1971, 62nd Leg., p. 221, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 22.017. Recommendations from Other Agencies

The board shall send to the Texas Water Development Board, the State Department of Health, the Texas Water Well Drillers Board, and to other persons which the board may designate, copies of every application received in proper form. These agencies and persons may make recommendations to the board concerning any aspect of the application, and shall have reasonable time to do so as the board may prescribe.

[Acts 1971, 62nd Leg., p. 221, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 22.018. Hearing on Permit Application

If it is considered necessary and in the public interest, the board may hold a public hearing on the application.

[Acts 1971, 62nd Leg., p. 221, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 22.019. Board Rules, Etc.

(a) The board shall adopt rules, regulations, and procedures reasonably required for the performance of its powers, duties, and functions under this chapter, including rules for notice and procedure of public hearings.

(b) Copies of any rules or regulations under this chapter proposed by the board shall, before their adoption, be sent to the Texas Railroad Commission, the Texas Water Development Board, the State Department of Health, the Texas Water Well Drillers Board, and any other persons the board may designate. Any agency or person to whom the copies of proposed rules and regulations are sent may submit comments and recommendations to the board, and shall have reasonable time to do so as the board may prescribe.

[Acts 1971, 62nd Leg., p. 221, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 22.020 to 22.030 reserved for expansion]

SUBCHAPTER C. OIL AND GAS WASTE

§ 22.031. Permit from Commission

No person may begin drilling a disposal well or converting an existing well into a disposal well to dispose of oil and gas waste without first obtaining a permit from the Railroad Commission of Texas.

[Acts 1971, 62nd Leg., p. 222, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 22.032. Information Required of Applicant**

The commission shall require an applicant to furnish any information the commission considers necessary to discharge its duties under this chapter. [Acts 1971, 62nd Leg., p. 222, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 22.033. Letter from Water Quality Board**

A person making application to the commission for a permit under this chapter shall submit with the application a letter from the board stating that drilling the disposal well and injecting oil and gas waste into the subsurface stratum will not endanger the freshwater strata in that area and that the formation or stratum to be used for the disposal is not freshwater sand.

[Acts 1971, 62nd Leg., p. 222, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 22.034. Commission Rules, Etc.**

(a) The commission shall adopt rules, regulations, and procedures reasonably required for the performance of its powers, duties, and functions under this chapter, including rules for notice and procedure of public hearings.

(b) Copies of any rules or regulations under this chapter proposed by the commission shall, before their adoption, be sent to the Texas Water Quality Board, the Texas Water Development Board, the State Department of Health, the Texas Water Well Drillers Board, and any other persons the commission may designate. Any agency or person to whom the copies of proposed rules and regulations are sent may submit comments and recommendations to the commission, and shall have reasonable time to do so as the commission may prescribe.

[Acts 1971, 62nd Leg., p. 222, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 22.035 to 22.050 reserved for expansion]

**SUBCHAPTER D. ISSUANCE OF PERMITS:  
TERMS AND CONDITIONS**

**§ 22.051. Issuance of Permit**

(a) The board or commission may grant an application in whole or in part and may issue the permit if it finds:

- (1) that the installation of the disposal well is in the public interest;
- (2) that no existing rights will be impaired; and
- (3) that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution.

(b) In the permit the board or commission shall impose terms and conditions reasonably necessary to protect fresh water from pollution, including the necessary casing.

[Acts 1971, 62nd Leg., p. 223, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 22.052. Copies of Permit; Filing Requirements**

(a) The board shall furnish the commission, the Texas Water Development Board, the State Department of Health, and the Texas Water Well Drillers Board with a copy of each permit the board issues. The commission shall furnish the board with a copy of each permit the commission issues and the board shall in turn forward copies to the Texas Water Development Board, the State Department of Health, and the Texas Water Well Drillers Board.

(b) Before beginning injection operations, a person receiving a permit to inject industrial and municipal waste shall file a copy of the permit with the health authorities of the county, city, and town where the well is located.

[Acts 1971, 62nd Leg., p. 223, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 22.053. Record of Strata**

The board or commission may require a person receiving a permit under this chapter to keep and furnish a complete and accurate record of the depth, thickness, and character of the different strata penetrated in drilling the disposal well.

[Acts 1971, 62nd Leg., p. 223, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 22.054. Electric or Drilling Log**

If an existing well is to be converted to a disposal well, the board or commission may require the applicant to furnish an electric log or a drilling log of the existing well.

[Acts 1971, 62nd Leg., p. 223, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 22.055. Casing Requirements**

The casing shall be set at the depth, with the materials, and in the manner required by the board or commission.

[Acts 1971, 62nd Leg., p. 223, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 22.056. Factors in Setting Casing Depth**

Before setting the depth to which casing shall be installed, the board or commission shall consider:

- (1) known geological and hydrological conditions and relationships;
- (2) foreseeable future economic development in the area; and
- (3) foreseeable future demand for the use of fresh water in the locality.

[Acts 1971, 62nd Leg., p. 223, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 22.057 to 22.100 reserved for expansion]

**SUBCHAPTER E. CIVIL AND CRIMINAL  
REMEDIES**

**§ 22.101. Civil Penalty**

(a) A person who violates any provision of this chapter, any rule or regulation of the board or the commission made under this chapter, or any term, condition, or provision of a permit issued under this chapter shall be subject to a civil penalty in any sum

not exceeding \$1,000 for each day of noncompliance and for each act of noncompliance.

(b) The action may be brought by the board or the commission in any court of competent jurisdiction in the county where the offending activity is occurring or where the defendant resides.

[Acts 1971, 62nd Leg., p. 224, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 22.102. Injunction, Etc.

The board or commission may enforce any valid rule or regulation made under this chapter, or any term or condition of a permit issued by the board or commission under this chapter, by injunction or other appropriate remedy. The suit shall be brought in a court of competent jurisdiction in the county where the offending activity is occurring.

[Acts 1971, 62nd Leg., p. 224, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 22.103. Procedure

(a) At the request of the board or commission, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both the injunctive relief and civil penalty, authorized in Sections 22.101 and 22.102 of this chapter.

(b) Any party to a suit may appeal from a final judgment as in other civil cases.

[Acts 1971, 62nd Leg., p. 224, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 22.104. Effect of Permit on Civil Liability

The fact that a person has a permit issued under this chapter does not relieve him from any civil liability.

[Acts 1971, 62nd Leg., p. 224, ch. 58, § 1, eff. Aug. 30, 1971.]

CHAPTER 23. WATER WELLS

Section

- 23.001. Definition.
- 23.002. Underground Water: Regulations.
- 23.003. Certain Wells to be Plugged or Cased.
- 23.004. Penalty.

§ 23.001. Definition

In this chapter, "commission" means the Texas Water Rights Commission.

[Acts 1971, 62nd Leg., p. 225, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 23.002. Underground Water: Regulations

The commission shall make and enforce rules and regulations for conserving, protecting, preserving, and distributing underground, subterranean, and percolating water located in this state, and shall do all other things necessary for these purposes.

[Acts 1971, 62nd Leg., p. 225, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 23.003. Certain Wells to be Plugged or Cased

The owner of a water well which encounters salt water or water containing mineral or other substances injurious to vegetation or agriculture shall securely plug or case the well in a manner that will

effectively prevent the water from escaping from the stratum in which it is found into another water-bearing stratum or onto the surface of the ground.

[Acts 1971, 62nd Leg., p. 225, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 23.004. Penalty

If the owner of a well that is required to be cased or plugged by this chapter fails or refuses to case or plug the well within the 30-day period following the date of the commission's order to do so, or if a person fails to comply with any other order issued by the commission under this chapter within the 30-day period following the date of the order, he is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$500; and he commits a separate offense each day the failure or refusal continues after the 30-day period.

[Acts 1971, 62nd Leg., p. 225, ch. 58, § 1, eff. Aug. 30, 1971.]

CHAPTER 24. SALT WATER HAULERS

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Section

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- 24.002. Definitions.

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- 24.012. Application Form.
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- 24.018. Suspension; Refusal to Renew.
- 24.019. Appeal.
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- 24.031. Rule-making Power.
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- 24.041. Hauling without Permit.
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- 24.043. Using Haulers without Permit.
- 24.044. Disposing of Salt Water.
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SUBCHAPTER A. GENERAL PROVISIONS

§ 24.001. Short Title.

This chapter may be cited as the Salt Water Haulers Act.

[Acts 1971, 62nd Leg., p. 225, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 24.002. Definitions

In this chapter, unless the context requires a different definition,

- (1) "person" means an individual, association of individuals, partnership, corporation, receiver, trustee, guardian, executor, or a fiduciary or representative of any kind;

(2) "commission" means the Railroad Commission of Texas;

(3) "salt water" means water containing salt or other mineralized substances produced by drilling an oil or gas well or produced in connection with the operation of an oil or gas well; and

(4) "hauler" means a person who transports salt water for hire by any method other than by pipeline.

[Acts 1971, 62nd Leg., p. 225, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 24.003 to 24.010 reserved for expansion]

#### SUBCHAPTER B. PERMITS

##### § 24.011. Application for Permit

Any person may apply to the commission for a permit to haul and dispose of salt water.

[Acts 1971, 62nd Leg., p. 226, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 24.012. Application Form

The commission shall prescribe a form on which an application for a permit may be made and shall provide the form to any person who wishes to submit an application.

[Acts 1971, 62nd Leg., p. 226, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 24.013. Contents of Application

The application for a permit shall:

(1) state the number of vehicles the applicant plans to use for salt water hauling;

(2) affirmatively show that the vehicles are designed so that they will not leak during transportation of salt water;

(3) include an affidavit from a person who operates an approved system of salt water disposal stating that the applicant has permission to use the approved system;

(4) state the applicant's name, business address, and permanent mailing address; and

(5) include other relevant information required by commission rules.

[Acts 1971, 62nd Leg., p. 226, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 24.014. Rejecting an Application

If an application for a permit does not comply with Section 24.013 of this code or with reasonable rules of the commission, the commission may reject the application.

[Acts 1971, 62nd Leg., p. 226, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 24.015. Bond

Before issuing a permit to a person whose application it has approved, the commission shall require the person to file with it a bond in the amount of \$5,000, guaranteed by a corporate surety company and conditioned on the payment of full damages to any person who may acquire a judgment against the permittee for damages done to the person's property

by the permittee's improper hauling, handling, or disposal of salt water. However, the commission may dispense with the bond requirement on a proper showing of financial responsibility.

[Acts 1971, 62nd Leg., p. 226, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 24.016. Expiration of Permit

Permits issued under this chapter expire on August 31 of each year.

[Acts 1971, 62nd Leg., p. 227, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 24.017. Renewal of Permit

A permittee may apply to renew his permit by submitting an application for renewal on or before August 31 of each year.

[Acts 1971, 62nd Leg., p. 227, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 24.018. Suspension; Refusal to Renew

The commission shall suspend or shall refuse to renew a permit for a period of six months if the permittee:

(1) violates the provisions of this chapter;

(2) violates reasonable rules promulgated under Section 24.031 of this code; or

(3) does not maintain his operation at the standards that entitled him to a permit under Section 24.013 of this code.

[Acts 1971, 62nd Leg., p. 227, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 24.019. Appeal

Any person whose permit application is refused, whose permit is suspended, or whose application for permit renewal is refused by the commission may file a petition in an action to set aside the commission's act within the 30-day period immediately following the day he receives notice of the commission's action.

[Acts 1971, 62nd Leg., p. 227, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 24.020. Suit to Compel Commission to Act

If the commission does not act within a reasonable time after a person applies for a permit or for renewal of a permit, the applicant may notify the commission of his intention to file suit; and after 10 days have elapsed since the day the notice was given, the applicant may file a petition in an action to compel the commission to show cause why it should not be directed by the court to take immediate action.

[Acts 1971, 62nd Leg., p. 227, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 24.021. Venue

The venue in actions under Sections 24.019 and 24.020 of this code is fixed exclusively in the district courts of Travis County.

[Acts 1971, 62nd Leg., p. 227, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 24.022 to 24.030 reserved for expansion]

SUBCHAPTER C. RULES

§ 24.031. Rule-making Power

The commission shall adopt rules to effectuate the provisions of this chapter.

[Acts 1971, 62nd Leg., p. 227, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 24.032. Copies of Rules

The commission shall print the rules and provide copies to persons who apply for them.

[Acts 1971, 62nd Leg., p. 228, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 24.033. Effective Date of Rules

No rule or amendment to a rule is effective until after the 30-day period immediately following the day on which a copy of the rule is filed with the secretary of state.

[Acts 1971, 62nd Leg., p. 228, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 24.034 to 24.040 reserved for expansion]

SUBCHAPTER D. OFFENSES; PENALTIES

§ 24.041. Hauling without Permit

No hauler may haul and dispose of salt water off the lease, unit, or other oil or gas property where it is produced unless the hauler has a permit issued under this chapter.

[Acts 1971, 62nd Leg., p. 228, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 24.042. Exception

A person may haul salt water for use in connection with drilling or servicing an oil or gas well without obtaining a hauler's permit under this chapter.

[Acts 1971, 62nd Leg., p. 228, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 24.043. Using Haulers without Permit

No person may knowingly utilize the services of a hauler to haul and dispose of salt water off the lease, unit, or other oil or gas property where it is produced if the hauler does not have a permit as required under this chapter.

[Acts 1971, 62nd Leg., p. 228, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 24.044. Disposing of Salt Water

(a) No hauler may dispose of salt water on public roads or on the surface of public land or private property in this state in other than a commission-approved disposal pit without written authority from the commission.

(b) No hauler may dispose of salt water on property of another without the written authority of the landowner.

[Acts 1971, 62nd Leg., p. 228, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 24.045. Use of Unmarked Vehicles

No person who is required to have a permit under this chapter may haul salt water in a vehicle that does not bear the owner's name and the hauler's permit number. This information shall appear on both sides and the rear of the vehicle in characters not less than three inches high.

[Acts 1971, 62nd Leg., p. 228, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 24.046. Penalty

A person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than 10 days or by both.

[Acts 1971, 62nd Leg., p. 228, ch. 58, § 1, eff. Aug. 30, 1971.]

CHAPTER 25. REGIONAL WASTE DISPOSAL

SUBCHAPTER A. GENERAL PROVISIONS

- Section
- 25.001. Short Title.
- 25.002. Purpose.
- 25.003. Definitions.
- 25.004. Cumulative Effect of Chapter.
- 25.005. Construction of Chapter.

SUBCHAPTER B. REGIONAL WASTE DISPOSAL SYSTEMS

- 25.021. Disposal System.
- 25.022. Purchase and Sale of Facilities.
- 25.023. Lease of Facilities.
- 25.024. Operating Agreements.
- 25.025. Waste Disposal Contracts by District.
- 25.026. Contracts by River Authority.
- 25.027. Contract with Public Agency.
- 25.028. Contract Provisions.
- 25.029. Continued Use of District Facilities.
- 25.030. Source of Contract Payments.
- 25.031. Rates.
- 25.032. Service to More Than One Public Agency.
- 25.033. Property Acquired by Condemnation or Otherwise.
- 25.034. Cost of Relocating, Altering, Etc.
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SUBCHAPTER C. DISTRICT REVENUE BONDS

- 25.051. Issuance of Bonds.
- 25.052. Form, Denomination, Interest Rate.
- 25.053. Refunding Bonds.
- 25.054. Sale or Exchange of Bonds.
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- 25.101. Authorization of Regional Plans.
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## SUBCHAPTER A. GENERAL PROVISIONS

## § 25.001. Short Title

This chapter may be cited as the Regional Waste Disposal Act.

[Acts 1971, 62nd Leg., p. 229, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 25.002. Purpose

The purpose of this chapter is to authorize public agencies to cooperate for the safe and economical collection, transportation, treatment, and disposal of waste in order to prevent and control pollution of water in the state.

[Acts 1971, 62nd Leg., p. 229, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 25.003. Definitions

In this chapter:

(1) "City" means any incorporated city or town, whether operating under general law or under its home-rule charter.

(2) "District" means any district or authority created and existing under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution, including any river authority.

(3) "Public agency" means any district, city, or other political subdivision or agency of the state which has the power to own and operate waste collection, transportation, treatment or disposal facilities or systems, and any joint board created under the provisions of Section 14, Chapter 114, Acts of the 50th Legislature (Article 46d-14, Vernon's Texas Civil Statutes).

(4) "River authority" means any district or authority created by the legislature, which contains an area within its boundaries of one or more counties, and which is governed by a board of directors appointed or designated in whole or in part by the governor, or by the Texas Water Rights Commission, including without limitation the San Antonio River Authority.

(5) "River basins" and "coastal basins" mean the river basins and coastal basins now defined and designated by the Texas Water Development Board as separate units for the purposes of water development and inter-watershed transfers, and as they are made certain by contour maps on file in the offices of the Texas Water Development Board, including, but not limited to, the rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes, and portions of them, as well as the lands drained by them.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, waste heat, or other waste that may cause impairment of the quality of water in the state, including storm waters.

(7) The terms "sewage," "municipal waste," "recreational waste," "agricultural waste," "industrial waste," "other waste," "pollution,"

"water," or "water in the state," and "local government" shall have the meanings defined in Section 21.003 of this code.

(8) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(9) "Treatment facility" means any devices and systems used in the storage, treatment, recycling and reclamation of waste to implement Chapter 21, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as stand-by treatment units and clear well facilities; any works, including sites therefor and acquisition of the land that will be part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste or facilities to provide for the collection, control, and disposal of waste heat.

(10) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

[Acts 1971, 62nd Leg., p. 229, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 442, ch. 194, § 8, eff. May 25, 1973.]

## § 25.004. Cumulative Effect of Chapter

(a) This chapter is cumulative of other statutes governing the Texas Water Quality Board, the State Department of Health, and the Texas Water Rights Commission relating to:

(1) the issuance of bonds;

(2) the collection, transportation, treatment, or disposal of waste; and

(3) the design, construction, acquisition, or approval of facilities for these purposes.

(b) The powers granted to districts and public agencies by this chapter are additional to and cumulative of the powers granted by other laws. This chapter is full authority for any district or public agency to enter into contracts authorized by it and for any district to authorize and issue bonds under its provisions without reference to the provisions of any other law or charter. No other law or charter provision which limits, restricts, or imposes additional requirements on matters authorized by this chapter shall apply to any action or proceeding under this chapter unless expressly provided to the contrary in this chapter.

[Acts 1971, 62nd Leg., p. 230, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.005. Construction of Chapter**

The terms and provisions of this chapter shall be liberally construed to accomplish its purposes.  
[Acts 1971, 62nd Leg., p. 230, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 25.006 to 25.020 reserved for expansion]

**SUBCHAPTER B. REGIONAL WASTE DISPOSAL SYSTEMS**

**§ 25.021. Disposal System**

A district may acquire, construct, improve, enlarge, extend, repair, operate, and maintain one or more disposal systems.

[Acts 1971, 62nd Leg., p. 230, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.022. Purchase and Sale of Facilities**

A district may contract with any person to purchase or sell, by installments over such term as considered desirable, any waste collection, transportation, treatment, or disposal facilities or systems.

[Acts 1971, 62nd Leg., p. 230, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.023. Lease of Facilities**

A district may lease to or from any person, for such term and on such conditions as may be considered desirable, any waste collection, transportation, treatment, or disposal facilities or systems.

[Acts 1971, 62nd Leg., p. 231, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.024. Operating Agreements**

A district may make operating agreements with any person, for such terms and on such conditions as may be considered desirable, for the operation of any waste collection, transportation, treatment, or disposal facilities or systems of any person by the district.

[Acts 1971, 62nd Leg., p. 231, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.025. Waste Disposal Contracts by District**

A district may make contracts with any person, including any public agency located inside or outside the boundaries of the district, under which the district will collect, transport, treat, or dispose of waste for the person.

[Acts 1971, 62nd Leg., p. 231, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.026. Contracts by River Authority**

Each river authority may make contracts authorized by this chapter with any person, including any public agency situated wholly or partly inside its boundaries and any public agency situated wholly or partly inside the river basin and any public agency situated wholly or partly inside the coastal basins adjoining its boundaries, but a river authority may not make contracts to serve a public agency situated wholly inside the boundaries of another river authority or to serve facilities of a person situated wholly within the boundaries of another river authority, except with the consent of the other river authority.

[Acts 1971, 62nd Leg., p. 231, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.027. Contract with Public Agency**

A public agency may make contracts with a district under which the district will make a disposal system available to the public agency and will furnish waste collection, transportation, treatment, and disposal services to the public agency, group of public agencies, or other persons through the district's disposal system.

[Acts 1971, 62nd Leg., p. 231, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.028. Contract Provisions**

(a) The contract may provide for:

(1) duration of the contract for a specified period or until issued and unissued bonds and refunding bonds of the district are paid;

(2) assuring equitable treatment of parties who contract with the district for waste collection, transportation, treatment, and disposal services from the same disposal system;

(3) requiring the public agency to regulate the quality and strength of waste to be handled by the disposal system;

(4) sale or lease to or use by a district of all or part of a disposal system owned or to be acquired by the public agency;

(5) the district operating all or part of a disposal system owned or to be acquired by the public agency; and

(6) other terms the district or the governing body of the public agency consider appropriate or necessary.

(b) The contract shall specify the method for determining the amounts to be paid by the public agency to the district.

(c) A contract made by a city may provide that the district shall have the right to use the streets, alleys, and public ways and places inside the city during the term of the contract.

[Acts 1971, 62nd Leg., p. 231, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.029. Continued Use of District Facilities**

After amortization of the district's investment in the disposal system, the public agency is entitled to continued performance of the service during the useful life of the disposal system, on payment of reasonable charges reduced to take into consideration the amortization.

[Acts 1971, 62nd Leg., p. 232, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.030. Source of Contract Payments**

(a) A public agency may pay for the waste collection, transportation, treatment, and disposal services with income from its waterworks system, sanitary sewer system, or both systems, or its combined water and sanitary sewer system, as prescribed by the contract. In the alternative, a joint board defined as a public agency in Section 25.003, Subdivision (3), may pay for these services from any revenue or other funds within its control specified in the contract if the city councils of the cities which

created the joint board approve, by ordinance, the contract between the joint board and the district. These payments constitute an operating expense of each system whose revenue is so used.

(b) The obligation of contract payments on the income of the public agency's water system is subordinate to the obligation imposed by any bonds that are payable solely from the water system net revenue and that are outstanding at the time the contract is made, unless the ordinance or resolution authorizing the bonds expressly reserved the right to give the contract payments a priority over the bond requirements.

(c) If a public agency having taxing power holds an election substantially according to the applicable provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> relating to the issuance of bonds by cities, and it is determined that the public agency is authorized to levy an ad valorem tax to make all or part of the payments under a contract with a district, then the contract is an obligation against the taxing power of the public agency to the extent authorized, and payments under the contract may be payable from and constitute solely an obligation against the taxing powers of the city or may be payable both from taxes and from revenue prescribed in the contract. Otherwise, neither the district nor the holders of the district's bonds are entitled to demand payment of the public agency's obligation out of any tax revenue.

[Acts 1971, 62nd Leg., p. 232, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Civil Statutes, Art. 701 et seq.

#### § 25.031. Rates

(a) When all or part of the payments under a contract are to be made from revenue of the waterworks system, sanitary sewer system, both systems, or a combination of both systems, the public agency shall establish, maintain, and periodically adjust the rates charged for services of the systems, so that the revenue, along with any taxes levied in support of the indebtedness, will be sufficient to pay:

- (1) the expenses of operating and maintaining the systems;
- (2) the obligations to the district under the contract; and
- (3) the obligations of bonds that are secured by revenue of the systems.

(b) The contract may require the use of consulting engineers and financial experts to advise the public agency on the need for adjusting rates.

[Acts 1971, 62nd Leg., p. 232, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 25.032. Service to More Than One Public Agency

A contract or group of contracts may provide for the district to render services concurrently to more than one person through constructing and operating a disposal system and may provide that the cost of these services be allocated among the persons as provided in the contract or group of contracts.

[Acts 1971, 62nd Leg., p. 233, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 25.033. Property Acquired by Condemnation or Otherwise

(a) To accomplish the purposes of this chapter, a district may acquire by purchase, lease, gift or in any other manner all or any interest in property inside or outside the boundaries of the district and may own, maintain, use, and operate it.

(b) To accomplish the purposes of the chapter, a district may exercise the power of eminent domain to acquire all or any interest in property inside or outside the boundaries of the district. The power shall be exercised according to the laws applicable or available to the district.

[Acts 1971, 62nd Leg., p. 233, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 25.034. Cost of Relocating, Altering, Etc.

If a district makes necessary the relocating; raising, rerouting, changing the grade of, or altering the construction of any highway, railroad, electric transmission line, pipeline, or telephone or telegraph properties or facilities in the exercise of powers granted under this chapter, the district shall pay all of the actual cost of the relocating, raising, rerouting, changing in grade, or altering of construction, and shall pay all of the actual cost of providing comparable replacement of facilities without enhancement, less the net salvage value of the facilities.

[Acts 1971, 62nd Leg., p. 233, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 25.035. Elections

No election is required for the exercise of any power under this chapter except for the tax levy as provided by Section 25.030(c) of this code.

[Acts 1971, 62nd Leg., p. 233, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 25.036 to 25.050 reserved for expansion]

### SUBCHAPTER C. DISTRICT REVENUE BONDS

#### § 25.051. Issuance of Bonds

In order to acquire, construct, improve, enlarge, extend, or repair disposal systems, the district may issue bonds secured by a pledge of all or part of the revenue from any contract entered into under this chapter and other income of the district.

[Acts 1971, 62nd Leg., p. 233, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 25.052. Form, Denomination, Interest Rate

The governing body of the district shall prescribe the form, denomination, and rate of interest for the bonds.

[Acts 1971, 62nd Leg., p. 234, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 25.053. Refunding Bonds

A district may refund any bonds issued under this chapter on the terms and conditions and at the rate of interest the governing body prescribes.

[Acts 1971, 62nd Leg., p. 234, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.054. Sale or Exchange of Bonds**

A district may sell bonds issued under this chapter at public or private sale at the price or prices and on the terms determined by the governing body, or it may exchange the bonds for property or any interest in property of any kind considered necessary or convenient to the purposes authorized in this chapter.

[Acts 1971, 62nd Leg., p. 234, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.055. Interim Bonds**

Pending the issuance of definitive bonds, a district may issue negotiable interim bonds or obligations eligible for exchange or substitution by use of definitive bonds.

[Acts 1971, 62nd Leg., p. 234, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.056. Attorney General's Examination**

(a) After issuance of the bonds is authorized, the bonds and the record relating to their issuance may be submitted to the attorney general for examination.

(b) When the bonds recite that they are secured by a pledge of the proceeds from a contract between the district and a public agency, a copy of the contract and the proceedings of the public agency authorizing the contract may also be submitted to the attorney general.

(c) If the attorney general finds that the bonds are authorized and that the contract is made in accordance with the constitution and laws of this state, he shall approve the bonds and the contract.

[Acts 1971, 62nd Leg., p. 234, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.057. Registration by Comptroller**

After the bonds have been approved by the attorney general, they shall be registered by the state comptroller.

[Acts 1971, 62nd Leg., p. 234, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.058. Validation Suit**

(a) Instead of, or in addition to, obtaining the approval of the attorney general, the district may have the bonds validated by suit in the district court as provided in Chapter 316, Acts of the 56th Legislature, Regular Session, 1959 (Article 717m, Vernon's Texas Civil Statutes).

(b) The governing body of the district may wait until after termination of the validation suit to fix the interest rate and sale price of the bonds.

(c) If the proposed bonds recite that they are secured by the proceeds of a contract between the district and a public agency, the petition shall so allege; and the notice of the suit shall mention this allegation and shall specify the public agency's funds or revenues from which the contract payments are to be made.

[Acts 1971, 62nd Leg., p. 234, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.059. Bonds Incontestable**

After the bonds are approved by the attorney general and registered with the comptroller, the bonds and the contract are incontestable.

[Acts 1971, 62nd Leg., p. 235, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.060. Negotiable Instruments**

Bonds issued under this subchapter are negotiable instruments.

[Acts 1971, 62nd Leg., p. 235, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.061. Investment Securities under Uniform Commercial Code**

Bonds issued under this subchapter are investment securities governed by Chapter 8, Uniform Commercial Code.

[Acts 1971, 62nd Leg., p. 235, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.062. Bonds as Authorized Investments**

Bonds issued under this chapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the sinking funds of cities, towns, villages, school districts, and other political corporations or subdivisions of the state.

[Acts 1971, 62nd Leg., p. 235, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.063. Security for Deposits**

The bonds are eligible to secure deposits of any public funds of the state or any political subdivision of the state, and are lawful and sufficient security for the deposits to the extent of their value when accompanied by unmatured coupons attached to the bonds.

[Acts 1971, 62nd Leg., p. 235, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.064. Funds Set Aside from Bond Proceeds**

The district may set aside out of the proceeds from the sale of bonds:

(1) interest to accrue on the bonds and administrative expenses to the estimated date when the disposal system will become revenue-producing; and

(2) reserve funds created by the resolution authorizing the bonds.

[Acts 1971, 62nd Leg., p. 235, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.065. Investment of Proceeds**

Pending their use, proceeds from the sale of bonds may be invested in securities or time deposits as specified in the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds. The earnings on these investments shall be applied as provided in the resolution or trust indenture.

[Acts 1971, 62nd Leg., p. 235, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 25.066. Rates and Charges**

While any bonds are outstanding, the governing body of the district shall fix, maintain, and collect,

for services furnished or made available by the disposal system, rates and charges adequate to:

- (1) pay maintenance and operating costs of and expenses allocable to the disposal system;
- (2) pay the principal of and interest on the bonds; and
- (3) provide and maintain the funds created by the resolution authorizing the bonds.

[Acts 1971, 62nd Leg., p. 236, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 25.067 to 25.100 reserved for expansion]

#### SUBCHAPTER D. RIVER AUTHORITY PLANNING

##### § 25.101. Authorization of Regional Plans

Each river authority may prepare regional plans for water quality management, control, and abatement of pollution in any segment of its river basin and adjoining coastal basins which:

(1) are consistent with any applicable water quality standards established under current law within the river basin;

(2) recommend disposal systems which will provide the most effective and economical means of collection, storage, treatment, and purification of waste, and means to encourage rural, municipal, and industrial use of the works and systems; and

(3) recommend maintenance and improvement of water quality standards within the river basin and methods of adequately financing the facilities necessary to implement the plan.

[Acts 1971, 62nd Leg., p. 236, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 25.102. Planning in Related Fields

River authorities may conduct planning in related or affected fields reasonably necessary to give meaning to the water quality management and pollution control planning carried out under this subchapter.

[Acts 1971, 62nd Leg., p. 236, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 25.103. Joint Planning

(a) River authorities may join in the performance of planning functions with any district or public agency and enter into planning agreements for the term and on the conditions considered desirable to provide coordinated planning on a basin-wide scale, including adjacent coastal basins.

(b) River authorities may provide for river basin planning committees as entities with powers, responsibilities, functions, and duties conferred by mutual agreement.

[Acts 1971, 62nd Leg., p. 236, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 25.104. Coordination with Other Planning Agencies

A river authority performing planning functions under this subchapter shall coordinate its efforts and cooperate with other public planning agencies having significant planning interests in any segment of

the river basin in or for which the planning is being conducted by the river authority.

[Acts 1971, 62nd Leg., p. 236, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 25.105. Financial Assistance

River authorities may make applications and enter into contracts for financial assistance in comprehensive planning which are appropriate under Section 3(c) of the Federal Water Pollution Control Act,<sup>1</sup> under 33 U.S.C., Sec. 1926, et seq., under 40 U.S.C., Sec. 461, et seq.,<sup>2</sup> and under any other relevant statutes.

[Acts 1971, 62nd Leg., p. 237, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> See 33 U.S.C.A. § 1153(c).

<sup>2</sup> 40 U.S.C.A. § 461 et seq.

##### § 25.106. Supervision by Water Quality Board

The Texas Water Quality Board is authorized to exercise continuing supervision on behalf of the state of comprehensive plans prepared under this chapter.

[Acts 1971, 62nd Leg., p. 237, ch. 58, § 1, eff. Aug. 30, 1971.]

### TITLE 3. RIVER COMPACTS

#### CHAPTER 41. RIO GRANDE COMPACT

##### Section

- 41.001. Ratification.
- 41.002. Original Copy.
- 41.003. Commissioner.
- 41.004. Term of Office.
- 41.005. Oath.
- 41.006. Compensation; Expenses.
- 41.007. Employees; Administrative Expenses.
- 41.008. Powers and Duties.
- 41.009. Text of Compact.

##### § 41.001. Ratification

The Rio Grande Compact, the text of which is set out in Section 41.009 of this code, was ratified by the legislature of this state in Chapter 3, page 531, Special Laws, Acts of the 46th Legislature, 1939, after having been signed at Santa Fe, New Mexico, on March 18, 1938, by M. C. Hinderlider, commissioner for the State of Colorado, Thos. M. McClure, commissioner for the State of New Mexico, and Frank B. Clayton, commissioner for the State of Texas, and approved by S. O. Harper, commissioner representing the United States.

[Acts 1971, 62nd Leg., p. 237, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 41.002. Original Copy

An original copy of the compact is on file in the office of the secretary of state.

[Acts 1971, 62nd Leg., p. 237, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 41.003. Commissioner

The governor, with the advice and consent of the senate, shall appoint a commissioner to represent this state on the commission established by Article XII of the compact.

[Acts 1971, 62nd Leg., p. 237, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 41.004. Term of Office

The commissioner holds office for a term of six (6) years and until his successor is appointed and has qualified.

[Acts 1971, 62nd Leg., p. 237, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 2504, ch. 823, § 1, eff. June 8, 1971.]

§ 41.005. Oath

The commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform his duties as commissioner.

[Acts 1971, 62nd Leg., p. 237, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 41.006. Compensation; Expenses

The commissioner is entitled to compensation as provided by legislative appropriation. On submission of detailed, sworn accounts, he is entitled to reimbursement for actual expenses incurred while traveling in the discharge of his duties.

[Acts 1971, 62nd Leg., p. 237, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 41.007. Employees; Administrative Expenses

The commissioner, in conjunction with the other members of the commission and as authorized by legislative appropriation, may employ engineering and clerical personnel and may incur necessary office expenses and other expenses incident to the proper performance of his duties and the proper administration of the compact. However, the commissioner shall not incur any financial obligation on behalf of this state until the legislature has authorized and appropriated money for the obligation.

[Acts 1971, 62nd Leg., p. 238, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 41.008. Powers and Duties

The commissioner is responsible for administering the provisions of the compact, and he has all the powers and duties prescribed by the compact.

[Acts 1971, 62nd Leg., p. 238, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 41.009. Text of Compact

The Rio Grande Compact reads as follows:

RIO GRANDE COMPACT

The State of Colorado, the State of New Mexico, and the State of Texas, desiring to remove all causes of present and future controversy among these States and between citizens of one of these States and citizens of another State with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, and for the purpose of effecting an equitable apportionment of such waters, have resolved to conclude a Compact for the attainment of these purposes, and to that end, through their respective Governors, have named as their respective Commissioners:

For the State of Colorado—M. C. Hinderlider

For the State of New Mexico—Thomas M. McClure

For the State of Texas—Frank B. Clayton

who, after negotiations participated in by S. O. Harper, appointed by the President as the representative of the United States of America, have agreed upon the following Articles, to wit:

ARTICLE I

(a) The State of Colorado, the State of New Mexico, the State of Texas, and the United States of America, are hereinafter designated "Colorado," "New Mexico," "Texas," and the "United States," respectively.

(b) "The Commission" means the agency created by this Compact for the administration thereof.

(c) The term "Rio Grande Basin" means all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the Closed Basin in Colorado.

(d) The "Closed Basin" means that part of the Rio Grande Basin in Colorado where the streams drain into the San Luis Lakes and adjacent territory, and do not normally contribute to the flow of the Rio Grande.

(e) The term "tributary" means any stream which naturally contributes to the flow of the Rio Grande.

(f) "Transmountain Diversion" is water imported into the drainage basin of the Rio Grande from any stream system outside of the Rio Grande Basin, exclusive of the Closed Basin.

(g) "Annual Debits" are the amounts by which actual deliveries in any calendar year fall below scheduled deliveries.

(h) "Annual Credits" are the amounts by which actual deliveries in any calendar year exceed scheduled deliveries.

(i) "Accrued Debits" are the amounts by which the sum of all annual debits exceeds the sum of all annual credits over any common period of time.

(j) "Accrued Credits" are the amounts by which the sum of all annual credits exceeds the sum of all annual debits over any common period of time.

(k) "Project Storage" is the combined capacity of Elephant Butte Reservoir and all other reservoirs actually available for the storage of usable water below Elephant Butte and above the first diversion to lands of the Rio Grande Project, but not more than a total of two million, six hundred and thirty-eight thousand, eight hundred and sixty (2,638,860) acre-feet.

(l) "Usable Water" is all water, exclusive of credit water, which is in project storage and which is available for release in accordance with irrigation demands, including deliveries to Mexico.

(m) "Credit Water" is that amount of water in project storage which is equal to the accrued credit of Colorado or New Mexico or both.

(n) "Unfilled Capacity" is the difference between the total physical capacity of project storage and the amount of usable water then in storage.

(o) "Actual Release" is the amount of usable water released in any calendar year from the lowest reservoir comprising project storage.

(p) "Actual Spill" is all water which is actually spilled from Elephant Butte Reservoir, or is released therefrom for flood control, in excess of the current demand on project storage and which does not become usable water by storage in another reservoir; provided, that actual spill of usable water cannot occur until all credit water shall have been spilled.

(q) "Hypothetical Spill" is the time in any year at which usable water would have spilled from project storage if seven hundred and ninety thousand (790,000) acre-feet had been released therefrom at rates proportional to the actual release in every year from the starting date to the end of the year in which hypothetical spill occurs; in computing hypothetical spill the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following the effective date of this Compact, and thereafter the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following each actual spill.

ARTICLE II

The Commission shall cause to be maintained and operated a stream gaging station equipped with an automatic water stage recorder at each of the following points, to wit:

- (a) On the Rio Grande near Del Norte above the principal points of diversion to the San Luis Valley;
- (b) On the Conejos River near Mogote;
- (c) On the Los Pinos River near Ortiz;
- (d) On the San Antonio River at Ortiz;
- (e) On the Conejos River at its mouths near Los Sauces;
- (f) On the Rio Grande near Lobatos;
- (g) On the Rio Chama below El Vado Reservoir;
- (h) On the Rio Grande at Otowi Bridge near San Ildefonso;
- (i) On the Rio Grande near San Acacia;
- (j) On the Rio Grande at San Marcial;
- (k) On the Rio Grande below Elephant Butte Reservoir;
- (l) On the Rio Grande below Caballo Reservoir.

Similar gaging stations shall be maintained and operated below any other reservoir constructed after 1929, and at such other points as may be necessary for the securing of records required for the carrying out of the Compact; and automatic water stage recorders shall be maintained and operated on each of the reservoirs mentioned, and on all others constructed after 1929.

Such gaging stations shall be equipped, maintained, and operated by the Commission directly or in cooperation with an appropriate Federal or State agency, and the equipment, method and frequency of measurement at such stations shall be such as to produce reliable records at all times.

ARTICLE III

The obligation of Colorado to deliver water in the Rio Grande at the Colorado-New Mexico State Line, measured at or near Lobatos, in each calendar year, shall be ten thousand (10,000) acre-feet less than the sum of those quantities set forth in the two (2) following tabulations of relationship, which correspond to the quantities at the upper index stations:

Discharge of Conejos River

Quantities in thousands of acre-feet

Conejos Index Supply (1)	Conejos River at Mouths (2)
100	0
150	20
200	45
250	75
300	109
350	147
400	188
450	232
500	278
550	326
600	376
650	426
700	476

Intermediate quantities shall be computed by proportional parts.

(1) Conejos Index Supply is the natural flow of Conejos River at the U.S.G.S. gaging station near Mogote during the calendar year, plus the natural flow of Los Pinos River at the U.S.G.S. gaging station near Ortiz and the natural flow of San Antonio River at the U.S.G.S. gaging station at Ortiz, both during the months of April to October, inclusive.

(2) Conejos River at mouths is the combined discharge of branches of this River at the U.S.G.S. gaging stations near Los Sauces during the calendar year.

Discharge of Rio Grande exclusive of Conejos River

Quantities in thousands of acre-feet

Rio Grande at Del Norte (3)	Rio Grande at Lobatos less Conejos at Mouths (4)
200	60
250	65
300	75
350	86
400	98
450	112
500	127
550	144
600	162
650	182
700	204
750	229
800	257
850	292
900	335
950	380
1,000	430
1,100	540
1,200	640
1,300	740
1,400	840

Intermediate quantities shall be computed by proportional parts.

(3) Rio Grande at Del Norte is the recorded flow of the Rio Grande at the U.S.G.S. gaging station near Del Norte during the calendar year (measured above all principal points of diversion to San Luis Valley) corrected for the operation of reservoirs constructed after 1937.

(4) Rio Grande at Lobatos less Conejos at mouths is the total flow of the Rio Grande at the U.S.G.S. gaging station near Lobatos, less the discharge of Conejos River at its mouths, during the calendar year.

The application of these schedules shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging station; (b) any new or increased depletion of the runoff above inflow index gaging stations; and (c) any transmountain diversions into the drainage basin of the Rio Grande above Lobatos.

In event any works are constructed after 1937 for the purpose of delivering water into the Rio Grande from the Closed Basin, Colorado shall not be credited with the amount of such water delivered, unless the proportion of sodium ions shall be less than forty-five (45) percent of the total positive ions in that water when the total dissolved solids in such water exceeds three hundred and fifty (350) parts per million.

ARTICLE IV

The obligation of New Mexico to deliver water in the Rio Grande at San Marcial, during each calendar year, exclusive of the months of July, August, and September, shall be that quantity set forth in the following tabulation of relationship, which corresponds to the quantity at the upper index station:

Discharge of Rio Grande at Otowi Bridge and at San Marcial exclusive of July, August, and September

Quantities in thousands of acre-feet

Otowi Index Supply (5)	San Marcial Index Supply (6)
100	0
200	65
300	141
400	219
500	300
600	383
700	469
800	557
900	648
1000	742
1100	839
1200	939
1300	1042
1400	1148
1500	1257
1600	1370
1700	1489
1800	1608
1900	1730
2000	1856
2100	1985
2200	2117
2300	2253

Intermediate quantities shall be computed by proportional parts.

(5) The Otowi Index Supply is the recorded flow of the Rio Grande at the U.S.G.S. gaging station at Otowi Bridge near San Ildefonso (formerly station near Buckman) during the calendar year, exclusive of the flow during the months of July, August, and September, corrected for the operation of reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and Otowi Bridge.

(6) San Marcial Index Supply is the recorded flow of the Rio Grande at the gaging station at San Marcial during the calendar year exclusive of the flow during the months of July, August, and September.

The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) depletion after 1929 in New Mexico at any time of the year of the natural runoff at Otowi Bridge; (c) depletion of the runoff during July, August, and September of tributaries between Otowi Bridge and San Marcial, by works constructed after 1937; and (d) any transmountain diversions into the Rio Grande between Lobatos and San Marcial.

Concurrent records shall be kept of the flow of the Rio Grande at San Marcial, near San Acacia, and of the release from Elephant Butte Reservoir, to the end that the records at these three (3) stations may be correlated.

ARTICLE V

If at any time it should be the unanimous finding and determination of the Commission that because of changed physical conditions, or for any other reason, reliable records are not obtainable, or cannot be obtained, at any of the stream gaging stations herein referred to, such stations may, with the unanimous approval of the Commission, be abandoned, and with such approval another station, or other stations, shall be established and new measurements shall be substituted which, in the unanimous opinion of the Commission, will result in substantially the same results, so far as the rights and obligations to deliver water are concerned, as would have existed if such substitution of stations and measurements had not been so made.

ARTICLE VI

Commencing with the year following the effective date of this Compact, all credits and debits of Colorado and New Mexico shall be computed for each calendar year; provided, that in a year of actual spill no annual credits nor annual debits shall be computed for that year.

In the case of Colorado, no annual debit nor accrued debit shall exceed one hundred thousand (100,000) acre-feet, except as either or both may be

caused by holdover storage water in reservoirs constructed after 1937 in the drainage basin of the Rio Grande above Lobatos. Within the physical limitations of storage capacity in such reservoirs, Colorado shall retain water in storage at all times to the extent of its accrued debit.

In the case of New Mexico, the accrued debit shall not exceed two hundred thousand (200,000) acre-feet at any time, except as such debit may be caused by holdover storage of water in reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and San Marcial. Within the physical limitations of storage capacity in such reservoirs, New Mexico shall retain water in storage at all times to the extent of its accrued debit. In computing the magnitude of accrued credits or debits, New Mexico shall not be charged with any greater debit in any one year than the sum of one hundred and fifty thousand (150,000) acre-feet and all gains in the quantity of water in storage in such year.

The Commission by unanimous action may authorize the release from storage of any amount of water which is then being held in storage by reason of accrued debits of Colorado or New Mexico; provided, that such water shall be replaced at the first opportunity thereafter.

In computing the amount of accrued credits and accrued debits of Colorado or New Mexico, any annual credits in excess of one hundred and fifty thousand (150,000) acre-feet shall be taken as equal to that amount.

In any year in which actual spill occurs, the accrued credits of Colorado or New Mexico, or both, at the beginning of the year shall be reduced in proportion to their respective credits by the amount of such actual spill; provided, that the amount of actual spill shall be deemed to be increased by the aggregate gain in the amount of water in storage, prior to the time of spill, in reservoirs above San Marcial constructed after 1929; provided, further, that if the Commissioners for the States having accrued credits authorize the release of part, or all, of such credits in advance of spill, the amount so released shall be deemed to constitute actual spill.

In any year in which there is actual spill of usable water, or at the time of hypothetical spill thereof, all accrued debits of Colorado or New Mexico, or both, at the beginning of the year shall be cancelled.

In any year in which the aggregate of accrued debits of Colorado and New Mexico exceeds the minimum unfilled capacity of project storage, such debits shall be reduced proportionally to an aggregate amount equal to such minimum unfilled capacity.

To the extent that accrued credits are impounded in reservoirs between San Marcial and Courchesne, and to the extent that accrued debits are impounded

in reservoirs above San Marcial, such credits and debits shall be reduced annually to compensate for evaporation losses in the proportion that such credits or debits bore to the total amount of water in such reservoirs during the year.

#### ARTICLE VII

Neither Colorado nor New Mexico shall increase the amount of water in storage in reservoirs constructed after 1929 whenever there is less than four hundred thousand (400,000) acre-feet of usable water in project storage; provided, that if the actual releases of usable water from the beginning of the calendar year following the effective date of this Compact, or from the beginning of the calendar year following actual spill, have aggregated more than an average of seven hundred and ninety thousand (790,000) acre-feet per annum, the time at which such minimum stage is reached shall be adjusted to compensate for the difference between the total actual release and releases at such average rate; provided, further, that Colorado or New Mexico, or both, may relinquish accrued credits at any time, and Texas may accept such relinquished water, and in such event the State or States so relinquishing shall be entitled to store water in the amount of the water so relinquished.

#### ARTICLE VIII

During the month of January of any year the Commissioner for Texas may demand of Colorado and New Mexico, and the Commissioner for New Mexico may demand of Colorado, the release of water from storage reservoirs constructed after 1929 to the amount of the accrued debits of Colorado and New Mexico, respectively, and such releases shall be made by each at the greatest rate practicable under the conditions then prevailing, and in proportion to the total debit of each, and in amounts, limited by their accrued debits, sufficient to bring the quantity of usable water in project storage to six hundred thousand (600,000) acre-feet by March 1st and to maintain this quantity in storage until April 30th, to the end that a normal release of seven hundred and ninety thousand (790,000) acre-feet may be made from project storage in that year.

#### ARTICLE IX

Colorado agrees with New Mexico that in event the United States or the State of New Mexico decides to construct the necessary works for diverting the waters of the San Juan River, or any of its tributaries, into the Rio Grande, Colorado hereby consents to the construction of said works and the diversion of waters from the San Juan River, or the tributaries thereof, into the Rio Grande in New Mexico, provided the present and prospective uses of

water in Colorado by other diversions from the San Juan River, or its tributaries, are protected.

## ARTICLE X

In the event water from another drainage basin shall be imported into the Rio Grande Basin by the United States or Colorado or New Mexico, or any of them jointly, the State having the right to the use of such water shall be given proper credit therefor in the application of the schedules.

## ARTICLE XI

New Mexico and Texas agree that upon the effective date of this Compact all controversies between said States relative to the quantity or quality of the water of the Rio Grande are composed and settled; however, nothing herein shall be interpreted to prevent recourse by a signatory State to the Supreme Court of the United States for redress should the character or quality of the water, at the point of delivery, be changed hereafter by one signatory State to the injury of another. Nothing herein shall be construed as an admission by any signatory State that the use of water for irrigation causes increase of salinity for which the user is responsible in law.

## ARTICLE XII

To administer the provisions of this Compact there shall be constituted a Commission composed of one representative from each State, to be known as the Rio Grande Compact Commission. The State Engineer of Colorado shall be ex-officio the Rio Grande Compact Commissioner for Colorado. The State Engineer of New Mexico shall be ex-officio the Rio Grande Compact Commissioner for New Mexico. The Rio Grande Compact Commissioner for Texas shall be appointed by the Governor of Texas. The President of the United States shall be requested to designate a representative of the United States to sit with such Commission, and such Representative of the United States, if so designated by the President, shall act as Chairman of the Commission without vote.

The salaries and personal expenses of the Rio Grande Compact Commissioners for the three (3) States shall be paid by their respective States, and all other expenses incident to the administration of this Compact, not borne by the United States, shall be borne equally by the three (3) States.

In addition to the powers and duties hereinbefore specifically conferred upon such Commission and the Members thereof, the jurisdiction of such Commission shall extend only to the collection, correlation, and presentation of factual data and the maintenance of records having a bearing upon the administration of this Compact, and, by unanimous action, to the making of recommendations to the respective States upon matters connected with the administra-

tion of this Compact. In connection therewith, the Commission may employ such engineering and clerical aid as may be reasonably necessary within the limit of funds provided for that purpose by the respective States. Annual reports compiled for each calendar year shall be made by the Commission and transmitted to the Governors of the signatory States on or before March 1st following the year covered by the report. The Commission may, by unanimous action, adopt rules and regulations consistent with the provisions of this Compact to govern their proceedings.

The findings of the Commission shall not be conclusive in any Court or tribunal which may be called upon to interpret or enforce this Compact.

## ARTICLE XIII

At the expiration of every five-year period after the effective date of this Compact, the Commission may, by unanimous consent, review any provisions hereof which are not substantive in character and which do not affect the basic principles upon which the Compact is founded, and shall meet for the consideration of such questions on the request of any member of the Commission; provided, however, that the provisions hereof shall remain in full force and effect until changed and amended within the intent of the Compact by unanimous action of the Commissioners, and until any changes in this Compact are ratified by the Legislatures of the respective States and consented to by the Congress, in the same manner as this Compact is required to be ratified to become effective.

## ARTICLE XIV

The schedules herein contained and the quantities of water herein allocated shall never be increased nor diminished by reason of any increase or diminution in the delivery or loss of water to Mexico.

## ARTICLE XV

The physical and other conditions characteristic of the Rio Grande and peculiar to the territory drained and served thereby, and to the development thereof, have actuated this Compact and none of the signatory States admits that any provisions herein contained establishes any general principle or precedent applicable to other interstate streams.

## ARTICLE XVI

Nothing in this Compact shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties, or to the Indian Tribes, or as impairing the Rights of the Indian Tribes.

## ARTICLE XVII

This Compact shall become effective when ratified by the Legislatures of each of the signatory States

and consented to by the Congress of the United States. Notice of ratification shall be given by the Governor of each State to the Governors of the other States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of each of the signatory States of the consent of the Congress of the United States.

IN WITNESS WHEREOF, The Commissioners have signed this Compact in quadruplicate original, one of which shall be deposited in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Sante Fe, in the State of New Mexico, on the 18th day of March, in the year of our Lord, One Thousand Nine Hundred and Thirty-eight.

(Signed) M. C. Hinderlider

(Signed) Thomas M. McClure

(Signed) Frank B. Clayton

Approved:

(Signed) S. O. Harper

## CHAPTER 42. PECOS RIVER COMPACT

Section	
42.001.	Ratification.
42.002.	Original Copy.
42.003.	Commissioner.
42.004.	Term of Office.
42.005.	Oath.
42.006.	Compensation; Expenses.
42.007.	Employees; Administrative Expenses.
42.008.	Powers and Duties.
42.009.	Cooperation of Water Rights Commission.
42.010.	Text of Compact.

### § 42.001. Ratification

The Pecos River Compact, the text of which is set out in Section 42.010 of this code, was ratified by the legislature of this state in Chapter 30, Acts of the 51st Legislature, Regular Session, 1949, after having been signed at Santa Fe, New Mexico, on December 3, 1948, by John H. Bliss, commissioner for the State of New Mexico, and Charles H. Miller, commissioner for the State of Texas, and approved by Berkeley Johnson, representing the United States.  
[Acts 1971, 62nd Leg., p. 247, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 42.002. Original Copy

An original copy of the compact is on file in the office of the secretary of state.  
[Acts 1971, 62nd Leg., p. 247, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 42.003. Commissioner

The governor, with the advice and consent of the senate, shall appoint a commissioner to represent this state on the commission established by Article V of the compact.  
[Acts 1971, 62nd Leg., p. 247, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 42.004. Term of Office

The commissioner holds office for a term of two years and until his successor is appointed and has qualified.  
[Acts 1971, 62nd Leg., p. 247, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 42.005. Oath

The commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform his duties as commissioner.  
[Acts 1971, 62nd Leg., p. 247, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 42.006. Compensation; Expenses

The commissioner is entitled to compensation as provided by legislative appropriation. He is entitled to reimbursement for actual expenses incurred while traveling in the discharge of his duties.  
[Acts 1971, 62nd Leg., p. 247, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 42.007. Employees; Administrative Expenses

The commissioner may employ engineering, legal, and clerical personnel as necessary to protect the interest of the state and to carry out and enforce the terms of the compact. He may incur necessary office expenses and other expenses incident to the proper performance of his duties and the proper administration of the compact. However, the commissioner shall not incur any financial obligation on behalf of this state until the legislature has authorized and appropriated money for the obligation.  
[Acts 1971, 62nd Leg., p. 248, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 42.008. Powers and Duties

- (a) The commissioner is responsible for administering the provisions of the compact, and he has all the powers and duties prescribed by the compact.
- (b) The commissioner may meet and confer with the New Mexico commissioner at any place the commission considers proper.  
[Acts 1971, 62nd Leg., p. 248, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 42.009. Cooperation of Water Rights Commission

The Texas Water Rights Commission shall cooperate with the commissioner in the performance of his duties and shall furnish him any available data and information he needs.  
[Acts 1971, 62nd Leg., p. 248, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 42.010. Text of Compact

The Pecos River Compact reads as follows:

PECOS RIVER COMPACT  
Entered Into by the States of  
NEW MEXICO  
and  
TEXAS

Sante Fe, New Mexico  
December 3, 1948

PECOS RIVER COMPACT

The State of New Mexico and the State of Texas, acting through their Commissioners, John H. Bliss for the State of New Mexico and Charles H. Miller for the State of Texas, after negotiations participated in by Berkeley Johnson, appointed by the President as the representative of the United States of America, have agreed respecting the uses, apportionment and deliveries of the water of the Pecos River as follows:

ARTICLE I

The major purposes of this Compact are to provide for the equitable division and apportionment of the use of the waters of the Pecos River; to promote interstate comity; to remove causes of present and future controversies; to make secure and protect present development within the states; to facilitate the construction of works for, (a) the salvage of water, (b) the more efficient use of water, and (c) the protection of life and property from floods.

ARTICLE II

As used in this Compact:

(a) The term "Pecos River" means the tributary of the Rio Grande which rises in north-central New Mexico and flows in a southerly direction through New Mexico and Texas and joins the Rio Grande near the town of Langtry, Texas, and includes all tributaries of said Pecos River.

(b) The term "Pecos River Basin" means all of the contributing drainage area of the Pecos River and its tributaries above its mouth near Langtry, Texas.

(c) "New Mexico" and "Texas" mean the State of New Mexico and the State of Texas, respectively; "United States" means the United States of America.

(d) The term "Commission" means the agency created by this Compact for the administration thereof.

(e) The term "deplete by man's activities" means to diminish the stream flow of the Pecos River at any given point as the result of beneficial consumptive uses of water within the Pecos River Basin above such point. For the purposes of this Compact it does not include the diminution of such flow by encroachment of salt cedars or other like growth, or by deterioration of the channel of the stream.

(f) The term "Report of the Engineering Advisory Committee" means that certain report of the Engineering Advisory Committee dated January, 1948, and all appendices thereto; including, basic data, processes, and analyses utilized in preparing that report, all of which were reviewed, approved, and adopted by the Commissioners signing this Compact at a meeting held in Santa Fe, New Mexico, on December 3, 1948, and which are included in the Minutes of that meeting.

(g) The term "1947 condition" means that situation in the Pecos River Basin as described and defined in the Report of the Engineering Advisory Committee. In determining any question of fact

hereafter arising as to such situation, reference shall be made to, and decisions shall be based on, such report.

(h) The term "water salvaged" means that quantity of water which may be recovered and made available for beneficial use and which quantity of water under the 1947 condition was non-beneficially consumed by natural processes.

(i) The term "unappropriated flood waters" means water originating in the Pecos River Basin above Red Bluff Dam in Texas, the impoundment of which will not deplete the water usable by the storage and diversion facilities existing in either state under the 1947 condition and which if not impounded will flow past Girvin, Texas.

ARTICLE III

(a) Except as stated in paragraph (f) of this Article, New Mexico shall not deplete by man's activities the flow of the Pecos River at the New Mexico-Texas state line below an amount which will give to Texas a quantity of water equivalent to that available to Texas under the 1947 condition.

(b) Except as to the unappropriated flood waters thereof, the apportionment of which is included in and provided for by paragraph (f) of this Article, the beneficial consumptive use of the waters of the Delaware River is hereby apportioned to Texas, and the quantity of such beneficial consumptive use shall be included in determining waters received under the provisions of paragraph (a) of this Article.

(c) The beneficial consumptive use of water salvaged in New Mexico through the construction and operation of a project or projects by the United States or by joint undertakings of Texas and New Mexico, is hereby apportioned forty-three per cent (43%) to Texas and fifty-seven per cent (57%) to New Mexico.

(d) Except as to water salvaged, apportioned in paragraph (c) of this Article, the beneficial consumptive use of water which shall be non-beneficially consumed, and which is recovered, is hereby apportioned to New Mexico but not to have the effect of diminishing the quantity of water available to Texas under the 1947 condition.

(e) Any water salvaged in Texas is hereby apportioned to Texas.

(f) Beneficial consumptive use of unappropriated flood waters is hereby apportioned fifty per cent (50%) to Texas and fifty per cent (50%) to New Mexico.

ARTICLE IV

(a) New Mexico and Texas shall cooperate to support legislation for the authorization and construction of projects to eliminate non-beneficial consumption of water.

(b) New Mexico and Texas shall cooperate with agencies of the United States to devise and effectuate means of alleviating the salinity conditions of the Pecos River.

(c) New Mexico and Texas each may:

(i) Construct additional reservoir capacity to replace reservoir capacity made unusable by any cause.

(ii) Construct additional reservoir capacity for the utilization of water salvaged and unappropriated flood waters apportioned by this Compact to such state.

(iii) Construct additional reservoir capacity for the purpose of making more efficient use of water apportioned by this Compact to such state.

(d) Neither New Mexico nor Texas will oppose the construction of any facilities permitted by this Compact, and New Mexico and Texas will cooperate to obtain the construction of facilities that will be of joint benefit to the two states.

(e) The Commission may determine the conditions under which Texas may store water in works constructed in and operated by New Mexico.

(f) No reservoir shall be constructed and operated in New Mexico above Avalon Dam for the sole benefit of Texas unless the Commission shall so determine.

(g) New Mexico and Texas each has the right to construct and operate works for the purpose of preventing flood damage.

(h) All facilities shall be operated in such manner as to carry out the terms of this Compact.

#### ARTICLE V

(a) There is hereby created an interstate administrative agency to be known as the "Pecos River Commission." The Commission shall be composed of one Commissioner representing each of the states of New Mexico and Texas, designated or appointed in accordance with the laws of each such state, and, if designated by the President, one Commissioner representing the United States. The President is hereby requested to designate such a Commissioner. If so designated, the Commissioner representing the United States shall be the presiding officer of the Commission, but shall not have the right to vote in any of the deliberations of the Commission. All members of the Commission must be present to constitute a quorum.

(b) The salaries and personal expenses of each Commissioner shall be paid by the government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact and which are not paid by the United States shall be borne equally by the two states. On or before November 1 of each even numbered year the Commission shall adopt and transmit to the Governors of the two states and to the President a budget covering an estimate of its expenses for the following two years. The payment of the expenses of the Commission and of its employees shall not be subject to the audit and accounting procedures of either of the two states. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified independent public accountant and the re-

port of the audit shall be included in, and become a part of, the annual report of the Commission.

(c) The Commission may appoint a secretary who, while so acting, shall not be an employee of either state. He shall serve for such term, receive such salary, and perform such duties as the Commission may direct. The Commission may employ such engineering, legal, clerical, and other personnel as in its judgment may be necessary for the performance of its functions under this Compact. In the hiring of employees the Commission shall not be bound by the civil service laws of either state.

(d) The Commission, so far as consistent with this Compact, shall have power to:

1. Adopt rules and regulations;
2. Locate, establish, construct, operate, maintain, and abandon water gaging stations, independently or in cooperation with appropriate governmental agencies;
3. Engage in studies of water supplies of the Pecos River and its tributaries, independently or in cooperation with appropriate governmental agencies;
4. Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions, salvage, and use of the waters of the Pecos River and its tributaries, independently or in cooperation with appropriate governmental agencies;
5. Make findings as to any change in depletion by man's activities in New Mexico, and on the Delaware River in Texas;
6. Make findings as to the deliveries of water at the New Mexico-Texas state line;
7. Make findings as to the quantities of water salvaged and the amount thereof delivered at the New Mexico-Texas state line;
8. Make findings as to quantities of water non-beneficially consumed in New Mexico;
9. Make findings as to quantities of unappropriated flood waters;
10. Make findings as to the quantities of reservoir losses from reservoirs constructed in New Mexico which may be used for the benefit of both states, and as to the share thereof charged under Article VI hereof to each of the states;
11. Acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;
12. Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder, independently or in cooperation with appropriate governmental agencies;
13. Make and transmit annually to the Governors of the signatory states and to the President of the United States on or before the last day of February of each year, a report covering the activities of the Commission for the preceding year.

(e) The Commission shall make available to the Governor of each of the signatory states any information within its possession at any time, and shall always provide free access to its records by the Governors of each of the States, or their representatives, or authorized representatives of the United States.

(f) Findings of fact made by the Commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

(g) The organization meeting of the Commission shall be held within four months from the effective date of this Compact.

#### ARTICLE VI

The following principles shall govern in regard to the apportionment made by Article III of this Compact:

(a) The Report of the Engineering Advisory Committee, supplemented by additional data hereafter accumulated, shall be used by the Commission in making administrative determinations.

(b) Unless otherwise determined by the Commission, depletions by man's activities, state-line flows, quantities of water salvaged, and quantities of unappropriated flood waters shall be determined on the basis of three-year periods reckoned in continuing progressive series beginning with the first day of January next succeeding the ratification of this Compact.

(c) Unless and until a more feasible method is devised and adopted by the Commission the inflow-outflow method, as described in the Report of the Engineering Advisory Committee, shall be used to:

(i) Determine the effect on the state-line flow of any change in depletions by man's activities or otherwise, of the waters of the Pecos River in New Mexico.

(ii) Measure at or near the Avalon Dam in New Mexico the quantities of water salvaged.

(iii) Measure at or near the state line any water released from storage for the benefit of Texas as provided for in subparagraph (d) of this Article.

(iv) Measure the quantities of unappropriated flood waters apportioned to Texas which have not been stored and regulated by reservoirs in New Mexico.

(v) Measure any other quantities of water required to be measured under the terms of this Compact which are susceptible of being measured by the inflow-outflow method.

(d) If unappropriated flood waters apportioned to Texas are stored in facilities constructed in New Mexico, the following principles shall apply:

(i) In case of spill from a reservoir constructed in and operated by New Mexico, the water stored to

the credit of Texas will be considered as the first water to spill.

(ii) In case of spill from a reservoir jointly constructed and operated, the water stored to the credit of either state shall not be affected.

(iii) Reservoir losses shall be charged to each state in proportion to the quantity of water belonging to that state in storage at the time the losses occur.

(iv) The water impounded to the credit of Texas shall be released by New Mexico on the demand of Texas.

(e) Water salvaged shall be measured at or near the Avalon Dam in New Mexico and to the quantity thereof shall be added a quantity equal to the quantity of salvaged water depleted by man's activities above Avalon Dam. The quantity of water salvaged that is apportioned to Texas shall be delivered by New Mexico at the New Mexico-Texas state line. The quantity of unappropriated flood waters impounded under paragraph (d) of this Article, when released shall be delivered by New Mexico at the New Mexico-Texas state line in the quantity released less channel losses. The unappropriated flood waters apportioned to Texas by this Compact that are not impounded in reservoirs in New Mexico shall be measured and delivered at the New Mexico-Texas state line.

(f) Beneficial use shall be the basis, the measure, and the limit of the right to use water.

#### ARTICLE VII

In the event of importation of water by man's activities to the Pecos River Basin from any other river basin the state making the importation shall have the exclusive use of such imported water.

#### ARTICLE VIII

The provisions of this Compact shall not apply to, or interfere with, the right or power of either signatory state to regulate within its boundaries the appropriation, use and control of water, not inconsistent with its obligations under this Compact.

#### ARTICLE IX

In maintaining the flows at the New Mexico-Texas state line required by this Compact, New Mexico shall in all instances apply the principle of prior appropriation within New Mexico.

#### ARTICLE X

The failure of either state to use the water, or any part thereof, the use of which is apportioned to it under the terms of this Compact, shall not constitute a relinquishment of the right to such use, nor shall it constitute a forfeiture or abandonment of the right to such use.

## ARTICLE XI

Nothing in this Compact shall be construed as:

(a) Affecting the obligations of the United States under the Treaty with the United Mexican States (Treaty Series 994);

(b) Affecting any rights or powers of the United States, its agencies or instrumentalities, in or to the waters of the Pecos River, or its capacity to acquire rights in and to the use of said waters;

(c) Subjecting any property of the United States, its agencies or instrumentalities, to taxation by any state or subdivision thereof, or creating any obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any state or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(d) Subjecting any property of the United States, its agencies or instrumentalities, to the laws of any state to an extent other than the extent to which such laws would apply without regard to this Compact.

## ARTICLE XII

The consumptive use of water by the United States or any of its agencies, instrumentalities or wards shall be charged as a use by the state in which the use is made; provided, that such consumptive use incident to the diversion, impounding, or conveyance of water in one state for use in the other state shall be charged to such latter state.

## ARTICLE XIII

This Compact shall not be construed as establishing any general principle or precedent applicable to other interstate streams.

## ARTICLE XIV

This Compact may be terminated at any time by appropriate action of the legislatures of both of the signatory states. In the event of such termination, all rights established under it shall continue unimpaired.

## ARTICLE XV

This Compact shall become binding and obligatory when it shall have been ratified by the legislature of each State and approved by the Congress of the United States. Notice of ratification by the legislature of each State shall be given by the Governor of that State to the Governor of the other State and to the President of the United States, and the President is hereby requested to give notice to the Governor of each State of approval by the Congress of the United States.

In Witness Whereof, the Commissioners have executed three counterparts hereof each of which shall be and constitute an original, one of which shall be deposited in the archives of the Department of State of the United States, and one of which shall be forwarded to the Governor of each State.

Done at the City of Santa Fe, State of New Mexico, this 3rd day of December, 1948.

\_\_\_\_\_  
JOHN H. BLISS

Commissioner for the State of New Mexico

\_\_\_\_\_  
CHARLES H. MILLER

Commissioner for the State of Texas

APPROVED

\_\_\_\_\_  
BERKELEY JOHNSON

Representative of the United States of America

## CHAPTER 43. CANADIAN RIVER COMPACT

## Section

43.001. Ratification.

43.002. Original Copy.

43.003. Commissioner.

43.004. Expenses.

43.005. Powers and Duties.

43.006. Text of Compact.

## § 43.001. Ratification

The Canadian River Compact, the text of which is set out in Section 43.006 of this code, was ratified by the legislature of this state in Chapter 153, Acts of the 52nd Legislature, Regular Session, 1951, after having been signed at Santa Fe, New Mexico, on December 6, 1950, by John H. Bliss, commissioner for the State of New Mexico, E. V. Spence, commissioner for the State of Texas, and Clarence Burch, commissioner for the State of Oklahoma, and approved by Berkeley Johnson, representing the United States.

[Acts 1971, 62nd Leg., p. 255, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 43.002. Original Copy

An original copy of the compact is on file in the office of the secretary of state.

[Acts 1971, 62nd Leg., p. 255, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 43.003. Commissioner

The governor shall appoint a commissioner to represent this state on the commission established by Article IX of the compact.

[Acts 1971, 62nd Leg., p. 255, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 43.004. Expenses

The commissioner is entitled to reimbursement for actual expenses incurred in the discharge of his duties.

[Acts 1971, 62nd Leg., p. 255, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 43.005. Powers and Duties

(a) The commissioner is responsible for administering the provisions of the compact, and he has all the powers and duties prescribed by the compact.

(b) The commissioner may meet and confer with the other commissioners at any place the commission considers proper.

[Acts 1971, 62nd Leg., p. 256, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 43.006. Text of Compact

The Canadian River Compact reads as follows:

CANADIAN RIVER COMPACT

The State of New Mexico, the State of Texas, and the State of Oklahoma, acting through their Commissioners, John H. Bliss for the State of New Mexico, E. V. Spence for the State of Texas, and Clarence Burch for the State of Oklahoma, after negotiations participated in by Berkeley Johnson, appointed by the President as the representative of the United States of America, have agreed respecting Canadian River as follows:

ARTICLE I

The major purposes of this Compact are to promote interstate comity; to remove causes of present and future controversy; to make secure and protect present developments within the States; and to provide for the construction of additional works for the conservation of the waters of Canadian River.

ARTICLE II

As used in this Compact:

(a) The term "Canadian River" means the tributary of Arkansas River which rises in northeastern New Mexico and flows in an easterly direction through New Mexico, Texas and Oklahoma and includes North Canadian River and all other tributaries of said Canadian River.

(b) The term "North Canadian River" means that major tributary of Canadian River officially known as North Canadian River from its source to its junction with Canadian River and includes all tributaries of North Canadian River.

(c) The term "Commission" means the agency created by this Compact for the administration thereof.

(d) The term "conservation storage" means that portion of the capacity of reservoirs available for the storage of water for subsequent release for domestic, municipal, irrigation and industrial uses, or any of them, and it excludes any portion of the capacity of reservoirs allocated solely to flood control, power production and sediment control, or any of them.

ARTICLE III

All rights to any of the waters of Canadian River which have been perfected by beneficial use are hereby recognized and affirmed.

ARTICLE IV

(a) New Mexico shall have free and unrestricted use of all waters originating in the drainage basin of Canadian River above Conchas Dam.

(b) New Mexico shall have free and unrestricted use of all waters originating in the drainage basin of Canadian River in New Mexico below Conchas Dam, provided that the amount of conservation storage in New Mexico available for impounding these waters which originate in the drainage basin of Canadian River below Conchas Dam shall be limited to an

aggregate of two hundred thousand (200,000) acre-feet.

(c) The right of New Mexico to provide conservation storage in the drainage basin of North Canadian River shall be limited to the storage of such water as at the time may be unappropriated under the laws of New Mexico and of Oklahoma.

ARTICLE V

Texas shall have free and unrestricted use of all waters of Canadian River in Texas, subject to the limitations upon storage of water set forth below:

(a) The right of Texas to impound any of the waters of North Canadian River shall be limited to storage on tributaries of said River in Texas for municipal uses, for household and domestic uses, livestock watering, and the irrigation of lands which are cultivated solely for the purpose of providing food and feed for the householders and domestic livestock actually living or kept on the property.

(b) Until more than three hundred thousand (300,000) acre-feet of conservation storage shall be provided in Oklahoma, exclusive of reservoirs in the drainage basin of North Canadian River and exclusive of reservoirs in the drainage basin of Canadian River east of the 97th meridian, the right of Texas to retain water in conservation storage, exclusive of waters of North Canadian River, shall be limited to five hundred thousand (500,000) acre-feet; thereafter the right of Texas to impound and retain such waters in storage shall be limited to an aggregate quantity equal to two hundred thousand (200,000) acre-feet plus whatever amount of water shall be at the same time in conservation storage in reservoirs in the drainage basin of Canadian River in Oklahoma, exclusive of reservoirs in the drainage basin of North Canadian River and exclusive of reservoirs east of the 97th meridian; and for the purpose of determining the amount of water in conservation storage, the maximum quantity of water in storage following each flood or series of floods shall be used; provided, that the right of Texas to retain and use any quantity of water previously impounded shall not be reduced by any subsequent application of the provisions of this paragraph (b).

(c) Should Texas for any reason impound any amount of water greater than the aggregate quantity specified in paragraph (b) of this Article, such excess shall be retained in storage until under the provisions of said paragraph Texas shall become entitled to its use; provided, that, in event of spill from conservation storage, any such excess shall be reduced by the amount of such spill from the most easterly reservoir on Canadian River in Texas; provided further, that all such excess quantities in storage shall be reduced monthly to compensate for reservoir losses in proportion to the total amount of water in the reservoir or reservoirs in which such excess water is being held; and provided further that on demand by the Commissioner for Oklahoma the remainder of any such excess quantity of water

in storage shall be released into the channel of Canadian River at the greatest rate practicable.

#### ARTICLE VI

Oklahoma shall have free and unrestricted use of all waters of Canadian River in Oklahoma.

#### ARTICLE VII

The Commission may permit New Mexico to impound more water than the amount set forth in Article IV and may permit Texas to impound more water than the amount set forth in Article V; provided, that no State shall thereby be deprived of water needed for beneficial use; provided further that each such permission shall be for a limited period not exceeding twelve (12) months; and provided further that no State or user of water within any State shall thereby acquire any right to the continued use of any such quantity of water so permitted to be impounded.

#### ARTICLE VIII

Each State shall furnish to the Commission at intervals designated by the Commission accurate records of the quantities of water stored in reservoirs pertinent to the administration of this Compact.

#### ARTICLE IX

(a) There is hereby created an interstate administrative agency to be known as the "Canadian River Commission." The Commission shall be composed of three (3) Commissioners, one (1) from each of the signatory States, designated or appointed in accordance with the laws of each such State, and if designated by the President an additional Commissioner representing the United States. The President is hereby requested to designate such a Commissioner. If so designated, the Commissioner representing the United States shall be the presiding officer of the Commission, but shall not have the right to vote in any of the deliberations of the Commission. All members of the Commission must be present to constitute a quorum. A unanimous vote of the Commissioners for the three (3) signatory States shall be necessary to all actions taken by the Commission.

(b) The salaries and personal expenses of each Commissioner shall be paid by the government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact and which are not paid by the United States shall be borne equally by the three (3) States and be paid by the Commission out of a revolving fund hereby created to be known as the "Canadian River Revolving Fund." Such fund shall be initiated and maintained by equal payments of each State into the fund in such amounts as will be necessary for administration of this Compact. Disbursements shall be made from said fund in such manner as may be authorized by the Commission. Said fund shall not be subject to the audit and

accounting procedures of the States. However, all receipts and disbursements of funds handled by the Commission shall be audited by a qualified independent public accountant at regular intervals and the report of the audit shall be included in and become a part of the annual report of the Commission.

(c) The Commission may:

(1) Employ such engineering, legal, clerical, and other personnel as in its judgment may be necessary for the performance of its functions under this Compact;

(2) Enter into contracts with appropriate Federal agencies for the collection, correlation, and presentation of factual data, for the maintenance of records, and for the preparation of reports;

(3) Perform all functions required of it by this Compact and do all things necessary, proper, or convenient in the performance of its duties hereunder, independently or in cooperation with appropriate governmental agencies.

(d) The Commission shall:

(1) Cause to be established, maintained and operated such stream and other gaging stations and evaporation stations as may from time to time be necessary for proper administration of the Compact, independently or in cooperation with appropriate governmental agencies;

(2) Make and transmit to the Governors of the signatory States on or before the last day of March of each year, a report covering the activities of the Commission for the preceding year;

(3) Make available to the Governor of any signatory state, on his request, any information within its possession at any time, and shall always provide access to its records by the Governors of the States, or their representatives, or by authorized representatives of the United States.

#### ARTICLE X

Nothing in this Compact shall be construed as:

(a) Affecting the obligations of the United States to the Indian Tribes;

(b) Subjecting any property of the United States, its agencies or instrumentalities, to taxation by any State or subdivision thereof, or creating any obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any State or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(c) Subjecting any property of the United States, its agencies or instrumentalities, to the laws of any State to an extent other than the extent to which such laws would apply without regard to this Compact;

(d) Applying to, or interfering with, the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of

water, not inconsistent with its obligations under this Compact;

(e) Establishing any general principle or precedent applicable to other interstate streams.

ARTICLE XI

This Compact shall become binding and obligatory when it shall have been ratified by the Legislature of each State and approved by the Congress of the United States. Notice of ratification by the Legislature of each State shall be given by the Governor of that State to the Governors of the other States and to the President of the United States. The President is hereby requested to give notice to the Governor of each State of approval by the Congress of the United States.

IN WITNESS WHEREOF, The Commissioners have executed four (4) counterparts hereof, each of which shall be and constitute an original, one (1) of which shall be deposited in the archives of the Department of State of the United States, and (1) of which shall be forwarded to the Governor of each State.

DONE at the City of Santa Fe, State of New Mexico, this 6th day of December, 1950.

/s/	John H. Bliss
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	John H. Bliss
	Commissioner for the State of New Mexico
/s/	E. V. Spence
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	E. V. Spence
	Commissioner for the State of Texas
/s/	Clarence Burch
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	Clarence Burch
	Commissioner for the State of Oklahoma

APPROVED:

/s/ Berkeley Johnson  
 Berkeley Johnson  
 Representative of the United States of America

CHAPTER 44. SABINE RIVER COMPACT

Section

44.001. Ratification.

44.002. Original Copy.

44.003. Members.

44.004. Terms of Office.

44.005. Oath.

44.006. Compensation; Expenses.

44.007. Employees; Administrative Expenses.

44.008. Powers and Duties.

44.009. Cooperation of Water Rights Commission.

44.010. Text of Compact.

§ 44.001. Ratification

The Sabine River Compact, the text of which is set out in Section 44.010 of this code, was ratified by the legislature of this state in Chapter 63, Acts of the 53rd Legislature, Regular Session, 1953, after having been signed at Logansport, Louisiana, on January 26, 1953, by Roy T. Sessums, representative for the State of Louisiana, and Henry L. Woodworth and John W. Simmons, representatives for the State of Texas, and approved by Louis W. Prentiss, representative of the United States.

[Acts 1971, 62nd Leg., p. 260, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 44.002. Original Copy

An original copy of the compact is on file in the office of the secretary of state.

[Acts 1971, 62nd Leg., p. 260, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 44.003. Members

The governor, with the advice and consent of the senate, shall appoint two members to represent this state on the administration established by Article VII of the compact.

[Acts 1971, 62nd Leg., p. 260, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 44.004. Terms of Office

The members hold office for staggered terms of six years, with the term of one member expiring every three years. Each member holds office until his successor is appointed and has qualified.

[Acts 1971, 62nd Leg., p. 260, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 44.005. Oath

Each member shall take the constitutional oath of office and shall also take an oath to faithfully perform his duties as a member of the compact administration.

[Acts 1971, 62nd Leg., p. 261, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 44.006. Compensation; Expenses

Each member is entitled to compensation in the amount of \$25 per day of service necessary to discharge his duties under the compact. Each member is entitled to reimbursement for actual expenses incurred in the discharge of these duties.

[Acts 1971, 62nd Leg., p. 261, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 44.007. Employees; Administrative Expenses

The members may make investigations and appoint engineering, legal, and clerical employees as necessary to protect the interest of this state and to carry out and enforce the compact. They may incur necessary office expenses and other expenses incident to the proper performance of their duties and the proper administration of the compact.

[Acts 1971, 62nd Leg., p. 261, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 44.008. Powers and Duties

(a) The members are responsible for administering the provisions of the compact, and have all the powers and duties prescribed by the compact.

(b) The members may meet and confer with the Louisiana members at any place the administration considers proper.

[Acts 1971, 62nd Leg., p. 261, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 44.009. Cooperation of Water Rights Commission**

The Texas Water Rights Commission shall cooperate with the members in the performance of their duties and shall furnish them any available data and information they need.

[Acts 1971, 62nd Leg., p. 261, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 44.010. Text of Compact**

The Sabine River Compact reads as follows:

SABINE RIVER COMPACT  
Entered Into by the States of  
LOUISIANA  
and  
TEXAS

Logansport, Louisiana  
January 26, 1953

SABINE RIVER COMPACT

The State of Texas and the State of Louisiana, parties signatory to this Compact (hereinafter referred to as "Texas" and "Louisiana", respectively, or individually as a "State", or collectively as the "States"), having resolved to conclude a compact with respect to the waters of the Sabine River, and having appointed representatives as follows:

For Texas: Henry L. Woodworth, Interstate Compact Commissioner for Texas; and John W. Simmons, President of the Sabine River Authority of Texas;

For Louisiana: Roy T. Sessums, Director of the Department of Public Works of the State of Louisiana;

and consent to negotiate and enter into the said Compact having been granted by Act of the Congress of the United States approved November 1, 1951 (Public Law No. 252; 82nd Congress, First Session), and pursuant thereto the President having designated Louis W. Prentiss as the representative of the United States, the said representatives for Texas and Louisiana, after negotiations participated in by the representative of the United States, have for such Compact agreed upon Articles as hereinafter set forth. The major purposes of this Compact are to provide for an equitable apportionment between the States of Louisiana and Texas of the waters of the Sabine River and its tributaries, thereby removing the causes of present and future controversy between the States over the conservation and utilization of said waters; to encourage the development, conservation and utilization of the water resources of the Sabine River and its tributaries; and to establish a basis for cooperative planning

and action by the States for the construction, operation and maintenance of projects for water conservation and utilization purposes on that reach of the Sabine River touching both States, and for apportionment of the benefits therefrom.

ARTICLE I

As used in this Compact:

(a) The word "Stateline" means the point on the Sabine River where its waters in downstream flow first touch the States of both Louisiana and Texas.

(b) The term "waters of the Sabine River" means the waters either originating in the natural drainage basin of the Sabine River, or appearing as stream-flow in said River and its tributaries, from its head-water source down to the mouth of the River where it enters into Sabine Lake.

(c) The term "Stateline flow" means the flow of waters of the Sabine River as determined by the Logansport gauge located on the U. S. Highway 84, approximately four (4) river miles downstream from the Stateline. This flow, or the flow as determined by such substitute gauging station as may be established by the Administration, as hereinafter defined, pursuant to the provisions of Article VII of this Compact, shall be deemed the actual Stateline flow.

(d) The term "Stateline reach" means that portion of the Sabine River lying between the Stateline and Sabine Lake.

(e) The term "the Administration" means the Sabine River Compact Administration established under Article VII.

(f) The term "Domestic use" means the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of an area not to exceed one acre, obtained directly from the Sabine River or its tributaries by an individual or family unit, not supplied by a water company, water district or municipality.

(g) The term "stock water use" means the use of water for any and all livestock and poultry.

(h) The term "consumptive use" means use of water resulting in its permanent removal from the stream.

(i) The terms "domestic" and "stock water" reservoir mean any reservoir for either or both of such uses having a storage capacity of fifty (50) acre feet or less.

(j) "Stored water" means water stored in reservoirs (exclusive of domestic or stock water reservoirs) or water withdrawn or released from reservoirs for specific uses and the identifiable return flow from such uses.

(k) The term "free water" means all waters other than "stored waters" in the Stateline reach including, but not limited to, that appearing as natural stream flow and not withdrawn or released from a reservoir for specific uses. Waters released from reservoirs for the purpose of maintaining stream

flows as provided in Article V, shall be "free water". All reservoir spills or releases of stored waters made in anticipation of spills, shall be free water.

(l) Where the name of the State or the term "State" is used in this Compact, it shall be construed to include any person or entity of any nature whatsoever of the States of Louisiana or Texas using, claiming, or in any manner asserting any right to the use of the waters of the Sabine River under the authority of that State.

(m) Wherever any State or Federal official or agency is referred to in this Compact, such reference shall apply equally to the comparable official or agency succeeding to their duties and functions.

#### ARTICLE II

Subject to the provisions of Article X, nothing in this Compact shall be construed as applying to, or interfering with, the right or power of either signatory State to regulate within its boundaries the appropriation, use and control of water, not inconsistent with its obligation under this Compact.

#### ARTICLE III

Subject to the provisions of Article X, all rights to any of the waters of the Sabine River which have been obtained in accordance with the laws of the States are hereby recognized and affirmed; provided, however, that withdrawals, from time to time, for the satisfaction of such rights, shall be subject to the availability of supply in accordance with the apportionment of water provided under the terms of this Compact.

#### ARTICLE IV

Texas shall have free and unrestricted use of all waters of the Sabine River and its tributaries above the Stateline subject, however, to the provisions of Articles V and X.

#### ARTICLE V

Texas and Louisiana hereby agree upon the following apportionment of the waters of the Sabine River:

(a) All free water in the Stateline reach shall be divided equally between the two States, this division to be made without reference to the origin.

(b) The necessity of maintaining a minimum flow at the Stateline for the benefit of water users below the Stateline in both States is recognized, and to this end it is hereby agreed that:

(1) Reservoirs and permits above the Stateline existing as of January 1, 1953 shall not be liable for maintenance of the flow at the Stateline.

(2) After January 1, 1953, neither State shall permit or authorize any additional uses which would have the effect of reducing the flow at the Stateline to less than 36 cubic feet per second.

(3) Reservoirs on which construction is commenced after January 1, 1953, above the Stateline shall be liable for their share of water necessary to

provide a minimum flow at the Stateline of 36 cubic feet per second; provided, that no reservoir shall be liable for a greater percentage of this minimum flow than the percentage of the drainage area above the Stateline contributing to that reservoir, exclusive of the watershed of any reservoir on which construction was started prior to January 1, 1953. Water released from Texas' reservoirs to establish the minimum flow of 36 cubic feet per second, shall be classed as free water at the Stateline and divided equally between the two States.

(c) The right of each State to construct impoundment reservoirs and other works of improvement on the Sabine River or its tributaries located wholly within its boundaries is hereby recognized.

(d) In the event that either State constructs reservoir storage on the tributaries below Stateline after January 1, 1953, there shall be deducted from that State's share of the flow in the Sabine River all reductions in flow resulting from the operation of the tributary storage and conversely such State shall be entitled to the increased flow resulting from the regulation provided by such storage.

(e) Each State shall have the right to use the main channel of the Sabine River to convey water stored on the Sabine River or its tributaries located wholly within its boundaries, downstream to a desired point of removal without loss of ownership of such stored waters. In the event that such water is released by a State through the natural channel of a tributary and the channel of the Sabine River to a downstream point of removal, a reduction shall be made in the amount of water which can be withdrawn at the point of removal equal to the transmission losses.

(f) Each State shall have the right to withdraw its share of the water from the channel of the Sabine River in the Stateline reach in accordance with Article VII. Neither State shall withdraw at any point more than its share of the flow at that point except, that pursuant to findings and determination of the Administration as provided under Article VII of this Compact, either State may withdraw more or less of its share of the water at any point providing that its aggregate withdrawal shall not exceed its total share. Withdrawals made pursuant to this paragraph shall not prejudice or impair the existing rights of users of Sabine River waters.

(g) Waters stored in reservoirs constructed by the States in the Stateline reach shall be shared by each State in proportion to its contribution to the cost of storage. Neither State shall have the right to construct a dam on the Stateline reach without the consent of the other State.

(h) Each State may vary the rate and manner of withdrawal of its share of such jointly stored waters on the Stateline reach, subject to meeting the obligations for amortization of the cost of the joint storage. In any event, neither State shall withdraw more than its prorata share in any one year (a year meaning a water year, October 1st to September 30th) except by authority of the Administration.

All jointly stored water remaining at the end of a water year shall be reapportioned between the States in the same proportion as their contribution to the cost of the storage.

(i) Except for jointly stored water, as provided in (h) above, each State must use its apportionment of the natural stream flows as they occur and there shall be no allowance of accumulation of credits or debits for or against either State. The failure of either State to use the stream flow or any part thereof, the use of which is apportioned to it under the terms of this Compact, shall not constitute a relinquishment of the right to such use in the future; conversely, the failure of either State to use the water at the time it is available does not give it the right to the flow in excess of its share of the flow at any other time.

(j) From the apportionment of waters of the Sabine River as defined in this Article, there shall be excluded from such apportionment all waters consumed in either State for domestic and stock water uses. Domestic and stock water reservoirs shall be so excluded.

(k) Each State may use its share of the water apportioned to it in any manner that may be deemed beneficial by that State.

#### ARTICLE VI

(a) The States through their respective appropriate agencies or subdivisions may construct jointly, or cooperate with any agency or instrumentality of the United States in the construction of works on the Stateline reach for the development, conservation and utilization for all beneficial purposes of the waters of the Sabine River.

(b) All monetary revenues growing out of any joint State ownership, title and interest in works constructed under Section (a) above, and accruing to the States in respect thereof, shall be divided between the States in proportion to their respective contributions to the cost of construction; provided however, that each State shall retain undivided all its revenues from recreational facilities within its boundaries incidental to the use of the waters of the Sabine River, and from its severally State-owned recreational facilities constructed appurtenant thereto.

(c) All operation and maintenance costs chargeable against any State ownership, title and interest in works constructed under Section (a) above, shall be assessed in proportion to the contribution of each State to the original cost of construction.

#### ARTICLE VII

(a) There is hereby created an interstate administrative agency to be designated as the "Sabine River Compact Administration" herein referred to as "the Administration".

(b) The Administration shall consist of two members from each State and of one member as representative of the United States, chosen by the Presi-

dent of the United States, who is hereby requested to appoint such a representative. The United States member shall be ex-officio chairman of the Administration without vote and shall not be a domiciliary of or reside in either State. The appointed members for Texas and Louisiana shall be designated within thirty days after the effective date of this Compact.

(c) The Texas members shall be appointed by the Governor for a term of six years; provided, however, that one of the original Texas members shall be appointed for a term to establish a half-term interval between the expiration dates of the terms of such members, and thereafter one such member shall be appointed each three (3) years for the regular term. One of the Louisiana members shall be ex officio the Director of the Louisiana Department of Public Works; the other Louisiana member shall be a resident of the Sabine Watershed and shall be appointed by the Governor of Louisiana for a term of four (4) years; provided that the first member so appointed shall serve until June 30, 1958. Each state member shall hold office subject to the laws of his state or until his successor has been duly appointed and qualified.

(d) Interim vacancy, for whatever cause, in the office of any member of the Administration shall be filled for the unexpired term in the same manner as hereinabove provided for regular appointment.

(e) Within sixty days after the effective date of this Compact, the Administration shall meet and organize. A quorum for any meeting shall consist of three voting members of the Administration. Each State member shall have one vote, and every decision, authorization, determination, order or other action shall require the concurring votes of at least three members.

(f) The Administration shall have power to:

(1) Adopt, amend and revoke by-laws, rules and regulations, and prescribe procedures for administration of and consistent with the provisions of this Compact;

(2) Fix and determine from time to time the location of the Administration's principal office;

(3) Employ such engineering, legal, clerical and other personnel, without regard to the civil service laws of either State, as the Administration may determine necessary or proper to supplement State-furnished assistance as hereinafter provided, for the performance of its functions under this Compact; provided, that such employees shall be paid by and be responsible to the Administration and shall not be considered to be employees of either State;

(4) Procure such equipment, supplies and technical assistance as the Administration may determine to be necessary or proper to supplement State-furnished assistance as hereinafter provided, for the performance of its functions under this Compact;

(5) Adopt a seal which shall be judicially recognized.

(g) In cooperation with the chief official administering water rights in each State and with appropri-

ate Federal agencies, the Administration shall have and perform powers and duties as follows:

(1) To collect, analyze, correlate, compile and report on data as to water supplies, stream flows, storage, diversions, salvage and use of the waters of the Sabine River and its tributaries, and as to all factual data necessary or proper for the administration of this Compact;

(2) To designate as official stations for the administration of this Compact such existing water gauging stations (and to operate, maintain, repair and abandon the same), and to locate, establish, construct, operate, maintain, repair and abandon additional such stations, as the Administration may from time to time find and determine necessary or appropriate;

(3) To make findings as to the deliveries of water at Stateline as hereinabove provided, from the stream-flow records of the Stateline gauge which shall be operated and maintained by the Administration or in cooperation with the appropriate Federal agency, for determination of the actual Stateline flow unless the Administration shall find and determine that, because of changed physical conditions or for any other reason, reliable records are not obtainable thereat; in which case such existing Stateline station may with the approval of the Administration be abandoned and, with such approval, a substitute Stateline station established in lieu thereof;

(4) To make findings as to the quantities of reservoir storage (including joint storage) and releases therefrom, diversions, transmission losses and as to incident stream-flow changes, and as to the share of such quantities chargeable against or allocable to the respective States;

(5) To record and approve all points of diversion at which water is to be removed from the Sabine River or its tributaries below the Stateline; provided that, in any case, the State agency charged with the administration of the water laws for the State in which such point of diversion is located shall first have approved such point for removal or diversion; provided further, that any such point of removal or diversion once jointly approved by the appropriate State agency and the Administration, shall not thereafter be changed without the joint amendatory approval of such State agency and the Administration;

(6) To require water users at their expense to install and maintain measuring devices of approved type in any ditch, pumping station or other water diversion works on the Sabine River or its tributaries below the Stateline, as the Administration may determine necessary or proper for the purposes of this Compact; provided that the chief official of each State charged with the administration of water rights therein shall supervise the execution and enforcement of the Administration's requirements for such measuring devices;

(7) To investigate any violation of this Compact and to report findings and recommendations thereon

to the chief official of the affected State charged with the administration of water rights, or to the Governor of such State as the Administration may deem proper;

(8) To acquire, hold, occupy and utilize such personal and real property as may be necessary or proper for the performance of its duties and functions under this Compact;

(9) To perform all functions required of the Administration by this Compact, and to do all things necessary, proper or convenient in the performance of its duties hereunder.

(h) Each State shall provide such available facilities, supplies, equipment, technical information and other assistance as the Administration may require to carry out its duties and function, and the execution and enforcement of the Administration's orders shall be the responsibility of the agents and officials of the respective States charged with the administration of water rights therein. State officials shall furnish pertinent factual and technical data to the Administration upon its request.

(i) Findings of fact made by the Administration shall not be conclusive in any court or before any agency or tribunal but shall constitute prima facie evidence of such facts.

(j) In the case of a tie vote on any of the Administration's determinations, orders or other actions subject to arbitration, then arbitration shall be a condition precedent to any right of legal action. Either side of a tie vote may, upon request, submit the question to arbitration. If there shall be arbitration, there shall be three arbitrators: one named in writing by each side, and the third chosen by the two arbitrators so elected. If the arbitrators fail to select a third within ten days, then he shall be chosen by the Representative of the United States.

(k) The salaries, if any, and the personal expenses of each member of the Administration, shall be paid by the Government which he represents. All other expenses incident to the administration of this Compact and which are not paid by the United States shall be borne equally by the States. Ninety days prior to the Regular Session of the Legislature of either State, the Administration shall adopt and transmit to the Governor of such State for his approval, its budget covering anticipated expenses for the forthcoming biennium and the amount thereof payable by such State. Upon approval by its Governor, each State shall appropriate and pay the amount due by it to the Administration. The Administration shall keep accurate accounts of all receipts and disbursements and shall include a statement thereof, together with a certificate of audit by a certified public accountant, in its annual report. Each State shall have the right to make an examination and audit of the accounts of the Administration at any time.

(l) The Administration shall, whenever requested, provide access to its records by the Governor of either State or by the chief official of either State

charged therein with the administration of water rights. The Administration shall annually on or before January 15th of each year make and transmit to the Governors of the signatory States, and to the President of the United States, a report of the Administration's activities and deliberations for the preceding year.

#### ARTICLE VIII

(a) This Compact shall become effective when ratified by the Legislature and approved by the Governors of both States and when approved by the Congress of the United States.

(b) The provisions of this Compact shall remain in full force and effect until modified, altered or amended, or in the same manner as hereinabove required for ratification thereof. The right so to modify, alter or amend this Compact is expressly reserved. This Compact may be terminated at any time by mutual consent of the signatory States. In the event this Compact is terminated as herein provided, all rights then vested hereunder shall continue unimpaired.

(c) Should a court of competent jurisdiction hold any part of this Compact to be contrary to the constitution of any signatory State or of the United States of America, all other severable provisions of this Compact shall continue in full force and effect.

#### ARTICLE IX

This Compact is made and entered into for the sole purpose of effecting an equitable apportionment and providing beneficial uses of the waters of the Sabine River, its tributaries and its watershed, without regard to the boundary between Louisiana and Texas, and nothing herein contained shall be construed as an admission on the part of either State or any agency, commission, department or subdivision thereof, respecting the location of said boundary; and neither this Compact nor any data compiled for the preparation or administration thereof shall be offered, admitted or considered in evidence, in any dispute, controversy, or litigation bearing upon the matter of the location of said boundary.

The term "Stateline" as defined in this Compact shall not be construed to define the actual boundary between the State of Texas and the State of Louisiana.

#### ARTICLE X

Nothing in this Compact shall be construed as affecting, in any manner, any present or future rights or powers of the United States, its agencies, or instrumentalities in, to and over the waters of the Sabine River Basin.

IN WITNESS WHEREOF, the Representatives have executed this Compact in three counterparts hereof, each of which shall be and constitute an original, one of which shall be forwarded to the Administrator, General Services Administration of the United States of America and one of which shall be forwarded to the Governor of each State.

DONE in the City of Logansport, in the State of Louisiana, this 26th day of January, 1953.

(SIGNED—Henry L. Woodworth)  
HENRY L. WOODWORTH,  
Representative for the  
State of Texas

(SIGNED—John W. Simmons)  
JOHN W. SIMMONS, Repre-  
sentative for the State of  
Texas

(SIGNED—Roy T. Sessums)  
ROY T. SESSUMS, Repre-  
sentative for the State of  
Louisiana

APPROVED:

(SIGNED—Louis W. Prentiss)  
LOUIS W. PRENTISS, Repre-  
sentative of the United States.

[Acts 1971, 62nd Leg., p. 261, ch. 58, § 1, eff. Aug. 30, 1971;  
Acts 1973, 63rd Leg., p. 824, ch. 374, § 1, eff. June 12, 1973.]

### CHAPTER 45. NEGOTIATION OF RED RIVER COMPACT

Section	
45.001.	Appointment of Commissioner.
45.002.	Term of Office.
45.003.	Oath.
45.004.	Compensation; Expenses.
45.005.	Powers.
45.006.	Cooperation of Water Rights Commission.
45.007.	Agreement to be Ratified.

#### § 45.001. Appointment of Commissioner

The governor, with the advice and consent of the senate, shall appoint a Red River Compact Commissioner to represent this state in conferences with duly appointed compact commissioners of other affected states and a United States representative appointed by the president, to negotiate a compact with each of the affected states respecting the use, control, and disposition of the water of the Red River and its tributaries.

[Acts 1971, 62nd Leg., p. 270, ch. 58, § 1, eff. Aug. 30, 1971;  
Acts 1973, 63rd Leg., p. 1782, ch. 656, § 1, eff. June 16, 1973.]

#### § 45.002. Term of Office

The commissioner first appointed under this Act holds office until February 1, 1975 and until his successor is appointed and has qualified. Thereafter, the commissioner or his successor holds office for successive terms of four years from February 1, 1975.

[Acts 1971, 62nd Leg., p. 270, ch. 58, § 1, eff. Aug. 30, 1971;  
Acts 1973, 63rd Leg., p. 1783, ch. 656, § 2, eff. June 16, 1973.]

#### § 45.003. Oath

The commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform his duties as commissioner.

[Acts 1971, 62nd Leg., p. 270, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 45.004. Compensation; Expenses**

The commissioner is entitled to compensation in an annual amount to be determined by the Legislature in appropriation bills. He is entitled to reimbursement for necessary expenses. The commissioner shall not be subject to the State Employees Retirement Act (Article 6228a, Vernon's Texas Civil Statutes).

[Acts 1971, 62nd Leg., p. 270, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1783, ch. 656, § 3, eff. June 16, 1973.]

**§ 45.005. Powers**

(a) The commissioner may meet and confer with the compact commissioners for the other affected states and the representative of the United States at any place the commissioners consider proper.

(b) The commissioner may make investigations and procure data as necessary for the proper performance of his duties. With the approval of the governor, he may employ clerical, legal, engineering, and other employees as necessary for the proper performance of his duties.

[Acts 1971, 62nd Leg., p. 270, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 45.006. Cooperation of Water Rights Commission**

The Texas Water Rights Commission shall cooperate with the commissioner in the performance of his duties and shall furnish him any available data and information he needs.

[Acts 1971, 62nd Leg., p. 270, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 45.007. Agreement to be Ratified**

Any agreement which may be entered into between the commissioner on behalf of this state and the compact commissioners of the other affected states and the representative of the United States shall be reduced to writing and submitted to the governor of this state. No such agreement has any binding effect upon this state or its legal representatives until it has been ratified by the legislature of this state and approved by the governor, ratified by the legislatures of the other affected states, and consented to by the Congress of the United States.

[Acts 1971, 62nd Leg., p. 270, ch. 58, § 1, eff. Aug. 30, 1971.]

**TITLE 4. GENERAL LAW DISTRICTS**

**CHAPTER 50. PROVISIONS GENERALLY APPLICABLE TO DISTRICTS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Section

- 50.001. Definitions.
- 50.002. Voter Qualifications; Election Procedures.

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

- 50.021. Counties over 500,000: District Accounting System.
- 50.022. Filing Bond.
- 50.023. Disqualification of Tax Assessor and Collector.
- 50.024. Election of Board.
- 50.024. Disqualification of Members of Governing Boards.

**SUBCHAPTER C. POWERS AND DUTIES**

Section

- 50.051. Special Law Districts: Powers of Officers.
- 50.052. Costs of Relocation of Property.
- 50.053. Notice of Bond Sale.
- 50.053. District Office.
- 50.054. Records.

**SUBCHAPTER D. REPORTS TO COMMISSION**

- 50.101. Order or Act Creating District.
- 50.102. Boundary Change.
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**SUBCHAPTER E. CONDEMNATION OF CEMETERIES**

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- 50.201. Description of Annexed Land.

**SUBCHAPTER G. DISSOLUTION OF INACTIVE DISTRICTS**

- 50.251. Dissolution Authority.
- 50.252. Notice of Hearing.
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- 50.254. Order of Dissolution.
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**SUBCHAPTER H. WATER SUPPLY CONTRACTS**

- 50.271. Definition.
- 50.272. Authorization to Contract.
- 50.273. Restriction on Water from Another Source.
- 50.274. Period and Terms.
- 50.275. Approval by the Texas Water Rights Commission.
- 50.276. Duty to Revise Rate of Compensation.
- 50.277. Source of Payments.

**SUBCHAPTER I. NOTICE**

- 50.301. Notice to Purchasers.
- 50.302. Filing Information.

**SUBCHAPTER J. GENERAL DISTRICT CREATION PROVISIONS**

- 50.331. Copies of Creation Petitions.

**SUBCHAPTER K. AUDIT OF DISTRICTS**

- 50.371. Duty to Audit.
- 50.372. Form of Audit.
- 50.373. Depository and Treasurer's Reports.
- 50.374. Filing of Audit.
- 50.375. Review by Commission.
- 50.376. Access to Records, Etc.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 50.001. Definitions**

As used in this chapter:

(1) "District" means any district or authority created by authority of either Article III, Section 52, (Subsection (b), Subdivisions (1) and (2)), or Article XVI, Section 59, of the Texas Constitution.

(2) "Commission" means the Texas Water Rights Commission.

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

[Acts 1971, 62nd Leg., p. 271, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1535, ch. 557, § 1, eff. June 15, 1973.]

#### § 50.002. Voter Qualifications; Election Procedures

The qualifications of voters in district elections are as specified in the state and federal constitutions and the procedures for conducting elections and for voting are as specified in the Texas Election Code except as otherwise provided in this title or in the special act of the legislature creating the district.

[Acts 1971, 62nd Leg., p. 271, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1535, ch. 557, § 2, eff. June 15, 1973.]

[Sections 50.003 to 50.020 reserved for expansion]

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

#### § 50.021. Counties over 500,000: District Accounting System

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

(1) is located wholly inside a county having a population of 500,000 or more; and

(2) is composed of territory less than the whole county.

(b) The officers of the district shall keep a complete system of accounts. Instead of having the auditing and supervising done by the county auditor, the district may contract with some competent person, firm, or corporation qualified under law to perform this work to audit the cash, books, accounts, records, and vouchers of all officers of the district at least once a year.

(c) One copy of the audit report shall be filed with the governing board of the district and one copy shall be filed with the county auditor. The report shall be kept open to public inspection at all reasonable times.

(d) Other than keeping the audit report on file, the county auditor has no duty in connection with the district.

[Acts 1971, 62nd Leg., p. 271, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.022. Filing Bond

Each member of the governing board of a district created under this code and who is required by law to file an official bond shall file a copy of the bond with the secretary of state within 10 days from the day the bond is required to be filed by law.

[Acts 1971, 62nd Leg., p. 271, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.023. Disqualification of Tax Assessor and Collector

(a) No person may serve as tax assessor and collector of any district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions

of the district and created by special act of the legislature if:

(1) he is related within the third degree of affinity or consanguinity to any developer of property in the district, a member of the governing board of the district or the manager, engineer, or attorney for the district;

(2) he is or was within two years immediately preceding the assumption of his assessment and collection duties with the district an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) he owns an interest in or is employed by any corporation organized for the purpose of tax assessment and collection services, a substantial portion of the stock of which is owned by a developer of property within the district, any director, manager, engineer, or attorney for the district; or

(4) he is himself or through a corporation developing land in the district, or is a director, engineer or attorney for the district.

(b) Within 60 days after the governing board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as tax assessor and collector with a person who would not be disqualified.

(c) Any person who wilfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

[Acts 1973, 63rd Leg., p. 1536, ch. 558, § 1, eff. June 15, 1973.]

#### § 50.024. Election of Board

[Text as added by Acts 1973, 63rd Leg., p. 1539, ch. 559, § 1]

The election of the members of the governing board of any district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district and created by special act of the legislature, shall be held on the first Saturday in April.

[Acts 1973, 63rd Leg., p. 1539, ch. 559, § 1, eff. June 15, 1973.]

For text as added by Acts 1973, 63rd Leg., p. 1748, ch. 635, § 1, see § 50.024, post.

**§ 50.024. Disqualification of Members of Governing Boards**

*[Text as added by Acts 1973, 63rd Leg., p. 1748, ch. 635, § 1]*

(a) A person is disqualified from serving as a member of a governing board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district and created by special act of the legislature if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district;

(2) he is or was within the two years immediately preceding his election or appointment to the board an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving or has served within the last two years immediately preceding his election or appointment to the board as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is or has been within the two years immediately preceding his election or appointment to the board:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the governing board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the governing board with a person who would not be disqualified.

(c) Any person who willfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land

into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

*[Acts 1973, 63rd Leg., p. 1748, ch. 635, § 1, eff. Aug. 27, 1973.]*

*For text as added by Acts 1973, 63rd Leg., p. 1539, ch. 559, § 1, see § 50.024, ante.*

*[Sections 50.025 to 50.050 reserved for expansion]*

**SUBCHAPTER C. POWERS AND DUTIES**

**§ 50.051. Special Law Districts: Powers of Officers**

In any district or authority that is created by legislative act under Article XVI, Section 59, of the Texas Constitution, and that has the power to provide a water supply for municipal or other uses, the directors, employees, and engineers have the same authority with respect to making surveys and attending to other business of the district or authority that directors, employees, and engineers of a water control and improvement district have under Section 51.000<sup>1</sup> of this code.

*[Acts 1971, 62nd Leg., p. 272, ch. 58, § 1, eff. Aug. 30, 1971.]*

<sup>1</sup> Possibly should read "51.136".

**§ 50.052. Costs of Relocation of Property**

(a) If any district or authority organized under the provisions of Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, in the exercise of the power of eminent domain, the police power, or any other power requires the relocation, raising, lowering, rerouting, or change in grade or alteration in the construction of any highway, railroad, electric transmission, telegraph, or telephone lines, conduits, poles, properties, facilities, or pipelines, the relocation, raising, lowering, rerouting, or change in grade or alteration of construction shall be done at the sole expense of the district or authority.

(b) "Sole expense" means the actual cost of the relocation, raising, lowering, rerouting, or change in grade or alteration of construction and providing comparable replacement without enhancing the facilities after deducting from it the net salvage value derived from the old facility.

(c) This section shall not be applicable to those projects under construction or financed or for which bonds have been voted and approved by the acts of

any district on the effective date of this Act, unless the provisions hereinabove are contained in the acts of the district authorizing said construction or financing.

[Acts 1971, 62nd Leg., p. 1771, ch. 518, § 17, eff. May 31, 1971.]

#### § 50.053. Notice of Bond Sale

*[Text as added by Acts 1973, 63rd Leg., p. 615, ch. 262, § 1]*

(a) Except for refunding bonds, bonds sold to a state or federal agency, and bonds registered with any federal agency, after any bonds are finally authorized and before they are sold by a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district and created by special act of the legislature, the governing board of the district shall publish an appropriate notice of the sale:

(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation which is published in the county or counties in which the district is located; and

(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the attorney general.

(b) If a newspaper publication required by Subdivision (1), Subsection (a), of this section is not published in the county, then notice may be published in any newspaper of general circulation in such county. [Acts 1973, 63rd Leg., p. 615, ch. 262, § 1, eff. Aug. 27, 1973.]

*For text as added by Acts 1973, 63rd Leg., p. 617, ch. 263, § 1, see Section 50.053, post.*

#### § 50.053. District Office

*[Text as added by Acts 1973, 63rd Leg., p. 617, ch. 263, § 1]*

(a) Each district created by special act of the legislature, proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district, after at least 25 qualified electors are residing in the district, shall maintain a district office located within the district, and on majority vote of the governing board at a public meeting, may maintain an office outside the district.

(b) After at least 25 qualified electors are residing in a district, on written request of at least five of these electors, the board shall designate a meeting place within the district. On the failure to designate the location of the meeting place within the district, five electors may petition the commission to designate a location, which may be changed by the board after the next election of members to the board.

[Acts 1973, 63rd Leg., p. 617, ch. 263, § 1, eff. Aug. 27, 1973.]

*For text as added by Acts 1973, 63rd Leg., p. 615, ch. 262, § 1, see Section 50.053, ante.*

#### § 50.054. Records

Each district covered by the provisions of Section 50.053 of this code shall preserve its minutes, contracts, records, notices, accounts, receipts, and records of all kinds or certified copies of all of these in a safe place in the district office located in the district. These minutes, contracts, records, notices, accounts, receipts, and other records are the property of the district and subject to public inspection. [Acts 1973, 63rd Leg., p. 617, ch. 263, § 1, eff. Aug. 27, 1973.]

[Sections 50.055 to 50.100 reserved for expansion]

### SUBCHAPTER D. REPORTS TO COMMISSION

#### § 50.101. Order or Act Creating District

Within 60 days after the date a district is created, the district shall file with the Texas Water Rights Commission a certified copy of the order or legislative act creating the district or authorizing its creation.

[Acts 1971, 62nd Leg., p. 272, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.102. Boundary Change

Within 60 days after the date of any boundary change, a district shall file with the commission a certified copy of the order of the district's governing body changing the boundaries.

[Acts 1971, 62nd Leg., p. 272, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.103. List of Directors

(a) After any election or selection of a director, a district shall notify the commission within 30 days after the date of the election of the name of the director chosen and the date on which his term of office expires.

(b) If there is a change of directors due to resignation or death, the district shall immediately notify the commission of the name of the newly elected or appointed member.

[Acts 1971, 62nd Leg., p. 272, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.104. Audit Report

Within 15 days after the date any audit of its affairs is completed, a district shall file a copy of the audit report with the commission and with the county clerk of the county in which the district's headquarters are located.

[Acts 1971, 62nd Leg., p. 272, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.105. Information Open to Public

The commission shall adopt a system for filing the information required by Sections 50.101–50.104 of this code, and shall allow public inspection of this file during the office hours of the commission.

[Acts 1971, 62nd Leg., p. 272, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 50.106. **Penalty**

A district that fails to comply with the provisions of Sections 50.101–50.104 of this code is subject to a civil penalty of not less than \$50 nor more than \$100 a day for each day the district willfully continues to violate these sections after receipt of written notice of violation from the commission by certified mail, return receipt requested. The state may sue to recover the penalty.

[Acts 1971, 62nd Leg., p. 273, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1531, ch. 554, § 1, eff. June 15, 1973.]

[Sections 50.107 to 50.150 reserved for expansion]

SUBCHAPTER E. CONDEMNATION OF CEMETERIES

§ 50.151. **Power to Condemn Cemeteries**

The use of land for the construction of dams and creation of lakes and reservoirs for the purpose of conservation and development of the natural resources of this state is hereby declared to be superior to all other uses; and for these purposes a district created under Article XVI, Section 59, of the Texas Constitution, has the power of eminent domain to acquire land, improvements, and other property owned and held for cemeteries or burial places that is necessary for the construction of a dam or that lies inside the area to be covered by the lake or reservoir or within 300 feet of the high-water line of the lake or reservoir.

[Acts 1971, 62nd Leg., p. 273, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 50.152. **Condemnation Procedure**

Except as otherwise provided by this subchapter, the procedure in condemnation proceedings is governed by Title 52, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1971, 62nd Leg., p. 273, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 50.153. **Notice**

(a) The notice provided by Article 3264, Revised Civil Statutes of Texas, 1925, shall be served on the title owner of the land on which the cemetery is situated.

(b) General notice to persons having relatives interred in the cemetery shall be given by publication for two consecutive weeks in a newspaper published in the English language in the county in which the cemetery is situated. If there is no newspaper published in the English language in the county, notice shall be given by publication in a newspaper in the nearest county in which such a newspaper is published.

[Acts 1971, 62nd Leg., p. 273, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 50.154. **Measure of Damages**

The measure of damages in these eminent domain proceedings shall be assessed as in other cases. An additional amount of damages shall be assessed to

cover the cost of removing and reintering the bodies interred in the cemetery or burial place and the cost of removing and resetting the monuments or markers erected at the graves.

[Acts 1971, 62nd Leg., p. 273, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 50.155. **Disposition of Additional Assessment**

The additional assessment shall be deposited in the registry of the county court and disbursed only for the purpose of removing and reintering the bodies in other cemeteries in Texas agreed on between the district and the relatives of the deceased persons.

[Acts 1971, 62nd Leg., p. 273, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 50.156. **Designation of Cemetery for Reinterment**

If in any case the district and the relatives of a deceased person cannot agree within 30 days on a cemetery for reinterment, or no relatives appear within that time, then the county judge shall designate the cemetery for reinterment.

[Acts 1971, 62nd Leg., p. 274, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 50.157. **Bond**

Instead of depositing the additional assessment in the registry of the court, the district may execute a bond sufficient to cover costs of removing and reintering the bodies. The bond shall be payable to and approved by the county judge and conditioned that the bodies will be removed and reinterred as provided by this subchapter.

[Acts 1971, 62nd Leg., p. 274, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 50.158 to 50.200 reserved for expansion]

SUBCHAPTER F. ANNEXATION

§ 50.201. **Description of Annexed Land**

If a district annexes land, the land to be annexed must be described by metes and bounds, or by lot and block number if there is a recorded map or plat and survey of the land.

[Acts 1971, 62nd Leg., p. 274, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 50.202 to 50.250 reserved for expansion]

SUBCHAPTER G. DISSOLUTION OF INACTIVE DISTRICTS

§ 50.251. **Dissolution Authority**

After notice and hearing, the Texas Water Rights Commission may dissolve any district which is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

[Acts 1971, 62nd Leg., p. 274, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 50.252. **Notice of Hearing**

(a) The commission shall give notice of the dissolution hearing which briefly describes the reasons for the proceeding.

(b) The notice shall be published once each week for two consecutive weeks before the day of hearing in some newspaper having general circulation in the county or counties in which the district is located. The first publication shall be 30 days before the day of the hearing.

(c) The commission shall give notice of the hearing by first class mail addressed to the directors of the district according to the last record on file with the commission.

[Acts 1971, 62nd Leg., p. 274, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.253. Investigation

The commission shall investigate the facts and circumstances of the district to be dissolved and the result of the investigation shall be included in a written report.

[Acts 1971, 62nd Leg., p. 274, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.254. Order of Dissolution

The commission may enter an order dissolving the district at the conclusion of the hearing if it finds that the district has performed none of the functions for which it was created for a period of five consecutive years before the day of the proceeding and that the district has no outstanding bonded indebtedness.

[Acts 1971, 62nd Leg., p. 275, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.255. Certified Copy of Order

The commission shall file a certified copy of the order of dissolution of the district in the deed records of the county or counties in which the district is located. If the particular district was created by special act of the legislature, the commission shall file a certified copy of the order of dissolution with the secretary of state.

[Acts 1971, 62nd Leg., p. 275, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.256. Appeals

(a) Appeals from a commission order dissolving a district shall be filed and heard in the district court of any of the counties in which the land is located.

(b) The trial on appeal shall be de novo and the substantial evidence rule shall not apply.

[Acts 1971, 62nd Leg., p. 275, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 50.257 to 50.270 reserved for expansion]

### SUBCHAPTER H. WATER SUPPLY CONTRACTS

#### § 50.271. Definition

As used in this subchapter, "eligible district" means any district or authority created under Article XVI, Section 59, of the Texas Constitution, and any corporation formed under the provisions of Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes).

[Acts 1971, 62nd Leg., p. 275, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.272. Authorization to Contract

Any eligible district may contract with any other eligible district for the purpose of supplying water to the other eligible district.

[Acts 1971, 62nd Leg., p. 275, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.273. Restriction on Water from Another Source

Any contract authorized under this subchapter may provide that the eligible district purchasing water shall not obtain water from any other source except to the extent provided in the contract.

[Acts 1971, 62nd Leg., p. 275, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.274. Period and Terms

The parties may determine the terms and time of the contract and may provide that it shall continue in effect until bonds specified in it and bonds issued to refund these bonds are paid.

[Acts 1971, 62nd Leg., p. 275, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.275. Approval by the Texas Water Rights Commission

No contract shall be final until approved by the Texas Water Rights Commission if the source of water to be provided under the provisions of this subchapter is public surface water.

[Acts 1971, 62nd Leg., p. 275, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.276. Duty to Revise Rate of Compensation

Any water supply contract authorized under this subchapter shall be subject to the statutory or the contractual duty of the eligible district supplying water under it from time to time to revise the rate of compensation for water sold and services rendered by it so that the net revenues of the eligible district will at all times be sufficient to enable it to pay its operation and maintenance expense and to pay the principal of and interest on bonds secured by the contract to the extent provided in the resolution or order authorizing the bonds.

[Acts 1971, 62nd Leg., p. 276, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 50.277. Source of Payments

Payments to be made by an eligible district under a water supply contract shall be paid from the revenue of and constitute an operating expense of the eligible district's water system.

[Acts 1971, 62nd Leg., p. 276, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 50.278 to 50.300 reserved for expansion]

### SUBCHAPTER I. NOTICE

#### § 50.301. Notice to Purchasers

(a) Any person who sells or conveys real property located in a district which was created under this title or by special act of the legislature, which is providing or proposing to provide, as the district's principal function, water and sewer services, or either of these services, to household users, and which,

if located within the corporate area of a city, includes less than 75 percent of the incorporated area of the city or which is located outside the corporate area of a city in whole or in substantial part, must first give to the purchaser the written notice provided in this section.

(b) The prescribed notice shall be a separate written document executed and acknowledged by the seller and shall read as follows:

“The real property, described below, which you are about to purchase is located in the \_\_\_\_\_ District. The district has taxing authority separate from any other taxing authority, and may, subject to voter approval, issue an unlimited amount of bonds. As of this date, the most recent rate of taxes levied by the district on real property located in the district is \$\_\_\_\_\_ on each \$100 of assessed valuation. The total amount of bonds which has been approved by the voters and which have been or may, at this date, be issued is \$\_\_\_\_\_. The purpose of this district is to provide water and sewer services within the district through the issuance of bonds payable from property taxes and user charges. The cost of these utility facilities is not included in the purchase price of your property, and these utility facilities are owned by the district. The legal description of the property which you are acquiring is as follows:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Seller

“The undersigned purchaser hereby acknowledges receipt of the foregoing notice prior to closing of the purchase of the real property described in such notice.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature of Purchaser

“(Note: Correct district name, tax rate, bond amount, and legal description are to be placed in the appropriate space by seller. Correct acknowledgments shall be provided for both seller and purchaser below. If the district does not propose to provide water and sewer services, the appropriate purpose may be eliminated.)”

(c) The notice required by this section shall be given to the purchaser at or prior to the final closing of the sale and purchase.

(d) The purchaser shall sign and acknowledge the notice to evidence the receipt of notice.

(e) The notice, following execution, acknowledgment, and closing of purchase and sale shall be recorded in the deed records of the county in which the property is located.

(f) For the purposes of this section, an executory contract of purchase and sale having a performance period of more than six months shall be considered a sale under Subsection (a) of this section.

(g) All sellers, and all persons completing the prescribed notice in the sellers' behalf, shall be entitled to rely on the information contained in or shown on the information form and map or plat filed by the district under Section 50.302 of this code in completing the prescribed form. Any information taken from the information form or map or plat filed by the district shall be for purposes of this section conclusively presumed as a matter of law to be correct. All subsequent sellers, purchasers, title insurance companies, examining attorneys, and lienholders shall be entitled to rely upon the information form and map or plat filed by the district.

(h) A purchaser, his heirs, successors, or assigns, shall not be entitled to maintain any action for damages or maintain any action against a seller, title insurance company, or lienholder by reason of use by the seller of the information filed for record by the district or reliance by the seller on the filed plat and filed legal description of the district in determining whether the property to be sold and purchased is within the district. No action may be maintained against any title company for failure to disclose the inclusion of the described real property within a district when the district has not filed for record the information form, map, or plat with the county clerk.

(i) Any purchaser who purchases any real property in a district and who thereafter sells or conveys the same shall on closing of such subsequent sale be conclusively considered as having waived any prior right to damages under this section for his prior purchase.

(j) It is the express intent of this section that all sellers, title insurance companies, examining attorneys, and lienholders shall be entitled to rely on the information form and map or plat as last filed by each district.

(k) If any sale or conveyance of real property within a district is not made in compliance with the provisions of this section, the purchaser may institute a suit for damages under the provisions of either Subsection (l) or Subsection (m) of this section.

(l) A purchaser of real property covered by the provisions of this section, if the sale or conveyance of the property is not made in compliance with this section, may institute a suit for damages in the amount of all cost relative to the purchase of the property plus interest and reasonable attorney's fees. The suit for damages may be instituted jointly or severally against the person, firm, corporation, partnership, organization, business trust, estate, trust, association, or other legal entity which sold or conveyed the property to the purchaser. Following the recovery of damages under this subsection, the amount of the damages shall first be paid to satisfy all unpaid obligations on each outstanding lien or liens on the property and the remainder of the damage amount shall be paid to the purchaser. On payment of all damages respectively to the lienhold-

ers and purchaser, the purchaser shall reconvey the property to the seller.

(m) A purchaser of real property covered by the provisions of this section, if the sale or conveyance of the property is not made in compliance with this section, may institute a suit for damages in an amount of not to exceed \$5,000, plus reasonable attorneys' fees.

(n) A purchaser is not entitled to recover damages under both Subsections (l) and (m) of this section, and entry of a final decision awarding damages to the purchaser under either Subsection (l) or Subsection (m) of this section shall preclude the purchaser from recovering damages under the other subsection. Any action for damages shall not, however, apply to, affect, alter, or impair the validity of any existing vendor's lien, mechanic's lien, or deed of trust lien on the property.

(o) A suit for damages under the provisions of this section must be brought within 90 days after the purchaser receives his first district tax notice or within four years after the property is sold or conveyed to the purchaser, whichever time occurs first, or the purchaser loses his right to seek damages under this section.

(p) Notwithstanding any provisions of this subchapter to the contrary, a purchaser may not recover damages of any kind under this section if he:

(1) purchases an equity in real property and in conjunction with the purchase assumes any liens, whether purchase money or otherwise; and

(2) does not require proof of title by abstract, title policy, or any other proof of title.

[Acts 1973, 63rd Leg., p. 1542, ch. 560, § 1, eff. Aug. 27, 1973.]

### § 50.302. Filing Information

(a) The governing board of any district covered by the provisions of Section 50.301 of this code shall file with the county clerk in each of the counties in which all or part of the district is located a duly affirmed and acknowledged information form which includes the information required in Subsection (b) of this section, and a complete and accurate map or plat showing the boundaries of the district.

(b) The information form filed by a district under this section shall include:

(1) the name of the district;

(2) the complete and accurate legal description of the boundaries of the district;

(3) the most recent rate of district taxes on property located in the district;

(4) the total amount of bonds which have been approved by the voters and which may be issued by the district;

(5) the date on which the election to confirm the creation of the district was held if such was required; and

(6) a statement of the functions performed or to be performed by the district.

(c) The information form and map or plat required by this section shall be signed by a majority of the members of the governing board of the district and by each such officer affirmed and acknowledged before it is filed with the county clerk, and each amendment made to an information form or map shall also be signed by the members of the governing board of the district and by each such officer affirmed and acknowledged before it is filed with the county clerk.

(d) The information form required by this section shall be filed with the county clerk within 48 hours after the effective date of this section or within 48 hours after the district is officially created, whichever time comes first. For purposes of this section, the words "officially created" mean the date and hour in which the results of the election to confirm the creation of the district are declared.

(e) Within seven days after there is a change in any of the information contained in the district information form or map or plat, the district shall file an amendment to the information form or map setting forth the changes made.

(f) Any person who affirms the corrections and accuracy of and acknowledges an information form, map, or plat, or any amendment to an information form or map or plat which includes information which is inaccurate or incorrect shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$1,000 for each violation.

(g) If a district fails to file the information required by this section in the time required, the commission, on its own motion or on request by any person, may request the attorney general, or the district or the county attorney of the county in which the district is located to seek a writ of mandamus to force the governing board of the district to prepare and file the necessary information.

(h) Any member of a governing board who wilfully fails or refuses to join in filing an information form, map, plat, or amendment to an information form, map, or plat under this section shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$1,000 for each violation. A member of a governing board is presumed to have wilfully failed or refused to join in the filing of an information form, map, plat, or amendment to an information form, map, or plat, if he was present at the meeting at which the information included in the information form, map, plat or amendment to the information form, map, or plat was adopted.

(i) If a district covered by the provisions of this section is dissolved, annexed to another local government or is consolidated with another district, the members of the governing board shall file a statement of this fact together with the effective date of the dissolution, annexation, or consolidation with the information form. After a district is dissolved and the statement is filed under this subsection, a person who sells or conveys property within the dissolved district is no longer required to give notice under Section 50.301 of this code.

(j) A copy of all information forms, maps, plats, and amendments to these filed under this section shall also be filed with the commission.

[Acts 1973, 63rd Leg., p. 1541, ch. 560, § 1, eff. Aug. 27, 1973.]

[Sections 50.303 to 50.330 reserved for expansion]

SUBCHAPTER J. GENERAL DISTRICT  
CREATION PROVISIONS

§ 50.331. Copies of Creation Petitions

In addition to other requirements of this code for the creation of districts including districts created by special act of the legislature, a copy of the petition to create a district including a district created by special act of the legislature shall be mailed to any city in whose extraterritorial jurisdiction all or part of the proposed district is located and to the commissioners court of any county in which all or part of the proposed district is located.

[Acts 1973, 63rd Leg., p. 490, ch. 214, § 1, eff. May 28, 1973.]

[Sections 50.332 to 50.370 reserved for expansion]

SUBCHAPTER K. AUDIT OF DISTRICTS

§ 50.371. Duty to Audit

(a) The governing board of each district created under the general law or by special act of the legislature shall have the district's fiscal accounts audited annually at the expense of the district.

(b) The person who performs the audit shall be a certified public accountant holding a permit from the Texas State Board of Public Accountancy.

(c) The audit required by this section shall be completed within 120 days after the close of the district's fiscal year.

[Acts 1973, 63rd Leg., p. 1533, ch. 556, § 1, eff. June 15, 1973.]

§ 50.372. Form of Audit

The commission shall adopt a manual of accounts, and except as otherwise provided by this manual of accounts, the audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants and shall include the auditor's representation that the financial statements have been prepared in accordance with generally accepted accounting principles.

[Acts 1973, 63rd Leg., p. 1533, ch. 556, § 1, eff. June 15, 1973.]

§ 50.373. Depository and Treasurer's Reports

The district depository and the district treasurer, if any, who receives or has control over any district funds shall keep a full and itemized account of district funds in its or his possession. The depository's and treasurer's itemized accounts and records shall be available for audit.

[Acts 1973, 63rd Leg., p. 1533, ch. 556, § 1, eff. June 15, 1973.]

§ 50.374. Filing of Audit

(a) After the governing board of the district has approved the audit, the audit shall be filed with the Texas Water Rights Commission.

(b) If the governing board of the district refuses to approve the audit report, the governing board shall file the report with the commission along with a statement from the board detailing its reasons for its failure to approve the report.

(c) Copies of the audit shall be filed in the office of the district and with any city in whose extraterritorial jurisdiction the district is located, and if the district is not located within the extraterritorial jurisdiction of a city, the audit shall be filed with the county in which the district is located; provided, however, this subsection shall not apply to any district which is located within all or parts of more than two counties; however, each such district shall file a copy of its annual audit report with the county clerk of each county within which the district is located.

(d) The audit filed with the district shall be available for public inspection.

[Acts 1973, 63rd Leg., p. 1533, ch. 556, § 1, eff. June 15, 1973.]

§ 50.375. Review by Commission

(a) The Texas Water Rights Commission shall review the audit report of each district, and if the commission has any objections or determines any violations of sound accounting practices, laws, or regulations, or if the commission has any recommendations, it shall notify the governing board of the district.

(b) Before the audit report is finally filed with the commission, the governing board and the auditor shall remedy objections and correct violations of which they have been notified by the commission.

(c) If the audit report indicates that any penal law has been violated, the chairman of the commission shall notify the appropriate county or district attorney and the attorney general.

[Acts 1973, 63rd Leg., p. 1533, ch. 556, § 1, eff. June 15, 1973.]

§ 50.376. Access to Records, Etc.

The commission shall have access to all vouchers, receipts, district fiscal and financial records, and other district records which the commission considers necessary for the review, analysis, and approval of an audit report.

[Acts 1973, 63rd Leg., p. 1533, ch. 556, § 1, eff. June 15, 1973.]

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#### SUBCHAPTER A. GENERAL PROVISIONS

##### § 51.001. Definitions

In this chapter:

- (1) "District" means a water control and improvement district.
- (2) "Board" means the board of directors of a district.
- (3) "Director" means a member of the board of directors of a district.
- (4) "Commissioners court" means the commissioners court of the county in which a district or part of a district is located.
- (5) "Commission" means the Texas Water Rights Commission.

[Acts 1971, 62nd Leg., p. 276, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.002 to 51.010 reserved for expansion]

#### SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

##### § 51.011. Creation of District

A water control and improvement district may be created under and subject to the authority, conditions, and restrictions of either Article III, Section 52, of the Texas Constitution, or Article XVI, Section 59, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 276, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 51.012. Composition of District

(a) A district may include all or part of one or more counties, including any town, village, or municipal corporation, and may include any other political subdivision of the state or any defined district.

(b) The areas composing a district do not have to be contiguous but may consist of separate bodies of land separated by land not included in the district; however, each segregated area, before it may be included in the district, must cast a majority vote in favor of the creation of the district.

(c) No district may include territory located in more than one county except by a majority vote of the electors residing within the territory in each county sought to be included in the district.

[Acts 1971, 62nd Leg., p. 276, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 51.013. Petition

(a) A petition requesting creation of a district shall be signed by a majority of the persons who hold title to land in the proposed district which

represents a total value of more than 50 percent of the value of all the land in the proposed district as indicated by the county tax rolls. If there are more than 50 persons holding title to land in the proposed district, the petition is sufficient if signed by 50 of them.

(b) The petition may be signed and filed in two or more copies.

[Acts 1971, 62nd Leg., p. 277, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 51.014. Contents of Petition

The petition shall include:

- (1) the name of the district;
- (2) the area and boundaries of the district;
- (3) the provision of the Texas Constitution under which the district is to be organized;
- (4) the purpose or purposes of the district;
- (5) a statement of the general nature of the work to be done and the necessity and feasibility of the project, with reasonable detail and definiteness to assist the court or commission passing on the petition in understanding the purpose, utility, feasibility, and need; and
- (6) a statement of the estimated cost of the project based on the information available to the person filing the petition at the time of filing.

[Acts 1971, 62nd Leg., p. 277, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 51.015. Place of Filing; Recording

(a) The petition shall be filed in the office of the county clerk of the county in which the district is located. If land in more than one county is included in the district, copies of the petition certified by the clerk shall be filed in the office of the county clerk of each county in which a portion of the district is located.

(b) The petition shall be recorded in a book kept for that purpose in the office of the county clerk.

(c) If more than one petition is filed and the petitions are identical except for the signature, one copy of the petition shall be recorded and all signatures on the other petitions shall be included.

[Acts 1971, 62nd Leg., p. 277, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 51.016. Board or Commission to Consider Creation of District

If the land to be included in a district is within one county, the creation of the district shall be considered and ordered by the commissioners court, but if the land to be included in a district is in two or more counties, the creation of the district shall be considered and ordered by the commission.

[Acts 1971, 62nd Leg., p. 277, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 51.017. Single-County District: Hearing

(a) Except as provided in Subchapter H of this chapter, if a petition is filed for the creation of a district within one county, the county judge shall issue an order setting the date of hearing on the

petition by the commissioners court and shall endorse the order on the petition or on a paper attached to the petition.

(b) After the order is issued, the county clerk shall issue notice of the hearing.

(c) The petition may be considered at a regular or special session of the court.

[Acts 1971, 62nd Leg., p. 278, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.018. Single-County District: Notice of Hearing**

(a) The notice of hearing on the petition shall include a statement of the nature and purpose of the district and the date, time, and place of hearing.

(b) The notice shall be prepared with one original and three copies. The county clerk shall retain one copy of the notice in his files and deliver the original and two copies to the county sheriff.

(c) The sheriff shall post one copy of the notice at the courthouse door 15 days before the day of the hearing and shall publish one copy in a newspaper of general circulation in the county once a week for two consecutive weeks. The first newspaper publication shall be made at least 20 days before the day of hearing.

(d) Before the hearing, the sheriff shall make due return of service of the notice with copy and affidavit of publication attached to the original.

[Acts 1971, 62nd Leg., p. 278, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.019. Single-County District: Name**

(a) A district located in one county may be named the \_\_\_\_\_ County Water Control and Improvement District, Number \_\_\_\_\_. (Insert the name of the county and proper consecutive number.)

(b) A district may be known and designated by any term descriptive of the location of the district and descriptive of the principal powers to be exercised by the district; however, the word "district" shall be included in the designation and a consecutive number shall be assigned to it if other districts of the same name have been created in the county.

[Acts 1971, 62nd Leg., p. 278, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.020. Single-County District: Testimony at Hearing**

(a) At the hearing on the petition, any person whose land is included in or would be affected by the creation of the district may appear and contest the creation of the district and may offer testimony to show that the district:

- (1) is or is not necessary;
- (2) would or would not be a public utility or benefit to land in the district; and
- (3) would or would not be feasible or practicable.

(b) The hearing may be adjourned from day to day.

[Acts 1971, 62nd Leg., p. 278, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.021. Single-County District: Granting or Refusing Petition**

(a) The commissioners court or the commission shall grant the petition requesting the creation of a district if it appears at the hearing that:

- (1) organization of the district as requested is feasible and practicable;
- (2) the land to be included and the residents of the proposed district will be benefited by the creation of the district;
- (3) there is a public necessity or need for the district; and
- (4) the creation of the district would further the public welfare.

(b) If the commissioners court or the commission fails to make the findings required by Subsection (a) of this section, it shall refuse to grant the petition.

(c) If the commissioners court or the commission finds that any of the land sought to be included in the proposed district will not be benefited by inclusion in the district, it may exclude those lands not to be benefited and shall redefine the boundaries of the proposed district to include only the land that will receive benefits from the district.

(d) The provisions of this section do not apply to underground water conservation districts which are created under the provisions of Chapter 52 of this code.

[Acts 1971, 62nd Leg., p. 279, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.022. Single-County District: Appeal from Order of Commissioners Court**

(a) If the commissioners court grants or refuses to grant the petition, any person who signed the petition or any person who appears and protests the petition and offers testimony against the creation of the district may appeal from the order of the court by giving notice of appeal in open court at the time of the entry of the order, which shall be entered on the court's docket, and by filing with the clerk of the commissioners court within five days a good and sufficient appeal bond in the amount of \$2500.

(b) The appeal bond shall be approved by the clerk of the commissioners court payable to the county judge conditioned for the prosecution of the appeal with effect and the payment of all costs incurred with the appeal in the event that the final decree of the court is against the appellant.

[Acts 1971, 62nd Leg., p. 279, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.023. Single-County District: Record on Appeal; Notice of Appeal**

(a) On completion of an appeal as provided in Section 51.022 of this code, the clerk of the commissioners court shall, within 10 days, prepare a certified transcript of all orders entered by the commissioners court and transmit them with all original documents, processes, and returns on processes to the clerk of the district court to which the appeal is taken.

(b) All persons shall be charged with notice of the appeal without notice or service of notice. No person who failed to appear by petition, in person, or by attorney in the commissioners court may be permitted to intervene in the district court trial.

[Acts 1971, 62nd Leg., p. 279, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.024. Single-County District: Hearing in District Court; Procedure**

(a) The district court, either in term time or in vacation time, shall schedule the appeal for hearing with all reasonable dispatch, and the judge shall give the appeal precedence over all causes which are not of like character.

(b) In the proceeding in the district court, formal pleadings shall not be required but, with the court's permission, may be filed.

(c) The trial and decision shall be by the court without the intervention of a jury, and the hearing shall be conducted as though the jurisdiction of the district court were original jurisdiction.

(d) The following matters may be contested in the district court:

(1) all matters which were or might have been presented in the commissioners court;

(2) the validity of the act under which the district is proposed to be created; and

(3) the regularity of all previous proceedings.

[Acts 1971, 62nd Leg., p. 279, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.025. Single-County District: Judgment of District Court; Appeal**

(a) In the appeal, the district court shall apply to the determination its full powers to the end that substantial justice may be done.

(b) An appeal from the judgment of the district court may be taken as in other civil causes, but appeals filed under Section 51.022 of this code shall be given precedence on the docket of any higher court over all causes which are not of similar public concern.

(c) The final judgment of the district court, or other court to which an appeal may be prosecuted, shall be certified and transmitted to the clerk of the commissioners court with all original documents and processes which were transmitted from the commissioners court to the district court on appeal.

(d) The commissioners court shall enter its order on the petition to conform to the decree entered by the court of final jurisdiction and shall enter other and further orders as may be required by law to execute the intent of the certified decree.

[Acts 1971, 62nd Leg., p. 280, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.026. Single-County District: Appointment of Directors; Bond**

(a) If the commissioners court grants a petition for creation of a district, it shall appoint five directors who shall serve until their successors are elected or appointed in accordance with law.

(b) Each director shall, within 15 days after appointment, file his official bond in the office of the county clerk, and the county clerk shall present the bond to the county judge for approval. The county judge shall pass on the bond and approve it, if it is proper and sufficient, or disapprove it and shall endorse his action on the bond and return it to the county clerk.

(c) If approved, the bond of a director shall be recorded in a record kept for that purpose in the office of the county clerk, but if a bond is not approved, a new bond may be furnished within 10 days after disapproval.

(d) If any director appointed under this section fails to qualify, the commissioners court shall appoint another person to replace him.

(e) Each director appointed under this section shall take the oath of office as provided by Section 51.078 of this code.

[Acts 1971, 62nd Leg., p. 280, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.027. Multi-County District: Hearing by Commission**

(a) The commission shall have exclusive jurisdiction and power to hear and determine all petitions for creation of a district which will include land or property located in two or more counties.

(b) The orders of the commission concerning the organization of a district shall be final, unless an appeal is taken from the orders as provided in this subchapter.

[Acts 1971, 62nd Leg., p. 281, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.028. Multi-County District: Notice of Hearing**

(a) When a petition is filed, the commission shall give notice of a hearing in the manner provided in Section 51.018 of this code.

(b) Further, the notice shall be posted at the courthouse door, on the bulletin board used for posting legal notices, in each county in which the district may be located.

(c) The notice shall be published in one or more newspapers with general circulation in the area of the proposed district.

[Acts 1971, 62nd Leg., p. 281, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.029. Multi-County District: Deposit Accompanying Petition**

(a) A petition to create a multi-county district shall be accompanied by a deposit of \$250 for the use of the state, and no part of the deposit may be returned except as provided in Subsection (c) of this section.

(b) The deposit shall be placed with the state treasurer to be held in trust outside the state treasury until the commission either grants or refuses the petition. At the time of action on the petition, the commission shall direct the state treasurer to transfer the deposit into the general revenue fund.

(c) If at any time before the hearing on the petition, the petitioners withdraw the petition, and only in that event, the commission shall direct the refund of the deposit to petitioners or their attorney of record. The receipt of the attorney of record shall be sufficient receipt for the return of the money. [Acts 1971, 62nd Leg., p. 281, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.030. Multi-County District: Hearing of Commission; Procedure**

(a) The commission shall hear, consider, and determine on the issues a petition filed under Section 51.028 of this code.

(b) At the hearing on the petition, the commission shall be governed by the provisions of Section 51.021 of this code. [Acts 1971, 62nd Leg., p. 281, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.031. Multi-County District: Appeal from Commission Decision**

(a) When the commission grants or refuses a petition, any person who comes within the requirements specified in Sections 51.020–51.025 of this code may prosecute an appeal from the judgment of the commission under Sections 51.022–51.025 of this code.

(b) The appeal may be taken to any district court in any county in which part of the proposed district is located or to a district court in Travis County.

(c) The time within which an appeal bond may be approved and filed is 15 days after the entry of the final order by the commission.

(d) On the perfection of the appeal, the appellant shall pay the actual cost of the transcript of the record, which will be assessed as part of the costs incurred on the appeal.

(e) Whenever practicable, the original documents and processes with the returns attached shall be sent to the district court. [Acts 1971, 62nd Leg., p. 281, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.032. Multi-County District: Appointment of Directors by Commission; Bond**

(a) If the commission grants the petition for creation of the district, it shall appoint five directors, who shall serve until their successors are elected or appointed.

(b) A certified copy of the order of the commission granting a petition and naming the directors shall be filed in the office of the county clerk of each county in which a portion of the district is located.

(c) Each director named in the order shall, within 15 days after appointment, file his official bond in the office of the county clerk of the county of his residence. The county clerk shall present the bond to the county judge for approval.

(d) The county judge shall act on each bond in the manner provided in Section 51.026 of this code.

(e) If any director appointed under this section fails to qualify, the commissioners court of the coun-

ty in which he lives shall appoint some qualified person to replace him. [Acts 1971, 62nd Leg., p. 282, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.033. Order of Confirmation Election; Holding of Election; Preliminary Bond Proposition**

(a) Within 30 days after the date of the first meeting of the board and before the district may incur any indebtedness other than for its operation and the holding of an election, the board shall issue and publish an order calling an election in the district to confirm the creation of the district.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "Confirmation of the district."

(c) The election shall be held in the manner provided for other elections.

(d) At the election, the proposition for the issuance of preliminary bonds may also be submitted to the district electors. Separate ballot boxes shall be provided for the different classifications of voters. [Acts 1971, 62nd Leg., p. 282, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.034. Result of Election; Entry of Order**

(a) If the majority of those voting at an election held under Section 51.033 of this code vote in favor of the confirmation of the district, the district is confirmed and ratified, but if the majority of those voting at the election vote against the confirmation of the district, the district shall have no further authority, except that any debts incurred shall be paid and the organization of the district shall be maintained until all the debts are paid.

(b) If the majority of those voting at the election favor the confirmation of the district and the result is declared, the board shall enter in their minutes an order substantially as follows: "An election having been held in \_\_\_\_\_ district on the \_\_\_\_\_ day of \_\_\_\_\_ for the purpose of voting on the confirmation of the creation of the district and the results of the election resulted in a vote of \_\_\_\_\_ votes for confirmation and \_\_\_\_\_ votes against confirmation of the district, the result is declared in favor of the creation of the district. The district is therefore declared to have been legally organized with the following boundaries: (Describe boundaries)."

(c) The order shall be signed by a majority of the board and acknowledged by the president of the board. The order shall be filed for record in the office of the county clerk of any county in which the district is situated and recorded in the deed records. [Acts 1971, 62nd Leg., p. 282, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.035. Inclusion of City, Town, or Municipal Corporation in District**

(a) No city, town, or municipal corporation may be included within any district created under this chapter unless the proposition for the creation of the

district has been adopted by a majority of the electors in the city, town, or municipal corporation.

(b) Any municipal corporation included within a district shall be a separate voting district, and the ballots cast within the municipal corporation shall be counted and canvassed separately from the remainder of the district.

(c) No district which includes a city, town, or municipal corporation may include land outside of the municipal corporation unless the election to confirm and ratify the creation of the district favors the creation of the district independent of the vote within the municipal corporation.

[Acts 1971, 62nd Leg., p. 283, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.036. Confirmation Election in District Including Land in More than One County

No district, the major portion of which is located in one county, may be organized to include land in another county unless the election held in the other county to confirm and ratify the creation of the district is adopted by those voting in the other county.

[Acts 1971, 62nd Leg., p. 283, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.037. Exclusion of Parts of District; Dissolution

(a) If any portion of a district governed by Sections 51.035 and 51.036 of this code, votes against the creation of the district and the remainder of the district votes for the creation, the district is confirmed and ratified in those portions of the district voting for the creation, and the district is composed only of those portions.

(b) The excluded portions of the district shall be excluded from all debts and obligations incurred after the election; however, all land and property included in the original district shall be subject to the payment of taxes for the payment of all debts and obligations, including organization expenses, incurred while it was a part of the district.

(c) If a district is created and portions of the proposed district are excluded by the vote in those portions, 10 percent of the voters in the district may file with the board a petition asking for a new election on the issue. A new election shall be ordered and held for the remaining portion of the district or the district organization may be dissolved by order of the board and a new district formed.

(d) A petition requesting a new election shall be filed within 30 days after the day on which the result of the election is canvassed and declared by the board.

[Acts 1971, 62nd Leg., p. 283, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.038. Municipal Districts

(a) A district operating under the provisions of this chapter may, by order of the board entered in the minutes, become a "municipal district."

(b) To become a municipal district, a district shall have a taxing power unlimited as to rate and

amount and may not have outstanding or authorized bond obligations exceeding 20 percent of the established assessable, taxable evaluation of the real estate subject to the district's taxing power. In computing outstanding or authorized bond obligations, the bond obligations which may be retired by the district out of revenues from sources other than the income from district taxation shall not be included.

(c) To be eligible to become a municipal district, a district:

(1) shall embrace the total area of a municipal corporation which has bond obligations which may be declared eligible for purchase by savings banks and trusts under the acts of the State of New York, and which has plans designed for furnishing, in whole or in part, a water supply, sanitation facilities, flood protection, or other service inuring to the general benefit of the inhabitants of the embraced city; or

(2) shall have a population, according to the last preceding federal census, of at least 30,000 persons and have established assessable real estate values of at least \$50 million.

[Acts 1971, 62nd Leg., p. 284, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.039. Bonds of Municipal Districts

(a) A district operating under Section 51.038 of this code may issue bonds which bear the legend "municipal bond."

(b) Bonds issued in compliance with this section and with Section 51.038 of this code shall be eligible for investment of the funds of:

(1) state banks, trust funds, and savings banks;

(2) insurance companies, for the purpose of holding the bonds as legal reserves against liability under their contracts for insurance or for investment of an accumulated surplus;

(3) counties, cities, towns, and other political bodies, for the purpose of investing the accumulated sinking fund money of those bodies;

(4) the State Board of Education and the regents of The University of Texas System; and

(5) trustees, receivers, administrators, and guardians administering funds under orders of a court.

(c) Municipal bonds issued under this section, when in the lawful possession of any person, shall be lawful reserves, where reserves are required by law.

(d) The bonds are eligible for deposit with the banking and insurance departments of Texas in all cases where deposit, pledge, or security is required by law.

(e) The bonds shall be lawful security for any bank designated as an official depository for a political body under the laws of Texas.

[Acts 1971, 62nd Leg., p. 284, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.040. Conversion of Certain Districts into Districts Operating under this Chapter**

(a) Any water improvement district, levee improvement district, or irrigation district created under Article III, Section 52, of the Texas Constitution, or under Article XVI, Section 59, of the Texas Constitution, or any conservation and reclamation district created under Article XVI, Section 59, of the Texas Constitution, may be converted to a district operating under this chapter.

(b) The governing body of a district which desires to convert into a district operating under this chapter shall adopt and enter in the minutes of the governing body a resolution declaring that, in its judgment, conversion into a water control and improvement district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district.

[Acts 1971, 62nd Leg., p. 284, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.041. Conversion of District; Notice**

(a) Notice of the adoption of a resolution under Section 51.040 of this code shall be given by publishing the resolution in a newspaper with general circulation in the county or counties in which the district is located.

(b) The notice shall be published once a week for two consecutive weeks with the first publication not less than 14 full days before the time set for a hearing.

(c) The notice shall:

- (1) state the time and place of the hearing;
- (2) set out the resolution in full; and
- (3) notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution.

[Acts 1971, 62nd Leg., p. 285, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.042. Conversion of District; Findings**

(a) If, on a hearing, the governing body of the district finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, it shall enter an order making this finding and the district shall become a district operating under this chapter.

(b) If the governing body finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, it shall enter an order against conversion of the district into one operating under this chapter.

(c) The findings of the governing body of a district entered under this section are final and not subject to appeal or review.

[Acts 1971, 62nd Leg., p. 285, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.043. Effect of Conversion**

A district which converts into a district operating under this chapter shall:

(1) be constituted a water control and improvement district operating under and governed by this chapter;

(2) be a conservation and reclamation district under the provisions of Article XVI, Section 59, of the Texas Constitution; and

(3) have and may exercise all the powers, authority, functions, and privileges provided in this chapter in the same manner and to the same extent as if the district had been created under this chapter.

[Acts 1971, 62nd Leg., p. 285, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.044. Reservation of Certain Powers for Converted Districts**

(a) Any water improvement district, water control and preservation district, fresh water supply district, levee improvement district, drainage district, or navigation district, after conversion under Section 51.040 of this code, may continue to exercise all necessary specific powers under any specific conditions provided by the chapter of this code under which the district was operating before conversion.

(b) At the time of making the order of conversion, the governing body shall specify in the order the specific provisions of the chapter of the code under which the district had been operating which are to be preserved and made applicable to the operations of the district after conversion into a district operating under this chapter.

(c) A reservation of a former power under Subsection (a) of this section may be made only if this chapter does not make specific provision concerning a matter necessary to the effectual operation of the converted district.

(d) In all cases in which this chapter does make specific provision, this chapter shall, after conversion, control the operations and procedure of the converted district.

[Acts 1971, 62nd Leg., p. 286, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.045. Conversion of a District Operating under this Chapter to a Fresh Water Supply District**

(a) Any district operating under this chapter may be converted into a district operating as a fresh water supply district under Chapter 53 of this code in the manner provided in this section.

(b) The governing body of a district desiring to convert under this section shall adopt a resolution declaring that, in its judgment, conversion of the district into one operating under Chapter 53 of this code and under the provisions of Article XVI, Section 59, of the Texas Constitution, would be in the best interest of the district and would be a benefit to the land and property in the district.

(c) The resolution shall provide for a public hearing on the proposition at a date to be fixed by the

governing body not less than 15 days nor more than 30 days from the date of the resolution.

(d) Notice of the hearing shall be published once a week for two consecutive weeks in a newspaper with general circulation in the area in which the district is located. The first publication shall be not less than 14 days before the time set for the hearing. The notice shall contain a copy of the resolution or a substantial statement of the matters contained in the resolution.

(e) At the hearing, any person may appear and offer testimony and other evidence.

(f) If, on hearing, the board finds that the conversion of the district operating under this chapter into one operating under Chapter 53 of this code would be in the best interest of the district and would be a benefit to the land and property in the district, it shall enter an order declaring the district to be one operating under Chapter 53 of this code, and thereafter, the district shall operate under the provisions of Chapter 53.

(g) If the board finds that conversion would not be in the best interest of the district and would not be a benefit to the land and property in the district, it shall enter its order to that effect and the district shall continue to operate under this chapter.

(h) The findings of the governing body shall be final and not subject to review or appeal.

(i) Nothing in this section may be construed to authorize the impairment of any existing contract. [Acts 1971, 62nd Leg., p. 286, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.046. Organization of District to Conduct Preliminary Surveys

A district may be organized for the sole purpose of conducting preliminary surveys to determine whether or not improvements are needed and what improvements, if any, are required to promote the public welfare.

[Acts 1971, 62nd Leg., p. 287, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.047. Creation of Master District

A master district may be created under this chapter and may include all or any part of the area of one or more districts created and operating under the provisions of this chapter or Chapters 53, 55, 56, 57, 60-63 of this code or Chapter 3, Title 128, Revised Civil Statutes of Texas, 1925.<sup>1</sup>

[Acts 1971, 62nd Leg., p. 287, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Water Auxiliary Laws, Art. 7808 et seq.

#### § 51.048. Purposes of Master District

(a) A master district may be created to conduct preliminary surveys and to develop a plan for the control and use of the water of any given stream, so that the improvements on one part of a watershed will be mechanically and economically related to all other improvements on the stream or its watershed.

(b) A master district also may be created to enable districts to pool their resources when necessary to economically:

(1) make preliminary surveys;

(2) adopt a plan to coordinate the plants, improvements, and facilities of the several constituent districts;

(3) provide the improvements and facilities proposed to be constructed and furnished by the master district;

(4) provide improvements for the common benefit of the several districts;

(5) enable the districts jointly to make purchases; or

(6) maintain or operate works for the common benefit of the several districts.

[Acts 1971, 62nd Leg., p. 287, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.049. Master District; Procedure

(a) The Commission shall have exclusive jurisdiction to hear and determine petitions for the creation of a master district.

(b) Each district composing part of a master district shall, for all purposes of an election, constitute a separate voting unit. No existing district may be included in a master district unless the proposal is approved by a majority of the qualified electors of the constituent district voting in the election.

[Acts 1971, 62nd Leg., p. 287, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.050. Master District; Directors

A master district may have directors which number five, seven, or any other uneven number up to 21.

<sup>1</sup>(b) The number shall be determined at the time of the creation of the district and may thereafter be changed by the directors of the district in a manner to conform to the requirements for equitable representation for the various areas of the master district.

(c) The election and qualification of the directors shall, where applicable, be controlled as provided by the other provisions of this chapter.

[Acts 1971, 62nd Leg., p. 287, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> No "(a)" in enrolled bill.

#### § 51.051. Master District Governed by Chapter

The provisions of this chapter, where applicable, shall govern a master district in:

(1) the procedure for its creation;

(2) the conduct of its affairs; and

(3) its powers.

[Acts 1971, 62nd Leg., p. 288, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.052. City, Town, or Municipal Corporation Created as a District

(a) Any city, town, or municipal corporation may have the benefit and powers provided in this chapter under the Texas Constitution and may aid any district in the construction and operation of any improvements to the extent that the improvements may be an advantage to the municipal corporation.

(b) The area included in any city, town, or municipal corporation may be organized into and constituted a district operating under this chapter with all the powers, authority, and privileges provided by Article XVI, Section 59, of the Texas Constitution. The district shall be governed by this chapter and by an ordinance duly enacted by the governing body of the city, town, or municipal corporation.

(c) The ordinance required by Subsection (b) of this section shall appoint five directors for the district. Each director's bond shall be filed with and approved by the governing body of the municipal corporation.

(d) On the qualification of the directors, the district shall be completely organized without the necessity of an election. The district shall thereafter be governed by the provisions of this chapter. [Acts 1971, 62nd Leg., p. 288, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.053 to 51.070 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 51.071. Board of Directors

The governing body of a district is the board of directors, which shall consist of five directors. [Acts 1971, 62nd Leg., p. 288, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 51.072. Qualifications for Director

To be qualified for election as a director, a person must be a resident of the state, own land subject to taxation in the district, and be at least 21 years of age. [Acts 1971, 62nd Leg., p. 288, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 51.0721. Disqualification of Members of the Board

(a) A person is disqualified from serving as a member of the board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district, if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, or attorney for the district;

(2) he is or was within two years immediately preceding his election or appointment to the board an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving or has served within the last two years immediately preceding his election or appointment to the board as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is or has been within the two years immediately preceding his election or appointment to the board:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who willfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Acts 1973, 63rd Leg., p. 1749, ch. 635, § 2, eff. Aug. 27, 1973.]

§ 51.073. Election of Directors; Term of Office

(a) An election shall be held in the district on the second Tuesday in January following the creation of the district to elect five directors.

(b) The three directors receiving the highest number of votes shall serve as directors for two years, and the other two directors shall serve for one year.

(c) At the second election of directors, two directors shall be elected to serve for two years.

(d) After the second election of directors, an election shall be held each year with two directors

elected one year and three the next year in continuing sequence.

[Acts 1971, 62nd Leg., p. 288, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.0731. Election Date for Certain Directors

The election date for directors of a district proposing to provide or actually providing water and sewer services or either of these services as the principal functions of the district shall be the first Saturday in April.

[Acts 1973, 63rd Leg., p. 1539, ch. 559, § 2, eff. June 15, 1973.]

#### § 51.074. Election to Replace Directors Temporarily Appointed by Commission

(a) A district organized by order of the commission shall elect five directors at the election which is held to confirm the creation of the district. The names of the five appointed directors shall be placed on the ballot, with a blank space left to write in the names of other persons.

(b) If the appointed directors are elected, they shall be confirmed without the necessity of furnishing new bonds and shall continue in office.

(c) If any of the appointed directors are not elected, the person or persons elected in their places must furnish bond, which shall be approved in the manner provided for directors first appointed.

[Acts 1971, 62nd Leg., p. 289, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.075. Application to Get on Ballot

A candidate for the office of director or other elective office may file an application with the secretary of the board to have his name printed on the election ballot. The application must be signed by the applicant or by at least 10 qualified electors of the district and must be filed at least 20 days before the date of the election.

[Acts 1971, 62nd Leg., p. 289, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.076. Selection of Directors in Certain Districts

(a) In a district created after June 18, 1967, with boundaries coterminous with the boundaries of a county, the commissioners court may provide in the order granting the petition for creation that the directors are to be selected either as provided in Section 51.073 of this code or by the "commissioners precinct method," which provides for the election of two directors from each commissioners precinct in the county and the election of one director from the county at large.

(b) If the commissioners court provides for the commissioners precinct method, it may appoint two qualified directors from each commissioners precinct and one director from the county at large, who shall serve until their successors are elected and have qualified. Except for the provisions of this subsection, Section 51.026 of this code applies to the appointment of the initial directors.

(c) The directors appointed by the commissioners court under Subsection (b) of this section shall order an election in the district on the second Tuesday in January following the creation of the district. The two persons receiving the highest number of votes in each precinct are the directors from that precinct, and the person receiving the highest number of votes from the county at large is the director at large.

(d) Of the two persons elected from each commissioners precinct, the person who receives the highest number of votes in each precinct shall serve for two years and until his successor is elected and has qualified, and the person receiving the second highest number of votes in each precinct shall serve for one year and until his successor is elected and has qualified. The person who is elected from the county at large shall serve for two years and until his successor is elected and has qualified. At each annual election after the first annual election, a person who is elected director shall serve for two years and until his successor is elected and has qualified.

(e) To be qualified for election as a director from a commissioners precinct, a person must be 21 years of age, a citizen of the state, and own land subject to taxation in the commissioners precinct from which he is elected.

(f) To be qualified for election as a director from the county at large, a person must possess the qualifications specified in Section 51.072 of this code.

(g) If a vacancy occurs in the office of director between regular elections, the vacancy shall be filled for the unexpired term at a special election in the director's precinct. The special election shall be called by a majority of the remaining members of the board within 8 days after the vacancy occurs and to be held not more than 40 days after the vacancy occurs.

(h) Except as otherwise provided in this section, all laws relating to the election and qualification of directors of a district shall govern and control the election and qualification of directors selected by the commissioners precinct method whether the precinct election is regular or special.

[Acts 1971, 62nd Leg., p. 289, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.077. Organization of Board

After a district is created and the directors have qualified, the board shall meet, elect a president, vice president, and secretary, and begin the discharge of its duties.

[Acts 1971, 62nd Leg., p. 290, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.078. Director's Oath

Each director shall take the oath of office prescribed by law for county commissioners.

[Acts 1971, 62nd Leg., p. 290, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.079. Director's Bond

(a) Each director shall execute a good and sufficient bond for \$5,000, payable to the district, conditioned on the faithful performance of his duties.

(b) After the creation of the district and the qualification of the first board of directors, all bonds required to be given by a director or other officer of the district are subject to the approval of the board.

(c) The county clerk of the county in which the director lives shall record each bond in the bond records of the county. The bond also shall be recorded in a bond record in the district office and filed for safekeeping in the depository of the district. [Acts 1971, 62nd Leg., p. 290, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.080. Compensation of Directors**

(a) A director is entitled to receive compensation of not more than \$25 a day for each day he actually spends performing his duties as a director, but the fees shall not be more than \$100 for any one month.

(b) Before a director may receive compensation for his services, he shall file with the secretary a verified statement showing the number of days actually spent in the service of the district. The statement shall be filed on the last day of the month, or as soon after that time as possible. [Acts 1971, 62nd Leg., p. 291, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.081. Officers; Quorum**

(a) The president is the chief executive officer of the district and presides at all meetings of the board. The vice president shall act as president in case of the absence or disability of the president. The secretary is secretary of the board and is responsible for seeing that all records and books of the district are properly kept. In the case of the absence or inability of the secretary to act, the board shall select a secretary pro tem.

(b) Three directors constitute a quorum for any meeting, and a concurrence of three is sufficient for transacting any business of the district except letting construction contracts and drawing warrants on the depository for payment of the contracts, which require the concurrence and signature of four directors. Warrants to pay current expenses, salaries, and accounts may be drawn by an officer or employee designated by standing order entered in the minutes when these accounts have been contracted and ordered paid by the directors. [Acts 1971, 62nd Leg., p. 291, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.082. Vacancies**

(a) All vacancies on the board and in other offices shall be filled for the unexpired term by appointment of the board.

(b) If the number of directors is reduced to fewer than three, the vacancies shall be filled by special election ordered by the remaining members of the board. If the director or directors fail to order an election within 15 days after the vacancies occur, any voter or creditor of the district may petition the district judge of any judicial district in which land of the district is located, and the judge may order the election, fixing the date, ordering the publication of notice by any county sheriff, and naming the officers to hold the election.

(c) The returns of the election ordered by a district judge shall be made to and filed in the office of the clerk of the court and he shall declare the result of the election.

(d) The officers elected shall furnish bond and qualify in the manner provided in this chapter for directors first appointed for a district on its creation. [Acts 1971, 62nd Leg., p. 291, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.083. General Manager**

The board may employ a general manager and give him full authority in the management and operation of the affairs of the district subject only to the orders of the board. [Acts 1971, 62nd Leg., p. 291, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.084. Director as Manager**

A director may be employed as general manager with compensation fixed by the other four directors. When so employed, he shall continue to perform the duties of a director. [Acts 1971, 62nd Leg., p. 292, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.085. District Tax Assessor and Collector**

The board may appoint one person to the office of tax assessor and collector, or it may order an election to fill that office. [Acts 1971, 62nd Leg., p. 292, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.0851. Disqualification of Tax Assessor and Collector**

(a) No person may serve as tax assessor and collector of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district if:

(1) he is related within the third degree of affinity or consanguinity to any developer of property in the district, a member of the board or the manager, engineer, or attorney for the district;

(2) he is or was within two years immediately preceding the assumption of his assessment and collection duties with the district an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) he owns an interest in or is employed by any corporation organized for the purpose of tax assessment and collection services, a substantial portion of the stock of which is owned by a developer of property within the district, any director, manager, engineer, or attorney for the district; or

(4) he is himself or through a corporation developing land in the district, or is a director, engineer or attorney for the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as tax assessor and

collector with a person who would not be disqualified.

(c) Any person who wilfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

[Acts 1973, 63rd Leg., p. 1537, ch. 558, § 2, eff. June 15, 1973.]

#### § 51.086. Tax Assessor and Collector's Bond

(a) The tax assessor and collector shall execute a good and sufficient bond for \$5,000, signed by at least two sufficient sureties or a surety company and approved by the board. The bond shall be conditioned on the faithful performance of his duties and on his paying to the depository all money or other things of value that he receives in his capacity as tax assessor and collector.

(b) The board may require the tax assessor and collector to give additional bonds or security or a larger bond at any time.

[Acts 1971, 62nd Leg., p. 292, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.087. Deputy Tax Assessor and Collector

(a) The board may appoint one or more deputies to assist the tax assessor and collector for a period not to exceed one year.

(b) Each deputy may be required to furnish a bond with similar conditions to the bond required by the tax assessor and collector.

[Acts 1971, 62nd Leg., p. 292, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.088. Compensation of Tax Assessor and Collector and Deputies

The board shall fix the compensation of the tax assessor and collector and each deputy.

[Acts 1971, 62nd Leg., p. 292, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.089. Additional Duties

The board may require the tax assessor and collector to perform duties other than those specified in this chapter.

[Acts 1971, 62nd Leg., p. 292, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.090. Bonds of Officers of a District Acting as Fiscal Agent or Collecting Money for United States

(a) If a district is appointed fiscal agent for the United States or if a district is authorized to make collections of money for the United States in connec-

tion with a federal reclamation project, each director and officer of the district including the tax assessor and collector shall execute an additional bond in the amount required by the secretary of the interior, conditioned on the faithful discharge of his respective office and on the faithful discharge by the district of its duties as fiscal or other agent of the United States under its appointment or authorization.

(b) The additional bonds shall be approved, recorded, and filed as provided in this chapter for other official bonds.

(c) Suit may be brought on the bonds by the United States or any person injured by the failure of the officer or<sup>1</sup> the district to fully, promptly, and completely perform their respective duties.

[Acts 1971, 62nd Leg., p. 292, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> So in enrolled bill.

#### § 51.091. Employees of the District

The board shall employ all persons necessary for the proper handling of the business and operation of the district, its plant and improvements. It may employ attorneys, bookkeepers, engineers, laborers, and a civil engineer, who shall be an officer of the district, to be known as "District Engineer."

[Acts 1971, 62nd Leg., p. 293, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.092. Employees' Compensation and Terms of Employment

The board shall determine the term of office and compensation to be paid the general manager and all employees. All employees may be removed by the board.

[Acts 1971, 62nd Leg., p. 293, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.093. Officers' and Employees' Bond

(a) The board shall require an officer or employee who collects, pays, or handles any funds of the district to furnish good and sufficient bond, payable to the district, for a sufficient amount to safeguard the district. The bond shall be conditioned on the faithful performance of his duties and on accounting for all funds and property of the district coming into his hands.

(b) The bond may be signed by individual sureties or by surety companies authorized to do business in the state.

[Acts 1971, 62nd Leg., p. 293, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.094. District Office

The board shall maintain a regular office for conducting the business of the district. The office shall be located inside the district, or if the district does not include towns which are within or adjoining the territory included in the district, it may be located in a nearby town which is best suited for the transaction of the business.

[Acts 1971, 62nd Leg., p. 293, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.0941. District Office in Certain Districts**

After at least 25 qualified electors are residing in the district any district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district shall maintain a district office within the district, and on majority vote of the board at a public meeting, may maintain an office outside the district.

[Acts 1973, 63rd Leg., p. 618, ch. 263, § 2, eff. Aug. 27, 1973.]

**§ 51.095. Meetings**

(a) The board shall hold regular meetings at the district office on the first Monday in February, May, August, and November of each year at 10 a. m. and may hold meetings at other times when required for the business of the district.

(b) Any person owning taxable property in the district may attend any meeting of the board and may present in an orderly manner matters for the board's consideration.

[Acts 1971, 62nd Leg., p. 293, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.0951. Meetings in Certain Districts**

After at least 25 qualified electors are residing in a district covered by Section 51.0941 of this code, on written request of at least five of these electors, the board shall designate a meeting place within the district. On the failure to designate the location of the meeting place within the district, five electors may petition the commission to designate a location, which may be changed by the board after the next election of members to the board.

[Acts 1973, 63rd Leg., p. 618, ch. 263, § 2, eff. Aug. 27, 1973.]

**§ 51.096. Minutes and Records of the District**

The board shall keep a true and complete account of all its meetings and proceedings, and shall preserve its minutes, contracts, records, notices, accounts, receipts, and records of all kinds in a fireproof vault or safe. All minutes, contracts, records, notices, accounts, receipts, and other records are the property of the district and subject to public inspection.

[Acts 1971, 62nd Leg., p. 293, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.0961. Records in Certain Districts**

Any district covered by the provisions of Section 51.0941 of this code shall preserve its minutes, contracts, records, notices, accounts, receipts, and records of all kinds or certified copies of these in a safe place in the district office located in the district. These minutes, contracts, records, notices, accounts, receipts, and other records are the property of the district and subject to public inspection.

[Acts 1973, 63rd Leg., p. 618, ch. 263, § 2, eff. Aug. 27, 1973.]

**§ 51.097. Recording Proceedings**

All proceedings of the board and all decrees and orders of any court affecting the creation, bounda-

ries, or validity of the district must be recorded in a special record book kept for that purpose in the office of the county clerk of each county in which the district is located. This recording is in addition to other recording provisions in this chapter.

[Acts 1971, 62nd Leg., p. 294, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.098. Contracts**

District contracts shall be executed by the board in the name of the district.

[Acts 1971, 62nd Leg., p. 294, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.099. Suits**

A district may sue and be sued in the courts of this state in the name of the district by and through its board. All courts shall take judicial notice of the creation of the district and of its boundaries.

[Acts 1971, 62nd Leg., p. 294, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.100. Payment of Judgment Against District**

Any court in the state rendering judgment for debt against a district may order the board to levy, assess, and collect taxes or assessments to pay the judgment.

[Acts 1971, 62nd Leg., p. 294, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.101. Actions Contesting District, Bonds, or Contracts; Suit by Attorney General**

(a) Except as provided in Subsection (b) of this section, and as provided in Sections 51.021–51.025 of this code, no suit may be instituted in any court of this state contesting:

(1) the validity of the creation and boundaries of a district created under this chapter;

(2) any bonds or other obligations created under this chapter; or

(3) the validity or the authorization of a contract with the United States by the district.

(b) The matters listed in Subsection (a) of this section may be judicially inquired into at any time and determined in any suit brought by the State of Texas, through the attorney general, on his own motion or on the motion of any person affected by the existence or plans of the district. The action shall be brought on good cause shown, except where otherwise provided by other provisions of this chapter or by the Texas Constitution.

[Acts 1971, 62nd Leg., p. 294, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.102 to 51.120 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES

**§ 51.121. Purposes of District**

(a) A water control and improvement district organized under the provisions of Article III, Section 52, of the Texas Constitution, may provide for:

(1) the improvement of rivers, creeks, and streams to prevent overflows, to permit navigation or irrigation, or to aid in these purposes; or

(2) the construction and maintenance of pools, lakes, reservoirs, dams, canals, and waterways for irrigation, drainage, or navigation, or to aid these purposes.

(b) A water control and improvement district organized under the provisions of Article XVI, Section 59, of the Texas Constitution, may provide for:

(1) the control, storage, preservation, and distribution of its water and floodwater and the water of its rivers and streams for irrigation, power, and all other useful purposes;

(2) the reclamation and irrigation of its arid, semiarid, and other land which needs irrigation;

(3) the reclamation, drainage, conservation, and development of its forests, water, and hydroelectric power;

(4) the navigation of its coastal and inland water;

(5) the control, abatement, and change of any shortage or harmful excess of water;

(6) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and

(7) the preservation and conservation of all natural resources of the state.

(c) The purposes stated in Subsection (b) of this section may be accomplished by any practical means. [Acts 1971, 62nd Leg., p. 294, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.122. Powers of District

The district has the functions, powers, authority, rights, and duties which will permit the accomplishment of the purposes for which it was created, including the investigation and, in case a plan for improvements is adopted, the construction, maintenance, and operation of necessary improvements, plants, works, and facilities, and the acquisition of water rights and all other properties, land, tenements, materials, borrow and waste ground, easements, rights-of-way, and everything considered necessary, incident, or helpful to accomplish by any practicable mechanical means any one or more of the objects authorized for the district, subject only to the restrictions imposed by the constitutions of Texas or the United States. A district also may acquire property deemed necessary for the extension or enlargement of the plant, works, improvements, or service of the district.

[Acts 1971, 62nd Leg., p. 295, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.123. Acquisition of Property

(a) A district may acquire the land material, borrow and waste ground, rights-of-way, easements, or other property by gift, grant, purchase, or condemnation.

(b) The district may acquire either the fee simple title to or an easement on all land, public or private, located inside or outside the district.

(c) The district may require the title to or an easement on property other than land held in fee. [Acts 1971, 62nd Leg., p. 295, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.124. Planning

The board may make investigations and plans necessary to the operation of the district and the construction of improvements. It may employ engineers, attorneys, bond experts, and other agents and employees required to perform this duty.

[Acts 1971, 62nd Leg., p. 295, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.125. Construction of Improvements

A district may construct all works and improvements necessary:

(1) for the prevention of floods;

(2) for the irrigation of land in the district;

(3) for the drainage of land in the district, including drainage ditches or other facilities for drainage;

(4) for the construction of levees to protect the land in the district from overflow;

(5) to alter land elevations where correction is needed; and

(6) to supply water for municipal uses, domestic uses, power and commercial purposes, and all other beneficial uses or controls.

[Acts 1971, 62nd Leg., p. 296, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.126. Purchase of Machinery and Supplies

The board may purchase machinery, materials, and supplies needed in the construction, operation, maintenance, and repair of district improvements.

[Acts 1971, 62nd Leg., p. 296, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.127. Adopting Rules and Regulations

A district may adopt and make known reasonable regulations to:

(1) secure and maintain safe, sanitary, and adequate plumbing installations, connections, and appurtenances as subsidiary parts of sanitary sewer systems;

(2) preserve the sanitary condition of all water controlled by the district;

(3) prevent waste or the unauthorized use of water; and

(4) regulate residence, hunting, fishing, boating, and camping, and all recreational and business privileges on any body or stream of water, or any body of land, or any easement owned or controlled by the district.

[Acts 1971, 62nd Leg., p. 296, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.128. Effect of Rules and Regulations

After the required publication, rules and regulations adopted by the district under Section 51.127 of this code shall be recognized by the courts as if they were penal ordinances of a city.

[Acts 1971, 62nd Leg., p. 296, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.129. Publication of Rules and Regulations

(a) The board shall publish once a week for two consecutive weeks a substantive statement of the rules or regulations and the penalty for their viola-

tion in one or more newspapers with general circulation in the area in which the property of the district is located.

(b) The substantive statement shall be as condensed as is possible to intelligently explain the purpose to be accomplished or the act forbidden by the rule or regulation.

(c) The notice must advise that breach of the regulations will subject the violator to a penalty and that the full text of the regulation is on file in the principal office of the district where it may be read by any interested person.

(d) Any number of regulations may be included in one notice.

[Acts 1971, 62nd Leg., p. 296, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.130. Effective Date of Rules and Regulations**

The penalty for violation of a rule or regulation is not effective and enforceable until five days after the publication of the notice. Five days after the publication, the published regulation shall be in effect and ignorance of it is not a defense for a prosecution for the enforcement of the penalty.

[Acts 1971, 62nd Leg., p. 297, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.131. Penalties for Violation of Regulation**

(a) The board may set reasonable penalties for the breach of any regulation of the district, which shall not exceed fines of more than \$200 or imprisonment for more than 30 days or both.

(b) These penalties shall be in addition to any other penalties provided by the laws of the state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office is located.

[Acts 1971, 62nd Leg., p. 297, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.132. Enforcement by Peace Officers**

A district may employ its own peace officers with power to:

(1) make arrests when necessary to prevent or abate the commission of any offense against the regulations of the district and against the laws of the state when the offense or threatened offense occurs on any land, water, or easement owned or controlled by the district; or

(2) make an arrest in case of an offense involving injury or detriment to any property owned or controlled by the district.

[Acts 1971, 62nd Leg., p. 297, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.133. Constructing Bridges and Culverts Across and Over County and Public Roads**

The district shall build necessary bridges and culverts across and over district canals, laterals, and ditches which cross county or public roads. Funds of the district shall be used to construct the bridges and culverts.

[Acts 1971, 62nd Leg., p. 297, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.134. Constructing Culverts and Bridges Across and Under Railroad Tracks, Roadways, and Interurban or Street Railways**

(a) The district, at its own expense, may build necessary bridges and culverts across or under any railroad tracks or roadways of any railroad or any interurban, or street railway to enable the district to construct and maintain any canal, lateral, ditch, or other improvement of the district.

(b) Before the district builds a bridge or culvert, the board shall deliver written notice to the local agent, superintendent, roadmaster, or owner. The railroad company or its owner shall have 60 days in which to build the bridge at its own expense and according to its own plans.

(c) The canal, culvert, ditch, or structure shall be constructed of sufficient size and proper plan to serve the purpose for which it is intended.

[Acts 1971, 62nd Leg., p. 297, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.135. Contracting for Toll Bridges and Ferry Service**

(a) A district may make contracts with responsible persons for the construction and operation of toll bridges over the district's water for not more than 20 years or for ferry service on or over the district's water for not more than 10 years.

(b) The contract shall set reasonable compensation to be charged for service by the facility and shall require adequate bond or bonds from the person with whom it enters into the contract, payable to the district, on the conditions and in the amount which the board considers necessary.

(c) The contracts may provide for forfeiture of the franchise for a failure of the licensee to render adequate public service.

[Acts 1971, 62nd Leg., p. 298, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.136. Right to Enter Land**

The board, the district engineer, and the employees of the district may enter any land inside or outside the district to make surveys for reservoirs, canals, rights-of-way, dams, or other contemplated improvements and to attend to any business of the district.

[Acts 1971, 62nd Leg., p. 298, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.137. Power to Contract**

The district may enter into a contract for the use by another of its water, power, facilities, or service, either inside or outside the district, except that a contract may not be made which impairs the ability of the district to serve lawful demands for service within the district.

[Acts 1971, 62nd Leg., p. 298, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.138. Investigation and Report of Engineer**

(a) The district engineer shall make a thorough study and investigation of all plans of the district and make and file in the district office a report on

all plans for construction of plants and improvements.

(b) The board shall provide and keep a book in the district office, to be known as the "Engineer's Record," in which all reports and recommendations made by the district engineer shall be recorded. The "Engineer's Record" shall be open to public inspection.

(c) A contract for more than \$20,000 may not be made by the district unless the district has a district engineer who has made a proper study and report on it.

[Acts 1971, 62nd Leg., p. 298, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.139. Contracts for Materials, Machinery, Construction, Etc., for More than \$10,000

(a) With the exception of a district operating under a contract with the United States, the board shall let a contract for more than \$10,000 for the purchase of materials, machinery, and all things to constitute the plant, works, facilities, and improvements of the district or for construction as specified in Subsections (b)-(d) of this section.

(b) The board shall advertise the letting of a contract, including the general conditions, time, and place of opening of sealed bids. The notice shall be published in one or more newspapers with general circulation in the state, and one or more newspapers published in each county in which part of the district is located to give general circulation in the district. If there are more than four counties in the district, notice may be published in any newspaper with general circulation in the district. If no newspaper is published in the county or counties in which the district is located, publication in one or more newspapers with general circulation in the state is sufficient. The notice shall be published once a week for three consecutive weeks prior to the date that the bids are opened, and the first publication shall be at least 21 days before the opening of sealed bids.

(c) A contract may cover all the improvements to be provided by the district, or the various elements of the improvements may be segregated for the purpose of receiving bids and awarding contracts.

(d) A contract may provide for the payment of a total sum which is the completed cost of the improvement or may be based on bids to cover cost of units of the various elements entering into the work as estimated and approximately specified by the district's engineers.

(e) A contract may be let and awarded in any other form or composite of forms and to any responsible person or persons which, in the board's judgment, will be most advantageous to the district and result in the best and most economical completion of the district's proposed plant, improvements, facilities, and works.

(f) A contract is not valid if the total sum required to fully complete the proposed plant, works, facilities, and improvements, as stipulated by the district's adopted plans, exceeds the total sum esti-

mated by the district's engineer in his plans, adopted by the district prior to the election for the authorization of bonds sufficient to pay the completed cost of all elements of the proposed works, other than the cost of land, easements, and other property necessary to be acquired under the provisions of Subchapter F of this chapter.

[Acts 1971, 62nd Leg., p. 298, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.140. Construction Bids

(a) A person who desires to bid on proposed construction work shall submit to the board a written sealed bid together with a certified check on a responsible bank in the state for at least one percent of the total amount of the bid.

(b) Bids shall be opened at the same time, and the board may reject any or all of the bids.

(c) If the successful bidder fails or refuses to enter into a proper contract with the district or fails or refuses to furnish the bond required by law, he forfeits the amount of the certified check which accompanied his bid, and the bank certifying the check is liable for it to the district.

[Acts 1971, 62nd Leg., p. 299, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.141. Reports Furnished to Prospective Bidders

The board shall furnish to any person who desires to bid on construction work, and who requests it in writing, a copy of the engineer's report which shows the work to be done and all details of it. The board may charge for each copy of the engineer's report an amount sufficient to cover the cost of making the copy.

[Acts 1971, 62nd Leg., p. 299, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.142. Provisions of Contracts for Construction Work

(a) Any contract made by the board for construction work shall conform to the provisions of this chapter, and the provisions of this chapter will be considered to be a part of the contract and shall prevail when the provisions of this chapter and the contract are in conflict.

(b) The contract shall contain, or have attached to it, the specifications, plans, and details for work included in the contract, and all work shall be done in accordance with these plans and specifications under the supervision of the board and the district engineer.

[Acts 1971, 62nd Leg., p. 299, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.143. Executing and Recording Construction Contract.

(a) Contracts for construction work shall be in writing and signed by the board and the contractor.

(b) A copy of the contract shall be filed with the county clerk, and the county clerk shall record the contract in a book kept for that purpose.

(c) The contract shall be available for public inspection.

[Acts 1971, 62nd Leg., p. 300, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.144. Contractor's Bond**

(a) The contractor shall execute a bond in an amount determined by the board, not to exceed the contract price, payable to the district, conditioned on the faithful performance of the obligations, agreements, and covenants of the contract.

(b) The bond shall provide that if the contractor defaults on the contract, he will pay to the district all damages sustained as a result of the default or complete the contract according to its terms.

(c) All sureties signing the bond are bound by it to the same extent that the principal is bound, regardless of the technical defenses.

(d) The bond shall be deposited in the district depository, and a true record of it shall be entered in a record book in the district office.

[Acts 1971, 62nd Leg., p. 300, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.145. Reports on Construction Work**

During the progress of the construction work, the district engineer shall submit to the board detailed written reports showing whether or not the contractor is complying with the contract, and when the work is completed, the district engineer shall submit to the board a final detailed report showing whether or not the contractor has fully complied with the contract.

[Acts 1971, 62nd Leg., p. 300, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1778, ch. 653, § 1, eff. June 16, 1973.]

**§ 51.146. Payments Under Construction Contract**

(a) The district shall pay the contract price of such contracts as hereinafter provided.

(b) The district will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the district engineer, on estimates approved by the district engineer. If requested by the district engineer, the contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the district engineer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the contractor at locations other than the site may also be taken into consideration (1) if such consideration is specifically authorized by the contract and (2) if the contractor furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this contract.

(c) In making such progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the directors, at any time after 50 percent of the work has been completed, find that satisfactory progress is being made, they may authorize any of the remaining progress payments to be made in full. Also, whenever the work is substan-

tially complete, the directors, if they consider the amount retained to be in excess of the amount adequate for the protection of the district, at their discretion, may release to the contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate project, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made therefor without retention of a percentage.

[Acts 1971, 62nd Leg., p. 300, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1778, ch. 653, § 1, eff. June 16, 1973.]

**§ 51.147. Repealed by Acts 1973, 63rd Leg., p. 1780, ch. 653, § 7, eff. June 16, 1973**

**§ 51.148. Repealed by Acts 1971, 62nd Leg., p. 1769, ch. 518, § 10, eff. May 31, 1971**

**§ 51.149. Contribution to Construction by Another District**

If it serves its best interest, a district may contribute to the construction of any improvement by another similar district which benefits the contributing district. The board may contract with the other district and determine the contribution in proportion to the cost of the construction.

[Acts 1971, 62nd Leg., p. 301, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.150. Joint Ownership Contracts**

(a) Two or more districts may enter into a contract to jointly own and construct irrigation works and reservoirs, levees, flood-control retarding systems, drainage systems, and all other plants, works, and improvements which they are authorized to own or construct. The contract may include provisions for joint construction and operation, but the terms and conditions may not conflict with the laws providing for the creation and operation of the districts.

(b) The parties joining in the contract shall have the terms of their agreement incorporated into a written or printed contract.

[Acts 1971, 62nd Leg., p. 301, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.151. Election to Approve a Joint Ownership and Construction Contract**

(a) Before the districts may be bound by a joint ownership and construction contract made under Section 51.150 of this code, an election to approve the contract must be held in each of the districts.

(b) The election to approve the contract shall be held on the same day in each district.

(c) Notice of the election shall be the same as notice of the election for the creation of a district under this chapter.

(d) At least 15 days before the day of the election, a copy of the contract must be filed in the office of each of the districts and be made available for public inspection, and each district must furnish a copy of the contract to any elector who appears at the office and requests a copy.

(e) If a majority of the electors in each district approve the contract at the election, the contract is adopted and is binding.

(f) The contract may be amended in the manner provided for adopting the original contract.

[Acts 1971, 62nd Leg., p. 301, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.152. General Manager for Joint Projects

The boards of the districts which are parties to a joint ownership and construction contract may employ a general manager for the joint project. The duties of the general manager may be included in the provisions of the joint contract.

[Acts 1971, 62nd Leg., p. 302, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.153. Transactions in District Names under Joint Ownership and Construction Contract

All bids, bonds, contracts, and other transactions made under a joint ownership and construction contract may be made in the names of the districts which are parties to the contract.

[Acts 1971, 62nd Leg., p. 302, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.154. Joint Projects under Joint Ownership and Construction Contracts

(a) When districts operating under a joint ownership and construction contract plan to construct any improvements, the districts may call jointly for bids on these improvements.

(b) The bids may be opened and considered at the office of either of the districts which are parties to the contract.

(c) The boards shall approve the award of the contract and the contractor's bond. The boards may meet for this purpose either at an office outside the districts or at an office established for transaction of all business of the joint project.

[Acts 1971, 62nd Leg., p. 302, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.155. Additional Powers of Districts under Joint Ownership and Construction Contracts

Districts which are acting under a joint ownership and construction contract may exercise jointly all powers which may be exercised by a single district.

[Acts 1971, 62nd Leg., p. 302, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.156. Contract with the United States

(a) The board of a district organized under the provisions of Article XVI, Section 59, of the Texas Constitution to irrigate arid land may contract with the United States for the investigation, construction, extension, operation, and maintenance of any federal reclamation project of benefit to the district and authorized under the National Reclamation Act of 1902, as amended.

(b) The board may contract to secure a district water supply from the federal reclamation project and to pay to the United States the agreed cost of it in the form of construction charges, operation and

maintenance charges, and water rental charges, as shown by the contract and in accordance with the terms and conditions of the national reclamation law.

[Acts 1971, 62nd Leg., p. 302, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.157. Construction Charges under a Contract with the United States

The construction charges under a contract with the United States may include the cost of drainage and flood-control works necessary to control floods or to maintain the irrigability of district land, and the cost of incidental electric power and municipal water service which the water supply of the reclamation project makes feasible.

[Acts 1971, 62nd Leg., p. 303, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.158. Election to Approve a Contract with the United States

(a) The electors of the district shall vote to approve every contract involving the payment of construction charges to the United States. The provisions of this chapter relating to the election to approve the validation of district bonds shall be followed, including the prosecution of an action in court to determine the validity of the contract.

(b) The notice of election shall state the maximum amount, exclusive of operation and maintenance charges, water rental charges, interest, and penalties, payable by the district to the United States under the contract.

(c) The ballot shall be printed to provide for voting for or against the proposition: "The contract with the United States and levy of taxes to make payments under the contract." This is the only proposition which may appear on the ballot.

[Acts 1971, 62nd Leg., p. 303, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.159. Conveying Property to the United States

A district may convey any property to the United States necessary for the construction, operation, or maintenance of federal reclamation works used or to be used for the benefit of the district.

[Acts 1971, 62nd Leg., p. 303, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.160. Engineering Data Unnecessary

If a district contracts with the United States under the provisions of Section 51.155 of this code for use by the district of federal reclamation works, the district need not prepare or file any engineering data for the construction of the works.

[Acts 1971, 62nd Leg., p. 303, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.161. Consent of United States to Alter District's Boundaries

Until all money has been paid by the district which is due to the United States under a contract relating to a federal reclamation project, the United States must consent to any change in the boundaries of the district.

[Acts 1971, 62nd Leg., p. 303, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.162. Taxes Levied by District under Contract with the United States**

(a) A district which enters into a contract with the United States shall levy annually sufficient taxes to provide payment of all installments required by the contract.

(b) The board may apportion benefits and levy and collect taxes on the benefit basis instead of the ad valorem basis with the approval of the district electors.

(c) The board may pay construction charges when provided by contract on the basis of the average gross annual acre income of the land of the district or designated divisions or subdivisions of the district. The secretary of the interior shall determine the annual gross acre income.

[Acts 1971, 62nd Leg., p. 303, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.163. Assessments for Contracts with the United States**

The board shall levy annually sufficient assessments to collect the money required to pay all the district's obligations in full when due regardless of any delinquency in payment of assessments by any tract of land. If collections in any year are insufficient to pay the obligations of the district, the levy shall be increased sufficiently the following year to cover the deficit.

[Acts 1971, 62nd Leg., p. 304, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.164. Duration of Annual Levies for Contracts with the United States**

The board shall continue annual levies for payment of construction charges each year against each tract of land in the district even though construction charges apportioned against other tracts of land in the district may be paid sooner or later.

[Acts 1971, 62nd Leg., p. 304, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.165. Superiority of Lien to Secure Contract with the United States**

The lien against district land created by a contract with the United States shall be superior to the lien created by any district bonds approved subsequent to the date of the contract with the United States.

[Acts 1971, 62nd Leg., p. 304, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.166. District's Authority to Solicit Cooperation, Donations and Contributions from Other Agencies**

A district organized under the provisions of this chapter may solicit cooperation, donations, and contributions from the United States, the state, or any other state or nation; any county, municipality, water improvement district, water control and improvement district, drainage district, or any other political subdivision of the state; or any person, copartnership, corporation, or association.

[Acts 1971, 62nd Leg., p. 304, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.167. Expense of Procuring Cooperation and Contributions from Other Agencies**

A district may incur reasonable expense to procure cooperation under Section 51.166 of this code in adding to the area of the district or with contributions to the cost of improvements made by the district. The contributions may be either a percentage of cost or a definite annual sum.

[Acts 1971, 62nd Leg., p. 304, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.168. Authority of Contributor**

(a) Any water improvement district, water control and improvement district, levee improvement district, county, city, town, or other political subdivision of the state may contract to contribute to the cost of the construction of drainage, flood-control or water-supply improvements, or the changing of land elevations which need correction. The improvements to be constructed may be outside the contributing district, municipality, or other political subdivision of the state, and may be located outside the state or the United States.

(b) The works may be constructed by any agency.

(c) The contributions shall be proportionate to the benefit which the contributor will derive from the proposed improvements.

[Acts 1971, 62nd Leg., p. 304, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.169. Issuance of Bonds by Contributor**

(a) The contract may provide for the issuance of bonds by the contributor and for direct payment from the proceeds of the bonds to contractors on the estimates of the engineer for the contributor.

(b) Before issuing bonds, a contributing political subdivision shall submit the contract for contribution to its electors for approval and for authority to issue the bonds, fix a lien to secure the bonds, and levy, assess, and collect taxes to retire the bonds. The procedure by a contributing political subdivision of the state shall conform to the applicable law under which the political subdivision was organized and authorized to create bonded indebtedness.

(c) The disposition of the proceeds of the bonds shall conform to the approved contract of contribution.

[Acts 1971, 62nd Leg., p. 305, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.170. Annual Tax by Contributor**

(a) The contract for contribution may provide that instead of issuing bonds the contributor may levy, assess, and collect an annual tax in a specific sum. The levy or assessment is a lien on the property subject to the contributor's taxing power.

(b) The contributor shall collect the tax at its own expense and pay it annually to the district to which the contribution is to be made. The district shall hold the annual payment as a trust fund and annually apply it to the bonds issued by it to provide funds for the construction of the improvements to which the contribution is made.

(c) The contributor shall submit the contract of contribution to its electors for approval and for authority to levy and assess a sufficient tax to meet the annual payments fixed in the contract. The election for the approval of the contract and the authorized taxes for the fulfillment of the contract shall conform to appropriate law under which the contributing political subdivision was organized and authorized to create bonded indebtedness.

(d) Payment of the annual sums of contribution shall conform to the contract of contribution.

[Acts 1971, 62nd Leg., p. 305, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.171. Contributions from Unappropriated or Available Funds of Contributor**

(a) If the proposed contributor has an unappropriated fund or a fund which is not required for actual use even though otherwise appropriated, the fund may be withdrawn from the project which does not need it and may be applied to pay contributions to the cost of the improvements considered to be a benefit to the contributor but to be constructed by another agency or jointly by the contributor and another agency.

(b) The board of the contributing political subdivision may contract for contributions and contribute from an unappropriated or available fund without submitting the contract and contributions to a vote of the electors of the contributor. However, the contributions shall not be made if they impair the ability of the contributor to meet any outstanding obligation or to adequately and economically discharge the contributor's duty to its electorate or constituency.

[Acts 1971, 62nd Leg., p. 305, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.172. Liability on Contracts of Acquired Irrigation System**

If a district acquires an established irrigation system which has contracted to supply water to others and the holders of the contracts or the lands entitled to service of water are not within the district, the contracts and duties shall be performed by the district in the same manner and to the same extent that any other purchaser of the system would be bound.

[Acts 1971, 62nd Leg., p. 306, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.173. Authority to Lease Irrigation System Serving the District**

(a) The board, by resolution, may lease all or part of any irrigation system serving all or part of the district, including distribution laterals, trunk or transmission canals, pumping plants, intakes, and all usual or necessary appurtenances. The board's resolution will specify the term of the lease, which may not be more than 40 years.

(b) The board may lease property located partly outside the boundaries of the district and may sell surplus water to other districts and to other consumers.

[Acts 1971, 62nd Leg., p. 306, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.174. Covenants and Agreements Included in Lease**

(a) The lease shall expressly state that the sums payable under the terms of the lease and the lease itself shall not constitute an indebtedness or pledge of the general credit of the district within the meaning of any constitutional or statutory limitation of indebtedness. The lease shall contain a statement that payments due under it are not payable from any funds raised or to be raised by taxation.

(b) The lease may contain covenants and agreements which are not inconsistent with the provisions of this code which authorize the lease for:

(1) the management and operation of the leased properties;

(2) the imposition and collection of charges for water;

(3) the disposition of the proceeds of charges;

(4) the insurance, protection, and maintenance of the leased properties;

(5) the creation of other obligations payable from the revenues derived from the operation of the leased properties;

(6) the keeping of books and records by the district; and

(7) other pertinent provisions which the board considers desirable to assure the payment of amounts due under the lease.

[Acts 1971, 62nd Leg., p. 306, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.175. Revenue for Payment of Lease Rental**

(a) All money due the lessor under the lease shall be payable solely from the revenue derived by the district from the sale of water supplied through the leased system.

(b) The board shall set and collect charges for the water supplied through the leased properties to produce sufficient revenue at all times to allow for delinquencies and to pay promptly all rental payments becoming due under the terms of the lease. The board may agree to deposit this money in a separate fund as a first charge on the gross revenue received each year from sales of water, and which shall not be used for any other purpose.

(c) The board may agree in the lease to pay all expenses of operating and maintaining the leased properties from the fund provided by the board each year for the maintenance and operation expenses of the district so that the gross revenue from sale of water will be available exclusively for payment of rentals until the amount required for rentals each year is paid into the separate rental fund.

(d) If the board includes this agreement in the lease, the board shall provide for the payment of sums into the maintenance fund from sources other than the remaining portions of the gross revenue from the sale of water not required to pay rentals which are sufficient each year to pay all expenses of operating the district and maintaining and operating

its properties and facilities, including the leased properties.  
[Acts 1971, 62nd Leg., p. 306, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.176. Receiver for Leased Irrigation System**

(a) If the district defaults in the payments due under a lease, the lessor may petition a court of competent jurisdiction to appoint a receiver for the leased properties.

(b) The receiver shall operate the properties and collect and distribute the revenue according to the terms of the lease and the direction of the court.

(c) The receiver has the same rights and powers as the board in its operation of the leased properties.  
[Acts 1971, 62nd Leg., p. 307, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.177. Joint Lease by Two or More Districts**

The boards of two or more districts may adopt resolutions to enter into a joint lease under the provisions of Section 51.173 of this code. The joint lease shall specify clearly the respective rights and liabilities of the districts and shall be subject to all the provisions of Sections 51.173-176 of this code.  
[Acts 1971, 62nd Leg., p. 307, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.178. Authority to Acquire Irrigation System Subject to Mortgage**

A district may acquire by gift, grant, or purchase any part of an irrigation system serving the district which is subject to a mortgage or encumbrance. The mortgage or encumbrance shall not be assumed by the district and shall not be an indebtedness of the district but shall constitute solely a charge on the encumbered property and the revenue from it.  
[Acts 1971, 62nd Leg., p. 307, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.179. Revenue for Payment of Mortgage**

(a) The board may determine conclusively by resolution whether the mortgage or encumbrance represents all or part of the cost of the acquired property and constitutes a purchase money lien on the property.

(b) The board may contract to use and pledge its revenue derived solely from the sale of water and services supplied through the acquired properties for the payment of a purchase money lien.

(c) The board also may use revenue from taxation or from the issuance and sale of bonds to pay all or part of the amount due under the encumbrance if a majority of the electors of the district voting at an election on this proposition approve its use.  
[Acts 1971, 62nd Leg., p. 307, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.180. Election to Approve Revenue for Payment of Mortgage**

(a) If tax and bond revenue is pledged to pay amount due under the encumbrance, the district must hold an election and receive the approval of the electors.

(b) An election to approve the use of tax and bond revenue shall be held in the same manner and with

the same voters' qualifications as provided for elections on the issuance of the bonds of the district.  
[Acts 1971, 62nd Leg., p. 308, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.181. Joint Acquisition of Mortgaged System by Two or More Districts**

(a) Two or more districts jointly may acquire by gift, grant, or purchase any part of an irrigation system serving the districts subject to a mortgage or encumbrances in the same manner that a single district may acquire the system.

(b) In the proceedings authorizing the acquisition, the boards of the respective districts shall define clearly the respective rights, interest, and liability of the districts in the acquired property and in the mortgage or encumbrance.  
[Acts 1971, 62nd Leg., p. 308, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.182. Authority to Lease Facilities to Water Customers**

(a) A district may lease to any person, firm, or corporation which is a bona fide water customer of the district any of its river pump stations, conveyance canals, off-channel reservoirs, reservoir pump stations, water mains, water treatment plants, or other facilities used in connection with them. The lease may include any of the district's land which is appropriate to the utilization of the leased facilities, including but not limited to land acquired by eminent domain.

(b) The board and the lessee shall agree on the form of the lease and its terms, conditions, provisions, and stipulations; however, the duration of the lease shall not be longer than the duration of the water contract between the district and the lessee under the primary term of the water contract and any renewal or extension of it.

(c) After a lease to a water customer is authorized by the board, the lease shall be executed by the president or vice president of the board and attested by the secretary. The lease is valid and effective without any other requirement or prerequisite by the district.  
[Acts 1971, 62nd Leg., p. 308, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.183. Expense of Relocation of Facilities**

If a district created after August 27, 1961, requires the relocation, raising, lowering, rerouting, or change in grade or alteration in the construction of any railroad, electric transmission, telegraph or telephone lines, conduits, poles, properties, or facilities, or pipelines in the exercise of the power of eminent domain or police power or any other power, all the relocation, raising, lowering, rerouting, or changes in grade or alteration of construction shall be the sole expense of the district. The term "sole expense" means the actual cost of relocation, raising, lowering, rerouting, or change in grade or alteration of construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility. This section does not apply to projects under con-

struction or financed or for which bonds were voted and approved by a district on August 27, 1961, unless the acts of the district authorizing the construction or financing contained the provisions of this section. [Acts 1971, 62nd Leg., p. 308, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.184. Preference in Use of Water

(a) The board may award the use of district water in the following order of preference and superiority:

- (1) domestic and municipal use;
- (2) industrial use, other than the development of hydroelectric power;
- (3) irrigation;
- (4) development of hydroelectric power;
- (5) pleasure and recreation.

(b) The board may withdraw water from an inferior use and appropriate the water to a superior use when required for the welfare of the district.

(c) The board must use the condemnation procedures in Subchapter F of this chapter for a withdrawal or diversion of the use of water which affects a vested right.

[Acts 1971, 62nd Leg., p. 309, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.185. Suit to Protect Water Rights

The board may institute and maintain any suit or suits to protect the water supply or other rights of the district, to prevent any unlawful interference with the water supply or other rights of the district, or to prevent a diversion of its water supply by others.

[Acts 1971, 62nd Leg., p. 309, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.186. Transfer of Water Right

If there is land in a district which has a water right from a source of supply acquired by the district but the land is difficult or impracticable to irrigate from that source of supply, the district may allow transfer of the water right to other land which is adjacent to the district. The adjacent land may be admitted to the district with the same right of water service as the land from which the water was transferred.

[Acts 1971, 62nd Leg., p. 309, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.187. Selling Waterpower Privileges

(a) The district may enter into a contract to sell waterpower privileges if power can be generated from water flowing from the district's reservoirs or within its canal system.

(b) The sale of waterpower privileges may not interfere with the district's obligation to furnish an adequate supply of water for the purpose for which the district was organized and for municipal purposes in districts which furnish water for municipal purposes.

[Acts 1971, 62nd Leg., p. 309, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.188. Selling Surplus Water

The district may sell any surplus district water for use in irrigation or for domestic or commercial uses to any person who owns or uses land in the vicinity of the district or to other districts which include land in the same vicinity.

[Acts 1971, 62nd Leg., p. 309, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.189. Pumping Water to Another District

If the board considers it advisable, it may contract to pump for or supply another district any water in which the other district has a right. The board shall provide the terms of the contract.

[Acts 1971, 62nd Leg., p. 310, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.190. Obtaining Topographic Maps and Data

The Texas Water Development Board shall furnish to a district topographic maps and data concerning all projects for the control of floods undertaken by the district and all projects for the storage of water or creation of reservoirs undertaken by the district.

[Acts 1971, 62nd Leg., p. 310, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.191. Sale of Property not Required for District's Plans

The board may sell at a public or private sale any property or land owned by the district which is not required to carry out the plans of the district.

[Acts 1971, 62nd Leg., p. 310, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.192. Notice of Sale of Property not Required for District's Plans

Before either a public or a private sale of property not required for the district's plans, the district shall give notice of the intent to sell by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the district.

[Acts 1971, 62nd Leg., p. 310, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.193. Use of Proceeds from Sale of Property not Required for District's Plans

(a) If the district has outstanding bonds, the proceeds of the sale of property not required for the district's plans shall be applied to retire outstanding emergency warrants, if any, issued to protect ultimate liability of the district in condemnation proceedings as provided in this chapter and the remainder, if any, to be placed in the interest and sinking fund account provided for the retirement of outstanding bonds of the district.

(b) If the district does not have money available from other sources to complete the plans for which its construction work and its bonds were authorized, the board may use the proceeds derived from the sale of the property or land not required to carry out the plans of the district to complete the work included in its plans for improvements to the degree required, and any excess of the proceeds shall be applied as provided in Subdivisions (1) and (2) of this section.

[Acts 1971, 62nd Leg., p. 310, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.194. Sale of Property not Acquired to Carry Out the Plans of the District**

The board may sell property bid in by it at any sale under foreclosure of its tax lien or of its lien for charges or assessments, or any property acquired by it other than for the purpose of carrying out the plans of the district, without formally determining that the property is not required to carry out the plans of the district, without giving notice of the intent of the district to sell the property, and without applying the proceeds of the sale as provided in Section 51.192 of this code.

[Acts 1971, 62nd Leg., p. 310, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.195 to 51.220 reserved for expansion]

**SUBCHAPTER E. ELECTION PROVISIONS**

**§ 51.221. Election Procedure**

(a) The board shall provide for holding elections and giving notice and shall appoint officers to hold the election at the time the election is ordered.

(b) The officers for the election shall include a presiding judge and an assistant judge and two clerks. More clerks may be appointed if necessary.

(c) The board shall name the polling places, and if more than one polling place is necessary, the board shall divide the district into election precincts. The polling places may be changed from time to time as required.

[Acts 1971, 62nd Leg., p. 311, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.222. Notice of Election**

(a) Notice of an election shall be given by order of the board.

(b) The notice shall be signed by the president and secretary of the board and shall state:

- (1) the purpose of the election;
- (2) the propositions and officers to be voted on;
- (3) the polling places; and
- (4) the names of the election officers.

(c) The notice shall be published once a week for three consecutive weeks in a newspaper with general circulation published in the county or counties in which the district is located. If no newspapers are published in these counties, the notice shall be published in the county nearest to the district. The first publication shall be not less than 21 days nor more than 35 days before the day of the election.

[Acts 1971, 62nd Leg., p. 311, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.223. Preparation and Delivery of Returns**

(a) The election officers shall make and deliver the election returns in triplicate. One copy shall be retained by the election judge; one copy shall be delivered to the president of the board, and one copy shall be delivered to the secretary of the board.

(b) The election officers shall give to the newspapers and to other persons requesting them the re-

turns of the election in that box at the time the returns are made.

(c) The ballot boxes and other election records and supplies shall be delivered to the secretary of the board at the district office.

(d) The ballot boxes containing the voted or mutilated ballots shall be preserved for one year subject to the order of any court in which a contest of the election is filed.

[Acts 1971, 62nd Leg., p. 311, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.224. Canvass of Returns**

The board shall meet and canvass the returns of the election not less than five nor more than seven days after the day of the election. If the returns cannot be canvassed within seven days after the day of the election, they shall be canvassed as soon as possible after that time.

[Acts 1971, 62nd Leg., p. 312, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.225 to 51.230 reserved for expansion]

**SUBCHAPTER F. EMINENT DOMAIN**

**§ 51.231. Power of Eminent Domain**

(a) The district may exercise the power of eminent domain to acquire all land, materials, borrow and waste ground, easements, rights-of-way, and everything considered necessary, incident, or helpful to accomplish by any practicable mechanical means any one or more of the purposes of the district. Property condemned by the district also may include property considered necessary for the extension or enlargement of the plant, works, improvements, or service of the district.

(b) The district may condemn either the fee simple title or an easement, and the land subject to condemnation may be public or private and may be located inside or outside the district.

[Acts 1971, 62nd Leg., p. 312, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.232. Restriction on Power of Eminent Domain**

Except to serve a public need superior to the use to which the property is being devoted, nothing in this subchapter shall authorize a district to condemn any land, property, easement, or facility owned, held, or used by another person when the property is necessary for the person to accomplish any of the purposes of this chapter.

[Acts 1971, 62nd Leg., p. 312, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.233. Choice of Proceedings**

Subject to the provisions of this chapter, the board may elect to use condemnation proceedings under the provisions of Title 52, Revised Civil Statutes of Texas, 1925, or the board, by its order for condemnation, may elect to proceed in the manner provided in Sections 51.234–51.273 of this code.

[Acts 1971, 62nd Leg., p. 312, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.234. Petition for Appointment of Tribunal**

(a) Any time after a district has adopted a plan for improvements which enables it to determine definitely which easements or fee simple title to property should be acquired, the board may petition the district judge of a judicial district in which part of the district is located, requesting the appointment of a tribunal of three persons to collectively exercise judicial functions within the authority of this subchapter.

(b) If the district judge having jurisdiction is disqualified because of interest, is absent from the district, or does not act, the petition may be presented to a judge for any judicial district adjacent to the district of the original presentation.

(c) The petition may be presented in term time or in vacation and shall be entered on the docket as provided for other causes. The court's order shall be entered in the minutes of the court.

(d) The petition shall state:

- (1) the necessity for condemnation;
- (2) the name of the county or counties in which the property to be condemned is located; and
- (3) the name and address of each person known to have title to or an interest in any property proposed for condemnation, or that the address is not known and cannot be ascertained by reasonable diligence.

[Acts 1971, 62nd Leg., p. 312, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.235. Qualifications for Appointment to Tribunal**

(a) The board, in the petition, shall nominate for appointment to the tribunal three persons who shall be:

- (1) of lawful age;
- (2) qualified electors of the state;
- (3) disinterested, with good moral character; and
- (4) unrelated knowingly within the third degree of consanguinity or affinity to a member of the board making the nomination, the judge having jurisdiction, or to any person known to be asserting title to or an interest in any property proposed to be condemned.

(b) One nominee shall be a lawyer learned in the law of eminent domain and the exercise of rights of eminent domain and the other two nominees shall be persons with knowledge of the value and uses of land, injuries to land, and benefits to land to be affected by the proposed condemnation.

[Acts 1971, 62nd Leg., p. 313, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.236. Hearing on Petition for Appointment of Tribunal**

The district judge having jurisdiction shall set a hearing on the petition not less than 10 days nor more than 15 days after the petition is presented to him.

[Acts 1971, 62nd Leg., p. 313, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.237. Notice of Hearing on Petition for Appointment of Tribunal**

(a) Notice of the hearing on the petition shall be written or printed and shall give the time, place, and object of the hearing and shall state that all interested persons will be allowed to make objection to any person nominated for appointment in the petition.

(b) The clerk of the court shall send a copy of the notice by registered mail to each owner whose name and address is given in the petition at least five days before the day set for the hearing on the petition. The notice shall be published one time at least five days before the day set for the hearing on the petition in one or more newspapers with general circulation in the area to be affected by the proposed condemnation.

(c) The publication shall have the effect of actual service on all interested persons, whether known or unknown, and whether named or not named in the petition.

[Acts 1971, 62nd Leg., p. 313, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.238. Appointment of Tribunal**

(a) At the time and place for the hearing on the petition, the judge shall hear protests from all interested persons.

(b) The judge may refuse to appoint any or all of the persons nominated in the petition if good cause is shown and may appoint other persons considered by him to be qualified under the provisions of this subchapter.

(c) If good cause for refusal is not established, the judge shall appoint the persons nominated in the petition.

[Acts 1971, 62nd Leg., p. 313, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.239. Appointment Final**

The proceeding shall be terminated on the appointment of the tribunal, and no appeal from the action of the court can be maintained.

[Acts 1971, 62nd Leg., p. 314, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.240. Costs of Proceeding**

The costs of the proceeding to appoint the tribunal shall be paid by the district proposing condemnation.

[Acts 1971, 62nd Leg., p. 314, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.241. Qualifying as Member**

Within 10 days after appointment or as soon after that time as practicable, each person appointed shall file with the secretary of the condemning district a written oath to be substantially as follows: "I swear (or affirm) that I, as a member of the tribunal to hear and determine matters incident to the condemnation proceedings instituted by (insert name of the district) will fairly, impartially, and without interest, prejudice, or favor, discharge my duties as a member of the tribunal appointed by the judge of the district court for the \_\_\_\_\_ District of Texas."

[Acts 1971, 62nd Leg., p. 314, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.242. Compensation of Tribunal**

The district shall pay each member of the tribunal reasonable fees of not more than \$25 a day for each day he serves together with his actual expense as approved.

[Acts 1971, 62nd Leg., p. 314, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.243. Filing of Proposed Report with Board**

The proposed report shall be delivered to the secretary of the board and shall become a permanent record of the district and be open to examination by all interested persons.

[Acts 1971, 62nd Leg., p. 314, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.244. Appointment of Replacement on Tribunal**

(a) If a member of the tribunal fails or refuses to act or becomes disqualified to act, he may be removed by petition to the court.

(b) A qualified substitute may be nominated and appointed to serve in his place in the manner provided for the original appointment, except that citation by publication is not required.

(c) The written notice shall be mailed instantly, and the hearing may be held on the third day after notice is mailed or as soon after the third day as the court may be able to act on the petition.

(d) If a member of the tribunal is disqualified to act regarding some parcel of property because of interest or relationship, a substitute may be appointed to serve only in the matter to which the disqualification exists. In that case, notice shall be given only to the person interested in the property to which the disqualification is related.

[Acts 1971, 62nd Leg., p. 314, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.245. Authority of Tribunal**

(a) When qualified, the members collectively shall be a judicial tribunal within the meaning and intent of Article V, Section 1, of the Texas Constitution.

(b) The tribunal shall have the duties and powers which are conferred on county courts and county judges for procedure and for effecting the administration of justice needed to accomplish the purpose of this subchapter.

(c) The tribunal shall have jurisdiction and power to do and decree all things which this subchapter authorizes the tribunal to do.

[Acts 1971, 62nd Leg., p. 315, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.246. Organization of Tribunal**

(a) The tribunal may organize to accomplish its duties as it considers best, except that two members are required for a quorum and the concurrence of at least two members is necessary to decide any matter.

(b) The lawyer member of the tribunal shall be the advisor in matters of law.

(c) The clerk of the district shall furnish the service of a competent person to serve the tribunal as clerk.

(d) Orderly minutes of the proceedings shall be kept and shall be signed by all participating members and shall be a public record.

(e) The tribunal shall have a seal bearing the name of the district and the words "Tribunal for Condemnation."

(f) The proceedings shall be as free from technicality and as summary in character as will accomplish substantial justice.

[Acts 1971, 62nd Leg., p. 315, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.247. Secretary of Tribunal**

(a) The secretary of the board shall serve as secretary of the tribunal or the secretary may appoint another well-qualified person to serve as secretary of the tribunal, subject to approval by the tribunal.

(b) The person acting as secretary shall attest all records and reports as "Secretary."

(c) The person appointed to serve shall take an oath that he will keep and preserve a true written record of all material proceedings, findings, appraisements, and assessments concerning the duties of the tribunal.

(d) The secretary shall furnish the tribunal information and assistance within his power and necessary to the performance of its duties.

[Acts 1971, 62nd Leg., p. 315, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.248. Order of Condemnation**

(a) Any time after the adoption and approval of plans for improvements or the enlargement, extension, or alteration of improvements, as required by Section 51.234(a) of this code, the board may order the condemnation of any land or other property. The order of condemnation shall be recorded in the minutes.

(b) The board may elect in the order to condemn the fee simple title to the land or to condemn only an easement. Part of a tract of land may be condemned in fee simple and part placed under an easement. The order of condemnation may specify within itself or by reference to exhibits, maps, or plats which land shall be placed under condemnation in fee simple, which land shall be placed under an easement, and if appropriate, identify any other property which is required to be taken.

(c) If it can be given by the exercise of reasonable diligence, the order of condemnation shall state the name and address of any owner or owners of each separate tract of land and appropriately relate those names and addresses to the property to which the ownership exists.

(d) The order shall contain a general statement showing the necessity for the taking but shall not be held invalid because of fault in the statement.

(e) The order may be amended in any and every particular at any time during the proceedings established in this subchapter if the person affected by the amendment or his agent or attorney is given actual notice of the amendment before any action is taken under it.

(f) The order for condemnation and all its exhibits shall be prepared in duplicate. One copy shall be delivered to the clerk of the tribunal for condemnation and filed by him as a record of the tribunal. The order shall constitute a petition for condemnation.

[Acts 1971, 62nd Leg., p. 315, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.249. Hearing and Order of Board

(a) The board shall receive, hear, and determine protests or recommendations relating to property to be condemned in the manner provided in Section 51.095 of this code.

(b) The findings of the board, after the advice of the district engineer relating to the necessity or advisability of acquiring any part of the property to be condemned, in fee or under an easement, for any purpose connected with or incident to the full completion and practical operation of the improvements to be provided under the district's plans for improvements, shall be final and not subject to judicial review except for fraud, palpable error, or an arbitrary act which would constitute actual fraud.

[Acts 1971, 62nd Leg., p. 316, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.250. Furnishing Board's Findings to Tribunal

The board's determination on the necessity or advisability of acquiring property shall be made before the tribunal views property subject to condemnation, as provided in this subchapter, and the board's specific identifying conclusions shall be furnished to the tribunal. The record shall be accompanied by a designation of all property, easements, or agreements for liquidated damage which have been placed under voluntary option to or adjustment with the district. The tribunal shall omit consideration or any matter already adjusted.

[Acts 1971, 62nd Leg., p. 316, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.251. Discharge of Tribunal's Duties

(a) The tribunal shall begin the discharge of its duties within 30 days after qualifying and organizing.

(b) The tribunal may at all times require the presence and necessary assistance of the district's engineers and attorneys to enable it to perform its duties intelligently.

[Acts 1971, 62nd Leg., p. 316, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.252. Tribunal to View Property

The tribunal shall view all public and private land or other property which has been ordered condemned, whether located inside or outside the district.

[Acts 1971, 62nd Leg., p. 317, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.253. Assessing Values and Damages on Affected Lands

(a) The tribunal shall appraise and assess the values of all affected land, easements, or property rights inside and outside the district and shall specif-

ically appraise and assess the damages to justly compensate and liquidate all injuries to be done to each item of property affected.

(b) The tribunal shall be governed by the provisions of Article 3265, Revised Civil Statutes of Texas, 1925, in assessing the value of property sought to be condemned, computing damages, and determining compensating benefits.

[Acts 1971, 62nd Leg., p. 317, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.254. Omitted Assessment

If the tribunal omits the assessment of damages to any specific parcel of property, either inside or outside the district, it shall be deemed an affirmative finding that no damage will be done to the omitted parcel of property.

[Acts 1971, 62nd Leg., p. 317, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.255. Tribunal's Proposed Report of Findings

(a) The tribunal shall prepare a specific and detailed proposed report of its findings which shows the owner of each parcel of property examined and concerning which any appraisal, award, finding, or assessment is made, together with a description of the property which identifies and relates it to the appropriate appraisal, award, finding, or assessment.

(b) The report shall separate and distinguish:

(1) the value of property to be taken by the district in fee simple;

(2) the amount of compensation for an easement to be taken by the district;

(3) the amount required to justly compensate and liquidate the injury or damage to be done to property which is not condemned and taken in fee simple or placed under an easement; and

(4) when appropriate, specify the parts of a parcel of property falling within more than one of the classifications and allocate to each portion its appropriate classified assessments.

(c) The report shall be prepared in triplicate and shall be approved and signed by at least two members of the tribunal.

(d) The proposed report shall show the number of days each member has actually served and the actual expenses necessarily incurred by each in serving the district.

[Acts 1971, 62nd Leg., p. 317, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.256. Hearing Objections to Tribunal Report

(a) The tribunal, in its proposed report, shall fix times and places to hear objections to its findings as reported. The tribunal shall consider the prevailing convenience of the property owners in fixing a place for hearing objections.

(b) Each hearing concerning land situated in a given county shall be held in the county in which the land proposed to be condemned is located and in a part of the county which will be most convenient to the majority of the landowners.

[Acts 1971, 62nd Leg., p. 317, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.257. Published Notice of Hearing on Tribunal Report**

(a) The secretary of the board shall promptly publish a notice of the filing of the report once a week for two consecutive weeks in one or more newspapers with general circulation in the district and in each of the counties in which affected property may be located. The first publication must appear at least 14 days before the day of the hearing.

(b) One notice may specify a hearing day and place for one county only and there may be notice for different days and places of hearing for other counties.

(c) The published notice shall be in substantially the following form:

**LEGAL NOTICE**

To the owners of, and all other persons having an interest in land or other property lying in \_\_\_\_\_ County, Texas: Take notice that a copy of the adopted plans for improvements by \_\_\_\_\_ County Water Control and Improvement District Number \_\_\_\_\_, are now open to inspection by anyone interested in them at the district's office at \_\_\_\_\_, Texas. These plans, contour maps and specifications will make manifest how your property will be affected. The tribunal previously appointed have appraised and assessed property values, benefits, and damages accruing to the affected land, and other property, both inside and outside the district, which will be condemned and taken, or subjected to an easement, or damaged, or otherwise affected by carrying out the plans for improvements to be provided by the district. The recorded report of the tribunal is open to inspection by any interested person at \_\_\_\_\_, in \_\_\_\_\_, Texas. Any interested person may make specific written objections to the report in whole or in part, and any person claiming damage to his property inside or outside the district, for which no damages have been assessed in the report are required to file an itemized claim for the damages in the district office on or before the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and all persons failing to make such objection or claim for damages will be deemed to have waived the same. Further, take notice that the tribunal of appraisalment will meet on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, Texas, for the purpose of hearing and acting on objections to their proposed decree, and to hear, consider, and determine claims for compensation and damages.

\_\_\_\_\_  
Secretary

[Acts 1971, 62nd Leg., p. 318, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.258. Written Notice of Hearing on Tribunal Report**

(a) The Secretary of the board shall mail a written notice to each person whose land or other property is listed in the proposed report of the tribunal if the post-office address is known. The notice shall be

mailed at least 10 days before the day for any given hearing.

(b) The notice shall state:

(1) the time and place of the meeting which the person is expected to attend;

(2) that the report of the tribunal to assess burdens on, values of, benefits to, and damages to the land and other property which will be affected by the district's plans for improvements has been filed in the district office and giving the location of the office;

(3) that the advised person may examine the report, together with the district's plans, contour maps, and specifications, and file written specific objections to any part of the report; and

(4) that the tribunal will meet on the day and at the place named for the purpose of hearing the notified person and acting on objections to the report.

(c) Instead of mailing notice, personal notice may be executed and return made under oath by any person appointed by the secretary of the board in the same manner and on the same persons, officers, or agents as provided for service of citations in suits pending in the district courts.

[Acts 1971, 62nd Leg., p. 318, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.259. Certification of Notice by Secretary**

The secretary of the board on the first day of the hearing shall file in the district office the original notice as published, with his affidavit showing the manner of publication and the days on which and the newspaper or newspapers in which the notice was published and shall certify the names and addresses of all persons to whom notices were mailed or on whom actual service was made. The secretary also shall show affirmatively that personal service was executed or timely notice mailed to or served on each landowner whose address was known or could be known by the exercise of reasonable diligence.

[Acts 1971, 62nd Leg., p. 319, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.260. Filing Exceptions to Report of Tribunal**

At or before the hearing on the report of the tribunal, any owner of land or other property affected by the report, or by the district's plans for improvements, may file exceptions to any part of the report, either in person or by an attorney or other agent. Any person whose property has been assessed no damages who believes that his land or other property will be damaged by carrying out the plans for improvements may file a claim for the damages with the district.

[Acts 1971, 62nd Leg., p. 319, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.261. Hearing Procedure**

(a) At the time and place named in the notice, the tribunal shall hear evidence and determine all objections and claims for damages and shall make changes and modifications from time to time which

will cause its proposed decree to conform to the justice of each case under the facts presented.

(b) The tribunal may grant in whole or in part, or may overrule, any claim for compensation or damage or any other exception to its proposed report.

(c) Until all persons desiring a hearing have been heard, the hearing may be recessed from one day or place to other days and places, to be announced in open meeting.

[Acts 1971, 62nd Leg., p. 319, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.262. Final Decree

(a) The tribunal shall determine finally all matters presented concerning its proposed report and shall enter its final decree concerning the proposed report to the extent that it is confirmed and shall approve and confirm the proposed report as modified or changed to the extent that it is modified or changed.

(b) The tribunal in its decree shall condemn all the land, easements, rights-of-way, or other property inside or outside the district which is considered by the board to be needed and is designated to make effectual and practicable the construction and operation of all works, improvements, and services which the district plans to provide ultimately and to accomplish any purpose designated in this subchapter. The tribunal shall condemn either the fee simple title or an easement as elected and designated by the board.

(c) The tribunal shall judge and award all compensation for property to be taken or placed under easement and shall award all damages, if any are allowed under the law.

[Acts 1971, 62nd Leg., p. 320, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.263. Filing Final Decree

A certified copy of the final decree of condemnation concerning the property in each county shall be filed with the county clerk for record, and the record shall be notice to all persons of the contents of the decree. The original decree shall be a permanent record of the district and also shall constitute notice.

[Acts 1971, 62nd Leg., p. 320, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.264. Costs

The tribunal may apportion and adjudge costs incurred for any hearing in a manner of allocation which is considered equitable.

[Acts 1971, 62nd Leg., p. 320, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.265. Authority to Appeal

(a) The final decree of the tribunal concerning any matter is subject to appeal or judicial review only in the manner specified in Sections 51.667-51.278 of this code.<sup>1</sup>

(b) The only questions which may be considered on appeal are whether or not just compensation was allowed and whether or not any damages are lawfully recoverable.

(c) The board in the name and behalf of the district or any person having an interest in the decree of the appraisers may appeal from the decree assessing or refusing to assess damages or fixing compensation for the value of property taken or subjected to an easement.

(d) The claimant shall be considered the plaintiff and the district shall be considered the defendant except in cases in which the district has filed exceptions to the report of the district's referees of appraisal.

[Acts 1971, 62nd Leg., p. 320, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> So in enrolled bill.

#### § 51.266. Jurisdiction of Appeal

(a) The appeal shall be in the district court having jurisdiction over the area in which the condemned land is located, either in whole or in part.

(b) The courts of jurisdiction shall be the number required to provide appeals in the jurisdiction within which any given land is situated.

(c) The district courts shall have jurisdiction regardless of the amount or the number of the separate claims involved.

[Acts 1971, 62nd Leg., p. 320, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.267. Notice of Appeal

Notice of appeal shall be given within two days after the entry of the final decree by the tribunal by filing written notice of the appeal with the secretary of the board. The written notice shall be a simple statement that the undersigned gives notice of appeal from the decree entered on the date stated and specifying the exact claims sought to be established by the appeal.

[Acts 1971, 62nd Leg., p. 321, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.268. Appeal Bond

(a) The appellant shall file an appeal bond with two or more good and sufficient sureties with the clerk of the court in which the appeal is being prosecuted within five days after the entry of the decree being appealed. The bond shall be in an amount double the costs, if any, already allocated to the appellant, plus double the amount estimated by the clerk to be incurred on the appeal.

(b) The bond shall be payable to the clerk of the court in which the appeal is being prosecuted and shall be subject to his approval as to sufficiency.

(c) The bond shall be conditioned on the appellant prosecuting his appeal with effect and paying all the costs awarded against him by the court.

(d) Any district, including a district established to be a "Municipal District," appealing a decree shall not be required to give a bond for appeal or a bond for costs.

[Acts 1971, 62nd Leg., p. 321, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.269. Period for Perfecting Appeal

Unless an appeal is perfected as provided in this subchapter within seven days after the day the final

decree of the tribunal is rendered, the decree shall be final and conclusive as to any given matter not appealed from and there shall be no extension of time for the filing of an appeal bond.

[Acts 1971, 62nd Leg., p. 321, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.270. Transcript and Pleadings

Within 12 days after the entry of a final decree of condemnation which has been appealed, the secretary of the board shall file with the clerk of the court a certified transcript of the final decree of condemnation which shows the facts concerning the items of decision appealed from, together with the original notices of appeal or a certificate showing the names and addresses of all persons who gave notice of appeal, and which includes the stated grounds on which each of the appeals has been predicated. It shall not be necessary to file any additional pleadings in the court.

[Acts 1971, 62nd Leg., p. 321, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.271. Docketing Appeal

All appeals for each given county shall constitute one proceeding on the docket of the district court. The docket shall recite the name of each of the parties to the proceeding and shall be indexed accordingly.

[Acts 1971, 62nd Leg., p. 321, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.272. Severance of Appeal

The court, on motion, may grant or refuse to grant a severance of any separate claim arising from distinction as to ownership.

[Acts 1971, 62nd Leg., p. 322, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.273. Procedure for Trial

(a) When an appeal is filed, the court shall set the appeal for a hearing and the appeal shall be tried de novo by the court. The court shall grant any interested party the right to trial by jury on request.

(b) An incomplete hearing may be recessed from one day to another day or may be continued to the next term or succeeding terms of the court.

(c) All proceedings before the court and notices of the hearings shall be in accordance with the provisions of the Texas Rules of Civil Procedure as applied to an ordinary civil case. The admission of evidence and the fixing of awards, so far as applicable and not inconsistent with the provisions of this subchapter, shall be governed by the law and rules of procedure relating to trials and awards in damage suits.

(d) The hearing shall be given precedence by the court over all civil causes on the docket which do not involve public welfare, shall be concluded with all reasonable dispatch, and shall be as summary in character as is consistent with full and complete justice.

[Acts 1971, 62nd Leg., p. 322, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.274. Court's Decree

(a) The court shall hear evidence proper to the consideration of any filed exception. After hearing all evidence and argument offered, the court in term time shall enter its final decree, either approving the decree of the tribunal, modifying the decree, or in any manner changing the decree so that in the court's judgment the decree will conform to the justice of each specific case.

(b) Except as otherwise provided in this subchapter, the court's decree shall conform to the provisions of Title 52, Revised Civil Statutes of Texas, 1925.

[Acts 1971, 62nd Leg., p. 322, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.275. Appeal from Court's Decree

The judgment of the district court may be appealed as in civil cases, and each appeal shall constitute a separate cause on the docket of the court of civil appeals.

[Acts 1971, 62nd Leg., p. 322, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.276. Writ of Possession

The appeal from the decree of the tribunal to condemn shall not delay possession of the condemned property or prosecution of the work, but a writ of possession shall not be issued until a special deposit has been made and certified to the clerk of the court as provided in Section 51.278.

[Acts 1971, 62nd Leg., p. 322, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.277. Reserve Fund Pending Appeal

(a) The district shall set apart in its depository out of the construction fund an amount of money not less than double the amount of the total award made by the tribunal, plus an additional amount which the board considers sufficient to pay the costs then incurred and the costs which may be incurred on appeal. The amount set apart shall be ascertained on the day on which the writ of possession is sought and must actually be available to the condemnor in lawful money of the United States. The fund must remain in the depository until the final adjudication of the condemnation and must be applied to the payment of awards and costs and shall not be used for any other purpose.

(b) In case of evident abuse of discretion by the board, the judge of the court, on motion by an aggrieved appellant, may require the board to increase the reserve fund to an amount which the judge considers adequate to discharge final awards. The board must comply with the increase of the reserve fund before it shall be authorized to take possession of any condemned property or to cause damage to any property.

(c) The record and the conditions of the deposit shall be acknowledged in writing by the depository, and the certificate of deposit shall be filed with the clerk of the court in which an appeal is pending as part of the record in the condemnation proceeding. The clerk of the court shall certify his genuine

official signature or those of his qualified deputies to the depository, and the depository may not pay vouchers drawn on the special fund except on written approval of the judge, the clerk of the court, and the condemnee.

(d) A condemnee who has appealed a decree may elect to receive money from the designated fund in satisfaction of his demand at any time before the final adjudication. When the condemnee elects to receive the amount of the award in satisfaction of his demand before final judgment or when the judgment in condemnation becomes final, the clerk of the court and the depository shall pay instantly to the condemnee the sum of the deposit due to the condemnee, other than that to cover costs. The payment may be with or without the consent of the condemnor.

(e) Any officer or employee of the condemnor, any officer or employee of the depository of the condemnor, or the clerk of the court or his deputy who knowingly permits any part of the special fund to be paid out for any purpose or in any manner except as provided in this section shall be guilty of a felony. On conviction, he may be fined in any sum not to exceed \$5,000 or imprisoned in the penitentiary for a term not to exceed three years or both.

(f) The sureties on the bond of the miscreant or the bond or security of the offending depository shall restore the misapplied or diverted deposit, provided the required sum, together with other lawful charges against the bond, does not exceed the penal sum of the bond or the security held instead of sureties.

[Acts 1971, 62nd Leg., p. 323, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.278. Vesting Title

On compliance with the provisions of this subchapter, the title to all land, easements, rights-of-way, or other property condemned shall vest in the district after payment or provision for payment of compensation. The district is entitled to immediate possession of the condemned property or rights.

[Acts 1971, 62nd Leg., p. 324, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.279. Claim Barred

A person owning or having an interest in property affected by the district's plans for improvements and service or its condemnation proceedings who has failed to file claim or objection or who has failed to appeal from an adverse ruling by the tribunal on any claim or objection as provided in this subchapter shall not claim from the district, its officers, contractors, agents, or employees any compensation for property or damage to property other than that which already has been awarded by the tribunal. This provision shall not apply to claims which are not incidents of lawful condemnation, construction, and operation.

[Acts 1971, 62nd Leg., p. 324, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.280 to 51.300 reserved for expansion]

### SUBCHAPTER G. WATER CHARGES AND ASSESSMENTS

#### § 51.301. Statement Estimating Water Requirements and Payment of Charge

(a) Each person who desires to receive water at any time during the year shall furnish the secretary of the board a written statement of the acreage he intends to irrigate and the different crops he intends to plant with the acreage of each crop.

(b) At the time the acreage estimate is furnished to the secretary, each person applying for water shall pay the portion of the water charge or assessment set by the board.

(c) If a person does not furnish the statement of estimated acreage or does not pay the part of the water charge or assessment set by the board before the date for fixing the assessment, the district is not obligated to furnish water to that person during that year.

[Acts 1971, 62nd Leg., p. 324, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.302. Contracts with Person Using Water

(a) The board may require each person who desires to use water during the year to enter into a contract with the district which states the acreage to be watered, the crops to be planted, the amount to be paid for the water, and the terms of payment.

(b) If a person irrigates more land than his contract specifies, he shall pay for the additional service.

(c) The directors also may require a person using water to execute a negotiable note or notes for all or part of the amount owed under the contract.

(d) The contract is not a waiver of the lien given to the district under Section 51.309 of this code against the crops of a person using water for the service furnished to him.

[Acts 1971, 62nd Leg., p. 324, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.303. Authority to Determine Rules and Regulations

The board may adopt, alter, and rescind rules, regulations, and standing and temporary orders which do not conflict with the provisions of this subchapter and which govern:

- (1) methods, terms, and conditions of water service;
- (2) applications for water;
- (3) assessments for maintenance and operation;
- (4) payment and the enforcement of payment of the assessments;
- (5) furnishing water to persons who did not apply for it before the date of assessment; and
- (6) furnishing water to persons who wish to take water for irrigation in excess of their origi-

nal applications or for use on land not covered by their original applications.

[Acts 1971, 62nd Leg., p. 325, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.304. Board's Estimate of Maintenance and Operating Expenses**

The board, on or as soon as practicable after a date fixed by standing order of the board, shall estimate the expenses of maintaining and operating the irrigation system for the next 12 months.

[Acts 1971, 62nd Leg., p. 325, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.305. Distribution of Assessment**

(a) Not less than one-third nor more than two-thirds of the estimated maintenance and operating expenses shall be paid by assessment against all land in the district to which the district can furnish water through its irrigation system or through an extension of its irrigation system.

(b) The assessments shall be levied against all irrigable land in the district on a per acre basis, whether or not the land is actually irrigated. The board shall determine from year to year the proportionate amount of the expenses which will be borne by water users.

(c) The remainder of the estimated expenses shall be paid by assessments against persons in the district who use or who make application to use water. The board shall prorate the remainder as equitably as possible among the applicants for water and may consider the acreage each applicant will plant, the crop he will grow, and the amount of water per acre he will use.

[Acts 1971, 62nd Leg., p. 325, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1770, ch. 518, § 12, eff. May 31, 1971.]

**§ 51.306. Notice of Assessments**

(a) Public notice of all assessments shall be given by posting printed notices of the assessment in at least three public places in the district.

(b) Notice shall be mailed to each landowner at the address which the landowner shall furnish to the board.

(c) The notice shall be posted in a public place and mailed to each landowner five days before the assessment is due, and notice of special assessments shall be given within 10 days after the assessment is levied.

[Acts 1971, 62nd Leg., p. 325, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.307. Payment of Assessments**

(a) All assessments shall be paid in installments at the times fixed by the board.

(b) If a crop for which water was furnished by the district is harvested before the due date of any installment payment, the entire unpaid assessment becomes due at once and shall be paid within 10 days after the crop is harvested and before the crop is removed from the county or counties in which it was grown.

[Acts 1971, 62nd Leg., p. 325, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.308. Collection of Assessments by Tax Assessor and Collector**

(a) Under the direction of the board, the assessor and collector, or other person designated by the board, shall collect all assessments for maintenance and operating expenses.

(b) The assessor and collector shall execute a bond in an amount determined by the board, conditioned on the faithful performance of his duties and accounting for all money collected.

(c) The assessor and collector shall keep an account of all money collected and shall deposit the money as collected in the district depository. He shall file with the secretary of the board a statement of all money collected once each week.

(d) The assessor and collector shall use a duplicate receipt book, give a receipt for each collection made, and retain in the book a copy of each receipt, which shall be kept as a record of the district.

[Acts 1971, 62nd Leg., p. 326, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.309. Lien Against Crops**

The district shall have a first lien, superior to all other liens, against all crops grown on each tract of land in the district to secure the payment of the assessment, interest, and collection or attorney's fees.

[Acts 1971, 62nd Leg., p. 326, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.310. List of Delinquent Assessments**

Within 10 days after any assessment is due, the board shall post in a public place in the district a list of all persons who are delinquent in paying their assessments and shall keep posted a correct list of all persons who are delinquent in paying assessments. If a person who owes an assessment has executed a note and contract as provided in Section 51.302 of this code, he shall not be placed on the delinquent list until after the maturity of the note and contract.

[Acts 1971, 62nd Leg., p. 326, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.311. Water Service Discontinued**

If a landowner fails or refuses to pay a water assessment when due, his water supply shall be cut off, and no water may be furnished to the land until all back assessments are fully paid. The discontinuance of water service is binding on all persons who own or acquire an interest in land for which assessments are due.

[Acts 1971, 62nd Leg., p. 326, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.312. Suits for Delinquent Assessments**

Suits for delinquent water assessment may be brought either in the county in which the district is located or in the county in which the defendant resides. All landowners are personally liable for assessments provided in this subchapter.

[Acts 1971, 62nd Leg., p. 326, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.313. Interest and Collection Fees**

(a) All assessments shall bear interest from the date payment is due at the rate of 10 percent a year.

(b) If suit is filed to foreclose a lien on crops or if a delinquent assessment is collected by any legal proceeding, an additional amount of 10 percent on unpaid principal and interest shall be added as collection or attorney's fees.

[Acts 1971, 62nd Leg., p. 327, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.314. Rights of the United States

(a) If the board enters into a contract with the United States, the remedies in this subchapter available to the district also shall apply to enforce payment of charges due to the United States. The federal reclamation laws shall also apply.

(b) The directors shall distribute and apportion all water acquired by the district under a contract with the United States in accordance with acts of Congress, rules and regulations of the secretary of the interior, and provisions of the contract.

[Acts 1971, 62nd Leg., p. 327, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.315. Surplus Assessments

If assessments made under this subchapter are more than sufficient to pay the necessary expenses of the district, the balance shall be carried over to the next year.

[Acts 1971, 62nd Leg., p. 327, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.316. Insufficient Assessments

If the assessments made under this subchapter are not sufficient to pay the necessary expenses of the district, the unpaid balance shall be assessed pro rata, in accordance with the assessments made for the current year. The additional assessments shall be paid under the same conditions and penalties within 30 days after the date of assessment.

[Acts 1971, 62nd Leg., p. 327, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.317. Determining Maintenance and Operation Charges

The board may make, establish, and collect maintenance and operation charges for service on the basis of the quantity of water furnished or appropriate measure of the service rendered.

[Acts 1971, 62nd Leg., p. 327, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.318. Charges for Maintenance Expenses

(a) If maintenance charges are based on the quantity of water used, a fixed minimum charge may be made on all land, water connections, or other service entitled to receive and use water. An additional charge may be made for the use of more water than that covered by the minimum charge.

(b) The board may install proper measuring devices or require that they be installed.

[Acts 1971, 62nd Leg., p. 327, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.319. Charge to Cities and Towns

If a district includes a city or town or contracts with a city or town to supply water to it, the charge for the use of the water and the time and manner of payment shall be determined by the board or fixed by the contract made with the board.

[Acts 1971, 62nd Leg., p. 327, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.320. Loans for Maintenance and Operating Expenses

The board may borrow money to pay maintenance and operating expenses at an interest rate of not more than 10 percent a year and may pledge as security any of its notes or contracts with water users or accounts against them.

[Acts 1971, 62nd Leg., p. 328, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.321. Water Service: Refused

The board may refuse water service to any person who refuses to pay the charges and assessments for water service or who fails or refuses to pay any taxes levied against his property after six months from the date the taxes become delinquent.

[Acts 1971, 62nd Leg., p. 328, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.322 to 51.330 reserved for expansion]

### SUBCHAPTER H. WASTE DISPOSAL AND CONTROL OF STORM WATER

#### § 51.331. Authority to Dispose of Waste and Control Storm Water

(a) A district may include in its purposes and plans all improvements, facilities, plants, equipment, and appliances incident to or helpful or necessary to the collection, transportation, processing, disposal, and control of all domestic, industrial, or communal wastes, whether fluids, solids, or composites, and to gather, conduct, divert, and control local storm water or other local harmful excesses of water.

(b) The district may use any mechanical or chemical means or processes incident, necessary, or helpful to accomplish these purposes, and to conserve and promote the public health and welfare, and to protect, effect, or restore the purity and sanitary condition of the state's water.

[Acts 1971, 62nd Leg., p. 328, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.332. Increasing District's Powers

(a) A district operating under the provisions of this chapter which did not at the time of its creation have the powers provided in Section 51.331 of this code may assume the additional powers in the same manner and by the same procedures as provided in this subchapter, except that it is not necessary to hold an election to confirm the order establishing the district's increased powers.

(b) The board may not issue a money obligation to finance the increased functions, facilities, and powers until after the electors of the district have authorized it by a constitutional and statutory majority vote as provided by this chapter to control the issuance of preliminary bonds or construction bonds as the proposal may require.

[Acts 1971, 62nd Leg., p. 328, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.333. Approval of Petition Creating District

(a) The commission shall hear and determine the petition to create a district to exercise the powers and functions provided in Section 51.331 of this code.

(b) The commission shall hear and determine the petition under the applicable provisions of Sections 51.027–51.031 of this code.

(c) The Texas Water Development Board and the division of sanitary engineering of the State Health Department shall render advisory aid concerning the petition and plans of the district, if it is requested.

(d) Nothing in this section impairs the right of the commissioners court to grant a petition under the provisions of Section 51.021 of this code relating to a district to be located wholly in one county if the district will not have the powers provided in Section 51.331 of this code.

[Acts 1971, 62nd Leg., p. 328, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.334. Election Provisions**

The provisions of Sections 51.035–51.037 of this code shall not apply to an election to create a district to exercise the powers provided in Section 51.331 of this code.

[Acts 1971, 62nd Leg., p. 329, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.335. Other Governmental Agencies Included**

(a) A district proposing to exercise the powers and to perform the functions provided in this subchapter may include any part of areas already included within the boundaries of any political subdivision, governmental agency, or body politic of the state.

(b) The district shall not usurp functions or duplicate a service already adequately exercised or rendered by the other governmental agency except under a valid contract with the other governmental agency.

[Acts 1971, 62nd Leg., p. 329, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.336. Additional Land**

Additional defined areas may be added to the district in the manner provided in this subchapter for creation of a district.

[Acts 1971, 62nd Leg., p. 329, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.337. Powers of District**

The district has all the powers and rights of procedure, financing, construction, maintenance, rehabilitation, operation, and administration conferred by Article XVI, Section 59, of the Texas Constitution, and by this chapter.

[Acts 1971, 62nd Leg., p. 329, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.338. Rules, Regulations, and Charges**

(a) The district may adopt and enforce reasonable rules, regulations, and specific charges, fees, or rentals in addition to taxes.

(b) The board shall publish a copy of the adopted orders and regulations once a week for two consecutive weeks in one or more newspapers with general circulation in the district and record the adopted orders and regulations in full in the minutes of the district.

(c) After the required publication and recording, the police power of the district, as provided in this

chapter, may be exercised to enforce the intent of the orders, and the district may discontinue a facility or service to prevent an abuse or to enforce payment of a due and unpaid charge.

[Acts 1971, 62nd Leg., p. 329, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.339. Taxes**

The district, either solely or in connection with other powers granted by this chapter, may impose taxes in addition to the taxes which may have been or may be imposed by another governmental agency included in the district.

[Acts 1971, 62nd Leg., p. 329, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.340 to 51.350 reserved for expansion]

**SUBCHAPTER I. GENERAL FISCAL PROVISIONS**

**§ 51.351. Construction Fund**

(a) The proceeds from the sale of bonds shall be deposited in the construction fund.

(b) Money deposited in the construction fund shall be used to pay expenses, debts, and obligations necessarily incurred in the creation, establishment, and maintenance of the district and to pay the purchase price of property and construction contracts, including purchases for which the bonds were issued.

(c) If the bonds were issued in accordance with a contract with the United States, debts and obligations may be paid from the construction fund under the terms of or incident to the contract.

(d) After the payment of obligations for which the bonds were issued, any remaining money in the construction fund may be transferred to the maintenance fund.

[Acts 1971, 62nd Leg., p. 330, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.352. Maintenance Fund**

(a) The district shall have a maintenance fund which shall include money collected by assessment or other method for the maintenance, repair, and operation of the properties and plant of the district or for temporary annual rental due to the United States.

(b) The maintenance fund shall be used to pay all expenses of maintenance, repair, and operation of the district except the expenses of assessing and collecting taxes for the interest and sinking fund. Expenses for collecting taxes for the interest and sinking fund shall be paid from the interest and sinking fund.

(c) The district may pay from the maintenance fund other expenses for which the payment is not provided in this chapter.

[Acts 1971, 62nd Leg., p. 330, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.353. Amortization and Emergency Fund**

(a) The board shall have a competent engineer make an inspection and valuation of the physical property of the district which is subject to decay,

obsolescence, injury, or damage by sudden, accidental, or unusual causes, and based on the inspection and valuation, the engineer shall determine as nearly as he can a sufficient amount to be set aside annually to pay for replacement of each item of physical property at the end of its economic life or for the restoration or replacement of any item of physical property if it is lost, injured, or damaged.

(b) The board shall set aside a portion of the maintenance fund as it is collected equal to the amount determined under Subsection (a) of this section and shall place this money in the amortization and emergency fund. No part of this fund may be spent except to replace amortized property or to replace or restore lost, injured, or damaged property.

(c) Any amount in the amortization and emergency fund which is not spent for the purposes for which the fund was created may be invested in bonds or interest bearing securities of the United States.

(d) The board is not required to create an amortization and emergency fund, but if the board does create the fund, it shall be kept up and maintained. [Acts 1971, 62nd Leg., p. 330, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.354. Expenditure of District Funds

Funds of the district shall be paid out on order of the board with warrants drawn for that purpose. [Acts 1971, 62nd Leg., p. 331, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.355. Depository

Before bonds are sold, the board shall elect a depository for the district as provided in this chapter, and the proceeds of the bonds shall be placed in the depository and disbursed as provided in this chapter.

[Acts 1971, 62nd Leg., p. 330, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.356. Selection of Depository

(a) The board shall select a depository for the district in the manner provided for the selection of a county depository and shall perform all duties provided by law for the selection of a depository, acceptance and approval of bonds, and other acts.

(b) The depository shall execute a good and sufficient bond approved by the board to fully protect the district and to guarantee the preservation of the funds and the accountability of the depository as provided by law. The bond shall be recorded in the district office and kept in a fireproof vault or safe.

(c) Except as otherwise provided, the duties and the bond and security of the depository shall be the same as provided by law for a county depository. [Acts 1971, 62nd Leg., p. 331, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.357. Functions and Duties of Depository

(a) Funds of the district shall be deposited in the depository and shall be paid out as provided in this chapter.

(b) The funds shall be deposited in the interest and sinking fund account, the construction account,

or the maintenance account, and each account shall be maintained separately.

(c) No money may be paid from the interest and sinking fund account except to pay interest and principal on bonds and to pay the expenses of assessing and collecting taxes to pay for the bonds.

(d) The depository shall make a report of all money received and paid out by it at the end of each month and shall file the report and the vouchers with the records of the district in the depository vault. A copy of the report shall be made available for inspection by any taxpayer and shall be delivered to the successor of the depository.

[Acts 1971, 62nd Leg., p. 331, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.358. Selecting a Bank as Depository in Which a District Director Has an Interest

(a) If the highest and best bidder to become the district depository is a bank in which a district director is a stockholder or a director, the bank may be selected as the depository if the interested director does not vote on the selection and the approval of the bond.

(b) Before the selection of the bank or the approval of the bond are effective, they must be submitted to and approved by the county judge in the county in which the district is located.

(c) If the county judge fails to approve the depository selected or the bond, new bids shall be requested and another bank selected as district depository. [Acts 1971, 62nd Leg., p. 331, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.359. District Audit

(a) The district shall keep a complete system of accounts and may have the accounts audited on a monthly, quarterly, or semiannual basis by one or more county auditors or by any independent public accountant of recognized integrity and ability.

(b) The audit shall conform to January 1 as the end of the fiscal year, and any district which fails to have an audit in January and July of each year is subject to audit by the county auditor of the county in which the district's principal office is located and to payment of the actual cost of the audit for the omitted period. The cost of this special audit shall be determined by the commissioners court of the county which the auditor represents and paid by the district.

(c) The audit report shall be prepared in duplicate, and one copy shall be filed in the district office and one copy shall be filed in the auditor's office. These filed copies of the audit report shall be public records which are available for inspection by any interested person.

[Acts 1971, 62nd Leg., p. 332, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.360. Maintenance Tax

(a) A district may levy and collect a tax for maintenance purposes, including funds for planning, maintaining, repairing, and operating all necessary plants, properties, facilities, and improvements of

the district and for paying costs of proper services, engineering and legal fees, and organization and administrative expenses.

(b) A maintenance tax may not be levied by a district until it is approved by a majority of the electors voting at an election held for that purpose. [Acts 1971, 62nd Leg., p. 332, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.361. Maintenance Tax Election**

(a) The maintenance tax election may be held at the same time and in conjunction with the election to authorize bonds, and the procedure for calling the election, giving notice, conducting the election, and canvassing the returns shall be the same as the procedure for a bond election.

(b) If only a maintenance tax election is called, the order calling the election shall be issued at least 15 days before the day of the election, and the election notice shall be published at least twice in a newspaper of general circulation in the district. The first publication of the notice shall be at least 14 days before the day of the election.

[Acts 1971, 62nd Leg., p. 332, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.362. Expenditure of Surplus Maintenance Tax Funds**

If a district has any surplus maintenance tax funds which are not needed for the purposes for which they were collected, the funds may be used for any lawful purpose.

[Acts 1971, 62nd Leg., p. 332, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.363 to 51.370 reserved for expansion]

**SUBCHAPTER J. BORROWING MONEY**

**§ 51.371. Authority to Borrow Money**

The board may declare that funds are not available to meet lawfully authorized obligations of the district, thereby creating an existing emergency, and may borrow money at a rate of not more than eight percent a year on notes of the district to pay the obligations.

[Acts 1971, 62nd Leg., p. 333, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.372. Security for Loan**

To secure the loan, the board may pledge up to 85 percent of any levied tax of the district which has not been collected by the district or may pledge as collateral any district bonds which have been authorized but not sold.

[Acts 1971, 62nd Leg., p. 333, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.373. Maturity Date of Loan**

(a) If taxes are pledged to pay for the loan, the loan shall mature not later than the following April 1.

(b) If preliminary or construction bonds are pledged to pay the loan, the loan shall mature not later than six months from the date it is made.

[Acts 1971, 62nd Leg., p. 333, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.374. Loan Secured by Bonds**

The amount of the loan may not be more than 25 percent of the district's unsold bonds and the par value of the bonds may not be more than 10 percent of the amount of the loan.

[Acts 1971, 62nd Leg., p. 333, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.375. Expenditure of Loan Proceeds**

No money obtained from a loan under Section 51.371 of this code may be spent for any purpose other than the purposes for which the pledged tax was levied or the pledged bonds were authorized.

[Acts 1971, 62nd Leg., p. 333, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.376. Authority of Certain Municipal Districts to Obtain Loans**

A district which is created under Article XVI, Section 59, of the Texas Constitution, and which is established as a municipal district under Section 51.038 of this code may obtain a loan from any source.

[Acts 1971, 62nd Leg., p. 333, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.377. Improvements Need not be Self-liquidating**

Improvements in districts borrowing money under Section 51.376 of this code do not have to be self-liquidating either in whole or in part.

[Acts 1971, 62nd Leg., p. 333, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.378. Loans Accomplished by Sale of District Bonds**

If the loan is secured by the sale of district bonds, the district may enter into an obligation to be conditioned conformably with the usages of investment banking to repurchase the bonds within the five-year period immediately following the date of the loan.

[Acts 1971, 62nd Leg., p. 333, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.379. Loans Obtained Without Sale of Bonds**

(a) If a district desires to secure a loan under Section 51.376 of this code without the sale of bonds, the amount of the loan may be equal to, but shall not be more than, the estimated and authorized maximum cost of the improvement.

(b) Loans made under this section may be obtained to pay debt already incurred, to obtain money to begin work on the improvement, or to provide money to continue construction which has already begun.

(c) The proceeds of the loan shall be applied to the purpose for which it was authorized, but the lender is not required to assure that the funds are properly spent.

(d) The rate of interest on the loan shall not be more than six percent and the loan shall mature on a date agreed to by the parties which shall be more than five years from the date of the loan.

[Acts 1971, 62nd Leg., p. 334, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.380. Impounding Bonds**

(a) If a loan is obtained under Section 51.376 of this code and the district has unsold bonds which were authorized to be used to pay for the improvements which are to be paid for with the loan, the district shall impound in its depository the unsold bonds in a par amount which is as nearly equal the amount of the loan as possible.

(b) If there are not enough unsold bonds to equal the amount of the loan, the district shall impound all the unsold bonds which are available.

(c) Any bonds which are impounded shall remain impounded unless they are:

(1) withdrawn by the borrower in proportion to the progressive reductions of the debt;

(2) placed under pledge as provided in Section 51.381 of this code; or

(3) sold and the proceeds applied to the payment of the loan.

[Acts 1971, 62nd Leg., p. 334, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.381. Pledge of Commercial Income**

(a) The term "commercial income" means income other than revenue derived from taxation.

(b) If required to do so, a district may pledge its existing and expected commercial income to secure a loan under Section 51.376 of this code to the extent that the pledge will not obviously and substantively impair the ability of the district to pay obligations which are held by others.

(c) If a district expects commercial income in the future but does not have the demonstrated income in an amount adequate to discharge the loan when it matures, the district may pledge the expected commercial income as provided in Subsection (b) of this section and in addition, or as an alternative, may pledge with a power of sale its unsold bonds in a par amount which shall not be more than the amount of the loan plus 10 percent. The district is not required to impound the bonds. The rate of interest on the loan may not be more than six percent.

(d) After commercial income is pledged, it may not be used for any purpose except to pay the debt which it secures, and it shall be applied to the reduction of the secured debt as rapidly as practicable.

[Acts 1971, 62nd Leg., p. 334, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.382. Evidence of Debt**

To evidence loans which are not secured by the sale of bonds, the district may execute and deliver to the lender certificates of indebtedness, notes, or obligations and may pledge its full faith and credit for their payment to the same extent that it may be pledged by district bonds.

[Acts 1971, 62nd Leg., p. 335, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.383. Retiring Bonds**

If bonds are impounded or pledged to secure a loan made to a district, as the loan is repaid a

proportionate amount of the bonds may be withdrawn, cancelled, and retired.

[Acts 1971, 62nd Leg., p. 335, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.384. Construction**

The provisions of Sections 51.376–51.383 of this code shall be liberally and sympathetically construed so that the districts covered by these sections will have the fullest and most flexible powers to comply with all conditions precedent required of the borrower by the lender unless specifically limited by these sections.

[Acts 1971, 62nd Leg., p. 335, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.385 to 51.400 reserved for expansion]

**SUBCHAPTER K. ISSUANCE OF BONDS****§ 51.401. Authority to Issue Bonds of Districts Operating under Article III, Section 52, of the Texas Constitution**

A district which is operating under Article III, Section 52, of the Texas Constitution, may issue bonds and lend its credit in an amount of not more than one-fourth of the assessed valuation of the real property in the district. However, the total indebtedness of any city or town may never be more than the limits imposed by the Texas Constitution.

[Acts 1971, 62nd Leg., p. 335, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.402. Authority to Issue Bonds of Districts Operating under Article XVI, Section 59, of the Texas Constitution**

A district operating under Article XVI, Section 59, of the Texas Constitution, may incur debt evidenced by the issuance of bonds which is necessary to provide improvements and maintenance of improvements to achieve the purposes for which the district was created.

[Acts 1971, 62nd Leg., p. 335, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.403. Amount of Debt Limited by Constitution**

No district may issue bonds or create indebtedness in an amount which is more than that authorized by the Texas Constitution.

[Acts 1971, 62nd Leg., p. 335, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.404. Issuance of Preliminary Bonds**

A district may issue preliminary bonds to create a fund to pay:

- (1) costs of organization;
- (2) costs of making surveys and investigations;
- (3) attorney's fees;
- (4) costs of engineering work;
- (5) costs of the issuance of bonds; and
- (6) other costs and expenses incident to organization of the district and its operation in investigating and determining plans for its plant and improvements and in issuing and sell-

ing bonds to provide for permanent improvements.

[Acts 1971, 62nd Leg., p. 335, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.405. Election on Preliminary Bonds**

(a) The proposition for the issuance of preliminary bonds shall be submitted to the electors of the district.

(b) The election may be held at the same time as the election to confirm the creation of the district or at a later time.

(c) The board shall make an estimate of the expenses to be paid with the proceeds of the preliminary bonds and shall include this estimate in the notice of election.

[Acts 1971, 62nd Leg., p. 336, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.406. Conditions of Preliminary Bonds**

(a) After preliminary bonds have been authorized at an election, the board may order the issuance of the bonds in an amount which is not more than the amount stated in the notice of election.

(b) The bonds may be paid serially or on amortization at any time not more than 10 years from their date.

(c) Although the bonds will be known and designated in the records as preliminary bonds, it is not necessary to make this designation on the bonds.

[Acts 1971, 62nd Leg., p. 336, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.407. Tax to Pay Preliminary Bonds**

At the time preliminary bonds are issued, a tax shall be levied to pay principal and interest as the bonds mature and to pay the cost of assessing and collecting the taxes.

[Acts 1971, 62nd Leg., p. 336, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.408. Issuance of Bonds**

(a) After a district is created and has adopted plans for construction of a plant and improvements, it may issue bonds to pay for constructing the plant and improvements and to pay costs and charges incident to the construction including the cost of necessary property and the retirement of preliminary bonds.

(b) The maximum amount of bonds which may be issued may not be more than the amount of the engineer's estimate plus the additional amounts added by the board in the election order.

[Acts 1971, 62nd Leg., p. 336, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.409. Purposes for Issuance of Bonds**

The district may issue bonds to include:

- (1) the cost of organization of the district;
- (2) incidental expenses;
- (3) the cost of investigation and making plans;
- (4) the engineer's work and other incidental expenses;
- (5) the cost of retirement of preliminary bonds;

- (6) the cost of issuing and selling bonds;
- (7) the estimated discount on the bonds;
- (8) the cost of operation of district for the period of construction of the plant and improvements stated in the engineer's report;
- (9) an amount to pay interest on the bonds during the period stated in the engineer's report, which shall not be more than three years from the time the bonds are sold; and
- (10) any additional cost or expense made necessary by any change or modification made in the proposed work by the district.

[Acts 1971, 62nd Leg., p. 336, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.410. Engineer's Report**

(a) Before an election is held to authorize the issuance of bonds, an engineer's report, which includes the plans and improvements to be constructed together with maps, plats, profiles, and data showing and explaining the engineer's report, shall be filed in the office of the district and shall be available for public inspection.

(b) The engineer's report shall contain a detailed estimate of the cost of improvements, including the cost of any property to be purchased, and an estimate of the time required to complete the improvements to the degree to which they may provide service.

(c) The board shall consider the engineer's report and may make changes in the report and note them in the minutes.

[Acts 1971, 62nd Leg., p. 337, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.411. Election Order**

(a) After the engineer's report is filed and approved, the board may order an election in the district to authorize the issuance of the bonds.

(b) In the order, the board shall estimate the total amount of money needed to cover the items listed in Section 51.409 of this code.

(c) The election order shall state:

- (1) the proposed maximum interest rate on the bonds;
- (2) the maximum maturity date of the bonds;
- (3) the time and places for holding the election; and
- (4) the names of the election officers.

(d) The election order shall be entered in the minutes of the board.

[Acts 1971, 62nd Leg., p. 337, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.412. Notice of Election**

(a) Notice of the bond election, signed by the president and secretary of the board, shall be published once a week for four consecutive weeks in a newspaper with general circulation in the county or counties in which all or part of the district is located. The first publication shall be at least 28 days before the day of the election.

(b) The notice shall include:

- (1) the maximum amount of bonds to be issued;
- (2) the proposed maximum interest rate;
- (3) the maximum maturity date;
- (4) the time and places for holding the election;
- (5) a substantial statement of the proposition;
- (6) a summary of the engineer's estimate of the cost of the proposed improvements; and
- (7) a statement of any estimate or estimates made by the board in its order calling the election.

(c) If a contract with the United States is proposed at the election, the notice shall state the maximum amount of money to be paid for construction purposes, exclusive of penalties and interest.

(d) A copy of the election notice, together with a copy of the published notice with the publisher's affidavit attached, shall be filed in the office of the district.

[Acts 1971, 62nd Leg., p. 337, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.413. Ballots

(a) The proposition to be voted on shall be the issuance of the total amount of bonds covered by the engineer's estimate plus additional estimates made by the board.

(b) The ballots shall be printed to provide for voting for or against: "The issuance of bonds and the levy of taxes to pay for the bonds."

(c) If a contract is proposed with the United States under the federal reclamation laws, the ballots shall be printed to provide for voting for or against: "The contract with the United States and the levy of a tax to pay the contract."

[Acts 1971, 62nd Leg., p. 338, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.414. Vote at Election

(a) Bonds of a district operating under the provisions of Article III, Section 52, of the Texas Constitution, may be issued only with the approval of two-thirds of the electors of the district participating in the election.

(b) In a district organized under the provisions of Article XVI, Section 59, of the Texas Constitution, bonds may be issued or indebtedness created only with the approval of a majority of the electors of the district participating in the election.

[Acts 1971, 62nd Leg., p. 338, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.415. Order to Issue Bonds or Execute Contract

After the vote is canvassed and the results are declared to be favorable to the proposition, the board shall make and enter an order directing the issuance of the bonds or the execution of a contract with the United States. The bonds or contract shall be in a sufficient amount to pay for the improvements together with all necessary incidental expenses, but

the amount may not be more than the amount specified in the election order and notice of election. [Acts 1971, 62nd Leg., p. 338, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.416. Record of Bond Proceedings Submitted to Attorney General

(a) After a district issues bonds other than preliminary bonds, but before they are sold, the record showing all the proceedings in the creation of the district and the issuance of the bonds shall be filed in the office of the attorney general.

(b) The attorney general shall examine the record and give his opinion on it.

(c) The record may be presented to the attorney general before the bonds are printed, and the bonds may be executed after the record is completed.

(d) After the record is approved, the bonds shall be issued or duly executed.

[Acts 1971, 62nd Leg., p. 338, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.417. Approval and Registration of Bonds

(a) After the bonds are issued and executed, they shall be submitted to the attorney general for approval.

(b) If the attorney general finds that the bonds are issued according to law and are valid, binding obligations of the district, he shall officially certify the bonds and execute a certificate, which shall be filed with the comptroller and recorded in the book kept for that purpose.

(c) The bonds may not be registered with the comptroller until 20 days after the day of the election authorizing the issuance of the bonds.

[Acts 1971, 62nd Leg., p. 339, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.418. Validity of Bonds

After the bonds are approved by the attorney general and registered by the comptroller, they shall be held to be valid, binding obligations of the district in any suit testing their validity. Any person interested in the bonds may file a suit before the bonds are registered to test the validity, but may not bring suit to test validity after the bonds are registered.

[Acts 1971, 62nd Leg., p. 339, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.419. Conditions of Bonds

(a) The bonds may be issued to mature at the end of a term of years or to mature serially at any date which is not later than the maximum maturity date stated in the election order.

(b) The bonds may be issued at any rate of interest which is not more than the rate of interest set in the election order.

[Acts 1971, 62nd Leg., p. 339, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.420. Form of Bonds

(a) The bonds shall be issued in the name of the district and shall be signed by the president and attested by the secretary, with the seal of the district attached.

(b) The bonds shall be issued in denominations of \$100 or multiples of \$100 and shall be payable annually or semiannually.

(c) The board shall determine and include in the bonds the time, place, manner, and condition of payment of principal and interest on the bonds, but none of the bonds may be made payable more than 40 years from their date.

(d) The lien for payments due to the United States under a contract that was not accompanied by a deposit of bonds with the United States shall be a preferred lien to that of any issue of bonds or any series of any issue of bonds subsequent to the date of the contract.

[Acts 1971, 62nd Leg., p. 339, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1768, ch. 518, § 4, eff. May 31, 1971.]

**§ 51.421. Authority of Commission over Issuance of District Bonds**

(a) As used in this section and Section 51.422 of this code, "designated agent" means any licensed engineer selected by the commission to perform the functions specified in those sections.

(b) The commission shall investigate and report on the organization and feasibility of all districts that issue bonds under this chapter.

(c) Any district that desires to issue bonds under this chapter shall submit to the commission a written application for investigation, together with copies of the engineer's report and data, profiles, maps, plans, and specifications prepared in connection with the engineer's report.

(d) The commission or its designated agents shall examine the application and accompanying documents and shall visit and carefully inspect the project. The commission or its designated agents may request and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements.

(e) The commission or its designated agents shall file in their office written suggestions for changes and improvements and shall furnish a copy of the report to the board of the district.

(f) If the commission approves or refuses to approve the project or the issuance of bonds for the improvements, it shall make a full written report which it shall file in its office and a copy of the report shall be furnished to the district.

[Acts 1971, 62nd Leg., p. 339, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.422. Commission Supervision of Projects and Improvements**

(a) During construction of projects and improvements approved by the commission, no substantial alterations may be made in the plans and specifications without the approval of the commission.

(b) The commission or its designated agent may inspect the improvements at any time during construction to determine if the project is being con-

structed in accordance with the plans and specifications approved by the commission.

(c) If the commission finds that the project is not being constructed in accordance with the approved plans and specifications, it shall give written notice immediately by certified mail to each member of the board of the district and the district's manager.

(d) If within 10 days after the notice is mailed the board of the district does not take steps to insure that the project is being constructed in accordance with the approved plans and specifications, the commission shall give written notice of this fact to the attorney general.

(e) After the attorney general receives this notice, he may bring an action for injunctive relief or quo warranto proceedings against the directors. Venue for either suit is exclusively in a district court in Travis County.

[Acts 1971, 62nd Leg., p. 340, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.423. Validation Suit**

(a) A district may file a suit to determine the validity of the creation of the district and the bonds.

(b) If requested by the secretary of the interior, the district shall file a suit to validate a contract made with the United States.

(c) If a validation suit is filed, the bonds do not have to be approved by the attorney general.

[Acts 1971, 62nd Leg., p. 340, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.424. Effect of Prior Registration**

If bonds are approved by the attorney general and registered by the comptroller before a validation suit is filed, the filing of the suit cancels the prior registration.

[Acts 1971, 62nd Leg., p. 340, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.425. Procedure in Validation Suit**

(a) A validation suit shall be brought by the district in the district court of any county in which all or part of the district is located or in a district court in Travis County.

(b) The suit shall be in the nature of a proceeding in rem.

(c) Any person who is interested in the suit may intervene and file an answer.

(d) The issue shall be tried and determined by the court and judgment shall be entered on the findings.

(e) A validation suit has preference over all other suits to allow a speedy determination.

[Acts 1971, 62nd Leg., p. 340, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.426. Notice of Validation Suit**

(a) To obtain jurisdiction of all parties to the validation suit, a general notice shall be published.

(b) The notice shall be published once a week for at least two consecutive weeks before the term of the court at which the notice is to be returned. The notice shall be published in a newspaper with general circulation in the county or counties in which the

district is located, but if no newspaper is published inside the district, the notice shall be published in a newspaper in the nearest county in which a paper is published.

(c) Notice also shall be served on the attorney general in the manner provided in civil suits.

(d) The attorney general may waive notice if he is furnished a full transcript of the proceedings held in connection with the creation of the district and the issuance of the bonds or held in connection with the authorization of a contract with the United States. A copy of the contract with the United States also must be furnished.

[Acts 1971, 62nd Leg., p. 341, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.427. Duties of Attorney General in Validation Suit

(a) The attorney general shall examine all the proceedings and shall require any further evidence and make any further examination which he considers advisable.

(b) The attorney general then shall file an answer to the suit, submitting the issue of whether the proceedings are valid and the bonds are legal and binding obligations of the district or whether the contract with the United States is legal and binding on the district.

[Acts 1971, 62nd Leg., p. 341, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.428. Judgment in Validation Suit

(a) After the trial of the validation suit, if the judgment of the court is adverse to the district on any issue, the district may make an exception and point out the error, and the error may be corrected by the judge in the manner directed by the court.

(b) The judgment shall be rendered showing that the corrections have been made and that the bonds or the contract with the United States are binding obligations of the district.

(c) After the judgment is entered, it is res judicata in all cases which may arise in connection with:

(1) the collection of the bonds or their interests;

(2) any taxes levied to pay charges or any money required to pay a contract with the United States; and

(3) all matters relating to the organization and validity of the district or the validity of the bonds or contract.

[Acts 1971, 62nd Leg., p. 341, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.429. Effect of Validation Suit

(a) After a final judgment is rendered in the validation suit, the bonds or the contract with the United States shall be incontestable.

(b) No suit may be brought in any court of this state to contest or enjoin the validity of the creation of the district, any bonds which are issued, any contract with the United States, or the authorization of a contract with the United States except in the

name of the State of Texas by the attorney general on his own motion or on the motion of any party affected on good cause shown.

(c) The attorney general may not file or prosecute such a suit unless it is based on allegations of fraud disclosed or found after the final judgment in the validation suit was rendered.

[Acts 1971, 62nd Leg., p. 342, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.430. Certified Copy of Decree

(a) After the judgment of the district court is entered, the clerk of the court shall make a certified copy of the decree which shall be filed with the comptroller. The comptroller shall record the decree in the book kept for that purpose.

(b) The certified copy of the decree or a certified copy of the comptroller's record of the decree shall be received in evidence in any suit which may affect the validity of the organization of the district or the validity of the bonds or the contract and shall be conclusive evidence of validity.

[Acts 1971, 62nd Leg., p. 342, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.431. Registration of Bonds and Decree

On the presentation of the bonds together with a certified copy of the decree of the court, the comptroller shall register the bonds in a book kept for that purpose. The comptroller shall attach to each bond a certificate stating that the court's decree has been filed and recorded in his office and shall sign the certificate and attach his official seal.

[Acts 1971, 62nd Leg., p. 342, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.432. Sale of Bonds

(a) After the bonds are issued by the district, the board shall sell the bonds on the best terms and for the best price possible.

(b) The board shall pay the proceeds from the sale of the bonds to the district depository.

(c) The district may exchange bonds for property acquired by purchase or to pay the contract price of work done for the use and benefit of the district.

[Acts 1971, 62nd Leg., p. 342, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.4321. Notice of Bond Sale

(a) Except for refunding bonds, bonds sold to a state or federal agency, and bonds registered with a federal agency, after any bonds are finally authorized and before they are sold by a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district, the board shall publish an appropriate notice of the sale:

(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation which is published in the county or counties in which the district is located; and

(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the attorney general.

(b) If a newspaper publication required by Subdivision (1), Subsection (a), of this section is not published in the county, then notice may be published in any newspaper of general circulation in such county. [Acts 1973, 63rd Leg., p. 616, ch. 262, § 2, eff. Aug. 27, 1973.]

**§ 51.433. Tax Levy**

(a) At the time bonds are voted, the board shall levy a tax on all property inside the district in a sufficient amount to redeem and discharge the bonds at maturity.

(b) The board annually shall levy or have assessed and collected taxes on all property inside the district in a sufficient amount to pay for the expenses of assessing and collecting the taxes.

(c) If a contract is made with the United States, the board annually shall levy taxes on property inside the district in a sufficient amount to pay installments and interest as they become due.

(d) The board may issue the bonds in serial form or payable in installments, and the tax levy shall be sufficient if it provides an amount sufficient to pay the interest on the bonds, the proportionate amount of the principal of the next maturing bonds, and the expenses of assessing and collecting the taxes for that year.

[Acts 1971, 62nd Leg., p. 342, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.434. Adjustment of Tax Levy**

(a) The tax levy made in connection with the issuance of bonds shall remain in force from year to year until a new levy is made.

(b) The board may from time to time increase or diminish the tax to adjust it for the taxable values of the property subject to taxation by the district and the amount required to be collected.

(c) The board shall raise an amount sufficient to pay the annual interest of and principal on all outstanding bonds.

[Acts 1971, 62nd Leg., p. 343, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.435. Changing Tax Rate**

If the tax levied is based on the assessed value obtained from the county tax rolls, or the tax rolls of the district for the preceding year and new tax rolls are approved before the time for collection of taxes, the board may change the tax rate provided the new rate is sufficient when applied to the new assessed value to raise the needed amount.

[Acts 1971, 62nd Leg., p. 343, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.436. Interest and Sinking Fund**

(a) The district shall have an interest and sinking fund which shall include all taxes collected under this chapter.

(b) Money in the interest and sinking fund may be used only:

- (1) to pay principal and interest on the bonds;
- (2) to defray the expenses of assessing and collecting the taxes; and

(3) to pay principal and interest due under a contract with the United States if bonds have not been deposited with the United States.

(c) Money in the fund shall be paid out of the fund on warrants by order of the board as provided in this chapter.

(d) The depository shall receive and cancel each interest coupon and bond as it is paid and shall deliver it to the board to be recorded, cancelled, and destroyed.

[Acts 1971, 62nd Leg., p. 343, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.437. Investment of Sinking Fund**

(a) The board may invest any portion of the sinking fund of the district in bonds of the United States, the state, any county or city in the state, any irrigation or water improvement district, school district, or other tax bonds issued under the laws of the state.

(b) The funds may be invested if the bonds to be paid with them do not mature within three years from the time the investment is made and if it is necessary to preserve the best interest of the district.

[Acts 1971, 62nd Leg., p. 343, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.438. Refunding Bonds**

(a) The district may refund any bonds issued by it by issuing new bonds.

(b) Refunding bonds may be issued only if the old bonds are taken in exchange at their face value or less or new bonds can be sold at a premium and the old bonds retired without loss to the district.

(c) The comptroller may not register the refunding bonds until the old bonds for which the refunding bonds are being issued are presented to him for cancellation or until a valid contract providing for the purchase or exchange of the old bonds is executed and a copy filed in his office.

(d) The comptroller shall keep the refunding bonds until the old bonds are presented to him for exchange or payment, and if the old bonds are presented for payment, the district shall pay them before the refunding bonds are registered.

[Acts 1971, 62nd Leg., p. 344, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.439. Limitation of Authority to Incur Debt and Issue Bonds**

(a) For the benefit of purchasers or holders of bonds to be issued or sold, the board of a district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, may limit the authority of the district to incur debt or issue bonds.

(b) The board shall limit the authority by adopting a resolution which states that during a period of not more than 15 years the district will not issue bonds in an amount of more than 25 percent of the assessed value of taxable real property in the district according to the last assessment for district purposes or in an amount of more than a fixed sum or for certain named purposes.

(c) The board shall publish notice of the adoption of the resolution once a week for two consecutive weeks in a newspaper with general circulation in the district. The notice shall state that the resolution will take effect unless a petition against the proposed limitation signed by 20 percent of the electors of the district is presented within 20 days after the first publication of the notice.

(d) If a petition is filed against the limitation, the resolution will not take effect until it is approved at an election held in the district.

(e) The ballots for the election shall be printed to provide for voting for or against: "The limitation during the term of \_\_\_\_\_ years of the maximum debt of the district to \_\_\_\_\_." (The blank spaces shall be filled with the purpose of the election.)

(f) If the limitation is approved at an election or if no petition is filed against the resolution, the district may not issue bonds under any statute or constitutional provision in excess of the limitation during the designated term of years except to complete and make repairs to improvements whose cost will be within the debt limitation.

[Acts 1971, 62nd Leg., p. 344, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.440. Issuing Bonds in Excess of Limitation

(a) A district may issue bonds in excess of a limitation made under Section 51.439 of this code only after the commission has approved the plans and specifications with the estimate of costs.

(b) If the plans, specifications, and estimate are approved, notice of the intention to issue the bonds shall be published once a week for three consecutive weeks in a newspaper with general circulation in the district. The notice shall include a statement of the purpose for issuing the bonds, the amount of the proposed bond issue, and the time the hearing is to be held, which may not be less than 30 days after the notice is first published.

(c) The board shall hold the hearing and any taxpayer, bondholder, or other interested person may appear and be heard.

(d) If the board approves the issuance of the additional bonds in the amount and for the purpose stated in the notice, the question of issuing the bonds shall be submitted to the electors of the district at an election.

[Acts 1971, 62nd Leg., p. 344, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.441. Modifications of Improvements

(a) After bonds are issued or a contract is entered into with the United States, the board may give notice of an election to be held to authorize the issuance of additional bonds or a further contract with the United States.

(b) Additional bonds may be issued or a supplemental contract made if the board considers it necessary to:

- (1) make modifications in the district or its improvements;

- (2) construct further or additional improvements and issue additional bonds on the report of the engineer;

- (3) make a supplemental contract with the United States;

- (4) make, on its own motion, additional improvements or purchase additional property to accomplish the purposes of the district and to serve the best interest of the district.

(c) The board shall enter its findings in the minutes.

(d) The election shall be held and the returns made in the manner provided in this chapter for the original election.

(e) If the result of the election favors the issuance of the bonds or the supplemental contract with the United States, the board may order the bonds issued or the contract made with the United States in the manner provided in this chapter.

(f) If a supplemental contract is made with the United States and bonds are not to be deposited with the United States, it is not necessary to issue bonds. If the district is required to raise money in addition to the amount of the contract, the bonds shall be issued only in the additional amount needed.

[Acts 1971, 62nd Leg., p. 345, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.442. Issuance of Additional Bonds or Creation of Additional Indebtedness under Certain Conditions

(a) A district may issue additional bonds or create additional indebtedness:

- (1) if works, improvements, and facilities constructed under a plan provided in Section 51.410 or 51.422 of this code are inadequate to accomplish the beneficial results which the district's location and conditions demand;

- (2) if it is considered necessary to make repairs, replacements, or additions to the district's improvements which cost more than \$25,000; or

- (3) if additional money is needed to complete the improvements as planned.

(b) The district shall provide the additional money for the particular purpose in accordance with the provisions of this chapter regulating the creation of bond obligations subject to every limitation with respect to the original proceedings and the substantial protection of the substantive rights of holders of any of the district's outstanding obligations.

[Acts 1971, 62nd Leg., p. 345, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.443. Interim Bonds

After bonds, other than preliminary bonds or notes, are voted by a district, the board may declare an existing emergency with relation to money being unavailable to pay for engineering work, purchase of land, rights-of-way, construction sites, construction work, and legal and other necessary expenses and may issue interim bonds on the faith and credit of

the district in the manner provided in Sections 51.444-51.449 of this code to pay these expenses.  
[Acts 1971, 62nd Leg., p. 346, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.444. Limitations on Interim Bonds**

(a) Interim bonds shall mature not later than 10 years from the date they are issued and shall be redeemable at any time before they mature, as provided in this subchapter.

(b) The principal amount of the interim bonds may not be more than 25 percent of the principal amount of the district's bonds which have been voted but not sold.

(c) Before the issuance of the interim bonds, the board, by resolution, may limit the issue to any amount less than 25 percent, and after the amount is determined and fixed by the resolution, no additional interim bonds may be issued and sold until all outstanding interim bonds are paid.

[Acts 1971, 62nd Leg., p. 346, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.445. Issuance of Bonds and Levy of Tax**

(a) After bonds other than preliminary bonds are voted, the board may authorize the issuance of the bonds in whole or in part as they are needed by the district.

(b) The board shall levy and annually assess and collect sufficient taxes to pay principal and interest on the bonds.

(c) The bonds may be approved by the attorney general and registered by the comptroller before the filing of the report of the Texas Water Rights Commission under Section 51.421 of this code.

[Acts 1971, 62nd Leg., p. 346, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.446. Deposit of Bonds to Secure Interim Bonds**

(a) As the interim bonds are issued and sold, the board, by order, shall deposit bonds of the district which have been validated by a court or approved by the attorney general and registered by the comptroller as provided in Section 51.417 of this code in the district depository.

(b) The bonds deposited shall be credited to the interest and sinking fund account created to pay the interim bonds.

(c) The principal amount of the bonds deposited shall total at least 110 percent of the principal sum of the series of interim bonds which the bonds are deposited to secure.

(d) The interest rate on the interim bonds may not be more than the interest rate on the bonds deposited to secure them.

[Acts 1971, 62nd Leg., p. 346, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.447. Procedure for Issuance and Sale of Interim Bonds**

(a) Interim bonds shall be issued in the name of the district, signed by the president, and attested by the secretary, with the district seal attached to each bond.

(b) The interim bonds may be issued in the denominations determined by the board and shall be approved by the attorney general and registered by the comptroller in the same manner as provided in Section 51.417 of this code.

(c) Interim bonds may be sold in the same manner and on the same terms provided by law for the sale of other bonds of the district.

(d) If interim bonds are sold at less than par value and accrued interest, the improvement bonds issued by the district must be sold at an increase over the price authorized by law in an amount sufficient to equal the discount allowed on the interim bonds.

[Acts 1971, 62nd Leg., p. 346, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.448. Payment of Interim Bonds**

(a) The board shall appropriate the tax levied to pay the bonds deposited to the credit of the interest and sinking fund to pay the interim bonds or as much of that tax as necessary to secure the loan evidenced by the interim bonds.

(b) The proceeds of the tax shall be devoted exclusively to the payment of the principal and interest on the interim bonds.

(c) None of the provisions of this subchapter relating to interim bonds shall be construed as prohibiting the sale of bonds deposited to the credit of the interest and sinking fund to pay interim bonds or of any other bonds of the district, but if any of these bonds are sold, the district depository shall apply the proceeds to the payment of principal and accrued interest on the interim bonds and the remainder to the purposes for which the bonds were authorized.

(d) If none of the bonds are sold at the time an installment on the principal and interest of interim bonds matures, the depository shall cancel the deposited bonds and attached interest coupons in an amount equal to the principal and interest of the interim bonds paid off and discharged.

[Acts 1971, 62nd Leg., p. 347, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.449. Redemption of Interim Bonds**

(a) At the option of the board, interim bonds may be redeemed at any time or times before maturity on payment by the district of the principal and accrued interest to the date fixed for redemption by the board.

(b) When interim bonds are called for redemption before maturity, the secretary shall give written notice of the redemption to the bank or banking house named as the place of payment in the bonds or to its successor or assign.

(c) In the notice, the secretary shall designate the bond or bonds called for redemption and payment and shall state number or numbers of the bonds.

(d) The notice shall include the redemption date which shall not be more than 60 days after the date notice of call for payment is made.

(e) If any of the bonds which are called for redemption are not presented, they shall cease to bear

interest from and after the date fixed for redemption.

[Acts 1971, 62nd Leg., p. 347, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.450. Alternate Methods for Paying Bonds

(a) As used in this section and in Sections 51.450–51.454 of this code, “net revenue” means income or increment which may come from ownership and operation of the improvements which are encumbered less the proportion of the district’s revenue income reasonably required to provide for administration, efficient operation, and adequate maintenance of the district’s services and facilities which are encumbered. Net revenue does not include money derived from taxation.

(b) A district which expects net revenue from operations may secure its bonds in any one of the following:

(1) as provided in Section 51.433 of this code;

(2) by entering into a contract to pledge the net revenue of the district and to mortgage and encumber part or all of the property and facilities, franchise, revenue and income from operations, and everything acquired or to be acquired by the district; or

(3) as provided in both Subdivisions (1) and (2) of this subsection.

[Acts 1971, 62nd Leg., p. 347, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.451. Taxes to Secure Certain Bonds

(a) If bonds are secured as provided in Section 51.450(b)(3) of this code, at the time that net revenue together with money derived from taxes accumulates a surplus in the sinking fund equal to the amount required in the succeeding year to liquidate the interest and principal on the district’s bonds maturing in that year, the district’s annual tax levies may be lowered to produce not less than 25 percent of the bond maturities for the succeeding year.

(b) If three successive years demonstrate that this net revenue is adequate to protect the district’s bonds as they mature, the district’s tax may be discontinued until further experience demonstrates the necessity to continue the tax to avoid default in the payment of the district’s bonds as they mature.  
[Acts 1971, 62nd Leg., p. 348, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.452. Election

(a) If the district proposes to issue bonds which will be secured under either Section 51.450(b)(2) or 51.450(b)(3) of this code, the proposition shall be presented at an election held under Section 51.413 of this code.

(b) The ballots for the election shall be printed to provide for voting for or against one of the following propositions:

(1) “The issuance of bonds and the pledge of net revenue for the payment of the bonds.”;

(2) “The issuance of bonds, the pledge of net revenue, and the creation of a lien on physical property to secure payment of the bonds; or

(3) “The issuance of bonds, the pledge of net revenue, and the levy of adequate taxes to pay the bonds.”

[Acts 1971, 62nd Leg., p. 348, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.453. Hearing and Election on Certain Bonds

(a) A district which plans to issue bonds payable from and secured by a pledge of net revenue and a lien on the physical property, either or both, without the levy of taxes, is not required to hold a hearing to exclude land or adopt a plan of taxation.

(b) The proposition for issuance of bonds may be submitted at the election held to confirm the creation of the district or at an election called by the board.

[Acts 1971, 62nd Leg., p. 348, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.454. Hearing Before Issuing Certain Bonds

If a district issues its original bonds under Section 51.450(b)(2) of this code and later desires to issue bonds payable in whole or in part from taxes or to levy a tax for maintenance purposes, the district shall hold a hearing to exclude land, and at the time provided by law, shall hold another hearing to adopt a plan of taxation. These hearings shall be held before an election is called to approve the issuance of tax-supported bonds or the levy of a maintenance tax.

[Acts 1971, 62nd Leg., p. 349, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.455. Issuance of Revenue Bonds to Construct Extensions and Improvements to Certain Systems

(a) A district which has adopted a plan for improvements designed to furnish a water and sewer system may also issue its revenue bonds as provided in Section 51.450(b)(2) of this code to construct extensions and improvements to the water and sewer system or to an irrigation system.

(b) The district may pay the revenue bonds by entering into contracts to pledge the net revenue derived from the sale of water for irrigation purposes and service charges obtained from the sale and distribution of water for irrigation purposes.

(c) The bonds may be issued in one or more issues under the terms and conditions considered by the board to be advisable.

[Acts 1971, 62nd Leg., p. 349, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.456 to 51.500 reserved for expansion]

### SUBCHAPTER L. TAX PLAN

#### § 51.501. Tax to Pay Preliminary Bonds

Taxes to pay principal and interest on preliminary bonds shall be levied and collected on the ad valorem basis.

[Acts 1971, 62nd Leg., p. 349, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.502. Hearing to Determine Basis of Taxation**

After the board adopts plans for construction of a plant and improvements to accomplish the purposes of the district and after an election is held to authorize the issuance of construction bonds and the levy of a tax to pay for the bonds, the board shall hold a public hearing to determine whether the taxes to pay the construction bonds and maintenance, operation, and administrative costs of the district shall be levied, assessed, and collected on:

- (1) the ad valorem basis;
- (2) the basis of assessment of specific benefits;
- (3) the basis of assessment of benefits on an equal sum per acre; or
- (4) the ad valorem basis for part of the total tax or defined area or property and on the benefit basis for the other part of the tax or defined area or property.

[Acts 1971, 62nd Leg., p. 349, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.503. Notice of Hearing**

Notice of the time and place of the hearing and the proposition to be determined shall be published once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall be made not less than 10 days before the day of the hearing set in the notice.

[Acts 1971, 62nd Leg., p. 349, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.504. Conduct of Hearing**

(a) At the hearing, any person who is a taxpayer in the district may appear and offer testimony to show which plan of taxation will be most conducive to equitable distribution of taxes.

(b) The hearing may be adjourned from day to day until all persons wishing to testify have been heard.

[Acts 1971, 62nd Leg., p. 350, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.505. Order**

(a) The board shall adopt the plan of taxation which will, in its judgment under the evidence, be most conducive to the equitable distribution of the district's tax.

(b) If the plan adopted by the board is made under the provisions of Section 51.512 of this code, the order shall specify the proportion of the tax which falls under each designated classification.

(c) The order of the board is final and cannot be reviewed or questioned in any court except on the ground of fraud or palpable and arbitrary abuse of discretion.

[Acts 1971, 62nd Leg., p. 350, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.506. Changing Tax Plan**

If after a tax plan is adopted the directors find that the best interest of the district and the necessity to maintain adequately and equitably the dis-

trict's tax requires a change in the tax plan, the board may give notice, hold a hearing, and determine a new plan in the manner provided in Sections 51.502-51.505 of this code.

[Acts 1971, 62nd Leg., p. 350, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.507. Effect of Sections 51.501-51.506 of Code**

Nothing in Sections 51.501-51.506 of this code shall be held to alter provisions of this chapter relating to districts which have contracts with the United States or to alter or impair the provisions of this code relating to taxes levied to provide local improvements to a defined area which do not affect the entire district.

[Acts 1971, 62nd Leg., p. 350, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.508. Unlimited Authority to Collect Service Charges and Taxes**

The provisions of this subchapter do not alter or impair the right of a district to make, establish, and collect maintenance and operation charges for service rendered; to levy and collect taxes to secure funds to maintain, repair, and operate all works and facilities; and to give and maintain proper service for the purposes of its organization.

[Acts 1971, 62nd Leg., p. 350, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.509. Lien Created; No Limitation**

Taxes, charges, or assessments imposed by a district for maintenance and operation of works, facilities, and services of the district shall constitute a lien against the land to which the taxes, charges, or assessments have been established. No law providing limitation against actions for debt shall apply.

[Acts 1971, 62nd Leg., p. 351, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.510. Purpose of Sections 51.511-51.530 of Code**

The purpose of Sections 51.511-51.530 of this code is to give a district the flexibility of taxing power which will permit and cause the tax of the district to be equitably distributed and which will give the highest practicable degree of service under the peculiar physical and economic conditions of the district. To this end, these sections shall be liberally and sympathetically construed.

[Acts 1971, 62nd Leg., p. 351, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.511. Authority to Adopt Alternative Plans of Taxation**

A district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, shall adopt a tax plan under the alternative provisions of Sections 51.512-51.530 of this code either at the time of its creation or before the appointment of commissioners of appraisal under this chapter.

[Acts 1971, 62nd Leg., p. 351, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.512. Alternative Plans of Taxation**

(a) The district's taxes for all purposes, except to pay the cost of preliminary surveys, may be levied, assessed, and collected on an adopted basis to be chosen from the alternatives provided in this section.

(b) The district's tax plan may be based on any one of the following:

- (1) ad valorem basis;
- (2) benefit basis;

(3) ad valorem basis to obtain a part or percentage of the total tax or to apply to a specific part of the district and benefit basis applied to the other part of percentage of the tax or to the remaining part of the district; or

(4) either ad valorem or benefit basis on designated property or defined areas of the district to pay for improvements, facilities, or service peculiar to the defined part of the district and not generally and directly benefiting the district as a whole.

[Acts 1971, 62nd Leg., p. 351, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.513. Adoption of Plan of Taxation

(a) Except as provided in Section 51.512(b)(4) of this code, before the commission of appraisal is appointed and the construction bonds are sold, the board shall adopt a proposed plan of taxation as provided in Sections 51.502-51.505 of this code.

(b) If the tax plan is not based wholly on the ad valorem basis or on the benefit basis, the order adopting the proposed plan shall specify the portion of the tax to be based on the ad valorem basis and the portion to be based on the benefit basis. The board also shall state the physical and economic reasons, the peculiar diverse local needs, or the comparative potential benefits of different areas of designated property in the district which make it necessary or equitable to levy all or part of the tax on a defined part of the district on the ad valorem or benefit basis.

[Acts 1971, 62nd Leg., p. 351, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.514. Notice of Adoption of Plan and Hearing

(a) After the tax plan is adopted, the board shall publish notice once a week for two consecutive weeks in one or more newspapers with general circulation in the county or counties in which the district is located.

(b) The notice shall state:

- (1) that the tax plan has been adopted;
- (2) that the plan is available for public inspection in the district's office;
- (3) that a hearing on the plan will be held by the board at a specified place and at a particular time, which shall not be less than 15 days nor more than 20 days after the first publication of notice; and
- (4) that all interested persons may appear and support or oppose all or part of the proposed tax plan and offer testimony.

[Acts 1971, 62nd Leg., p. 352, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.515. Order Adopting Tax Plan

(a) After all persons have been heard, the board may approve the proposed tax plan or may change or modify the plan.

(b) The board shall adopt a tax plan which it considers, under the evidence before it, most equitably distributes the tax burden and conserves the public welfare.

(c) The board shall enter its order establishing the tax plan, and the plan shall become the basis for the assessment and collection of taxes until the district adopts a different plan.

(d) The order is not subject to judicial review except on the ground of fraud, palpable error, or arbitrary and confiscatory abuse of discretion.

(e) A new plan may be adopted if required to preserve equity of distribution in the manner provided for adopting the original plan; however, no change may be made in the tax plan which will impair the ability of the district promptly to meet all outstanding obligations of the district within the intent of Sections 51.434 and 51.437 of this code.

[Acts 1971, 62nd Leg., p. 352, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.516. Obtaining Funds to Construct, Administer, Maintain, and Operate Improvements and Facilities in Defined Part of District.

On adoption of the plan of taxation provided in Section 51.512(b)(4) of this code, the district, under the limitations of this subchapter, may apply separately, differentially, equitably, and specifically its taxing power and lien to a defined area or designated property to provide money to construct, administer, maintain, and operate improvements and facilities peculiar to the defined area or the designated property.

[Acts 1971, 62nd Leg., p. 352, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.517. Adoption of Tax Plan for Only Part of District

If a district adopts the tax plan and assumes the powers in Section 51.512(b)(4) of this code, or if required to conserve and protect the public welfare, the district, in the manner provided in Sections 51.518-51.524 of this code, may provide, pay for, maintain, and operate improvements, service, or facilities peculiar to a designated area or defined property which do not affect the whole district.

[Acts 1971, 62nd Leg., p. 352, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.518. Defining Area and Designating Property to be Benefited by Improvements; Adopting Tax Plan

(a) The board shall define the particular area to be taxed by metes and bounds or designate the property to be served, affected, and taxed.

(b) The board shall adopt a plan for improvements in the defined area or to serve the designated property in the manner provided in Sections 51.410-51.411 of this code.

(c) The board shall adopt a plan of taxation to apply to the defined area or designated property which may or may not be in addition to other taxes imposed by the district on the same area or property.

The proportional tax or income contributions of the defined area or designated property and the proportional and equitable interest of the entire district shall be taken into consideration in imposing any tax to an area or piece of property.

[Acts 1971, 62nd Leg., p. 353, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.519. Notice and Hearing**

The board shall give notice and hold a hearing in the same manner and for the same purpose as provided in Sections 51.514–51.515 of this code.

[Acts 1971, 62nd Leg., p. 353, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.520. Board's Order**

At the hearing, if the board decides to define and serve the proposed separate tax area or separate designated property, it shall enter an order in the record, and if the proposal involves the issuance of bonds, the board shall call an election in the whole district.

[Acts 1971, 62nd Leg., p. 353, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.521. Procedure for Election**

(a) The election shall conform to the provisions of this code relating to an election to authorize the issuance of construction bonds.

(b) The board shall submit the appropriate issues to the electors, and the issues may be submitted on the same ballot to be used in another election.

(c) The notice of election shall define the area to be designated and the plan of taxation to be applied.

[Acts 1971, 62nd Leg., p. 353, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.522. Election not Required in Separate Election Precinct**

If proposed improvements are considered to be required to promote the public welfare or if the owners of the land in a defined area file a petition acknowledged as required for deeds requesting the district to provide improvements and assess a tax only in the defined area, it is not necessary to constitute the area a separate election precinct and have a separate election in that area.

[Acts 1971, 62nd Leg., p. 353, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.523. Ballots**

The ballot for an election under this subchapter shall be printed to provide for voting for or against substantially the proposition: "Designation of the area, issuance of bonds, and levy of a tax to retire the bonds."

[Acts 1971, 62nd Leg., p. 353, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.524. Declaring Result and Issuing Order**

If a majority of the electors approve the proposal, the board shall declare the result and, by order, shall establish the area and define it by metes and bounds or designate the specific property and shall fix the tax basis for the area or property. A certified copy of the order shall be recorded in the minutes of the district and shall constitute notice.

[Acts 1971, 62nd Leg., p. 354, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.525. Pledge of Faith and Credit**

If at an election the electors approve the issuance of bonds and the levy of a tax which applies only to a defined area, the district may issue bonds which pledge only the faith and credit based on the property values in the defined area; however, the district may pledge the full faith and credit of the entire district under the condition of authorization in Section 51.529 of this code.

[Acts 1971, 62nd Leg., p. 354, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.526. Election in Separate Election Precinct.**

(a) If the improvements to be provided in a defined area are considered peculiarly for the benefit of that area and not required to conserve the public or general welfare in the district as a whole, and if the proposed improvements in that area will require the imposition of a tax only on the property in the area, the defined area is constituted a separate election precinct in which a separate election shall be held to determine if the improvements will be provided and a separate tax levied.

(b) The election shall be held in the manner provided for issuance of bonds under this subchapter.

(c) If a majority of the electors in the defined area approve the propositions, the district shall provide money when necessary and shall provide the improvements and levy the tax.

(d) At an election in the defined area, each qualified elector of the district who owns property in the defined area may elect to vote in the area and not in the precinct of his residence.

[Acts 1971, 62nd Leg., p. 354, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.527. Issuance of Bonds and Levy of Tax for Defined Area or Designated Property.**

(a) After the order is recorded, the district may issue its bonds to provide the specific plant, works, and facilities included in the plans adopted for the area or to serve the property and shall provide the plant, works, and facilities.

(b) In the appropriate case, the board shall levy, assess, and collect taxes on the property located in the defined area or on the designated property in conformity with the adopted tax plan.

[Acts 1971, 62nd Leg., p. 354, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.528. Contract to Provide Improvements, Facilities, and Services to Designated Property or Area**

(a) Property or areas inside or outside the district may, by contract, be designated to obtain improvements, facilities, or service for the designated area or property.

(b) The designation shall be based on a written petition in conformity with the laws authorizing contracts by a petitioner or person owning, controlling, or governing the property or area to be designated.

(c) The board may make the designation in a contract to provide, administer, maintain, and oper-

ate the desired improvements, facilities, or service for the designated area or property, and the designated area or property shall be subject to being made the basis of the bonds and may be subject to a tax lien in amount to retire the obligations incurred by the district to provide the facilities, improvements, or service and to cover the expenses necessary to administer, maintain, and operate the improvements and facilities under the contract.

(d) The contract may not violate the law of this state or the United States and may not result in impairing a vested right or causing the district to fail to serve fully and permanently water demands in the district in the order of preference of uses.

(e) The contract may provide that one governing body may establish the contractual and statutory tax lien in behalf of the district and may levy, assess and collect the tax for and on behalf of the district.

(f) The district may not issue bonds pledging the full faith and credit of the district under this section or under Section 51.517 of this code without submitting the proposition to the electors of the whole district under the provisions of this subchapter or under the provisions authorizing the issuance of construction bonds.

[Acts 1971, 62nd Leg., p. 354, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.529. Authority of District

(a) If a majority of the electors in the whole district approve the proposal, the district may issue its bonds to provide the plant, improvements, and facilities peculiar to the defined area or designated property or peculiar to a contract for service and may pledge the full faith and credit of the district to pay for the bonds.

(b) The district shall have a lien on the property in the defined area or on the designated property and may levy, assess, and collect or have levied, assessed, and collected taxes in the area or on the property to protect the district from or to compensate any liability incurred on behalf of the defined area or designated property.

[Acts 1971, 62nd Leg., p. 355, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.530. Administrative Authority of Board

The board shall administer all business incident to the creation and operation of a defined area or service to designated property unless otherwise provided by contract.

[Acts 1971, 62nd Leg., p. 355, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.531. Master District; Taxing Authority

A master district may levy and collect taxes, equitably distributed, which shall be in addition to other taxes which may be levied by the several districts constituting the master district.

[Acts 1971, 62nd Leg., p. 355, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.532. Taxes in Districts Consisting of a City, Town or Municipal Corporation

If a city, town, or municipal corporation is constituted a district operating under this chapter, taxes

levied in the district may be assessed and collected in the manner provided in Sections 51.533–51.538 of this code.

[Acts 1971, 62nd Leg., p. 355, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.533. Order Fixing Rate of Taxation

(a) The board shall issue an order fixing the rate of taxation and levying a tax. The order shall be signed by the president and secretary of the district, and the district seal shall be attached.

(b) The board shall enter the order in their minutes and file a copy of the order with the secretary of the city, town, or municipal corporation.

(c) The secretary of the city, town, or municipal corporation shall record the order in a book kept in his office for that purpose and shall make and deliver a copy of the order to the assessor and collector of the city, town, or municipal corporation.

[Acts 1971, 62nd Leg., p. 356, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.534. Laws Governing the Assessment and Collection of Taxes

(a) A tax levy ordered under Section 51.532 of this code shall be entered on the tax rolls and shall be assessed and collected in the same manner as other municipal taxes.

(b) The collection of the tax shall be governed by the provisions of law governing the collection of taxes in the city, town, or municipal corporation.

(c) Officers of the city, town, or municipal corporation have the same duties in the collection of taxes as provided for the collection and accounting for municipal taxes.

[Acts 1971, 62nd Leg., p. 356, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.535. Provisions of Chapter Inapplicable to District

If taxes are levied, assessed, and collected under Sections 51.533–51.538 of this code, the provisions of this chapter relating to assessment and collection of taxes do not apply to the district and it is not necessary for the district to appoint an assessor and collector.

[Acts 1971, 62nd Leg., p. 356, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.536. Compensation of City Assessor and Collector

The board shall pay to the city assessor and collector and other city officers reasonable compensation for the services performed by them for the district. The amount of compensation shall be fixed in advance of the performance of the duties.

[Acts 1971, 62nd Leg., p. 356, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.537. Assessor and Collector's Report

The assessor and collector shall make a report of collected taxes to the district depository on the last day of each month and shall deposit the collected taxes in the depository. A copy of the report shall be filed in the office of the board.

[Acts 1971, 62nd Leg., p. 356, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.538. Election Required**

Taxes levied, bonds issued, and indebtedness incurred by a district operating under Sections 51.533-51.538 of this code are subject to the provisions of the constitution and this chapter which require an election to authorize tax levies, bonds, and indebtedness.

[Acts 1971, 62nd Leg., p. 356, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.539 to 51.560 reserved for expansion]

SUBCHAPTER M. TAXATION ON THE  
AD VALOREM BASIS

**§ 51.561. Assessment of District Property**

The assessor and collector shall assess all taxable property in the district.

[Acts 1971, 62nd Leg., p. 357, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.562. Law Governing Property Subject to Taxation**

The property subject to taxation in the district shall be determined by and governed by the law relating to taxation for state and county purposes and these laws shall apply unless otherwise provided.

[Acts 1971, 62nd Leg., p. 357, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.563. Rendition of Property**

(a) The assessor and collector shall compile a record of all taxpayers and those subject to tax in the district and all taxable property and the name and post-office address of the owners.

(b) On or before the first day of April of each year, the assessor and collector shall furnish to each taxpayer and to each owner of taxable property in the district a blank form for the rendition of property for taxation. The form may be delivered or mailed to the owner.

(c) Failure to receive the form furnished by the assessor and collector shall not excuse anyone from the duty of making and filing a statement and rendition. Any property owner failing to receive the form shall call at the office of the district for it.

(d) Each owner of taxable property in the district shall file in the office of the assessor and collector a full, accurate, and complete statement under oath of all property owned by him in the district which is subject to taxation.

(e) The statement shall include the true value of all property listed and owned by the party rendering it. In rendering land improvements and all other property, the statement shall show both the market value and the real value.

(f) The statement shall be filed on or before March 31 of each year.

[Acts 1971, 62nd Leg., p. 357, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.564. Failure or Refusal to File Rendition**

A person who fails or refuses to file, under oath, a true, full, and complete statement and rendition of

all property owned by him which is subject to district taxation shall be precluded from making an objection, protest, or contest against the assessment made against him by the district.

[Acts 1971, 62nd Leg., p. 357, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.565. Property Owner's Oath**

(a) The statement and rendition shall have attached to it substantially the following oath:

"I \_\_\_\_\_, on my oath, state that the foregoing statement and rendition is a true, full, and complete statement of all property owned by me, for whom this rendition is made or by whom this rendition is made, subject to taxation in the district. I have correctly stated the description, location, and value thereof and of each item thereof."

(b) The statement and oath shall be signed and made before an officer authorized by law to take oaths and acknowledgments.

(c) The officer taking the oath shall place on the oath his certificate substantially as follows: "Subscribed and sworn to by \_\_\_\_\_ before me this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_." The officer also shall attach his official seal and signature.

[Acts 1971, 62nd Leg., p. 357, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.566. Agent May File Rendition Statement**

The statement and rendition may be filed by any authorized agent of the owner of any property, but the agent shall state in the statement and rendition that he is filing as an agent.

[Acts 1971, 62nd Leg., p. 358, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.567. Verification of Rendition; Rendition of Property Not Already Rendered**

(a) The assessor and collector shall check, investigate, and verify each rendition of property and shall note on the rendition in writing his report. He shall include in the report any property omitted from the rendition with his estimate of the value of all the property not rendered at its full value or if the property is rendered at more than its full value.

(b) The assessor and collector shall make and file a rendition of all property in the district which is not rendered for taxation and shall file the rendition before June 1 of each year or as soon after that time as possible.

(c) In making the rendition of unrendered property, the assessor and collector shall include all property which is not rendered by the owner or his agent, and if the owner is unknown, the property shall be listed as being owned by "owner unknown."

(d) Property whose owner is unknown shall be taxed and taxes collected even though the owner is unknown and may be assessed against a person who is not the owner.

[Acts 1971, 62nd Leg., p. 358, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.568. Rendition of Property at a Later Date**

On creation of the district, if it becomes necessary to have property rendered for taxation at a later

date than provided for regular assessment, the board shall fix the time for the rendition to be made and the other necessary functions connected with it. After the first year, the assessments shall be made as provided in this subchapter.

[Acts 1971, 62nd Leg., p. 358, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.569. Authority to Administer Oaths

The assessor and collector may administer oaths to fully carry out his duties and the assessment of property for taxation.

[Acts 1971, 62nd Leg., p. 358, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.570. Laws and Penal Statutes Applicable to Rendition of Property

The laws and penal statutes of this state providing for rendition of property for state and county purposes and providing penalties for making false oaths and for failing to render property shall apply to rendition of property by a district except as otherwise provided.

[Acts 1971, 62nd Leg., p. 358, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.571. Appointment of Board of Equalization

(a) The board, at their first meeting or as soon after that time as practicable and each following year, shall appoint three commissioners to the board of equalization.

(b) Each person appointed to the board of equalization shall be a qualified property taxpaying elector of the district.

[Acts 1971, 62nd Leg., p. 359, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.572. First Meeting of Board of Equalization

(a) At the same meeting at which the first board of equalization is appointed, the board shall fix a time for the meeting.

(b) The board of equalization shall convene at the time designated by the board to receive all assessment lists or books of the assessor and collector for examination, correction, equalization, appraisal, and approval.

[Acts 1971, 62nd Leg., p. 359, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.573. Oath of Board of Equalization

(a) Before the board of equalization begins to perform its duties, each commissioner shall take and subscribe the following oath:

"I do solemnly swear (or affirm) that I will, to the best of my ability, make a full and complete examination, correction, equalization, and appraisal of all property contained in the district as shown by the assessment lists or books of the assessor and collector for the district and add all property not included of which I have knowledge."

(b) The oath shall be recorded in the minutes and shall be kept by the secretary of the board.

[Acts 1971, 62nd Leg., p. 359, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.574. Compensation of Board of Equalization

Members of the board of equalization shall receive the compensation fixed by the board.

[Acts 1971, 62nd Leg., p. 359, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.575. Secretary of Board of Equalization

The secretary of the board shall act as secretary of the board of equalization at all meetings and shall keep a permanent record of all the proceedings of the board of equalization.

[Acts 1971, 62nd Leg., p. 359, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.576. Annual Meeting Date of Board of Equalization

The board of equalization shall convene on the first Monday in June of each year and shall complete its work by September 1 or as soon after that time as possible.

[Acts 1971, 62nd Leg., p. 359, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.577. Powers and Duties of Board of Equalization

(a) At the time the board of equalization convenes, the assessor and collector shall bring to the meeting all assessment lists and books for examination so that the board of equalization may see whether or not each person has rendered his property at its full value.

(b) The board of equalization may send for persons and papers, administer oaths to persons who testify, and ascertain the value of all property subject to taxation.

(c) The board of equalization may raise or lower the valuation of any of the property, may correct any and all errors of assessments and renditions, and may add any unrendered property to the tax rolls.

(d) The board of equalization shall equalize as nearly as possible the value of all property rendered for taxation and fix the value of it for taxation.

[Acts 1971, 62nd Leg., p. 359, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.578. Complaints Filed with Board of Equalization

Any person may file with the board of equalization a complaint relating to the rendition and assessment of his own property or to any other property and the board of equalization shall consider all complaints.

[Acts 1971, 62nd Leg., p. 360, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.579. Lists of Persons and Property Not on Tax Rolls Submitted to Board of Equalization

(a) Anyone may file with the board of equalization lists of property which is omitted from the tax rolls, and the board of equalization shall add to the tax rolls any property which has been omitted from them.

(b) The assessor and collector shall file with the board of equalization a list of all persons who fail or refuse to render their property.

[Acts 1971, 62nd Leg., p. 360, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.580. Hearing**

After the board of equalization has passed on the renditions, it shall fix a date to hear protests from persons whose renditions have been raised.

[Acts 1971, 62nd Leg., p. 360, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.581. Notice of Hearing**

At least 10 days before the hearing, the secretary shall mail written notice of the time and place of the hearing to all persons whose assessments have been raised. Failure to give the notice does not relieve the owner of the property of his duty to take notice of the hearing and to attend.

[Acts 1971, 62nd Leg., p. 360, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.582. Hearing Procedure**

At the hearing, the board of equalization shall hear and consider all complaints and protests, reconsider the valuation of all property whose valuation is raised by them, and finally fix the valuation on all property.

[Acts 1971, 62nd Leg., p. 360, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.583. Final Approval of Tax Rolls**

(a) After the assessor and collector makes his final tax rolls, the board of equalization shall meet and consider the tax rolls and make necessary corrections and endorse their approval on the rolls.

(b) The action of the board of equalization in approving the tax rolls is final and is not subject to revision by the board of equalization or any other tribunal.

[Acts 1971, 62nd Leg., p. 360, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.584. Preservation of Official Documents**

(a) The assessor and collector shall prepare the tax rolls in duplicate and one copy shall be retained in his office, and one copy shall be filed in the district office.

(b) The minutes of the board of equalization, renditions, protests, and other papers filed in connection with the rendition of property and preparation of the tax rolls shall be preserved as official records in the district office.

[Acts 1971, 62nd Leg., p. 360, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.585. Permanent Finance Ledger**

(a) The board shall provide a permanent finance ledger in which the assessor and collector shall be charged with the total assessment of property shown on the tax rolls.

(b) Credit shall be entered in the permanent finance ledger of all collections paid to the depository.

(c) The permanent finance ledger and the books and accounts of the assessor and collector shall be audited by the board semiannually on January 1 and July 1 of each year and at any other times ordered by the board.

[Acts 1971, 62nd Leg., p. 361, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.586. Date Taxes Are Due**

All taxes are due and payable on October 1 of each year and shall be paid on or before January 31 of the following year.

[Acts 1971, 62nd Leg., p. 361, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.587. Delinquent Taxes**

(a) All taxes which are not paid by January 31 become delinquent on February 1 of each year and shall be and remain a lien on the property for which they were assessed although the owner is unknown, the property is listed under the name of a person who is not the owner, or the ownership has changed.

(b) The property may be sold under a judgment of a court for all taxes, interest, penalty, and costs assessed against the property at any time after taxes become delinquent.

(c) The district may file suit to collect the delinquent taxes, and if the owner of the property is unknown, the suit may be filed against the unknown owner and the property sold under judgment of the court.

(d) Taxes are not barred by any statute of limitation, and no law providing for a period of limitation as to debts or actions shall apply to these taxes.

[Acts 1971, 62nd Leg., p. 361, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.588. Interest and Penalty on Delinquent Taxes**

All delinquent taxes shall have a penalty of 10 percent of their amount added to them, which shall accrue at the time the taxes become delinquent. The delinquent taxes also shall bear interest at the rate of six percent a year from the date on which they become delinquent.

[Acts 1971, 62nd Leg., p. 361, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.589. Preparing and Filing Delinquent Tax Roll**

The assessor and collector shall prepare and file with the board a delinquent tax roll on or before April 1 of each year. The delinquent tax roll shall show all charges on the tax rolls which have not been paid.

[Acts 1971, 62nd Leg., p. 361, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.590. Notice of Delinquent Tax List**

(a) The board shall publish the delinquent tax list once a week for two weeks in a newspaper published in the county in which the district or part of the district is located. If no newspaper is published in the district, the notice shall be published in a newspaper outside the district.

(b) The delinquent tax list shall include:

- (1) the name of the owner;
- (2) a description of the property; and
- (3) the total amount of taxes due.

(c) The newspaper which publishes the notice shall be paid a reasonable fee fixed by agreement; however, the fee shall not be more than 20 cents for each

rendition or tract of land using not more than three lines single column.

(d) The publisher of the newspaper which publishes the notice shall file in the district office a copy of each issue of the newspaper containing the notice with an affidavit of publication attached.

(e) The notice provided in this section is intended to be for the information of all taxpayers and shall not be held to be requisite to filing a suit for the collection of taxes. The suit may be filed without publishing notice.

[Acts 1971, 62nd Leg., p. 361, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.591. Attorney to File Suits to Collect Delinquent Taxes**

(a) The board shall on or before April 1 of each year employ an attorney to file suits to collect all delinquent taxes.

(b) The attorney is entitled to receive a fee of 10 percent of the amount of all delinquent taxes collected or paid after suits are filed. The fees shall be charged as court costs.

[Acts 1971, 62nd Leg., p. 362, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.592. Delinquent Tax Suit**

(a) A delinquent tax suit shall be filed as any other civil suit.

(b) If the owner of the property against which delinquent taxes are owed is unknown, the suit may be filed against the unknown owner and citation published in the manner provided for state and county taxes.

(c) All tax suits shall be for the collection of the amount due and foreclosure of the lien on the property against which the delinquent taxes are assessed.

(d) Costs of the suit shall be taxed in the order of sale.

[Acts 1971, 62nd Leg., p. 362, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.593. Sale of Property to Pay Delinquent Taxes**

(a) Property on which delinquent taxes are owed shall be sold under order of sale.

(b) If more property is covered by the lien fixed by the judgment than is necessary to secure the amount due, the property may be divided and sold in parcels as necessary to collect the amount due.

(c) The officer executing the order of sale shall make deeds to the purchaser which shall be held to vest a good and perfect title in the purchaser, subject to contest only for fraud.

[Acts 1971, 62nd Leg., p. 362, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.594. Redemption of Property on Which Delinquent Taxes Are Owed**

A person may redeem property on which delinquent taxes are owed at any time before the date of sale under a judgment by paying the taxes and all penalties, interest, attorney's fees, and court costs which have accrued.

[Acts 1971, 62nd Leg., p. 362, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.595. Authorizing Taxes to be Assessed and Collected by Assessor and Collector of County or City**

(a) A majority of the board may adopt a resolution to have the district's taxes assessed and collected by the county assessor and collector or by the city assessor and collector of an incorporated city or town inside the boundaries of the district.

(b) The taxes shall be assessed and collected by the county or city assessor and collector in the manner provided by the board and turned over to the treasurer of the district.

[Acts 1971, 62nd Leg., p. 362, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.596. Compensation of County or City Assessor and Collector**

If the county or city assessor and collector is required to assess and collect the taxes of the district, he is entitled to receive one percent of the total taxes shown on the completed roll for assessing the taxes and one percent for collecting the taxes. The compensation for collection of delinquent taxes shall be five percent of the amount collected.

[Acts 1971, 62nd Leg., p. 363, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.597. Alternate Method for Assessment, Equalization, and Collection of Taxes**

Instead of having taxes assessed, equalized, and collected as provided in Sections 51.561-51.596 of this code, the board may enter into a contract for this service with the commissioners court of each county in which taxable property of the district is located.

[Acts 1971, 62nd Leg., p. 363, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.598. Consideration and Costs under Contract**

(a) The consideration for services rendered under a contract entered into under Section 51.597 of this code shall be computed as fees of office of the county officers rendering the services under the contract.

(b) The service charge to be paid by the district under the contract may not be more than the reasonable cost which would be added to the county's cost for assessing and collecting taxes if there were no contract.

(c) If the service may be accomplished by an extension of an ad valorem tax levy by the district on the rolls to be used for state and county taxes, the cost shall not be more than \$1,800 a year for the assessment and equalization of taxes and shall not be more than \$1,500 a year for the collection of and accounting for the taxes, together with other acts which are lawful duties incident to collecting delinquent taxes.

[Acts 1971, 62nd Leg., p. 363, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.599. County Assessor and Collector's Bond**

(a) The county assessor and collector shall be considered the assessor and collector of the district, and he may be required by the district to execute a

surety company bond payable to the district. The premium on the bond shall be paid by the district.

(b) In the absence of a separate bond, the official bond of the county assessor and collector shall inure ratably to the benefit of the district.

[Acts 1971, 62nd Leg., p. 363, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.600. Tax Assessment and Collection Procedure under Contract**

(a) On entering into a contract under Section 51.597 of this code, the county assessor and collector shall perform for the contracting district the same duties which he is required by law to perform in assessing and collecting state and county taxes.

(b) Before the district requires service under the contract, it shall levy an ad valorem tax or fix the specific assessment of benefits or tax per acre for each year for which service is to be rendered under the contract.

(c) Within the time which will not delay the preparation of the county's tax rolls, the district shall deliver to the county tax assessor and collector a certificate showing the rate or amount of the district's tax levy or specific assessment for the current taxing year.

(d) The county assessor and collector shall pay to the district or the district depository all money collected by him for the district during any calendar month and shall furnish to the district on or before the fifteenth day of the next succeeding month an itemized statement of the collections made in the previous month, unless the contract provides for more frequent accounting.

(e) The district shall keep a finance ledger in which the full amount of the completed tax rolls shall be charged to the county assessor and collector and the amount of taxes collected and paid over to the district shall be entered.

[Acts 1971, 62nd Leg., p. 364, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.601. Audit**

(a) The district under the contract may elect to require the county auditor to audit annually the collections and accounts of the county assessor and collector and furnish the district with a report of his finding.

(b) The district shall pay to the county the actual cost of the audit, not to exceed \$500.

[Acts 1971, 62nd Leg., p. 364, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.602 to 51.630 reserved for expansion]

**SUBCHAPTER N. TAXATION ON THE BENEFIT BASIS**

**§ 51.631. Method of Taxation for District under Contract with United States**

A district which is operated under contract with the United States may adopt the plan to levy and collect taxes on the benefit basis instead of the ad

valorem basis and determine taxes under the provisions of Sections 51.632-51.634 of this code.

[Acts 1971, 62nd Leg., p. 364, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.632. Assessment Record**

When necessary, the board shall apportion and assess the benefits conferred on property in the district and shall make a record showing the amount and value of benefits to accrue on property in the district and the amount of taxes to be levied and collected on the property. No taxes assessed or adjudged against the property may be more than the benefit which accrues to the property from the organization, operation, and maintenance of the district and its improvements.

[Acts 1971, 62nd Leg., p. 364, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.633. Notice of Taxes**

After the board makes the record, it shall mail to each property owner whose name appears in the record notice of the amount of taxes levied on his property and the date and place at which the property owner may appear and contest the correctness and equitableness of the tax.

[Acts 1971, 62nd Leg., p. 364, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.634. Decision After Hearing**

After the hearing, the board shall determine whether or not the tax is equitable and shall sustain, reduce, or increase the tax to an amount which in the board's judgment is equitable. The decision of the board is final.

[Acts 1971, 62nd Leg., p. 365, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.635. Method of Taxation for District not under Contract with the United States**

If a district which is not operating under contract with the United States adopts the benefit basis plan for taxation, the levy, assessment, equalization of property values, and collection of taxes shall be made in the manner provided in Sections 51.636-51.648 of this code.

[Acts 1971, 62nd Leg., p. 365, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.636. Commissioners of Appraisement**

As soon as practicable after the approval of the engineer's report and the adoption of the plan for improvements to be constructed, the board shall appoint three disinterested commissioners of appraisal. The commissioners shall be freeholders but not owners of land within the district which they represent.

[Acts 1971, 62nd Leg., p. 365, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.637. Compensation of Commissioners**

On approval by the board, each commissioner is entitled to receive \$10 a day for each day he actually serves, plus all necessary expenses.

[Acts 1971, 62nd Leg., p. 365, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.638. Notice of Appointment and Meeting**

Immediately after the commissioners of appraisal are appointed, the secretary of the board shall give written notice to each appointee of his appointment and of the time and place of the first meeting of the commissioners.

[Acts 1971, 62nd Leg., p. 365, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.639. First Meeting of Commissioners**

(a) The commissioners shall meet at the time specified in the notice from the secretary or as soon after that time as possible.

(b) At the meeting the commissioners shall take and subscribe an oath to discharge faithfully and impartially their duties as commissioners and make a true report of the work which they perform. They shall then organize by electing one commissioner as chairman and one commissioner as vice chairman.

(c) The secretary of the board or, in his absence, a person appointed by the board shall serve as secretary to the commissioners of appraisal and shall furnish to the commissioners any information and assistance which is necessary for the commissioners to perform their duties.

[Acts 1971, 62nd Leg., p. 365, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.640. Assistance for Commissioners**

Within 30 days after the commissioners qualify and organize, they shall begin to perform their duties, and in the exercise of their duties they may obtain legal advice and information relative to their duties from the district's attorney and, if necessary, may require the presence of the district engineer or one of his assistants at any time and for as long as necessary to properly perform their duties.

[Acts 1971, 62nd Leg., p. 365, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.641. Viewing Land and Other Property and Improvements in District**

The commissioners shall view the land in the district which will be affected by the district's reclamation plans and the public roads, railroads, rights-of-way, and other property and improvements located in the district and shall assess the amount of the benefits and damages that will accrue to the land, roads, railroads, rights-of-way or other property or improvements in the district from the construction of the improvements.

[Acts 1971, 62nd Leg., p. 366, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.642. Commissioners Report**

(a) The commissioners shall prepare a report and file it with the secretary of the board. The report shall be signed by at least a majority of the commissioners.

(b) The report shall include:

- (1) the name of the owner of each tract of land which is subject to assessment;
- (2) a description of the property;
- (3) the amount of the benefits or damages assessed on each tract of land;

(4) the time and place at which a hearing will be held on the report to hear objections; and

(5) the number of days each commissioner served and the actual expenses incurred during his service as commissioner.

(c) The day set in the report for the hearing may not be later than 20 days after the report is filed.  
[Acts 1971, 62nd Leg., p. 366, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.643. Notice of Hearing**

(a) After the commissioners' report is filed, the secretary of the board shall publish notice of the hearing on the report at least once a week for two consecutive weeks in a newspaper published in each county in which part of the district is located. The secretary shall mail written notice of the hearing to each person whose property will be affected if his address is known.

(b) The notice shall state:

- (1) the time and place of the hearing;
- (2) that the commissioners' report has been filed;
- (3) that interested persons may examine the report and make objections to it; and
- (4) that the commissioners will meet at the time and place indicated to hear and act on objections to the report.

(c) On the day of the hearing, the secretary shall file in his office the original notice and his affidavit stating the manner of publication, the names of persons to whom notice was mailed, and the names of persons to whom notice was not mailed because the secretary by reasonable diligence could not ascertain their addresses. Copies of the notice and affidavit also shall be filed with the commissioners of appraisal and the clerk of the commissioners court.

[Acts 1971, 62nd Leg., p. 366, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.644. Hearing**

(a) At or before the hearing on the commissioners' report, an owner of land that is affected by the report or the reclamation plans may file exceptions to all or part of the report.

(b) At the hearing, the commissioners shall hear and make determinations on the objections submitted and may make necessary changes and modifications in the report for objections which are sustained.

[Acts 1971, 62nd Leg., p. 367, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.645. Witnesses at the Hearing**

At the hearing, interested parties may appear in person or by attorney and are entitled, on demand, to have the chairman of the commissioners of appraisal issue process for witnesses. The commissioners shall have the same power as a court of record to enforce the attendance of witnesses.

[Acts 1971, 62nd Leg., p. 367, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.646. Costs of Hearing**

The commissioners may adjudge and apportion the costs of the hearing in any manner they consider equitable.

[Acts 1971, 62nd Leg., p. 367, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.647. Commissioners' Decree**

(a) After the commissioners have made a final decision, they shall issue a decree confirming their report insofar as it remains unchanged and shall approve and confirm changes in the report.

(b) The final decree and judgment of the commissioners shall be entered in the minutes of the board, and certified copies shall be filed as a permanent record with the county clerk of each county in which part of the district is located and shall be notice to all persons of the contents and purpose of the decree.

(c) The findings of the commissioners which relate to benefits and damages to land and other property in the district are final and conclusive.

[Acts 1971, 62nd Leg., p. 367, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.648. Effect of Final Judgment and Decree**

The final judgment and decree of the commissioners shall form the basis for all taxation in the district. Taxes shall be apportioned and levied on each tract of land and other real property in the district in proportion to the net benefits to the land or other property stated in the final judgment and decree.

[Acts 1971, 62nd Leg., p. 367, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.649. Fixing Tax as Equal Sum on Each Acre**

At the election at which the plan of taxation is determined or at any other time before the bonds are issued, the voters of any district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, may vote on the proposition of whether or not benefits for tax purposes shall be fixed as an equal sum on each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. The benefit per acre shall be voted on as it is applied to land in the district that can be irrigated by gravity flow from the irrigation system and also the benefit to land in the district that cannot be irrigated by gravity flow.

[Acts 1971, 62nd Leg., p. 367, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.650. Election**

(a) If the board desires to submit the question of whether or not to adopt the method of assessing benefits provided in Section 51.649 of this code, it shall order an election to be held in the district and shall submit the proposition in the manner provided for other district elections.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "Uniform assessment of benefits of \$\_\_\_\_\_ per acre on all irrigable land in the district, and the assessment of \$\_\_\_\_\_ per acre on all nonirrigable land in the district."

(c) The board shall determine the amounts to fill the spaces in the proposition. The amount of charge per acre may be found by dividing the number of acres of land into the amount of debt to be incurred by the district in providing for irrigation.

(d) If a majority of the persons voting in the election vote in favor of the proposition, it shall be adopted.

[Acts 1971, 62nd Leg., p. 368, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.651. Excluding Nonirrigable Land From District**

If the owner of land which is classed nonirrigable under the uniform acreage valuation objects to the amount of charges fixed against him by the order calling the election or by the result of the election, he may have his nonirrigable land excluded from the district by filing an application for exclusion as provided by law within 10 days after the election is held.

[Acts 1971, 62nd Leg., p. 368, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.652. Setting Annual Value of Land Unnecessary**

If the district adopts the uniform acreage valuation for taxation, the valuation shall be applied to all land, and it is not necessary for the assessor and collector or the board of equalization to annually fix the value of the land or equalize the values. It is also unnecessary for the board to appoint a commission to ascertain or fix the value of the improvement to particular land.

[Acts 1971, 62nd Leg., p. 368, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.653. Preparing Tax Rolls**

(a) The board of equalization shall examine the renditions and tax rolls to determine if all property subject to taxation appears on the tax rolls under the proper classification. The board of equalization shall add to the tax roll any property which was left off or was not rendered for taxation and shall examine, correct, and certify the tax roll.

(b) Any property owner may protest to the board of equalization that his property has not been properly classified. The board of equalization shall consider the protest and enter its findings in the minutes in the manner provided by law.

[Acts 1971, 62nd Leg., p. 368, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.654. Rendition of Property**

Land which is taxed on the uniform acreage valuation shall be rendered for taxation as either subject to irrigation or not subject to irrigation. When land is rendered, the value need not be stated, and it is unnecessary for the person rendering the property to include the value of the land in an affidavit or for the assessor and collector to set a value on the land.

[Acts 1971, 62nd Leg., p. 368, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.655. Law Governing Administration of Benefit Tax Plan**

The rate of taxation, the collection of taxes, the assessment of property, and the rendition of property for taxation shall be governed by the law relating to ad valorem taxes.

[Acts 1971, 62nd Leg., p. 369, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.656. Irrigating Nonirrigable Land**

If land which is classed as nonirrigable is later irrigated by the district, before the owner of the land receives the water, he shall pay to the district an amount equal to the entire amount that would have been charged to the owner if the land had been originally classed as irrigable.

[Acts 1971, 62nd Leg., p. 369, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.657. Taxation in District Constructing Levees or Drainage Systems**

(a) A district created to construct levees or works and plants to protect from overflow or created to construct drainage systems may adopt the plan of assessing benefits at an equal sum on each acre of land in the district in the manner provided in Sections 51.650–51.656 of this code.

(b) The proposition included in the election order shall be printed to provide for voting for or against: "Uniform assessment of benefits for \_\_\_\_\_ purposes."

[Acts 1971, 62nd Leg., p. 369, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.658 to 51.690 reserved for expansion]

**SUBCHAPTER O. ADDING AND EXCLUDING TERRITORY AND CONSOLIDATING DISTRICTS**

**§ 51.691. Excluding Land From District**

After a district is organized, preliminary surveys are completed, and plans adopted by the district for the construction of a plant and improvements, and before the board calls an election for the authorization of construction bonds, the board must exclude land or other property from the district under the provisions of Sections 51.692–51.701 of this code, if the exclusions are practicable, just, or desirable.

[Acts 1971, 62nd Leg., p. 369, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.692. Hearing to Announce Proposed Exclusions and to Receive Petitions**

Before the election to authorize construction bonds, the board shall give notice of a time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to receive petitions for exclusion of land or other property.

[Acts 1971, 62nd Leg., p. 369, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.693. Notice of Hearing**

(a) The board shall publish notice of the hearing once a week for two consecutive weeks in one or

more newspapers with general circulation in the district. The first publication shall appear at least 15 days and not more than 40 days before the day of the hearing.

(b) The notice shall advise all interested property owners of their right to present petitions for exclusions and to offer evidence in support of the petitions and their right to contest any proposed exclusion based on either a petition or the board's own conclusions and to offer evidence in support of the contest.

[Acts 1971, 62nd Leg., p. 369, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.694. Petition**

(a) A petition for exclusion of land must accurately describe by metes and bounds the land to be excluded. A petition for exclusion of other property must describe the property to be excluded for identification.

(b) A petition for exclusion shall be filed with the district at least 10 days before the hearing and shall state clearly the particular grounds on which the exclusion is sought. Only the stated grounds shall be considered.

[Acts 1971, 62nd Leg., p. 370, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.695. Grounds for Exclusion**

Exclusions from the district may be made on the grounds that:

(1) to retain certain land or other property within the district's taxing power would be arbitrary, would be unnecessary to conserve the public welfare, would impair or destroy the value of the property desired to be excluded, and would constitute the arbitrary imposition of a confiscatory burden;

(2) to retain any given land or other property in the district and to extend to it, either presently or in the future, the benefits, service, or protection of the district's facilities would create an undue and uneconomical burden on the remainder of the district; or

(3) the land desired to be excluded cannot be bettered as to conditions of living and health, or served with water, or protected from flood, or drained, or freed from interruption of traffic caused by excess of water on the roads, highways, or other means of transportation serving the land, or otherwise benefited by the district's proposed improvements.

[Acts 1971, 62nd Leg., p.370, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.696. Hearing Procedure**

The board may adjourn the hearing from one day to another and until all persons desiring to be heard are heard. The board immediately shall specifically describe all property which it proposes to exclude on its own motion and shall hear first any protests and evidence against exclusions proposed on the board's own motion.

[Acts 1971, 62nd Leg., p. 370, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.697. Order Excluding Land**

After considering all engineering data and other evidence presented to it, the board shall determine whether the facts disclose the affirmative of the propositions stated in Subdivision (1) or (2) or, if appropriate, in Subdivision (3) of Section 51.695 of this code. If the affirmative exists, the board shall enter an order excluding all land or other property falling within the conditions defined by the respective subdivisions and shall redefine the boundaries of the district in the order to embrace all land not excluded.

[Acts 1971, 62nd Leg., p. 370, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.698. Suit to Review, Etc.**

Any person owning an interest in land affected by the order may file a petition within 20 days after the effective date of the order to review, set aside, modify, or suspend the order.

[Acts 1971, 62nd Leg., p. 371, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.699. Venue of Suit**

The venue in any action shall be in any district court which has jurisdiction in the county in which the district is located. If the district includes land in more than one county, the venue shall be in the district court having jurisdiction in the county in which the major portion of the acreage of the land sought to be excluded from the district is located.

[Acts 1971, 62nd Leg., p. 371, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.700. Trial Procedure**

(a) A suit to review, modify, suspend, or set aside the order of the board shall be a trial de novo as that term is understood in an appeal from a justice of the peace court to a county court. The trial shall be strictly de novo with no presumption of validity or reasonableness or presumption of any character in favor of the order.

(b) The decision shall be made on a preponderance of the evidence and facts found in the trial as in other civil cases, independently of any action taken by the board.

(c) The procedure for the trial and the determination of the orders and judgments to be entered shall be governed solely by the rules of law, evidence, and procedure of the state courts according to the constitution, statutes, and rules of procedure for the trial of civil actions.

(d) The so-called "substantial evidence" rule enunciated by the courts for orders of other administrative or quasi-judicial agencies shall not apply in the trial.

[Acts 1971, 62nd Leg., p. 371, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.701. Appeal**

A person may appeal from the judgment or order of a district court in a suit brought under the provisions of Sections 51.698-51.700 to the court of civil appeals and supreme court as in other civil cases in which the district court has original jurisdic-

tion. The appeal is subject to the statutes and rules of practice and procedure in civil cases.

[Acts 1971, 62nd Leg., p. 371, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.702. Exclusion of Nonagricultural and Nonirrigable Land From the District**

After the district is organized, acquires facilities with which to function as an irrigation district, and votes, issues, and sells bonds for the purposes for which the district was organized, land within the district subject to taxation which is not agricultural land or cannot be irrigated in a practicable manner may be excluded from the district by complying with the provisions of Sections 51.703-51.713 of this code.

[Acts 1971, 62nd Leg., p. 371, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.703. Prerequisite to Application for Exclusion**

The owner of land in the district which is not agricultural land or cannot be irrigated in a practicable manner may apply for its exclusion from the district if all taxes levied and assessed by the district on the land to be excluded have been fully paid, including all bond tax and flat water rate assessment.

[Acts 1971, 62nd Leg., p. 371, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.704. Substituting Land of Equal Acreage and Value**

Land which can be irrigated in a practicable manner of at least equal acreage and equal value to the land being excluded must be added to the district simultaneously with the exclusion of the nonagricultural or nonirrigable land.

[Acts 1971, 62nd Leg., p. 372, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.705. Securing Application to Substitute Land**

The board may require an owner of land in the district who has applied for the exclusion of his nonagricultural or nonirrigable land from the district to procure an application of the owner of land adjoining the boundaries or the canals of the district, and capable of being irrigated in a practicable manner from the facilities of the district, for inclusion in the district of his land in an amount and value at least equal to the land which is to be excluded under the application of the owner of nonagricultural or nonirrigable land. Each application shall set forth the facts concerning the land to be excluded from and the land to be added to the district, including evidence of their reasonable market value.

[Acts 1971, 62nd Leg., p. 372, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.706. Application of Owner of New Land to be Substituted**

The owner of the new land to be added shall submit an application setting forth that the owner of the new land assumes the payment of all taxes to be levied on his land by the district after the date the land is added to the district. The application also shall set forth an agreement by the owner of the new land that the land will be subject to future taxes for bond tax and flat rate and all other

assessments levied and assessed by the district as though the land had been incorporated originally in the district. The application also shall contain an agreement by the owner of the new land that the land will be subject to the same liens and provisions as all other land in the district and subject to the statutes governing all other land in the district. [Acts 1971, 62nd Leg., p. 372, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.707. Consent of Outstanding Bondholders

(a) The board shall communicate the contents of the applications to exclude nonagricultural or nonirrigable land and to include an equal amount of irrigable land to the holders of outstanding bonds voted, issued, sold, and delivered by the district and payable from taxes levied on property in the district.

(b) If the consent in writing of 95 percent or more of the bondholders to the plan is filed with the board, the board may hold a hearing on the applications.

[Acts 1971, 62nd Leg., p. 372, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.708. Notice of Hearing on Applications

The board shall give notice of the hearing on the applications by publishing the time, place, and nature of the hearing one time in a newspaper published in a county in which all or part of the district is located. The newspaper must have been published regularly for more than 12 months preceding the date of the publication of the notice and must have circulation in the district. The notice shall be published not less than 10 days nor more than 20 days before the date of the hearing.

[Acts 1971, 62nd Leg., p. 372, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.709. Hearing Procedure

The board shall hear all interested parties and all evidence in connection with the applications.

[Acts 1971, 62nd Leg., p. 373, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.710. Board's Resolution to Substitute Land

If the board finds that all the conditions provided for the exclusion of land and inclusion of other land in the district exist, it may adopt and enter in its minutes a resolution to exclude land which is nonagricultural or nonirrigable in a practicable manner and include land which may be irrigated from the facilities of the district in a practicable manner. [Acts 1971, 62nd Leg., p. 373, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.711. Liability of Excluded and Included Land

The land excluded from the district is free from any lien or liability created on the excluded land by reason of its having been included in the district. Land added to the district is subject to all laws, liens, and provisions governing the district and the land in the district.

[Acts 1971, 62nd Leg., p. 373, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.712. Duty to Advise Water Rights Commission

The board shall furnish the Texas Water Rights Commission a detailed description of the land excluded and a detailed description of the land included within 30 days after the exclusion and inclusion of land under the provisions of Sections 51.702-51.711 of this code.

[Acts 1971, 62nd Leg., p. 373, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.713. Right to Serve New Land Included in District

The district has the same right to furnish water service to the included land that it previously had to furnish service to the excluded land. The mere inclusion of a larger total acreage than that excluded does not give the district the right to irrigate a larger total acreage or to appropriate a larger quantity or volume of public water for irrigation than the district would have had the right to irrigate or to appropriate before the exclusion and inclusion of the land.

[Acts 1971, 62nd Leg., p. 373, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.714. Adding Land by Petition of Landowner

The owner of land may file with the board a petition requesting that the land described by metes and bounds in the petition be included in the district.

[Acts 1971, 62nd Leg., p. 373, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.715. Petition Signed and Executed

The petition of the landowner to add his land to the district shall be signed and executed in the manner provided by law for the conveyance of real estate.

[Acts 1971, 62nd Leg., p. 373, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.716. Hearing and Determination of Petition

The board shall hear and consider the petition and may add to the district the land described in the petition if it is considered to be to the advantage of the district and if the water supply, canals, and other improvements are sufficient to supply the added land without injuring land already in the district.

[Acts 1971, 62nd Leg., p. 374, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.717. Recording Petition

A petition which is granted adding land to the district shall be filed for record and shall be recorded in the office of the county clerk of the county in which the land is located.

[Acts 1971, 62nd Leg., p. 374, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.718. Adding Certain Territory by Petition

Landowners of a defined area of territory not included in a district may file a petition requesting inclusion with the secretary of the board signed by a majority of the landowners in the territory or by 50 landowners if the number of landowners is more than 50.

[Acts 1971, 62nd Leg., p. 374, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.719. Hearing on Petition**

The board by order shall set the time and place of the hearing on the petition to include the territory in the district. The hearing shall be held not less than 30 days from the date of the order.

[Acts 1971, 62nd Leg., p. 374, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.720. Notice of Hearing**

(a) The secretary of the board shall issue notice of the time and place of the hearing, and the notice shall describe the territory proposed to be annexed.

(b) The secretary shall post copies of the notice in three public places in the district and one copy in a public place in the territory proposed to be annexed. The notices shall be posted for at least 15 days before the day of the hearing.

(c) The notice shall be published one time in a newspaper with general circulation in the county. The notice shall be published at least 15 days before the day of the hearing.

[Acts 1971, 62nd Leg., p. 374, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.721. Resolution to Add Territory**

If the board finds on hearing the petition that the addition would be of benefit to the district and that the water supply, canals, and other improvements are sufficient to supply the added territory without injuring the land already in the district, it may add the territory to the district by resolution entered in its minutes. The board does not have to include all the territory described in the petition if it finds that a modification or change is necessary or desirable.

[Acts 1971, 62nd Leg., p. 374, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.722. Elections to Ratify Annexation of Land**

(a) Annexation of the territory is not final until ratified by a majority vote of the electors at a separate election held in the district and by a majority vote of the electors at a separate election held in the territory proposed to be added.

(b) If the district has outstanding debts or taxes, the same election shall determine also whether or not the territory to be added will assume its proportion of the debts or taxes if the land is added to the district.

[Acts 1971, 62nd Leg., p. 374, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.723. Notice and Procedure of Election**

The notice of the election, the manner and the time of giving the notice, the manner of holding the election, and qualifications of the voters shall be governed by the provisions of Subchapter E of this chapter.

[Acts 1971, 62nd Leg., p. 375, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.724. Liability of Added Territory**

The added territory shall bear its pro rata part of all indebtedness or taxes that may be owed, contracted, or authorized by the district to which it is added.

[Acts 1971, 62nd Leg., p. 375, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.725. Adding Territory Annexed to a City in the District**

Territory annexed to a city included in a district organized under the provisions of this chapter and providing water or sewer services to the city or its inhabitants may be added to the district by complying with the provisions of Sections 51.726-51.729 of this code.

[Acts 1971, 62nd Leg., p. 375, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.726. Hearing to Add Territory Annexed to a City**

After final passage of an ordinance or resolution annexing territory to the city, the board may issue a notice of a hearing on the question of annexing any part of the territory to the district.

[Acts 1971, 62nd Leg., p. 375, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.727. Notice of Hearing**

(a) The notice of the hearing shall state the date and place of the hearing and a description of the area proposed to be annexed. In lieu of the description, the notice may make reference to the annexation ordinance of the city.

(b) The board shall publish the notice one time at least 10 days before the day of the hearing in a newspaper with general circulation in the city which made the annexation.

(c) Additional notice shall be given to a railroad with any railroad right-of-way or property in the territory to be annexed by certified mail at its latest address appearing on the tax rolls of the city, district, or county.

[Acts 1971, 62nd Leg., p. 375, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.728. Resolution Adding the Territory**

If the board finds from the hearing that the territory proposed to be annexed will be benefited by the facilities or services afforded or to be afforded by the district, the board shall adopt a resolution annexing the territory to the district.

[Acts 1971, 62nd Leg., p. 375, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.729. Election to Assume Bonds and Authorize Tax**

After territory is added to the district, the board may call an election within the district to determine whether the district as enlarged shall assume the outstanding tax-supported bonds, and the tax-supported bonds voted but not yet sold, and whether an ad valorem tax shall be levied on all taxable property in the district as enlarged for the payment of the bonds. The election shall be called and held in the manner provided in this chapter for elections for the issuance of bonds.

[Acts 1971, 62nd Leg., p. 376, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.730. Extending Municipal District to Include Lands Annexed to City**

If a district is a "Municipal District," and includes the total area of a city or town, and furnishes or has

plans to furnish all or part of a water supply, sanitation facilities, flood protection, or other service for the general benefit of the inhabitants of the embraced city or town, the boundaries of the district shall be extended automatically to include land which the embraced city or town annexes by extending its boundaries to include land that is not already included in the district. The land annexed to the city or town shall constitute part of the district, but the inclusion in the district is not final until the board publishes notice of a hearing, holds a hearing, and hears evidence to consider the exclusion or retention in the district of any part of the added land, according to the applicable provisions of Sections 51.691–51.701 of this code.

[Acts 1971, 62nd Leg., p. 376, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.731. Liability of Land Added to a District Operating under Article XVI, Section 59**

(a) If land is added to a district operating under Article XVI, Section 59, of the Texas Constitution, the order of the board adding the land to the district may contain an agreement that the added land will be taxed on the benefit basis instead of the ad valorem basis. The agreement may provide that the added land will be taxed on a uniform acreage basis or on the plan of a definite annual payment.

(b) The board, in its order adding land to the district, shall set the amount of the debts to be paid by the owner of the added land and levy annual taxes against the land to pay the debts. The taxes assessed by the board constitute a lien against the added land in the same manner and to the same extent as if the land had been a part of the district at the time the indebtedness was incurred or authorized by an election held for that purpose.

(c) The added land is a part of the district and is liable for debts subsequently incurred by the district in the same manner as other land in the district. [Acts 1971, 62nd Leg., p. 376, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.732. Consolidation of Districts**

Two or more districts governed by the provisions of this chapter may consolidate into one district as provided by Sections 51.733–51.736 of this code.

[Acts 1971, 62nd Leg., p. 376, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.733. Elections to Approve Consolidation**

(a) After the directors of each district have agreed on the terms and conditions of consolidation, they shall order an election in each district to determine whether the districts should be consolidated.

(b) The directors of each district shall order the election to be held on the same day in each district and shall give notice of the election for at least 20 days in the manner provided by law for other elections.

(c) The districts may be consolidated only if the electors in each district vote in favor of the consolidation.

[Acts 1971, 62nd Leg., p. 376, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.734. Governing Consolidated Districts**

(a) After two or more districts are consolidated, they become one district, except for the payment of debts created before consolidation, and are governed as one district.

(b) During a period of 90 days after the date of the election to approve consolidation, the officers of each district shall continue to act jointly as officers of the original districts to wind up the affairs of their respective districts.

(c) The consolidation agreement may provide that the officers of the original districts shall continue to act jointly as officers of the consolidated district until the next general election or name persons to serve as officers of the consolidated district until the next general election if all officers of the original districts agree to resign.

(d) New officers of the consolidated district must qualify as officers of the district within the period of 90 days after the election and shall assume their offices at the expiration of the 90-day period.

(e) The current board shall approve the bond of each new officer.

[Acts 1971, 62nd Leg., p. 377, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.735. Debts of Original Districts**

After two or more districts are consolidated, the debts of the original districts are protected and are not impaired. These debts may be paid by taxes or assessments levied on the land in the original districts as if they had not consolidated or contributions from the consolidated district on terms stated in the consolidation agreement.

[Acts 1971, 62nd Leg., p. 377, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.736. Assessment and Collection of Taxes**

After consolidation, the officers of the consolidated district shall assess and collect taxes on property in the original district to pay debts created by the original district.

[Acts 1971, 62nd Leg., p. 377, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 51.737 to 51.780 reserved for expansion]

**SUBCHAPTER P. DISSOLUTION OF DISTRICT**

**§ 51.781. Dissolution of District Prior to Issuance of Bonds**

(a) If the electors of a district reject the proposal to issue construction bonds by a constitutional or statutory majority vote, the board must dissolve the district and liquidate the affairs of the district as provided in Sections 51.781–51.792 of this code.

(b) Subject to the provisions of Subchapter G of Chapter 50 of this code, if a district finds at any time before the authorization of construction bonds or the final lending of its credit in another form that the proposed undertaking for any reason is impracticable or apparently cannot be successfully and beneficially accomplished, the board may issue notice of a hearing on a proposal to dissolve the district.

(c) Subject to the provisions of Subchapter G of Chapter 50 of this code, if 20 percent of the qualified voters of a district petition the board for a hearing on a proposal to dissolve the district and deposit with the board an amount estimated to cover the actual cost of giving notice and holding the hearing, the board shall publish notice of the hearing within 10 days and shall hold the hearing within 40 days after the filing of the petition, as provided in Sections 51.782–51.785 of this code. If the finding is against the petition, the deposit shall be applied to pay the cost of giving notice and holding the hearing.

[Acts 1971, 62nd Leg., p. 377, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.782. Notice of Hearing**

The board shall post notice of the hearing on the bulletin board at the courthouse door of each county in which the district is located and at three or more other public places within the boundaries of the district. The notice must be posted at least 10 days before the hearing on the proposed dissolution of the district.

[Acts 1971, 62nd Leg., p. 378, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.783. Hearing**

The board shall hear all interested persons and shall consider their evidence at the time and place stated in the notice.

[Acts 1971, 62nd Leg., p. 378, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.784. Board's Order to Continue or Dissolve District**

The board shall determine from the evidence whether the best interests of the persons, land, and property in the district will be promoted by prosecuting the district's plans or whether the best interests of the persons and property in the district will be served by dissolving the district, and the board shall enter the appropriate findings and order in the record.

[Acts 1971, 62nd Leg., p. 378, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.785. Judicial Review of Board's Order**

The board's decree to continue or to dissolve the district shall be final and cannot be judicially reviewed except on the ground of fraud, palpable error, or gross abuse of discretion.

[Acts 1971, 62nd Leg., p. 378, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.786. Appointment of Trustee**

(a) If the board orders the dissolution of the district, it shall appoint a director or some other competent person as trustee to close the affairs of the district as soon as practicable.

(b) The board shall determine the term of service and the amount of compensation for the trustee.

[Acts 1971, 62nd Leg., p. 378, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.787. Discharge of District's Obligations by Trustee**

(a) The trustee shall reduce all assets and resources of the district to possession and money and apply them to discharge the outstanding obligations of the district, having regard to specific funds.

(b) If required, the board shall levy, assess, and collect sufficient additional taxes to pay all necessary expenses and outstanding obligations of the district.

[Acts 1971, 62nd Leg., p. 378, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.788. Discharge of Trustee**

The trustee shall be discharged when all obligations of the district are paid and the trustee's account is verified and settled.

[Acts 1971, 62nd Leg., p. 379, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.789. Final Order of Dissolution**

After all obligations are paid and the trustee is discharged, the board shall enter its final order of dissolution and record the final order in the deed records of the county or counties in which the district is located.

[Acts 1971, 62nd Leg., p. 379, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.790. Water Rights of Dissolved District**

Water rights held from the state shall revert to the state and may not be assigned by the district in anticipation of dissolution.

[Acts 1971, 62nd Leg., p. 379, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.791. Taxes in Excess of District's Obligations**

(a) If taxes have been collected by the dissolved district in excess of the amount required to liquidate the obligations of the district, the excess shall be paid ratably to the county treasurer or treasurers of the county or counties in which the district was located.

(b) The commissioners courts shall credit the money received from the dissolved district to the interest and sinking fund for any outstanding county bonds. If the county has no outstanding bonds, the money may be applied as the commissioners court lawfully directs.

[Acts 1971, 62nd Leg., p. 379, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.792. Permanent Record of Dissolved District**

All records, vouchers, and accounts of the district shall be delivered to the commissioners court of the county in which the district's principal office was located and shall be preserved as a permanent record.

[Acts 1971, 62nd Leg., p. 379, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.793. Dissolution of District for Failure to Complete Plant**

Subject to the provisions of Subchapter G of Chapter 50 of this code if a district has not within 10 years from the date of its creation commenced and completed the construction of a plant and improve-

ments to carry out the purposes of its creation in accordance with the plans adopted by the district, the board may enter a resolution in its minutes to dissolve the district under the provisions of Sections 51.794–51.828 of this code. After compliance with these provisions, a vote of the electors of the district, and the payment of its valid, enforceable indebtedness, the district may be dissolved.

[Acts 1971, 62nd Leg., p. 379, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.794. Resolution to Dissolve District

The board shall find in its resolution to dissolve the district that the plans of the district are impracticable or that the purposes of the district should be abandoned and shall state the reasons for the finding.

[Acts 1971, 62nd Leg., p. 379, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.795. Statements of Indebtedness and Expenses

The board shall prepare or have prepared and shall approve a statement of all valid, enforceable indebtedness of the district and shall enter the statement in the minutes. The board shall prepare or have prepared an estimate of all expenses incurred or to be incurred in the dissolution of the district and in the collection of sufficient taxes to pay all valid, enforceable indebtedness of the district.

[Acts 1971, 62nd Leg., p. 380, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.796. Election to Approve Dissolution of District and Issuance of Dissolution Bonds

The board shall enter an order calling an election to determine whether or not the district shall be dissolved and bonds issued to pay the district's indebtedness and estimated expenses.

[Acts 1971, 62nd Leg., p. 380, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.797. Maximum Amount, Interest Rate, and Maturity of Bonds

The maximum amount of bonds to be voted on and issued shall not be more than the total amount of the approved valid, enforceable indebtedness and the estimate of expenses, exclusive of the estimated cost of collection of taxes. The maximum amount of bonds, exclusive of interest and expenses of collection, to be issued for fees and expenses of dissolution of the district shall not be more than an amount equal to \$2 times the number of acres in the district. The bonds shall mature serially over a period of not more than seven years.

[Acts 1971, 62nd Leg., p. 380, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.798. Notice of Election

(a) The president and secretary of the board shall issue notice of the election, stating:

- (1) the findings of the board with reference to the dissolution of the district;
- (2) the amount of bonds to be issued;
- (3) the interest rate on the bonds; and
- (4) the time and place of the election.

(b) The notice also shall contain a statement of the estimates and the expenses incurred and to be incurred in the dissolution of the district and the collection of taxes for the payment of the bonds and shall state that the bonds will be payable by the levy of taxes on the taxable property in the district in proportion to the values of the property as provided in Section 51.804 of this code.

(c) The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which any part of the district is located. The first publication shall be at least 14 days before the day of the election.

[Acts 1971, 62nd Leg., p. 380, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.799. Procedure for Holding Election

(a) The ballots for the election shall be printed to provide for voting for or against the proposition: "Dissolution of the district and issuance of dissolution bonds and the levy of taxes for the payment of the bonds."

(b) The election shall be conducted and returns made and canvassed according to the provisions in this chapter for construction bond elections.

[Acts 1971, 62nd Leg., p. 380, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.800. Issuance and Sale of Dissolution Bonds

(a) If a majority of the electors at the election vote in favor of the dissolution of the district and the issuance of bonds and the levy of taxes for the payment of the bonds, the board shall issue and sell the bonds or any part of them. The bonds shall be known as "dissolution bonds."

(b) The board may deliver the dissolution bonds or any part of them in satisfaction of the valid, enforceable indebtedness of the district for which the bonds are issued, or in payment of expenses incurred or to be incurred in connection with the dissolution of the district, or in payment of services rendered or to be rendered to the district.

(c) The dissolution bonds shall be:

- (1) serially numbered, commencing with the first maturities;
- (2) issued in the name of the district;
- (3) signed by the president; and
- (4) attested by the secretary, with the seal of the district attached.

(d) The board shall determine the maturities of the bonds not to exceed seven years from their date, the denominations of the bonds, and the interest.

[Acts 1971, 62nd Leg., p. 381, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.801. Destroying Unsold Bonds

If a majority of the electors at the election vote in favor of the dissolution of the district, the board shall destroy all unsold bonds of the district and enter an order cancelling all unissued and unsold bonds authorized by the electors. After the destruc-

tion and the entry of the order, the bonds shall have no further force or effect.

[Acts 1971, 62nd Leg., p. 381, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.802. Board's Authority to Contract**

The board may contract with trustees, engineers, attorneys, and others it considers necessary or desirable to properly liquidate and wind up the affairs of the district. The board also may assume obligations made by others for the benefit of the district, or from which the district benefited, which in its judgment may be fair and equitable.

[Acts 1971, 62nd Leg., p. 381, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.803. Tax to Pay Dissolution Bonds**

The order issuing the dissolution bonds shall provide that the principal of and interest on the bonds shall be payable from the proceeds of a tax to be levied on the taxable property located in the district. The tax shall be in an amount sufficient for the payment of the principal and interest.

[Acts 1971, 62nd Leg., p. 381, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.804. Determining Amount of Tax**

(a) The value of all of the taxable property of the district shall be taken at the assessed value as determined and approved by the board in the manner provided in this subchapter, and an amount equal to the total of the principal and all interest to maturity on the bonds voted plus the estimated cost of collection of taxes shall be assessed against the taxable property of the district on the ad valorem basis.

(b) The tax against the taxable property of each owner shall be that portion of the total principal and interest of the dissolution bonds and costs of collection which the assessed value of the taxable property of the owner bears to the total assessed values in the district.

[Acts 1971, 62nd Leg., p. 381, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.805. Payment of Tax**

The amount of the tax on the taxable property of each owner shall be payable in equal annual installments during the period in which the bonds mature, on dates specified in the order issuing the bonds.

[Acts 1971, 62nd Leg., p. 382, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.806. Advance Payment of Taxes in Cash**

The order issuing the bonds shall provide that a property owner may secure release of the entire amount of his taxable property as assessed on the rolls from the tax levied for the dissolution bonds by the payment in cash of the full amount of tax.

[Acts 1971, 62nd Leg., p. 382, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.807. Computing Amount of Advance Cash Payment**

(a) In order to compute the full amount of an advance cash payment, the interest rate on the bonds shall be applied on an annual basis to each unpaid installment of taxes for the number of years

the installment of taxes must run before being due. The total of the items computed shall be deducted from the face amount of the unpaid installments of taxes.

(b) In order to compute the full amount of an advance cash payment, the interest rate on the bonds shall be applied on an annual basis to each unpaid past-due installment of taxes for the number of years the installment has been past due, and 10 percent of the face amount of each installment that is past due shall be added as a penalty. The total of the items computed shall be added to the unpaid installments.

[Acts 1971, 62nd Leg., p. 382, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.808. Surrender of Bonds in Payment of Taxes**

The order issuing the bonds shall provide that any of the bonds with all unmatured interest and all appurtenant coupons may be surrendered at any time in payment of all unpaid installments of the taxes. The amount of taxes found to be due by the method provided in Section 51.809 of this code may be discharged by the surrender of the proper amount of dissolution bonds, together with all unpaid appurtenant interest coupons at the face value of the bonds and coupons.

[Acts 1971, 62nd Leg., p. 382, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.809. Computing Amount of Payment Made by Surrendering Bonds**

(a) In order to compute payment by surrendering bonds, the interest rate on the bonds shall be applied on an annual basis to each unpaid installment of taxes for the number of years the installment must run before being due. The total of the items computed shall be deducted from the face amount of the unpaid installments of taxes.

(b) In order to compute payment by surrendering bonds, the interest rate on the bonds shall be applied to each unpaid installment of taxes for the number of years the installment has been past due and 10 percent of the face amount of each installment of taxes that is past due shall be added as a penalty. The total of the items computed shall be added to the face amount of each unpaid installment of taxes.

[Acts 1971, 62nd Leg., p. 382, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.810. Use by Trustee of Advance Payments of Tax**

The order issuing the bonds shall provide that the bonds shall be called and redeemed by the trustee in the inverse order of their maturity and in the inverse order of their serial numbers. They shall be paid out of any funds received in advance payment of taxes that are not required for meeting any past-due and unpaid principal and interest or the next maturing installment of principal and interest.

[Acts 1971, 62nd Leg., p. 383, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.811. Approval and Registration of Dissolution Bonds**

After the dissolution bonds are issued by the board and before they are put in circulation, the

bonds, at the option of the board, shall either be submitted to and approved by the attorney general and registered by the comptroller as provided in Sections 51.416–51.418 of this code or be validated by suit as provided in Sections 51.423–51.431 of this code. The provisions of these sections of this code which are not inconsistent with the provisions of this subchapter are applicable to the dissolution bonds provided for in this subchapter.

[Acts 1971, 62nd Leg., p. 383, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.812. Preparing Tax Roll

Before the issuance and delivery of the bonds, the board shall prepare a tax roll in duplicate showing the full and true valuation of all property subject to taxation, the name of the owner of the property, if known; and if the name of the owner is not known, the tax roll shall state that the owner of the property is not known.

[Acts 1971, 62nd Leg., p. 383, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.813. Filing Tentative Tax Roll

After the tax roll is prepared, it shall be filed in the district office, if any, and if there is not, in the office of the county clerk of the county or counties in which the district is located. The tax roll shall be subject to public inspection.

[Acts 1971, 62nd Leg., p. 383, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.814. Notice of Meeting as Board of Equalization

(a) After the tax roll has been filed for at least five days, the board shall publish a notice once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which any part of the district is located. The first publication shall be at least 14 days before the meeting of the board of equalization.

(b) The notice shall call attention to the filing of the tax roll and the name and place or places where the tax roll is filed and available for inspection, and shall notify all interested persons of the time and place of the meeting of the board for the purpose of acting as a board of equalization to examine, correct, equalize, appraise, and approve the valuations of the taxable property of the district and improvements on taxable property as set forth in the tax roll.

[Acts 1971, 62nd Leg., p. 383, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.815. Meeting as Board of Equalization

At the time and place stated in the notice, the board shall meet and examine the tax roll. The board shall equalize as nearly as possible the value of all property for taxation and fix the value of all property for taxation.

[Acts 1971, 62nd Leg., p. 384, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.816. Authority and Procedure as Board of Equalization

(a) Any interested person may appear at the meeting and offer evidence for or against any matter being considered by the board of equalization.

The board may send for persons and papers, and may administer oaths to persons who testify before the board, and may ascertain the full true value of all property subject to taxation.

(b) The board may lower or raise the valuation of all property listed on the tax roll and place property on the roll which did not appear on it. The board shall correct any errors of assessment and equalize the value of property appearing on the roll.

[Acts 1971, 62nd Leg., p. 384, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.817. Approving Tax Roll

After the board of equalization finally fixes the valuation of all taxable property in the district and the tax roll of the district is finally prepared, the board shall meet and consider the tax roll, make all necessary corrections in the tax roll, and endorse its approval on the roll.

[Acts 1971, 62nd Leg., p. 384, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.818. Approved Tax Roll Not Subject to Revision

The action of the board in finally approving the tax roll is final and is not subject to revision by the board or any other tribunal.

[Acts 1971, 62nd Leg., p. 384, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.819. Filing Approved Tax Roll

After the final approval of the tax roll by the board, the board shall file the tax roll with the assessor and collector of the county or counties in which the district is located.

[Acts 1971, 62nd Leg., p. 384, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.820. Collection of Taxes

The assessor and collector shall collect the taxes shown on the roll on the land located in the county for which he is assessor and collector at the time and in the manner specified by the board in its various orders issuing the dissolution bonds and levying the taxes. The assessor and collector is entitled to one percent of the amount collected for his services in collecting the taxes.

[Acts 1971, 62nd Leg., p. 384, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 51.821. Appointment of Trustee

(a) Before the issuance and delivery of dissolution bonds, the board shall appoint a trustee of the funds to be collected from the taxes. The trustee shall be an individual or a bank or trust company in the county or one of the counties in which the district is located.

(b) The board may determine the powers, rights, duties, liabilities, and other matters relating to the trusteeship and the appointment of successor trustees which the board considers proper to effectuate the purpose of the trusteeship.

(c) The board may determine the bond to be given by the trustee and the amount to be paid to the trustee from the funds collected from the taxes.

[Acts 1971, 62nd Leg., p. 384, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.822. Authority of the Trustee**

The trustee shall receive from the assessor and collector all proceeds from the assessments less the assessor and collector's charges and shall be the paying agent of the district for the bonds. The bonds shall be payable at the place of business of the trustee. The trustee shall be authorized by the order providing for the issuance of the bonds to institute suits in the name of the district for the use and benefit of the holders of the bonds and to apply all sums of money recovered in the suits to the payment of the bonds.

[Acts 1971, 62nd Leg., p. 385, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.823. Tax Lien**

After filing the tax roll in the office of the assessor and collector, the taxes, penalties, interest, and attorney's fees shall become a specific charge on and be secured by a lien superior to all other liens, except tax liens, on the personal property, land, and improvements listed on the tax roll regardless of whether the ownership of the personal property, land, and improvements is correctly stated on the tax roll.

[Acts 1971, 62nd Leg., p. 385, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.824. Foreclosure of Lien**

(a) The lien shall be foreclosed for the full amount due and order of sale issued against the property or as much of it as may be found in a suit brought for the recovery of the taxes.

(b) The lien may be foreclosed in a suit or suits brought in the name of the district by the board, or by the trustee or his successor as provided by the board.

(c) The procedure for the suit shall be the procedure for ordinary civil foreclosure suits.

(d) The provisions of Chapter 506, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 7345D, Vernon's Texas Civil Statutes), shall not be applicable to the suits.

[Acts 1971, 62nd Leg., p. 385, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.825. Default in Payment of Tax Installment**

(a) Default in the payment of an installment of taxes levied for the payment of dissolution bonds for 60 days after the installment becomes due and payable as provided by the board shall, at the option of the board or the trustee, immediately mature the remaining installments and cause the entire amount of the taxes to immediately become due and payable.

(b) The trustee shall bring suit for the collection of the entire amount of the taxes and for the foreclosure of the lien securing the payment of the taxes.

[Acts 1971, 62nd Leg., p. 385, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.826. Penalty and Attorney's Fee**

(a) A penalty of 10 percent of the unpaid amount of taxes shall accrue immediately on default of payment of taxes after the 60 days.

(b) An attorney's fee of 10 percent of the unpaid amount of the taxes is due and payable immediately on institution of suit for collection and foreclosure.

(c) The penalty and attorney's fee shall be recovered in the suit and shall constitute an addition to the taxes and shall be secured by the tax lien. [Acts 1971, 62nd Leg., p. 385, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.827. Discharge of Lien**

(a) On the final payment of the taxes, either the assessor and collector or the trustee shall issue a certificate certifying that the taxes have been fully satisfied and the lien is released.

(b) The execution and acknowledgment of the certificate and the recording of the certificate in the deed records of the county in which the property is located shall be full and conclusive evidence of the discharge of the taxes and lien.

[Acts 1971, 62nd Leg., p. 386, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.828. District Considered Dissolved**

(a) On the issuance and sale or delivery of the dissolution bonds and the appointment and qualification of the trustee, the secretary shall deposit all available existing records of the district in the office of the county clerk of the county or one of the counties in which the district is located.

(b) The district immediately is considered dissolved for all purposes, except that the taxes levied against the taxable property may be enforced in the name of the district on behalf of the bondholders by the trustee or his successors. The surviving board may meet from time to time until the dissolution bonds are paid and discharged and may delegate its powers and give instructions to the trustee or his successors as the board sees fit and circumstances warrant. After the payment of all dissolution bonds, interest, and costs of collection, the board shall be dissolved.

[Acts 1971, 62nd Leg., p. 386, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.829. Dissolution of District in Counties of Less Than 11,000 Population**

Subject to the provisions of Sections 50.251-50.256 of this code, a district located entirely in a county having a population of less than 11,000, according to the last preceding federal census, may be abolished by a majority vote of the electors residing in the district at an election held for the purpose of determining whether or not the district should be dissolved.

[Acts 1971, 62nd Leg., p. 386, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 51.830. Petition for Dissolution of District**

A petition for the dissolution of the district shall be filed with the board and shall state the name of the district and the purpose for which the election is requested. The petition may refer to the order establishing the district for boundaries, limits, and area of the district.

[Acts 1971, 62nd Leg., p. 386, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 51.831. Signatures on Petition

A petition for dissolution of the district may be signed and filed in two or more copies. The petition shall be signed by a majority in number of the property owners with land in the district and the property owners of a majority in value of the land in the district, as shown by the tax rolls of the district, or 50 landowners if the number of landowners in the district is more than 50.

[Acts 1971, 62nd Leg., p. 386, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 51.832. Procedure for Holding Election

(a) An election to determine whether or not the district shall be dissolved shall be held in accordance with the provisions of Subchapter E, of this chapter.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "The dissolution of district."

(c) The returns of the election shall be canvassed and the result declared by the board. The board shall enter an order in its minutes declaring the result of the election, which order shall be made and entered in accordance with Section 51.034 of this code. The order shall be filed in the office of the county clerk and recorded in the deed records of the county as provided in Section 51.034 of this code.

[Acts 1971, 62nd Leg., p. 387, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 51.833. Election in District Including City, Town, or Municipal Corporation

In an election to dissolve a district in which a city, town, or municipal corporation is located, the city, town, or municipal corporation shall be a separate voting precinct, and the ballots cast in the city, town, or municipal corporation shall be counted and canvassed to show the result of the election there. If the city, town, or municipal corporation votes against the dissolution of the district and the balance of the district votes for the dissolution of the district, the district shall be dissolved.

[Acts 1971, 62nd Leg., p. 387, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 51.834. Subsequent Election

If the proposition to dissolve the district fails to carry at the election held for that purpose, no other election for the same purpose shall be held within one year after the date of the election.

[Acts 1971, 62nd Leg., p. 387, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 51.835. District Dissolved

If a majority of those voting at the election vote in favor of dissolving the district, the district shall be dissolved and shall have no further authority after the election, except that any debts incurred shall be paid and the organization shall be maintained until all the debts are paid.

[Acts 1971, 62nd Leg., p. 387, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 51.836. Taxes to Pay Indebtedness After Dissolution

If a district has outstanding bonds or other indebtedness maturing beyond the current year in which

the dissolution occurs, the commissioners court of the county in which the district is located shall levy and have collected, as county taxes are assessed and collected, sufficient taxes on all taxable property in the district to pay the principal of and interest on the bonds and other indebtedness when due.

[Acts 1971, 62nd Leg., p. 387, ch. 58, § 1, eff. Aug. 30, 1971.]

## CHAPTER 52. UNDERGROUND WATER CONSERVATION DISTRICTS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 52.001. Definitions

In this chapter:

(1) "Commission" means the Texas Water Rights Commission.

(2) "District" means an underground water conservation district created under this chapter.

(3) "Underground water" means water percolating below the surface of the earth and that is suitable for agricultural, gardening, domestic, or stock raising purposes, but does not include defined subterranean streams or the underflow of rivers.

(4) "Underground water reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries and containing underground water that can be produced from a well at a rate of 150,000 gallons or more a day.

(5) "Subdivision of an underground water reservoir" means a reasonably definable part of an underground water reservoir in which the underground water supply will not be unreasonably affected by withdrawing water from any part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.

(6) "Waste" means:

(A) withdrawal of underground water from an underground water reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from an underground water reservoir if the water produced is not used for a beneficial purpose;

(C) escape of underground water from an underground water reservoir to any other reservoir that does not contain underground water;

(D) pollution or harmful alteration of underground water in an underground water reservoir by salt water, other deleterious matter admitted from another stratum or from the surface of the ground; or

(E) wilfully causing, suffering, or permitting underground water to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well.

(7) "Use for a beneficial purpose" means use for:

(A) agricultural, gardening, domestic, stock raising, municipal, mining, manufac-

turing, industrial, commercial, recreational, or pleasure purposes;

(B) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or

(C) any other purpose that is useful and beneficial to the user.

(8) "Segregated irrigated area" means an irrigated area separated from other irrigated areas by at least five miles of unirrigated land.

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

(10) "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.

[Acts 1971, 62nd Leg., p. 388, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1768, ch. 518, § 9, eff. May 31, 1971; Acts 1973, 63rd Leg., p. 1641, ch. 598, § 1, eff. Aug. 27, 1973.]

§ 52.002. Ownership of Underground Water

The ownership and rights of the owner of the land and his lessees and assigns in underground water are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owner or his lessees and assigns of the ownership or rights, subject to the rules promulgated by a district under this chapter.

[Acts 1971, 62nd Leg., p. 389, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 52.003. Surface Water Laws not Applicable

The laws and administrative rules relating to the use of surface water do not apply to underground water.

[Acts 1971, 62nd Leg., p. 389, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 52.004. Application of Chapter and District Rules

The provisions of this chapter and the rules adopted by a district under this chapter apply only in the area designated by the commission as an underground water reservoir or a subdivision of an underground water reservoir over which the district is organized.

[Acts 1971, 62nd Leg., p. 389, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 52.005 to 52.020 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT

§ 52.021. Purpose

In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of the underground water of underground water reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water therefrom, consistent with the objective of Article XVI, Section 59, of the Texas Constitution, underground water conservation districts may be created as provided by this chapter.

[Acts 1971, 62nd Leg., p. 389, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1641, ch. 598, § 2, eff. Aug. 27, 1973.]

#### § 52.022. Method of Creating District

Except as otherwise provided by this subchapter, the provisions in Chapter 51 of this code for creating water control and improvement districts apply to the creation of underground water conservation districts to the extent that those provisions may be made applicable.

[Acts 1971, 62nd Leg., p. 389, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 52.023. Boundaries of District

(a) The commission may not consider a petition for the creation of a district unless the proposed boundaries of the district are coterminous with the boundaries of an underground water reservoir or a subdivision of an underground water reservoir, as previously designated by the commission.

(b) Subject to Subsection (a) of this section, a district may include all or part of one or more counties, cities, districts, or other political subdivisions.

[Acts 1971, 62nd Leg., p. 389, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1641, ch. 598, § 4, eff. Aug. 27, 1973.]

#### § 52.024. Designation of Reservoirs and Subdivisions

(a) On its own motion from time to time, or on receiving a petition conforming to the requirements of Section 51.013 of this code, the commission, after notice and hearing as provided by Sections 51.018 and 51.027–51.029 of this code, shall designate underground water reservoirs and subdivisions of underground water reservoirs.

(b) On the request of any person interested in the petition, or on the request of the commission, the Texas Water Development Board shall prepare available evidence relating to the existence, area, and characteristics of the reservoir or subdivision. Before making the designation, the commission shall consider the evidence prepared by the board and other evidence submitted at the hearing.

(c) The commission may alter the boundaries of designated underground water reservoirs and subdivisions as required by future conditions and as justified by factual data. However, an alteration of boundaries does not invalidate the previous creation of any district.

(d) When the commission has designated the boundaries of a subdivision as provided by this section, its findings on the location of the boundaries, the questions of "reasonableness" and "affect," as referred to in Section 52.001(5) of this code, and all other questions essential to the existence of a subdivision, are conclusive and final unless a suit is brought under Section 52.301 of this code within the 30-day period immediately following the date on which the commission enters its order.

[Acts 1971, 62nd Leg., p. 390, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 52.025. Findings

(a) If the commission finds that the district is feasible and practicable, that it would be a benefit to land in the district, and that it would be a public benefit or utility, the commission shall make these findings and grant the petition.

(b) If the commission finds that the district is not feasible and practicable, that it would not be a benefit to land in the district, that it would not be a public benefit or utility, or that it is not needed, the commission shall refuse to grant the petition.

[Acts 1971, 62nd Leg., p. 390, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1641, ch. 598, § 3, eff. Aug. 27, 1973.]

#### § 52.026. Segregated Irrigated Area

A district shall include no segregated irrigated area unless a majority of the qualified electors residing in the segregated irrigated area and voting at the election favor inclusion of the area within the district.

[Acts 1971, 62nd Leg., p. 390, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 52.027 to 52.050 reserved for expansion]

### SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

#### § 52.051. Administrative and Procedural Provisions

Except as otherwise provided by this chapter, the administrative and procedural provisions of Chapter 51 of this code apply to districts created under this chapter.

[Acts 1971, 62nd Leg., p. 391, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 52.052. Election of Directors: Precinct Method

The directors of the district shall be elected according to the precinct method as prescribed by Chapter 51 of this code. However, if any part of a municipal corporation is a part of one precinct, then no part of the municipal corporation shall be included in another precinct, except that a municipal corporation having a population of more than 200,000 may be divided between two precincts.

[Acts 1971, 62nd Leg., p. 391, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 52.053 to 52.100 reserved for expansion]

### SUBCHAPTER D. POWERS AND DUTIES

#### § 52.101. Rule-making Power

A district may make and enforce rules to provide for conserving, preserving, protecting, recharging, controlling subsidence, and preventing waste of the underground water of an underground water reservoir or its subdivisions.

[Acts 1971, 62nd Leg., p. 391, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1641, ch. 598, § 5, eff. Aug. 27, 1973.]

**§ 52.102. Rules: Publication, Effective Date**

A brief resume of each rule shall be published once a week for two consecutive weeks in one or more newspapers to give circulation within the district. No rule may be made effective until at least 14 days have elapsed after the date of the first publication.

[Acts 1971, 62nd Leg., p. 391, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 52.103. Enforcement of Rules**

The district may enforce its rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.

[Acts 1971, 62nd Leg., p. 391, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 52.104. Improvements and Facilities**

The district may:

- (1) acquire land to erect dams or to drain lakes, draws, and depressions;
- (2) construct dams;
- (3) drain lakes, depressions, draws, and creeks; and
- (4) install pumps and other equipment necessary to recharge the underground water reservoir or its subdivision.

[Acts 1971, 62nd Leg., p. 391, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 52.105. Sale and Distribution of Water Prohibited**

No district may sell or distribute surface water or underground water for any purpose.

[Acts 1971, 62nd Leg., p. 392, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 52.106. Preferential-Use Provisions Inapplicable**

The preferential-use provisions of Section 51.184 of this code are not applicable to underground water conservation districts.

[Acts 1971, 62nd Leg., p. 392, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1770, ch. 518, § 13, eff. May 31, 1971.]

**§ 52.107. Engineering Surveys**

The district may employ registered professional engineers to make surveys of the underground water reservoir or subdivision and surveys of the facilities for development, production, and use of the water, in order to determine the quantity of water available for production and use and to determine the improvements, development, and recharging needed by the reservoir or its subdivision.

[Acts 1971, 62nd Leg., p. 392, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 52.108. Planning**

(a) The district may develop comprehensive plans for the most efficient use of the underground water in the underground water reservoir or its subdivision and for controlling and preventing waste of underground water and for controlling and preventing subsidence.

(b) The district shall specify in the plans, in as much detail as practicable, the acts, procedure, per-

formance, and avoidance that are or may be necessary to effect the plans, including specifications. [Acts 1971, 62nd Leg., p. 392, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1642, ch. 598, § 6, eff. Aug. 27, 1973.]

**§ 52.109. Research Projects**

The district may carry out research projects, develop information, and determine limitations which should be made on withdrawing underground water from the underground water reservoir or its subdivision.

[Acts 1971, 62nd Leg., p. 392, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 52.110. Collection of Information**

The district may collect information regarding the use of underground water and the practicability of recharging the reservoir or its subdivision.

[Acts 1971, 62nd Leg., p. 392, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 52.111. Publication of Plans and Information**

The district may publish its plans and the information it develops, bring them to the attention of the users of underground water in the district, and encourage the users to adopt and use them.

[Acts 1971, 62nd Leg., p. 392, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 52.112. Records and Reports**

The district may require that records be kept and reports be made of the drilling, equipping, and completing of water wells and of the production and use of underground water from the underground water reservoir or its subdivision.

[Acts 1971, 62nd Leg., p. 392, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 52.113. Drillers' Logs**

The district may require that accurate drillers' logs be kept of water wells and that copies of drillers' logs and electric logs be filed with the district.

[Acts 1971, 62nd Leg., p. 393, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1767, ch. 518, § 1, eff. May 31, 1971.]

**§ 52.114. Permits for Wells**

The district may require permits for the drilling, equipping, or completing of wells, or for substantially altering the size of wells or well pumps, or for all of these operations. Permits may be issued subject to the rules made under Section 52.117 of this code and subject to terms and provisions with reference to the drilling, equipping, completion, or alteration of wells or pumps that may be necessary to conserve the underground water, prevent waste, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, or lessen interference between wells.

[Acts 1971, 62nd Leg., p. 393, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 52.115. Permit: Application and Hearing**

The district shall promptly consider and pass on each application for a permit. If, within 20 days

after the date it is submitted, an application has not been passed on or set for a hearing on a specific date, the applicant may petition the district court of the county where the land is located for a writ of mandamus to compel the district to act on the application or set a date for a hearing on the application. A hearing shall be held within 30 days after the setting of the date and the district shall act on the application within 10 days after the date of the hearing.

[Acts 1971, 62nd Leg., p. 393, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 52.116. Drilling, Etc., Without Permit

Except as provided by Section 52.118 of this code, no person, firm or corporation may begin to drill a well in the district, or substantially alter the size of a well or pump, which well could reasonably be expected to produce more than 100,000 gallons of water a day from the reservoir or subdivision, without first obtaining a permit from the district.

[Acts 1971, 62nd Leg., p. 393, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 52.117. Regulation of Spacing and Production

In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, or to prevent waste, the district may provide for the spacing of water wells and may regulate the production of wells.

[Acts 1971, 62nd Leg., p. 393, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1642, ch. 598, § 7, eff. Aug. 27, 1973.]

#### § 52.118. Exceptions; Limitations

(a) The district may not require a permit for the drilling or producing of a well drilled, completed, and equipped so that it will not produce more than 100,000 gallons of underground water a day.

(b) The district shall not deny the owner of a tract of land, or his lessee, who has no well capable of producing more than 100,000 gallons a day on the tract, either a permit to drill a well on his land or the privilege to produce underground water from his land, subject to the rules of the district.

(c) The district may not restrict the production of any well that produces less than 100,000 gallons a day.

(d) Nothing in this chapter applies to wells drilled for oil, gas, sulphur, or brine, or for core tests, or for injection of gas, salt water, or other fluid, or for any other purpose, under permits issued by the Texas Railroad Commission. The district shall not require a permit to drill a well to supply water for drilling any of these wells permitted by the Texas Railroad Commission. When the well ceases to be used for these purposes, it may then be used as an ordinary water well if it meets the spacing and other rules of the district; and its use is subject to the rules of the district.

(e) Water wells exempted under this section shall be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe,

and fittings to prevent the escape of underground water from an underground water reservoir to any reservoir not containing underground water and to prevent the pollution or harmful alteration of the character of the water in any underground water reservoir.

[Acts 1971, 62nd Leg., p. 393, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 52.119. Open or Uncovered Wells

(a) The district may require the owner or lessee of land on which an open or uncovered well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds, except when the well is in actual use.

(b) As used in this section, "open or uncovered well" means an artificial excavation at least 10 feet deep and at least 10 inches but not more than six feet in diameter, that is dug or drilled for the purpose of producing water from the underground water reservoir and is not capped or covered as required by this chapter.

(c) If the owner or lessee fails or refuses to close or cap the well in compliance with this chapter within 10 days after being requested to do so in writing by an officer, agent, or employee of the district, any person, firm, or corporation employed by the district may go on the land and close or cap the well safely and securely.

(d) Expenses incurred by the district in closing or capping a well, not to exceed \$100, constitute a lien on the land on which the well is located.

(e) The lien is perfected by filing in the deed records of the county where the well is located an affidavit, executed by any person conversant with the facts, stating the following:

(1) the existence of the well;

(2) the legal description of the property on which the well is located;

(3) the approximate location of the well on the property;

(4) the failure or refusal of the owner or lessee, after notification, to close the well within 10 days after the notification;

(5) the closing of the well by the district, or by an authorized agent, representative, or employee of the district; and

(6) the expense incurred by the district in closing the well.

(f) The district may make and enforce rules that are necessary or appropriate to effectively exercise the powers granted in this section.

(g) Nothing in this section affects the enforcement of Chapter 281, Acts of the 51st Legislature, 1949 (Article 1721, Vernon's Texas Penal Code).

[Acts 1971, 62nd Leg., p. 394, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 52.120. Illegal Drilling and Operation of Well; Suit

(a) Drilling a well without a required permit or operating a well at a higher rate of production than

the rate approved for the well is declared to be illegal, wasteful per se, and a nuisance.

(b) A person who has an estate in land which is adjacent to the land on which the well is located, or a part which lies within one-half mile of the well, may sue in a court of competent jurisdiction to restrain or enjoin the illegal drilling or operation, or both. The suit may be brought with or without the joinder of the district.

(c) The aggrieved party may also sue for damages for injuries he may have suffered by reason of the illegal operation and for other relief to which he may be entitled. In a suit for damages, the existence or operation of a well in violation of the rules of the district is prima facie evidence of illegal drainage.

(d) The suit may be brought in the county where the illegal well is located or in the county where all or part of the affected land is located.

(e) The remedies provided by this section are cumulative of other remedies available to the individual or the district.

(f) A suit brought under this section shall be advanced for trial and determined as expeditiously as possible. The court shall not grant a postponement or continuance, including a first motion, except for reasons considered imperative by the court.  
[Acts 1971, 62nd Leg., p. 395, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 52.121 to 52.200 reserved for expansion]

SUBCHAPTER E. TAX AND BOND PROVISIONS

§ 52.201. Limit on Taxing Power

The district may not levy or collect taxes on property in the district at a rate greater than 50 cents on the \$100 assessed valuation.  
[Acts 1971, 62nd Leg., p. 395, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 52.202. Bonds: Approval of Commission not Required

A district proposing to issue bonds is not required to submit its plans to and secure approval of the commission under Sections 51.421-51.422 of this code.  
[Acts 1971, 62nd Leg., p. 396, ch. 58, § 1, eff. Aug. 30, 1971.]  
[Sections 52.203 to 52.300 reserved for expansion]

SUBCHAPTER F. JUDICIAL REVIEW

§ 52.301. Suit Against District or Commission

(a) A person, firm, corporation, or association of persons affected by and dissatisfied with any provision of this chapter or with any rule or order made by a district under this chapter is entitled to file a suit against the district or its directors to challenge the validity of the law, rule, or order. The suit shall be filed in a court of competent jurisdiction in any county in which the district or any part of the district is located.

(b) A person, firm, corporation, or association of persons affected by and dissatisfied with any provision of this chapter or by an act of the commission is entitled to file suit against the commission to challenge the validity of the law or the act of the commission. The suit shall be filed in a court of competent jurisdiction in Travis County.  
[Acts 1971, 62nd Leg., p. 396, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 52.302. Suit to be Expedited

A suit brought under this subchapter shall be advanced for trial and determined as expeditiously as possible. No postponement or continuance shall be granted except for reasons considered imperative by the court.  
[Acts 1971, 62nd Leg., p. 396, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 52.303. Trial of Suit

The burden of proof is on the petitioner, and the challenged law, rule, order, or act shall be deemed prima facie valid; but the trial shall be de novo, and the court shall determine all issues of law and fact independent of any determination by the district or the commission.  
[Acts 1971, 62nd Leg., p. 396, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 52.304. Subchapter Cumulative

The provisions of this subchapter do not affect other legal or equitable remedies that may be available.  
[Acts 1971, 62nd Leg., p. 396, ch. 58, § 1, eff. Aug. 30, 1971.]  
[Sections 52.305 to 52.400 reserved for expansion]

SUBCHAPTER G. DISSOLUTION OF DISTRICT

§ 52.401. Dissolution

(a) A district may be dissolved in the manner provided by Sections 51.781-51.792 of this code.  
(b) A district composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved. In this case, the commissioners court shall levy and collect taxes on all taxable property in the district in an amount sufficient to pay the principal of and interest on the indebtedness when due. The taxes shall be levied and collected in the same manner as county taxes.  
(c) This section does not apply to any district composed of territory in more than one county.  
[Acts 1971, 62nd Leg., p. 396, ch. 58, § 1, eff. Aug. 30, 1971.]

CHAPTER 53. FRESH WATER SUPPLY DISTRICTS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 53.001. Definitions

In this chapter:

- (1) "District" means a fresh water supply district established under this chapter.
- (2) "Board" means the board of supervisors of a district.
- (3) "Improvement" means a facility for conserving, transporting, or distributing fresh water.

[Acts 1971, 62nd Leg., p. 397, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 53.002 to 53.010 reserved for expansion]

SUBCHAPTER B. CREATING AND DIVIDING A DISTRICT

§ 53.011. Creating a District

A district is created by petition, hearing, and election.  
[Acts 1971, 62nd Leg., p. 397, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 53.012. Cities and Towns

Cities and towns are includable in a district.  
[Acts 1971, 62nd Leg., p. 397, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 53.013. Presenting Petition

A person may present a petition requesting creation of a district to the commissioners court of the county which includes the land in the proposed district. If the commissioners court is not in session, the petition may be presented to the county judge.  
[Acts 1971, 62nd Leg., p. 397, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 53.014. Requisites of Petition

To be sufficient, the petition must:

- (1) contain the signatures of 50 or a majority of the electors of the proposed district who own land in the proposed district; and
- (2) state:
  - (A) the boundaries of the proposed district;
  - (B) the general nature of the projects proposed to be done;
  - (C) the necessity for the proposed district;
  - (D) the feasibility of the proposed district; and
  - (E) the proposed name for the district, which must include the name of the county in which it is situated.

[Acts 1971, 62nd Leg., p. 397, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 53.015. Deposit

The person who presents the petition shall at the same time pay a deposit of \$100 to the county clerk. The clerk shall pay out the deposit on vouchers approved by the county judge for all expenses necessary for the hearing and the election for the creation of the district. After the election, the clerk shall return any portion of the deposit which is left to the petitioners or their attorney.

[Acts 1971, 62nd Leg., p. 397, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 53.016. Time and Place of Hearing

The commissioners court or county judge shall immediately set a time and place for a hearing on the petition by the commissioners court. The hearing must be held during the period beginning on the 15th day and ending with the 30th day after the day the petition is presented.

[Acts 1971, 62nd Leg., p. 398, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 53.017. Notice

(a) The county clerk shall issue notice of the time and place of the hearing, and in the notice he shall include a statement that any person is entitled to appear at the hearing, challenge the form and allegations of the petition, and contest the proposition that the projects to be undertaken by the proposed district would benefit the land inside its boundaries.

(b) The county clerk may deliver the notice to any adult who is willing to execute it as directed by Section 53.018 of this code.

[Acts 1971, 62nd Leg., p. 398, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.018. Posting Notice**

(a) The person receiving the notice shall post a copy of it at the courthouse door and a copy at each of four different places inside the proposed district. He shall post the notice for at least the 10 days that immediately precede the day set for the hearing.

(b) The person posting the notice shall swear in writing, before some officer who is authorized by law to administer oaths, that he posted the notice according to the provisions of Subsection (a) of this section. The sworn written statement is conclusive of the facts sworn to.

[Acts 1971, 62nd Leg., p. 398, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.019. Hearing Powers**

(a) The commissioners court shall have jurisdiction to determine all issues pertaining to the sufficiency of the petition and shall allow any interested person to appear before it in person or by attorney to offer testimony relative to the sufficiency of the petition.

(b) The commissioners court may adjourn the hearing from day to day as is necessary to complete the hearing.

(c) The commissioners court may make all orders necessary to determine the matters before it.

[Acts 1971, 62nd Leg., p. 398, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.020. Findings; Ordering Election**

(a) The commissioners court shall order an election to determine whether or not the proposed district shall be created, if, at the hearing of the petition, the commissioners court finds:

(1) that the petition conforms to the requirements of Section 53.014 of this code;

(2) that the projects to be undertaken by the proposed district are feasible, practical, and necessary; and

(3) that the projects would benefit the land inside the proposed district.

(b) The commissioners court by order shall set the day for the election, which must be held during the period beginning on the 20th day and ending with the 30th day after the day the order is made.

[Acts 1971, 62nd Leg., p. 398, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.021. Officers to be Elected**

In the election, five supervisors and the tax assessor and collector are elected.

[Acts 1971, 62nd Leg., p. 399, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.022. Notice of Election**

(a) The commissioners court shall prepare a notice of the election, stating:

(1) the time and places of holding the election;

(2) the boundaries of the proposed district;

(3) the proposition to be voted on;

(4) the officers to be voted for; and

(5) the presiding officers appointed to hold the election.

(b) The county clerk shall post the notice at the courthouse door for at least the 20 days immediately preceding the day of the election.

[Acts 1971, 62nd Leg., p. 399, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.023. Conduct of Election**

The commissioners court shall select and name the polling places for each election. Each district is an election precinct for an election held under this chapter. The commissioners court shall appoint a presiding judge, one other judge, and two clerks for each polling place.

[Acts 1971, 62nd Leg., p. 399, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.024. Ballot for Election**

The commissioners court shall provide the ballots for the election, and on each ballot the commissioners court shall have only the following information printed:

(1) the proposition relating to creation of the district;

(2) the names of the persons who were recommended as supervisors and as tax assessor and collector in the petition;

(3) five blank lines under an appropriate heading for write-in votes for the office of supervisor; and

(4) one blank line under an appropriate heading for a write-in vote for the office of tax assessor and collector.

[Acts 1971, 62nd Leg., p. 399, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.025. Returns; Canvass**

Immediately after the election, the presiding judges shall make out and deliver the returns in the same manner that returns are made out and delivered in general elections. The commissioners court, at a regular or called session, shall immediately canvass the returns and declare the result.

[Acts 1971, 62nd Leg., p. 399, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.026. Declaration of Result**

(a) If the result of the election is in favor of creating the district, then the commissioners court shall make and enter in its minutes an order substantially in this form: "\_\_\_\_\_ and \_\_\_\_\_ others having petitioned for the creation of \_\_\_\_\_ County Fresh Water Supply District No. \_\_\_\_\_; an election having been held in the proposed district on \_\_\_\_\_; and a majority of the votes cast in the election having favored creation of the district; now, therefore, the court declares that \_\_\_\_\_ County Fresh Water Supply District No. \_\_\_\_\_ is created, with the following metes and bounds: (Field notes)."

(b) The first district created in a county is "No. 1," the second district is "No. 2," and so on consecutively.

[Acts 1971, 62nd Leg., p. 399, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.027. Recordation of Order**

After entering the order creating the district, the commissioners court shall make a certified copy of the order. The commissioners court shall file this copy with the county clerk. The county clerk shall record the certified copy in the deed records of the county. Recording the order gives notice of its contents to the same extent that recording a deed gives notice of its contents. The district shall pay all costs of making and recording the copy. [Acts 1971, 62nd Leg., p. 400, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.028. Certificates of Election**

The commissioners court shall issue certificates of election to the five persons receiving the most votes for supervisor and to the person receiving the most votes for tax assessor and collector. If two or more persons receive the same number of votes for the position of fifth supervisor, the commissioners court shall select one of them to be the fifth supervisor. [Acts 1971, 62nd Leg., p. 400, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.029. Division of Certain Districts**

A district located in a county having a population of 800,000 or more, according to the last preceding federal census, may be divided into two new districts if it has no outstanding bonded debt and is not levying ad valorem taxes. The division procedure is prescribed by Sections 53.030 to 53.041 of this code. [Acts 1971, 62nd Leg., p. 400, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.030. Ordering Election**

The board may order a special election on its own motion or on presentation of a petition signed by 20 or more qualified property taxpaying electors of the district. [Acts 1971, 62nd Leg., p. 400, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.031. Order: Metes and Bounds**

The petition for election and the order and notices of election must set forth the metes and bounds of the two proposed new districts. [Acts 1971, 62nd Leg., p. 400, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.032. Order: Time of Election**

In the order the board shall set the time for the election, which must be held before the expiration of the 30th day after the day the order is made. [Acts 1971, 62nd Leg., p. 400, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.033. Order: Election of Supervisors**

The board shall include in the order a statement that if the election results in division of the district, the two new districts will each be governed by a board of five supervisors elected in the same election. [Acts 1971, 62nd Leg., p. 401, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.034. Order: Division of Property and Money**

In the election order the board shall state in a general way how the properties and any money on

hand will be divided between the two new districts if the election is in favor of dividing into two districts. The basis set by the board is controlling. [Acts 1971, 62nd Leg., p. 401, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.035. Notice of Election**

The board shall give notice of the election by:

- (1) posting copies of the election order at each of three public places inside the district for at least the 10 days immediately preceding the date of the election; or
- (2) publishing the order in a newspaper of general circulation in the county in which the district is located; or
- (3) both posting and publishing the order.

[Acts 1971, 62nd Leg., p. 401, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.036. Candidates for Supervisor**

(a) To be qualified for election as a supervisor of one of the proposed new districts, a person must:

- (1) be a resident of the territory to be included in the new district;
- (2) have been a resident of the county for six months and the state for one year immediately preceding the day of the election; and
- (3) have the qualifications prescribed by Section 53.063 of this code for supervisors.

(b) A qualified person may have his name printed on the ballot as a candidate for supervisor of a proposed new district by filing a written application with the secretary of the board of supervisors of the existing district at least 10 days before the day of the election.

[Acts 1971, 62nd Leg., p. 401, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.037. Ballots and Election Supplies**

The board shall furnish the ballots and election supplies necessary to hold the election. The board shall pay for the ballots, election supplies, and other expenses of the election from district funds.

[Acts 1971, 62nd Leg., p. 401, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.038. Conduct of Election**

The board shall appoint a presiding judge and two or more clerks to assist him in holding the election. The election is governed by the general election laws except as otherwise provided in this chapter.

[Acts 1971, 62nd Leg., p. 401, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.039. Canvassing Returns**

Immediately after the election is held, the presiding judge shall make out and deliver the returns to the board, and the board shall then canvass the returns and declare the result.

[Acts 1971, 62nd Leg., p. 402, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.040. Elected Supervisors Take Office**

If the election results in a division of the district, the five candidates receiving the most votes in each new district shall be declared elected. They shall

immediately qualify by taking the constitutional oath of office and shall file the oath with the county clerk.

[Acts 1971, 62nd Leg., p. 402, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.041. Completing Membership of the Board

If no supervisors are elected, or if a full board is not elected, the commissioners court shall appoint the needed members of the board.

[Acts 1971, 62nd Leg., p. 402, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.042. Newly Elected Supervisors—Term of Office

The newly elected supervisors hold office until the new district's first general election and then until their successors are elected and have qualified.

[Acts 1971, 62nd Leg., p. 402, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.043. Powers of New District

A district created by the division of an existing district into two districts has all the powers and duties given by this chapter to any other district.

[Acts 1971, 62nd Leg., p. 402, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 53.044 to 53.060 reserved for expansion]

### SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

#### § 53.061. Creation of District

A commissioners court may create one or more fresh water supply districts in its county by following the procedure prescribed in Sections 53.011–53.029 of this code.

[Acts 1971, 62nd Leg., p. 402, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.062. Board of Supervisors

A district created under this chapter is governed by a board of five elected supervisors. Specific provisions for the election of supervisors are found in Section 53.021 (creation election) and Section 53.086 (biennial general election) of this code.

[Acts 1971, 62nd Leg., p. 402, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.063. Supervisor's Qualifications

To be qualified for election as a supervisor, a person must be:

- (1) a resident of the district;
- (2) an owner of land in the district; and
- (3) 21 years old or older at the time of his election.

[Acts 1971, 62nd Leg., p. 402, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.0631. Disqualification of Members of the Board

(a) A person is disqualified from serving as a member of the board if:

- (1) he is related within the third degree of affinity or consanguinity to a member of the board or the manager, engineer, or attorney for the district;

(2) he is or was within two years immediately preceding his election or appointment to the board an employee of any developer of property in the district or any other director, or the manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving or has served within the last two years immediately preceding his election or appointment to the board as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is or has been within the two years immediately preceding his election or appointment to the board:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who willfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Acts 1973, 63rd Leg., p. 1750, ch. 635, § 3, eff. Aug. 27, 1973.]

**§ 53.064. Terms of Office and Succession**

(a) The first elected supervisors hold office until the first general election of officers following their election. Their successors hold office for a term of two years.

(b) The provisions of Section 55.113 of this code govern the filling of a vacancy on the board of supervisors.

[Acts 1971, 62nd Leg., p. 403, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.065. Board Officers and Meetings**

(a) After each biennial election, the board shall organize by electing one of its members president.

(b) The board may appoint a secretary and may pay him a salary of \$150 a month or less.

(c) Three supervisors constitute a quorum, and a concurrence of three is necessary, for transacting any of the business of the district.

(d) The board shall have an office in the district and shall hold meetings at the office at 10 a. m. on the first Monday in February, May, August, and November of each year. The board shall also hold special meetings at the office.

(e) A taxpayer, resident, or interested person may attend any meeting of the board. No person may participate in a meeting without the consent of the board. If given permission by the board, a person may present in an orderly manner any matter at the meeting.

[Acts 1971, 62nd Leg., p. 403, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.066. Board Records**

(a) The board shall keep an accurate record of all its meetings and proceedings.

(b) The board shall keep contracts, records of notices, duplicate vouchers, duplicate receipts, and all other accounts and records in a fireproof vault or safe. It shall deliver the records, which are the property of the district, to its successors in office.

[Acts 1971, 62nd Leg., p. 403, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.067. Supervisor's Bond**

Within 10 days after the commissioners court enters the order creating the district each supervisor shall execute a good and sufficient bond for \$5,000, payable to the district and approved by the commissioners court, conditioned on the faithful performance of his duties.

[Acts 1971, 62nd Leg., p. 403, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.068. Supervisor's Oath**

Each supervisor shall take the oath of office provided by statute for county commissioners. A supervisor, when taking the oath, shall substitute the name of the district for the name of the county.

[Acts 1971, 62nd Leg., p. 403, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.069. Recording the Oath and Bond**

(a) The commissioners court shall file each supervisor's bond and oath with the county clerk. The

county clerk shall record the bond and the oath in the official bond records of the county.

(b) The county clerk shall deliver bonds filed with him to the district depository. The district depository shall keep the bonds as district records.

[Acts 1971, 62nd Leg., p. 403, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.070. Supervisor's Compensation**

(a) A supervisor is entitled to receive for his services not more than \$25 for each day he actually engages in the work of the district.

(b) Before a supervisor may receive compensation for his services, he must submit a statement of his services similar to the one required by Section 55-111(b) of this code.

[Acts 1971, 62nd Leg., p. 404, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 942, ch. 154, § 2, eff. Aug. 30, 1971.]

**§ 53.071. District Assessor and Collector**

One person shall serve as both assessor and tax collector for the district. The tax assessor and collector is elected. The first assessor and collector is elected at the election to create the district.

[Acts 1971, 62nd Leg., p. 404, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.072. Assessor and Collector's Qualifications**

To be qualified for election as assessor and collector, a person must be a resident of the district and a qualified voter in the district.

[Acts 1971, 62nd Leg., p. 404, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.0721. Disqualification of Assessor and Collector**

(a) No person may serve as assessor and collector of a district if:

(1) he is related within the third degree of affinity or consanguinity to any developer in the district, a member of the board or the manager, engineer, or attorney for the district;

(2) he is or was within two years immediately preceding the assumption of his assessment and collection duties with the district an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) he owns an interest in or is employed by any corporation organized for the purpose of tax assessment and collection services, a substantial portion of the stock of which is owned by a developer of property within the district, any director, manager, engineer, or attorney for the district; or

(4) he is himself or through a corporation developing land in the district, or is a director, engineer or attorney for the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as tax assessor and collector with a person who would not be disqualified.

(c) Any person who wilfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

[Acts 1973, 63rd Leg., p. 1537, ch. 558, § 3, eff. June 15, 1973.]

#### § 53.073. Assessor and Collector's Term of Office

The first elected assessor and collector holds office until the next general election of officers following his election. The succeeding assessor and collectors hold office for terms of two years. The board shall fill any vacancy in the office of assessor and collector by appointment for the unexpired term.

[Acts 1971, 62nd Leg., p. 404, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.074. Assessor and Collector's Bond

(a) Before beginning to perform his duties, the assessor and collector must execute a good and sufficient bond for \$5,000, payable to the district and approved by the commissioners court, conditioned on the faithful performance of his duties and on paying to the district depository all money which he receives as collector.

(b) The board may require the assessor and collector to execute additional bonded security.

[Acts 1971, 62nd Leg., p. 404, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.075. Assessor and Collector's Salary

The board shall fix the salary of the assessor and collector at \$2,400 a year or less.

[Acts 1971, 62nd Leg., p. 404, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.076. District Engineer

The board may employ an engineer.

[Acts 1971, 62nd Leg., p. 404, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.077. Engineer's Compensation

The board shall fix the salary of the engineer at \$3,600 a year or less.

[Acts 1971, 62nd Leg., p. 404, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.078. Establishment of Board of Equalization

At their first regular meeting, or as soon after that as practicable, the supervisors shall appoint three commissioners to be the board of equalization. The supervisors shall appoint the board of equalization members annually.

[Acts 1971, 62nd Leg., p. 404, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.079. Qualifications of Members of Board of Equalization

Each member of the board of equalization must be a qualified voter and resident property owner of the district.

[Acts 1971, 62nd Leg., p. 405, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.080. Oath of Members of Board of Equalization

Before beginning his duties each member of the board of equalization shall take the following oath: "I, \_\_\_\_\_, do solemnly swear that I will, to the best of my ability, make a full and complete examination, correction, equalization, and appraisal of all property in the district, as shown by the assessment list or books of the district assessor." The board shall enter each oath in the minutes.

[Acts 1971, 62nd Leg., p. 405, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.081. Duties of Board of Equalization

The board of equalization has the same powers and duties with respect to the district as are provided by law for equalization boards of water improvement districts.

[Acts 1971, 62nd Leg., p. 405, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.082. Meetings of Board of Equalization

At the meeting at which the board of equalization members are appointed, the board of supervisors shall set the time for the meeting of the board of equalization for the first year. At the first meeting, the board of equalization shall receive all assessments, lists, and books of the district assessor for examination, correction, equalization, appraisal, and approval. At all meetings of the board, a secretary shall keep a permanent record of the proceedings.

[Acts 1971, 62nd Leg., p. 405, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.083. Compensation of Board of Equalization Members and Secretary

Each member of the board of equalization is entitled to receive not more than \$5 a day for his services for the time actually engaged in discharging his duties. The secretary of the board of equalization is entitled to receive the same compensation as a board member.

[Acts 1971, 62nd Leg., p. 405, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.084. Required Official Bonds

A bond required of an officer or employee of the district is governed by the provisions of Section 55.123 of this code, which governs the approval and furnishing of bonds by surety companies for officers and employees of water improvement districts.

[Acts 1971, 62nd Leg., p. 405, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.085. Compensation of Other Officers

(a) If the compensation of an officer of a district is not provided for in this chapter, the district shall pay him the same compensation that he would re-

ceive for doing similar service as an officer of the county.

(b) The district shall pay a clerk who records orders the same compensation that a county clerk is paid for recording deeds. The district shall pay a person who posts notices the same compensation that a sheriff is paid for officially posting notices. [Acts 1971, 62nd Leg., p. 405, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.086. Date for General Elections**

The district shall hold a general election every second year to elect five supervisors and one assessor and collector. The District shall hold the election on the first Saturday in April. If the first Saturday in April is a state or national holiday, the district shall hold the election on the next Tuesday.

[Acts 1971, 62nd Leg., p. 405, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1540, ch. 559, § 3, eff. June 15, 1973.]

**§ 53.087. District Seal**

The district shall have a common seal which is circular in form with the name of the district surrounding a five-pointed star.

[Acts 1971, 62nd Leg., p. 406, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.088. Status of the District**

(a) A district is:

- (1) a governmental agency;
- (2) a body politic and corporate; and
- (3) a defined district within the meaning of Article XVI, Section 59, of the Texas Constitution.

(b) A district may, through its board, sue and be sued in any court of this state in the name of the district. All courts of this state shall take judicial notice of the creation of a district. A district shall contract and be contracted with in the name of the district.

[Acts 1971, 62nd Leg., p. 406, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.089. Filling Offices Vacant Due to Lack of Candidates**

(a) After a district has issued any bonds, if there are not enough qualified persons to fill all the offices of the district, an owner of any of the bonds may file a petition with the county clerk of any county in which the district is located to have the commissioners court appoint a board of supervisors and a secretary for the board for the district. The person who files the petition shall address the petition to the commissioners court and set forth the facts as to the insufficiency of the number of qualified persons.

(b) When the petition is filed, the county judge shall by order set a date for a hearing on the merits of the petition and the commissioners court shall hold the hearing during the period beginning on the 30th day and ending with the 60th day after the day the petition is filed. The commissioners court shall give notice of the hearing, setting forth the time and place of the hearing and a brief description of the

purpose of the hearing. The commissioners court shall have the notices posted in four places in the district and at the courthouse door. The commissioners court shall have the notices posted for at least the 20 days immediately preceding the day of the hearing. The commissioners court shall hold the hearing in the courtroom of the commissioners court. The commissioners court has exclusive original jurisdiction to hear and determine the matters and facts involved in the hearing. A district court of the county may review the findings and judgment of the commissioners court.

(c) If there is no governing body or board of supervisors of a district, this fact is prima facie proof that there are not enough qualified persons who are residents and property owners in the district to fill all the offices of the district. In this case, the petitioning bond owners are entitled to the relief given by this section.

(d) If the commissioners court finds that the allegations in the petition are true and sufficient, the commissioners court shall enter its judgment and decree and appoint three disinterested commissioners to be the board of supervisors and the board of equalization of the district.

(e) An appointed commissioner must be a landowner of the county in which the district is located. He may or may not own land inside the district for which he is to act. No appointed commissioner may be related within the fourth degree of affinity or consanguinity to a member of the commissioners court that appoints him.

(f) A commissioner who is appointed by the commissioners court shall be 21 years old or older. The appointed board and its secretary have the same powers and duties and are entitled to receive the same compensation as a regularly appointed board and its secretary.

(g) If the commissioners court appoints commissioners as provided in Subsection (d) of this section, the tax assessor and collector of the county in which the district is located shall be ex officio tax assessor and collector of the district. If the positions of tax assessor and tax collector for the county are filled by two different persons, these persons shall fill the same positions, respectively, for the district. The county assessor and collector is entitled to receive the same compensation for his services as does a regularly elected district assessor and collector.

(h) The commissioners court that grants the relief provided for in this section shall levy taxes on all taxable property inside the district in an amount sufficient to pay the interest on the bonds as it accrues and the principal as it matures. The tax assessor and collector shall assess and collect these taxes.

[Acts 1971, 62nd Leg., p. 406, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.090. District Office**

(a) After at least 25 qualified electors are residing in the district, the district shall have a district office located in the district, and on majority vote of the

board at a public hearing may maintain an office outside the district.

(b) After at least 25 qualified electors are residing in a district, on written request of at least five of these electors, the board shall designate a meeting place within the district. On the failure to designate the location of the meeting place within the district, five electors may petition the commission to designate a location, which may be changed by the board after the next election of members to the board.

[Acts 1973, 63rd Leg., p. 618, ch. 263, § 3, eff. Aug. 27, 1973.]

#### § 53.091. Records

The district shall preserve its minutes, contracts, records, notices, accounts, receipts, and records of all kinds or certified copies of these in a safe place in the district office. These minutes, contracts, records, notices, accounts, receipts, and other records are the property of the district and subject to public inspection.

[Acts 1973, 63rd Leg., p. 618, ch. 263, § 3, eff. Aug. 27, 1973.]

[Sections 53.092 to 53.100 reserved for expansion]

### SUBCHAPTER D. POWERS AND DUTIES

#### § 53.101. Purpose of District

Fresh water supply districts may be created to conserve, transport, and distribute fresh water from any sources for domestic and commercial purposes.

[Acts 1971, 62nd Leg., p. 407, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.102. Constitutional Basis

The constitutional basis for this chapter is Article XVI, Section 59, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 407, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.103. Governmental Powers of District

A district has the powers of government and authority to exercise the rights, privileges, and functions given to it by this chapter or by any other state law.

[Acts 1971, 62nd Leg., p. 407, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.104. Authority to Acquire Water Rights

A district may acquire water rights and privileges in any way that an individual or corporation may acquire them. A district may hold water rights and privileges, either by gift, purchase, devise, appropriation, or by other means.

[Acts 1971, 62nd Leg., p. 407, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.105. Duties—In General

The board shall control and manage the affairs of the district, including:

- (1) making all contracts for the district;
- (2) controlling the construction of all improvements and other works inside and outside the district; and

- (3) controlling the transportation and distribution of the water of the district.

[Acts 1971, 62nd Leg., p. 408, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.106. Employees

The board may employ all necessary employees for the district, including:

- (1) a general manager;
- (2) attorneys;
- (3) a bookkeeper;
- (4) an engineer; and
- (5) assistants and laborers.

[Acts 1971, 62nd Leg., p. 408, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.107. Distribution of Water and Use of Revenues Obtained from Distribution of Water

(a) The board shall:

- (1) prescribe the terms on which water will be furnished;
- (2) fix the rate to be paid by users of water from the district; and
- (3) make rules and regulations governing the distribution and use of water.

(b) The board shall apply any revenue obtained from the sale of water to operation and maintenance expenses. Any revenue left after paying these expenses shall be used to pay interest on bonds and other indebtedness incurred by the district with the remainder to be placed in the sinking fund.

[Acts 1971, 62nd Leg., p. 408, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.108. Right to Enter Land

The supervisors and employees of a district may go on any land inside or outside the district to examine the land with reference to:

- (1) the location of improvements to be constructed by the district; and
- (2) any other lawful purpose in regard to conserving, transporting, and distributing water.

[Acts 1971, 62nd Leg., p. 408, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.109. Power of Eminent Domain

(a) The district may exercise the power of eminent domain to acquire the fee simple title, easement, or right-of-way over and through any public or private land, water, or land under water, inside or outside the district, necessary to construct and operate the improvements authorized by this chapter and to connect with pipelines belonging to other districts.

(b) The district may not exercise the power of eminent domain to take a right-of-way over or through:

- (1) a park;
- (2) a cemetery;
- (3) a manufacturing establishment; or
- (4) an established and developed waterpower existing at the time the district is created.

(c) The district shall pay fair and just compensation to the owners of pipelines in other districts to which the district connects its improvements. The district may connect its improvements with those of other districts only when the use will not impair the supply or service of the other districts.

(d) The board shall institute eminent domain proceedings in the name of the district.  
[Acts 1971, 62nd Leg., p. 408, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.110. Acquisition of Right-of-Way**

(a) The district may acquire the rights-of-way for necessary improvements by gift, grant, purchase, or condemnation proceedings.

(b) The district may construct and maintain improvements inside and outside the district on the land it acquires.  
[Acts 1971, 62nd Leg., p. 409, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.111. Right-of-Way across Roads**

A district has the right-of-way across any public or county road. The district shall restore the roads where crossed as nearly as is possible to their previous condition.  
[Acts 1971, 62nd Leg., p. 409, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.112. Use of Roadways**

In order to secure fresh water, a district may construct necessary levees, bridges, and other improvements across or under:

- (1) railroad embankments, tracks, or rights-of-way;
- (2) public or private roads and their rights-of-way;
- (3) rivers;
- (4) improvements of other districts and their rights-of-way; and
- (5) other improvements and their rights-of-way.

[Acts 1971, 62nd Leg., p. 409, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.113. Constructing Improvements on Railroad Ways**

(a) Before the district may construct an improvement across or under any railroad property, the district must notify the railroad authorities of the district's intention to construct the improvement if the railroad does not do so.

(b) The railroad has 30 days from the day it receives the notice in which to decide whether or not to build the improvement itself, at its own expense and according to its own plans.

(c) If the railroad builds the improvement, it must do so in a manner which is satisfactory to the district.  
[Acts 1971, 62nd Leg., p. 409, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.114. Power to Construct Improvements**

(a) A district may build and maintain necessary works and improvements inside and outside the district.

(b) A district may make any contracts necessary to build and maintain works and improvements. A district may employ any persons and means necessary to build and maintain works and improvements.

(c) With the consent of the proper governing bodies, a district may, if necessary, take over, by purchase or otherwise, all or part of any water plants or systems inside the district.  
[Acts 1971, 62nd Leg., p. 409, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.115. Duties of Engineer**

(a) The engineer shall make maps and profiles of the district improvements, including any part of the improvements which extends beyond the boundaries of the district.

(b) The engineer may adopt other correct maps, plats, and surveys.

(c) The engineer shall perform other duties required of him by the board.  
[Acts 1971, 62nd Leg., p. 409, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.116. Construction Contracts**

(a) A district may enter into necessary contracts for authorized construction and repairs.

(b) Before awarding a contract of \$1,000 or more, the board shall ask for competitive bids on uniform written specifications, after advertising one time in a newspaper of general circulation in the county or district for at least five days before opening bids.

(c) The board shall award each contract to the lowest and best bidder.

(d) The board shall require each contractor to execute a surety bond in a sum equal to the amount of the contract, to insure the faithful performance of the contract and payment for labor and materials.

(e) The bond shall be approved by the board and deposited with the depository, and a true copy of the bond shall be retained in the office of the district secretary.

(f) When the amount is \$1,000 or less, but more than \$150, the board may receive bids and award contracts without advertising or requiring bond.

(g) When the amount is \$150 or less, the board may purchase on emergency requisitions. All of the provisions of Articles 1667 through 1673, Revised Civil Statutes of Texas, 1925, as amended, apply to the accounting of the district and the record of purchases, except as otherwise provided in this section.  
[Acts 1971, 62nd Leg., p. 410, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.117. Formal Requirements of a District Contract**

To be effective, a contract made by the board must be in writing and signed by the contractor and at least three supervisors. The board shall file a copy of each contract with the depository, where it may be inspected by any interested person.

[Acts 1971, 62nd Leg., p. 410, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.118. Performance of Contract**

The contractor shall fulfill the contract in accordance with the specifications and under the supervision of the board and the district engineer. The engineer shall inspect the work and report on the progress of the work.

[Acts 1971, 62nd Leg., p. 410, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.119. Payment of Contracts**

The board shall pay for the work in the manner provided for by law for contracts executed by water control and preservation districts.

[Acts 1971, 62nd Leg., p. 410, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.120. Power to Purchase Equipment**

The board may buy necessary equipment and supplies that are required to construct, operate, and maintain the works and improvements of the district.

[Acts 1971, 62nd Leg., p. 410, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.121. Constructing Sanitary Sewer Systems**

(a) A district may purchase, construct, acquire, own, operate, repair, improve, and extend sanitary sewer systems to control wastes, if no other public sanitary sewer system is available for the area inside the fresh water supply district.

(b) Before a district may exercise the power given by this section, it must hold an election in the same manner as provided in this chapter for other elections of the district.

[Acts 1971, 62nd Leg., p. 411, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.122. Regulating Sanitary Conditions Inside the District**

(a) A district may regulate the installation, maintenance, and operation of plumbing fixtures and facilities inside the district for the purpose of:

(1) maintaining safe and sanitary conditions; and

(2) protecting the lives, health, and welfare of the people in the district.

(b) The board may set a reasonable penalty for violating any rule authorized by Subsection (a) of this section, within these limits:

(1) a fine of not more than \$200;

(2) confinement in the county jail for not more than 30 days; or

(3) both the fine and the jail sentence.

(c) The penalty set by the supervisors is in addition to other penalties provided by law. A court of proper jurisdiction in the county where the district's principal office is located may enforce the penalties.

(d) A penalty for the violation of a rule is not valid unless a brief, substantial statement of the rule and the penalty is published once a week for two consecutive weeks in a newspaper of general circulation in the area in which the district is located. A penalty takes effect seven days after the second publication.

(e) The courts shall take judicial notice of the rules made by a district under this section.

[Acts 1971, 62nd Leg., p. 411, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.123. Interest in District Contract**

(a) No supervisor, engineer, or employee of the district may have a direct or indirect interest in any contract for:

(1) the purchase of material needed by the district; or

(2) the construction of improvements by the district.

(b) A person who violates any provision of Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by:

(1) a fine of not more than \$1,000 or confinement in the county jail for not less than six months nor more than one year, or by both; and

(2) removal from office and disqualification for further employment by the district.

[Acts 1971, 62nd Leg., p. 411, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.124. Peace Officers**

(a) A district may deputize peace officers, who may arrest any person who violates a rule of the district or a law of the state.

(b) The power of arrest of a peace officer appointed by a district extends only to offenses committed inside the district.

[Acts 1971, 62nd Leg., p. 411, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.125. Joint Projects**

A district may act jointly with other districts, political subdivisions, cities, towns, states, and the federal government in exercising any power given by this chapter. The supervisors shall set the terms on which joint projects will be carried out.

[Acts 1971, 62nd Leg., p. 412, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.126. Effect of Enumeration of Powers**

No statement of specific powers in this chapter is a limitation on the general powers given by this chapter, unless it is specifically so stated.

[Acts 1971, 62nd Leg., p. 412, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 53.127 to 53.140 reserved for expansion]

**SUBCHAPTER E. GENERAL FISCAL PROVISIONS****§ 53.141. May Borrow Money**

A district may borrow money to accomplish the purposes stated in Section 53.101 of this code.

[Acts 1971, 62nd Leg., p. 412, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.142. Notes as Security**

(a) The board may, without an election, borrow money on notes of the district at a rate of interest of six percent or less a year.

(b) The district shall pay these notes solely from gross revenues of the district's water system, less

the reasonable cost of maintaining and operating the system. No obligation to pay these notes may ever be a charge on the property of the district or on taxes levied or collected by the district. The obligation is solely a charge on the revenues pledged for their payment. The district shall not pay any part of the obligation from taxes levied or collected by the district.

(c) The issuance of each note must be authorized by a majority vote of the board and the board, at the time of the authorization, shall set rates and charges for the use of the facilities or the services rendered by the district. The board shall set the rates in an amount sufficient to assure the prompt payment of the principal of and interest on the notes as they mature.

[Acts 1971, 62nd Leg., p. 412, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.143. Vouchers**

(a) At least three supervisors shall sign each voucher to be paid by the district. Each voucher shall refer to the book and page of the minutes which authorized the payments.

(b) The board shall issue all vouchers from a regular duplicate book and shall retain the duplicates as part of the district records.

[Acts 1971, 62nd Leg., p. 412, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.144. Payment of Organization Expenses**

The board may pay all necessary expenses of creating the district and may reimburse any person, corporation, or association for money advanced to create or organize the district. The board shall pay these expenses from money obtained from the sale of bonds.

[Acts 1971, 62nd Leg., p. 412, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.145. Payment of Election Expenses**

The board shall pay all expenses of calling and holding each election, except the creation election, from any district funds except the interest and sinking fund.

[Acts 1971, 62nd Leg., p. 413, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.146. Maintenance Fund**

(a) A district shall have a maintenance and operating fund. The fund consists of all money collected by assessment or otherwise for maintaining and operating the property of the district.

(b) The board shall use the money in this fund to pay:

- (1) all salaries of officers and employees, other than that of the assessor and collector; and
- (2) operating expenses.

[Acts 1971, 62nd Leg., p. 413, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.147. Payment of Premiums on Surety Bonds**

The board may pay the premiums on surety bonds required of officials and employees of the district out of any available funds of the district.

[Acts 1971, 62nd Leg., p. 413, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.148. District Depository**

(a) The board shall select a depository for the district in accordance with the provisions of law relating to the selection of county depositories. The duties of the depository are governed by the law relating to county depositories.

(b) In the selection of the depository, the board shall act in the same capacity as does the commissioners court in the selection of county depositories.

(c) The depository shall act as district treasurer and shall execute a bond in an amount determined by the board. The depository shall make and file reports and shall preserve the district records as required of depositories for water improvement districts by Section 55.426 of this code.

[Acts 1971, 62nd Leg., p. 413, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.149. District Audit**

(a) The board shall keep a complete record of accounts for the district. They shall, on June 1 of each year, appoint an auditor. The auditor shall examine the accounts, books, and reports of the depository, the assessor and collector, and the board.

(b) The auditor shall make a full written report showing in detail for what purposes the money from each fund has been expended. He shall file a copy of the report with the district depository, a copy with the board, and a copy with the county clerk.

(c) The auditor shall file the report on or before September 1 of each year.

[Acts 1971, 62nd Leg., p. 413, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.150. Payment of Damages**

The district shall pay out of any funds or property of the district, except the interest and sinking fund:

- (1) compensation and damages adjudicated in condemnation proceedings; and
- (2) compensation for damage done to the property of any person or corporation in the construction and maintenance of improvements.

[Acts 1971, 62nd Leg., p. 413, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.151. Cost of Sanitary Sewer Systems**

(a) The board may pay the cost of acquiring and repairing sanitary sewer systems from:

- (1) the proceeds of sale of bonds or other obligations issued by the district;
- (2) revenue obtained from maintenance taxes; or
- (3) revenue from the operation of the district's improvements.

(b) The board may pay the cost of maintaining and operating sanitary sewer systems with funds obtained from maintenance taxes or from operating revenues. The board may not pay these costs with borrowed money.

[Acts 1971, 62nd Leg., p. 414, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 53.152 to 53.170 reserved for expansion]

## SUBCHAPTER F. BOND AND TAX PROVISIONS

## § 53.171. Power to Issue Bonds

(a) A district may issue bonds to secure indebtedness.

(b) A district may not issue tax bonds or incur any debt which is to be paid with tax revenue unless an election is first held in the district and the proposition is approved by a majority of the electors of the district who vote in the election.

[Acts 1971, 62nd Leg., p. 414, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 53.172. Ordering Bond Election

After the creation of a district and the qualification of the supervisors, the board may order an election in the district to authorize a bond issue. The board shall set the day for the election, which must be held during the period beginning on the 20th day and ending with the 30th day after the day of the order. At this election, the board shall submit only a proposition authorizing the issuance of bonds and the levy of a tax to pay the bonds. The ballots shall be printed to allow for voting for or against the proposition: "The issuance of bonds and the levy of taxes to pay the bonds."

[Acts 1971, 62nd Leg., p. 414, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 53.173. Notice of Election

(a) The board shall give notice of the bond election, stating the amount of bonds to be issued. The board shall post a copy of the notice in four public places in the district, including a copy at the courthouse door. The board shall have the notice posted during the 20-day period immediately preceding the day of the election.

(b) The board shall have printed on the notice:

- (1) the proposition to be voted on; and
- (2) an estimate of the probable cost of constructing or purchasing the proposed improvement and the incidental expenses connected with the construction or purchase.

[Acts 1971, 62nd Leg., p. 414, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 53.174. Conduct of Bond Election

The board shall select polling places in the district and shall appoint a presiding judge, one other judge, and two clerks for each polling place. The board shall provide the necessary ballots for the election and shall have printed on them the proposition to be submitted.

[Acts 1971, 62nd Leg., p. 414, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 53.175. Canvassing Bond Election Results

Immediately after the election, the presiding judge of each polling place shall return the result in the same manner as results are returned in general elections for state and county officers. The judge shall return the result to the board, which shall, at a regular or special session, canvass the vote. If a

majority of the votes favor issuing bonds and levying taxes, the board shall declare the result and enter it in the minutes.

[Acts 1971, 62nd Leg., p. 415, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 53.176. Issuing Bonds

(a) After declaring the result of the election, the board shall make and enter an order in the minutes directing the issuing of bonds sufficient to pay for the proposed improvements. The board may not issue bonds in an amount greater than that specified in the order and notice of election.

(b) Subchapter L, of Chapter 55 of this code, providing for the issuing, denominations, rate of interest, manner and conditions of payment, and maturity dates of water improvement district bonds, apply to bonds of a fresh water supply district.

[Acts 1971, 62nd Leg., p. 415, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 53.177. Approving Bonds

(a) Before the board offers bonds for sale, it shall send to the attorney general a certified copy of all proceedings relating to organizing the district and issuing the bonds. They shall also provide other relevant information he requires.

(b) The attorney general shall carefully examine the bonds in connection with the record and the constitution and laws of this state governing the issuance of bonds. The attorney general shall certify the bonds if he finds that they conform to the record and the constitution and laws of this state and that they are valid and binding obligations of the district.

[Acts 1971, 62nd Leg., p. 415, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 53.178. Registering Bonds

When the attorney general approves the bonds, the comptroller shall register them in a book kept for that purpose. The comptroller shall record the certificate of the attorney general as to the bonds' validity. The bonds are then prima facie valid in any action, suit, or proceeding. In a suit to enforce collection of the bonds and interest on the bonds, the only defense against the validity of the bonds is forgery or fraud.

[Acts 1971, 62nd Leg., p. 415, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 53.179. Selling Bonds

After the bonds are registered, the board shall sell them on the best terms and for the best price possible. The board shall promptly pay to the district depository the money received from the sale of the bonds. The district depository shall hold the money for the district.

[Acts 1971, 62nd Leg., p. 415, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 53.1791. Notice of Bond Sale

(a) Except for refunding bonds, bonds sold to a state or federal agency, and bonds registered with a federal agency, after any bonds are finally authoriz-

ed and before they are sold by a district, the board shall publish an appropriate notice of the sale:

- (1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation which is published in the county or counties in which the district is located; and
- (2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the attorney general.

(b) If a newspaper publication required by Subdivision (1), Subsection (a), of this section is not published in the county, then notice may be published in any newspaper of general circulation in such county. [Acts 1973, 63rd Leg., p. 616, ch. 262, § 3, eff. Aug. 27, 1973.]

**§ 53.180. Recording of Bond Issues**

(a) After the bonds are issued, the board shall deliver a well-bound book to the county treasurer, who shall keep in the book a list of:

- (1) all bonds which have been issued;
- (2) their manner of payment;
- (3) the amount of each bond;
- (4) the rate of interest on each bond;
- (5) the date of issuing each bond;
- (6) the date when each bond is due;
- (7) the place where each bond is payable;
- (8) the amount received for each bond; and
- (9) the tax levy to pay interest on and redeem the bonds.

(b) The county treasurer shall keep the books open at all times for inspection by any taxpayer or bondholder. When a person pays for a bond, the treasurer shall enter the payment in the book. The treasurer is entitled to receive for his services the same fee allowed by law to the county clerk for recording deeds.

[Acts 1971, 62nd Leg., p. 416, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.181. Paying Bonds and Interest**

At the time for paying interest or for redeeming the bonds, the district depository shall receive and cancel any interest coupons paid or any bonds redeemed. When the board receives an interest coupon or a bond, it shall credit the account of the depository with the amount received. The board shall then cancel and destroy the bond or coupon. [Acts 1971, 62nd Leg., p. 416, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.182. Bonds Payable from Revenues and Ad Valorem Taxes**

(a) For the purpose of constructing, purchasing, repairing, improving, and extending authorized improvements, a district may issue bonds payable solely from the revenues of:

- (1) the operation of the district's water system, less the reasonable cost of maintaining and operating the system; or

- (2) the operation of the district's sanitary sewer system, less the reasonable cost of maintaining and operating the system; or

- (3) both the water system and the sanitary sewer system.

(b) The district may also issue bonds for the purposes set out in this section, payable both from ad valorem taxes and the revenues of:

- (1) its water system; or
- (2) its sanitary sewer system; or
- (3) both its water system and sanitary sewer system.

(c) If the district issues combination tax and revenue bonds, it shall levy, assess, and collect ad valorem taxes until the net revenues from the operation of the water system or the sanitary sewer system, together with the revenue from taxes, have accumulated a surplus in the sinking fund at least equal to the principal of and interest on the bonds scheduled to accrue in the next year. When this accumulation is completed, the board may reduce the tax levy to a rate that will produce at least 25 percent of the principal and interest requirements for each of the next succeeding years. When actual experience of three successive years demonstrates that the net revenues are adequate to pay the principal of and the interest on the bonds as they mature, the board may discontinue the tax until it becomes necessary to levy the tax again to avoid default in paying the bonds and interest.

[Acts 1971, 62nd Leg., p. 416, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.183. Election Required**

(a) A district may not issue bonds as authorized in Section 53.182 of this code unless an election is first held in the district and the proposition is approved by a majority of the electors of the district who vote in the election.

(b) If the election is held to authorize revenue bonds only, the board shall have the ballots printed to allow for voting for or against the proposition: "The issuance of bonds and the pledge of net revenues for the payment of the bonds."

(c) If the election is held to authorize combination tax and revenue bonds, the board shall have the ballots printed to allow for voting for or against the proposition: "The issuance of bonds to be paid for from an adequate pledge of net revenues and levy of ad valorem taxes."

(d) Except as provided in this section, the provisions of Sections 53.172-53.175 of this code, relating to tax bond elections, apply to elections held under this section.

[Acts 1971, 62nd Leg., p. 417, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.184. Refunding Bonds**

(a) With the consent of the holders, a district may refund outstanding bonds by issuing new coupon bonds in their place.

(b) Interest is shown by coupons attached to the bonds. The board may pay the interest on the bonds annually or semiannually.

(c) The board may pay the refunding bonds serially or in any other manner it chooses, but it shall pay the bonds not later than 40 years from the date the bonds are issued.

(d) The board shall issue the bonds in denominations of \$100 or a multiple of \$100. The board shall levy a tax sufficient to meet the payment of principal of and interest on the refunding bonds before the bonds are delivered. The refunding of bonds does not affect any taxes already due.

(e) The board shall issue refunding bonds in the manner provided for other district bonds. The board shall deduct any sum on hand to the credit of any sinking fund account in ascertaining the amount of refunding bonds to be issued, and it shall apply the money to the payment of the outstanding bonds.

(f) The board shall not issue refunding bonds until they are approved by the attorney general and registered by the comptroller. The comptroller shall not register the refunding bonds until the old bonds being replaced are presented to him for cancellation. After the comptroller registers the new bonds, he shall cancel the old bonds and interest coupons and deliver the new bonds to the proper bondholders. The district may present the old bonds for cancellation in installments, and the comptroller may register and deliver a like amount of the new bonds. [Acts 1971, 62nd Leg., p. 417, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.185. Rates and Charges

If the board issues revenue bonds or combination tax and revenue bonds, the board, at the time it authorizes the bonds, shall fix rates and charges for the use of the facilities or the services rendered in an amount which, together with any tax which is levied, will assure the prompt payment of the principal of and interest on the bonds as they mature. [Acts 1971, 62nd Leg., p. 417, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.186. Interest and Sinking Fund

(a) A district shall have an interest and sinking fund. The board shall credit to this fund all taxes collected for the payment of interest or redemption of district bonds.

(b) The board shall use money in this fund only:

- (1) to pay interest on district bonds;
- (2) to cancel and surrender district bonds; and
- (3) to pay the expenses of assessing and collecting the taxes.

[Acts 1971, 62nd Leg., p. 418, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.187. Investment of Sinking Fund

The board may invest the district's sinking funds in county, municipal, district, or other bonds in which other sinking funds may by law be invested. The board may also invest the sinking funds in bonds of the series to which the funds apply, if the

bonds are offered for redemption before maturity on terms the board deems advantageous to the district. [Acts 1971, 62nd Leg., p. 418, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.188. Levy of Taxes

After the district has issued bonds, the board shall levy taxes on all property in the district, whether real, personal, or mixed. The board shall levy the taxes based on the full value of each piece of property. The board shall levy the taxes in an amount which is enough to pay the interest on the bonds and to create a sinking fund sufficient to redeem and discharge the bonds when they mature. The board shall levy taxes annually for this purpose as long as the bonds are outstanding.

[Acts 1971, 62nd Leg., p. 418, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.189. Assessor and Collector—Office

The assessor and collector shall maintain an office. [Acts 1971, 62nd Leg., p. 418, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.190. Subject to Rules of Board

The assessor and collector is subject to the rules and regulations of the board in the same manner as provided by law for assessors and collectors of water improvement districts.

[Acts 1971, 62nd Leg., p. 418, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.191. Duties—In General

In addition to the other duties imposed by this chapter, the assessor and collector shall:

- (1) return to the board of equalization a list of all persons who refuse to sign the oath for tax assessment;
- (2) make up and return the assessment rolls and keep bound records of the rolls;
- (3) collect all taxes and deposit them weekly in the district depository;
- (4) file once a week with the district secretary a statement of all money collected;
- (5) keep an account of all money collected;
- (6) make a monthly report of collections; and
- (7) use a duplicate receipt book, give a receipt for each collection, and retain a copy in the book which he shall preserve as a district record.

[Acts 1971, 62nd Leg., p. 418, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.192. Assessor's Accounts

The board shall charge the assessor and collector with the total assessment as shown by the assessment rolls. For this purpose, the board shall use a permanent finance ledger. The board shall give the assessor and collector credit for all money he pays to the depository as shown by his monthly reports. After the final annual settlement, the assessor and collector shall make a complete report of all taxes that have not been collected. The board shall audit the report and give proper credits to the assessor and collector. The board shall make the annual settlement on the first Monday in May of each year. [Acts 1971, 62nd Leg., p. 419, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.193. Rendering Property for Taxation**

Each person, partnership, or corporation that owns taxable property in the district shall render the property for taxation to the tax assessor and collector when called on to do so. If he is not called on to do so, he shall render his property for taxation on or before June 1 of each year.

[Acts 1971, 62nd Leg., p. 419, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.194. Assessment of Taxes**

(a) Immediately after the district votes a bond issue, the tax assessor and collector shall assess all taxable property, whether real, personal, or mixed, in the district. He shall assess all property annually.

(b) The tax assessor and collector shall make the assessment on forms provided by the board and on each form he shall record:

(1) the property owner's sworn statement listing all property which he owns in the district and which is subject to state and county taxation; and

(2) the full value of the property.

(c) The assessor and collector shall make a list of all property which is not rendered for taxation in the district and which is subject to state and county taxation.

(d) The assessor and collector has authority to administer oaths to carry out fully the provisions of this section.

[Acts 1971, 62nd Leg., p. 419, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.195. Date of Tax Assessment**

The tax assessor and collector shall assess taxes for the district on January 1 of each year. He shall complete the assessment and have the lists and books ready to deliver on or before June 1.

[Acts 1971, 62nd Leg., p. 419, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.196. Appraisal Dates**

The board of equalization shall, after the first year, meet annually on the first Monday in June to receive all assessment lists or books of the assessor and collector. The board shall complete its examination and equalization of the lists by the second Monday in June. The board shall deliver the rolls to the assessor and collector by the second Monday in July. The assessor and collector shall complete the rolls, and the board shall approve the rolls and return them to the assessor and collector, by the first Monday in September.

[Acts 1971, 62nd Leg., p. 419, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.197. Maintenance Tax Election**

(a) If the board considers it necessary to levy a maintenance tax, it shall call an election in the district.

(b) The board shall have printed on the ballot the proposition for or against the tax and the amount of the proposed tax, which may be either a fixed rate or a maximum rate.

(c) Except as provided in this section, the provisions of Sections 53.172-53.175 of this code, relating to tax bond elections, apply to elections held under this section.

[Acts 1971, 62nd Leg., p. 419, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.198. Levy of Maintenance Tax**

(a) After the district has voted a maintenance tax, the board shall levy the tax and have it assessed and collected as are other taxes. The board may not levy a tax in an amount which is more than the specific sum voted.

(b) The board shall use the revenue from the maintenance tax only:

(1) to maintain, repair, and make additions to the district improvements; and

(2) to pay for other lawful expenses of the district.

(c) The board may levy maintenance taxes until the power is taken away by another district election. The board may hold an election on the question of repeal or reduction of maintenance taxes no more often than once every five years. The board may refrain from levying maintenance taxes if they are not necessary.

[Acts 1971, 62nd Leg., p. 420, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.199. Tax Collection Dates**

All taxes are due and payable on October 1 of each year. The district taxpayers shall pay the taxes before February 1 of the next year.

[Acts 1971, 62nd Leg., p. 420, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.200. Delinquent Taxes**

All the provisions of Subchapter M of Chapter 55 of this code relating to the lien, penalties, interest and costs, preparation and publication of the delinquent tax roll, suit for collection and foreclosure proceedings, attorney's fees, and officers' fees in proceedings for collecting delinquent taxes, and relating to redemption of lands before sale, apply to collecting delinquent taxes in a fresh water supply district.

[Acts 1971, 62nd Leg., p. 420, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 53.201 to 53.230 reserved for expansion]

SUBCHAPTER G. ADDING AND EXCLUDING TERRITORY

**§ 53.231. Excluding Land from District**

The board, by resolution, may exclude territory from the district to the extent of at least 10 acres contiguous and adjoining the boundaries of the district. The board may exclude land by resolution only before the district has issued and sold any bonds and before the district has levied any taxes.

[Acts 1971, 62nd Leg., p. 420, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.232. Procedure**

The resolution is effective only after:

(1) notice is published as prescribed by Section 53.233 of this code; or

(2) the resolution is confirmed at an election ordered under Section 53.235 of this code.

[Acts 1971, 62nd Leg., p. 420, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.233. Publication of Notice**

(a) The board shall have the notice of intention to adopt the resolution published once a week for two consecutive weeks in a newspaper of general circulation in the county. It shall have the first notice published before the beginning of the 14-day period immediately preceding the day of the meeting at which the resolution is to be finally passed.

(b) The board shall state in the notice the date set for the meeting and shall include in the notice a copy of the proposed resolution containing a description by metes and bounds of the land proposed to be excluded.

[Acts 1971, 62nd Leg., p. 420, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.234. Petition for Election**

At any time before the date set for the meeting, 10 or a majority of the qualified electors of the district who own land in the district may file a petition with the president or secretary of the board, requesting an election on the proposition to exclude the territory.

[Acts 1971, 62nd Leg., p. 421, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.235. Order of Election**

When the petition is filed, the board shall order an election on the proposition.

[Acts 1971, 62nd Leg., p. 421, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.236. Final Passage of Resolution**

(a) If no petition is filed, no election on the proposition is required. The board may finally pass and adopt the resolution to exclude the territory from the district. The board shall have a copy of the resolution, signed by a majority of the supervisors and duly attested by the secretary of the board, recorded in the deed records of the county in which the district is located.

(b) The resolution takes effect when it is properly recorded.

[Acts 1971, 62nd Leg., p. 421, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.237. Cancellation of Previously Issued Bonds**

If a district has authorized the issuance of bonds, and the bonds have not been sold or put into circulation, and the district has levied no tax to pay the principal of and interest on the bonds, the district, by excluding any territory, cancels this authorized bonded indebtedness.

[Acts 1971, 62nd Leg., p. 421, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.238. Redefining District Boundaries**

(a) The board, within a reasonable time after excluding territory from the district, shall adopt a resolution redefining the boundaries of the district to reflect the exclusion of the territory.

(b) When the board has passed the resolution, the secretary of the district shall enter and record the resolution in the minutes or records of the board. The board shall file a certified copy of the resolution in the office of the county clerk of the county in which the district is located. The board shall also have a certified copy recorded in the deed records of the county.

[Acts 1971, 62nd Leg., p. 421, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.239. Adding Territory to District**

A district may annex territory not already included in a fresh water supply district by following the procedure described in this subchapter.

[Acts 1971, 62nd Leg., p. 422, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.240. Annexation Petition**

(a) A person may present a petition to the secretary of the board, requesting that the district annex the described area.

(b) The petition must be signed by a majority of the persons who own land in the described area; but if more than 50 persons own land in the area, the petition must be signed by at least 50 of them.

[Acts 1971, 62nd Leg., p. 422, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.241. Time and Place of Hearing**

The board by order shall set the time and place of the hearing on the petition. The board may not hold the hearing before the expiration of the 30th day after the day of the order.

[Acts 1971, 62nd Leg., p. 422, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.242. Notice of Annexation Hearing**

The secretary shall issue notice of the time and place of hearing. In the notice, he shall describe the territory proposed to be annexed. The secretary shall post copies of the notice in three public places in the territory proposed to be annexed. He shall post the notices for at least the 15 days immediately preceding the day of the hearing. He shall also publish the notice once in a newspaper of general circulation in the county before the beginning of the 15-day period immediately preceding the day of the hearing.

[Acts 1971, 62nd Leg., p. 422, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.243. Resolution to Add Territory**

(a) The board may by resolution add the territory to the district if, on hearing the petition, they find that:

(1) the proposed addition of territory to the district is feasible and practicable; and

(2) the addition would be of benefit both to the territory and to the district.

(b) The board need not include all of the land described in the petition if it finds that a modification or change is necessary or desirable.

(c) The board shall have a copy of the resolution, signed by a majority of the supervisors and attested by the secretary of the board, recorded in the deed records of the county.

(d) The resolution takes effect when it is properly recorded.

[Acts 1971, 62nd Leg., p. 422, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.244. Apportionment of District Indebtedness**

The added territory shall bear its pro rata part of the indebtedness or taxes that are owed, contracted, or authorized by the district to which the new territory has been added. Before the added territory is subject to any part of the district indebtedness or taxes, however, the board shall order an election in the district, as enlarged, on the question of the assumption of the indebtedness or taxes by the district as enlarged.

[Acts 1971, 62nd Leg., p. 422, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.245. Conduct of Elections**

An election held either to confirm the exclusion of territory or to assume indebtedness or taxes is to be held as are elections for issuing bonds by the district.

[Acts 1971, 62nd Leg., p. 423, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.246. Excluding Land Inside Cities or Towns**

(a) The board of supervisors of a district located entirely in one county may exclude from the district land which is inside the boundaries of a city or town if:

(1) the district, when created, did not include inside its boundaries any land which was inside the corporate limits of the city or town;

(2) the district has inside its boundaries land which has been annexed by a city or town since the district was created;

(3) the city or town provides to the annexed land the same services as the district may provide to it;

(4) the population of the city or town is more than 4,000, according to the last preceding federal census;

(5) the city or town has not adopted a home-rule charter; and

(6) the area to be excluded has a part of its boundary identical with a part of the boundary of the district as it exists at the time of the exclusion.

(b) Under this section, the board shall not at any time reduce the size of the district to an area less than 90 percent of the area it encompassed at the time of its creation.

[Acts 1971, 62nd Leg., p. 423, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.247. Meeting to Determine Exclusion**

The board, by three-fifths vote, may call a meeting of the board to determine whether or not the district shall exclude any land from the district. The board shall call a meeting for this purpose if five percent of the qualified property taxpaying electors of the district petition them to do so.

[Acts 1971, 62nd Leg., p. 423, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.248. Requirements of Petition**

The petitioners, in their petition, shall describe the proposed new boundaries of the district. They shall state also that it is proposed that all the land inside the boundaries of the district not included inside the proposed new boundaries be excluded from the district.

[Acts 1971, 62nd Leg., p. 423, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.249. Notice of the Meeting**

(a) The board, in the notice of the meeting, shall state:

(1) the proposed new boundaries of the district;

(2) the proposal to exclude all land outside the proposed new boundaries;

(3) the time and place of the meeting; and

(4) the right of any landowner of the district to appear at the meeting and to be heard in support of or in opposition to establishing the new boundaries and excluding the land proposed to be excluded.

(b) The board shall address the notice to "All landowners and taxpayers of \_\_\_\_\_ County Fresh Water Supply District No. \_\_\_\_\_ (inserting the name and number of the district) and all other persons concerned."

[Acts 1971, 62nd Leg., p. 423, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.250. Posting of Notice**

The board shall post a certified copy of the notice in three public places inside the district. The board shall also have the notice published one time before the beginning of the 10-day period immediately preceding the day of the meeting, in a newspaper of general circulation in the district. If there is no newspaper of general circulation in the district, the board shall have the notice printed in a newspaper of general circulation in the county where the district is located.

[Acts 1971, 62nd Leg., p. 424, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.251. Power to Adjourn Meeting**

The board may adjourn the meeting from time to time in their discretion.

[Acts 1971, 62nd Leg., p. 424, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.252. Excluding Land by Resolution or Election**

(a) The board may, at its discretion, either call an election on the question of whether or not to exclude

the land from the district, or, by resolution, declare the land excluded from the district, if:

(1) no district landowner has filed, by the time of the meeting, a written protest against excluding the land from the district;

(2) no district landowner protests the exclusion at the meeting; or

(3) the protests, if any, represent less than three percent of the total superficial area of the district.

(b) If the board, by resolution, declares that the land is excluded, it shall state in the resolution the new boundaries of the district. The board shall file a copy of the resolution, signed by a majority of the supervisors and duly attested by the secretary, in the office of the county clerk. The county clerk shall record the resolution in the deed records of the county in which the district is located. After the resolution is recorded, the land excluded is no longer a part of the district.

[Acts 1971, 62nd Leg., p. 424, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.253. Protest

If a written protest is filed with the board before the meeting or if a protest is made at the meeting by a district landowner, the board shall pass on the protest after hearing the evidence.

[Acts 1971, 62nd Leg., p. 424, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.254. Election Required by Protests

(a) If the owner or owners of as much as three percent of the district land protest the exclusion, the board shall call an election to decide whether or not the proposed land shall be excluded.

(b) Except as provided in this subchapter, the provisions of Sections 53.022–53.028 of this code apply, to the extent they are applicable, to elections held under this section. The board shall perform the duties imposed on the commissioners court by those sections.

[Acts 1971, 62nd Leg., p. 424, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.255. Notice of Election to Exclude Land

(a) The board shall post a notice of the election stating

(1) the time and place for holding the election;

(2) the proposed new boundaries of the district;

(3) the proposition to be voted on; and

(4) the names of the presiding officers appointed by the board to hold the election.

(b) The board shall post a copy of the notice in four public places in the district and a copy at the courthouse door for the 20 days immediately preceding the date of the election.

[Acts 1971, 62nd Leg., p. 424, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.256. Ballots

The board shall provide the necessary ballots for the election and shall have the ballots printed to allow for voting for or against the proposition:

“The establishment of the new boundaries of the \_\_\_\_\_ County Fresh Water Supply District No. \_\_\_\_\_ (inserting the name of the district).”  
[Acts 1971, 62nd Leg., p. 425, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.257. Order Excluding Land

If the election favors establishing the new boundaries, the board shall enter an order declaring the result of the election. The board shall enter the order in its minutes, declaring that the land which has been excluded is no longer a part of the district. In the order the board shall also describe the new boundaries. The board shall file a copy of the order, signed by a majority of the board and duly attested by the secretary, in the office of the county clerk. The county clerk shall record the copy in the deed records of the county in which the district is located and the land shall cease to be a part of the district.  
[Acts 1971, 62nd Leg., p. 425, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.258. If Proposition Defeated

If the proposition to exclude the land is defeated, the board may not act on a petition to exclude all or any part of the land voted on within one year of the election.

[Acts 1971, 62nd Leg., p. 425, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.259. Rights of Bondholders

No proceeding under this subchapter diminishes or impairs the rights of the holders of any outstanding and unpaid bonds, warrants, or other certificates of indebtedness of a district.

[Acts 1971, 62nd Leg., p. 425, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 53.260. Apportionment of District Indebtedness

(a) Each property owner in the excluded territory shall pay as his proportional share of each series of district indebtedness a sum equal to the percentage of the “net indebtedness” which the assessed value of his excluded property bears to the total assessed value of all property in the district before the exclusion. For each series of indebtedness, all property values are to be taken from the tax rolls of the district for the year in which the series of indebtedness was issued and sold.

(b) In Subsection (a) of this section, the phrase “net indebtedness” means the greater of:

(1) the face value (par value plus accrued interest) of the outstanding bonds or warrants in the series at the time of the exclusion, less the sinking funds, reserves, and deposits held for paying the indebtedness; and

(2) the market value of the outstanding bonds or warrants in the series at the time of the exclusion, less the sinking funds, reserves, and deposits held for paying the indebtedness.

[Acts 1971, 62nd Leg., p. 425, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.261. Resolution Establishing Apportionment**

(a) When the board adopts the resolution or enters the order excluding land, it shall determine the proportional share of district indebtedness chargeable to the excluded land. The board shall adopt in its records a resolution establishing the proportional share. When the board determines and establishes the amount, it is binding on all persons and property in both the excluded and the remaining areas of the district.

(b) The board shall charge the property remaining inside the district with the remaining district indebtedness. The property owners of the newly defined district shall pay the remaining indebtedness by annual taxes.

[Acts 1971, 62nd Leg., p. 426, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.262. Current Taxes—Lien**

(a) The owners of the property in the excluded land shall pay the taxes levied against their property by the district for the year in which the land was excluded. Until paid, these taxes are a lien against the property excluded from the district as though the land had not been excluded.

(b) The board shall credit the amount collected against the total amount which the owners of the excluded land owe. The board may not levy additional taxes or other charges against the excluded land for the year in which the exclusion is made.

[Acts 1971, 62nd Leg., p. 426, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.263. Annual Levy of Taxes Against Excluded Territory**

(a) The district shall levy and collect taxes against the property in the excluded territory on the same basis as the district levies and collects taxes annually against the property remaining inside the district, until the amount collected equals the total net amount chargeable against the excluded territory.

(b) The district may lower the rates on the taxes and charges assessed against the property in the excluded territory for the last year during which the assessments are made, in order to obtain only enough money to discharge the balance of the sum chargeable against the excluded territory.

(c) The district shall continue to levy taxes against the land in the excluded territory each year until enough taxes have been levied to cover the excluded territory's pro rata share of the district's indebtedness.

[Acts 1971, 62nd Leg., p. 426, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.264. Voluntary Payments**

A municipality authorized to do so, and any person, firm, or corporation desiring to do so may voluntarily pay to the district at any time any amount toward the discharge of the amount chargeable against the property in the excluded territory. The district shall credit all voluntary payments as a reduction of the amount charged against the excluded territory.

[Acts 1971, 62nd Leg., p. 426, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.265. Status of Delinquent Taxes**

All taxes against land in the excluded territory which are delinquent at the time of exclusion or which become delinquent after the exclusion have the same status they would have had if the district had not excluded the land. The district has and may exercise all of the liens, rights, and remedies it would have had against the persons and property against which the taxes were assessed if the district had not excluded the territory.

[Acts 1971, 62nd Leg., p. 427, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.266. Collection of Delinquent Taxes**

The principal of all delinquent taxes which were levied against excluded territory after the exclusion, and which are collected before final payment of the indebtedness charged to the territory, shall be credited against that indebtedness as if the taxes had been collected when due. The district shall enforce and collect all taxes remaining delinquent after the collection of all charges provided for in this subchapter.

[Acts 1971, 62nd Leg., p. 427, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.267. Penalties and Interest**

Taxes and charges provided for in this subchapter are subject to the same penalties and interest as are other taxes which the district levies. The district has the rights and remedies concerning these taxes which it has concerning other taxes.

[Acts 1971, 62nd Leg., p. 427, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.268. Discharge of Excluded Land From Obligations**

On payment of its pro rata share of the district indebtedness except for delinquent taxes against specific pieces of property, the excluded territory is released from all liability to the district except the liability on each piece of property for payment of the delinquent taxes.

[Acts 1971, 62nd Leg., p. 427, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.269. Resolution of Discharge**

(a) When the liability of the excluded territory is discharged, except for delinquent taxes, the board shall adopt a resolution stating this fact and listing the property on which the taxes are unpaid. In the list the supervisors shall give a brief description of the property, the name of the owner, and the amount of the principal sum owed for each year there is a delinquency.

(b) The supervisors shall have the resolution entered in their minutes and recorded in the deed records of the county.

[Acts 1971, 62nd Leg., p. 427, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 53.270. Release on Payment of Delinquent Taxes**

When a property owner pays the delinquent taxes against property listed in the resolution, it is discharged from all obligations to the district. The release is established by a certificate of the tax

assessor and collector of the district certifying that the property owner has paid the delinquent taxes against the property.

[Acts 1971, 62nd Leg., p. 427, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 53.271. Rights after Exclusion

The property owners of the excluded territory have no right, title, or interest in the district property after the land is excluded.

[Acts 1971, 62nd Leg., p. 427, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 53.272. Debts Incurred after Exclusion

No property or property owner in the excluded territory is liable for the payment of any bonds, warrants, or other indebtedness issued or incurred by the district after the territory is excluded.

[Acts 1971, 62nd Leg., p. 428, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 53.273. Findings of Fact by the Supervisors

The board's findings of fact relating to the excluded territory are prima facie valid if they are entered in the minutes. The findings are not contestable except in a direct attack instituted in a court of competent jurisdiction within the time and in the manner provided by law for election contests.

[Acts 1971, 62nd Leg., p. 428, ch. 58, § 1, eff. Aug. 30, 1971.]

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*Acts 1971, 62nd Leg., p. 774, ch. 84, amends the Water Code by adding Chapter 54, Municipal Utility Districts.*

SUBCHAPTER A. GENERAL PROVISIONS

§ 54.001. Definitions

In this chapter:

- (1) "District" means a municipal utility district operating under this chapter.
- (2) "Board" means the board of directors of a district.
- (3) "Director" means a member of the board of directors of a district.
- (4) "Commission" means the Texas Water Rights Commission.
- (5) "Public agency" means any city, the United States, the State of Texas, and any district or authority created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution, including any river authority, or any other political subdivision or governmental agency of the United States or the State of Texas.
- (6) "City" means any incorporated city, town, or village of the State of Texas whether operating under general law or under its home-rule charter.
- (7) "Extraterritorial jurisdiction" means the extraterritorial jurisdiction of a city as defined

in Article I, Chapter 160, Acts of the 58th Legislature, 1963, as amended (Article 970a, Vernon's Texas Civil Statutes.)

(8) "Sole expense" means the actual cost of the relocation, raising, rerouting, or changing grade or alteration of construction and providing comparable replacement without enhancing the facilities after deducting from it the net salvage value derived from the old facility.

[Acts 1971, 62nd Leg., p. 774, ch. 84, § 1.]

[Sections 54.002 to 54.010 reserved for expansion]

#### SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

##### § 54.011. Creation of District

A municipal utility district may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 774, ch. 84, § 1.]

##### § 54.012. Purposes of a District

A district shall be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state.

[Acts 1971, 62nd Leg., p. 775, ch. 84, § 1.]

##### § 54.013. Composition of District

(a) A district may include the area in all or part of any county or counties including all or part of any cities and other public agencies.

(b) The land composing a district need not be in one body, but may consist of separate bodies of land separated by land which is not included in the district.

[Acts 1971, 62nd Leg., p. 775, ch. 84, § 1.]

##### § 54.014. Petition

When it is proposed to create a district, a petition requesting creation shall be filed with the commission. The petition shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the county tax rolls. If there are more than 50 persons holding title to the land in the proposed district, as indicated by the county tax rolls, the petition is sufficient if it is signed by 50 holders of title to the land.

[Acts 1971, 62nd Leg., p. 775, ch. 84, § 1.]

##### § 54.015. Contents of Petition

The petition shall:

(1) describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;

(2) state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and

(3) include a name of the district which shall be generally descriptive of the locale of the district followed by the words Municipal Utility District, or if a district is located within one county, it may be designated "\_\_\_\_\_ County Municipal Utility District No. \_\_\_\_\_." (Insert the name of the county and proper consecutive number.) The proposed district shall not have the same name as any other district in the same county.

[Acts 1971, 62nd Leg., p. 775, ch. 84, § 1.]

##### § 54.016. Consent of City

(a) No land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included in a district unless the city grants its written consent, by resolution or ordinance, to the inclusion of the land within the district. The request to a city for its written consent to the creation of a district, shall be signed by a majority in value of the holders of title of the land within the proposed district as indicated by the county tax rolls or, if there are more than 50 persons holding title to the land in the proposed district as indicated by the county tax rolls, the request to the city will be sufficient if it is signed by 50 holders of title to the land in the district. A petition for the written consent of a city to the inclusion of land within a district shall describe the boundaries of the land to be included in the district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, and state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition.

(b) If the governing body of a city fails or refuses to grant permission for the inclusion of land within its extraterritorial jurisdiction in a district within 60 days after receipt of a written request, a majority of

the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district.

(c) If the governing body of the city and a majority of the electors or the owner or owners of 50 percent or more of the land to be included in the district fail to execute a mutually agreeable contract providing for the water or sanitary sewer service requested within six months after receipt of the petition, the failure shall constitute authorization for the inclusion of the land in the district under the provisions of this section. Authorization for the inclusion of such land within the district under the provisions of this section shall mean only authorization to initiate proceedings to include the land within the district as otherwise provided by this Act.

(d) The provisions of this section relating to the method of including land in a district without securing the written consent of a city applies only to land within the extraterritorial jurisdiction of a city and does not apply to land within the corporate limits of a city. Under no circumstances shall land within the corporate limits of a city be included in a district without the written consent, by ordinance or resolution, of the city. The provisions of this section shall apply whether the land is proposed to be included in the district at the time of creation of a district or to be included by annexation to a district.

(e) A city may provide in its written consent to the inclusion of land in a district, that the district construct all facilities to serve the land in accordance with plans and specifications which have been approved by the city. The city may also provide in its written consent that the city shall have the right to inspect all facilities being constructed by a district. The city's consent to the inclusion of land in the district may also contain restrictions on the terms and provisions of the district's bonds and notes issued to provide service to the land and conditions on the sale of the district's bonds and notes if the restrictions and conditions do not generally render the bonds and notes of districts in the city's extraterritorial jurisdiction unmarketable. The city's consent to the inclusion of land in a district may restrict the purposes for which a district may issue bonds to the purposes of the purchase, construction, acquisition, repair, extension and improvement of land, easements, works, improvements, facilities, plants, equipment and appliances necessary to:

- (1) provide a water supply for municipal uses, domestic uses and commercial purposes;
- (2) collect, transport, process, dispose of and control all domestic, industrial or communal wastes whether in fluid, solid or composite state; and
- (3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the district and the payment of organi-

zation expenses, operation expenses during construction and interest during construction.

(f) In addition to all the rights and remedies provided by the laws of the state in the event a district violates the terms and provisions of a city's written consent, the city shall be entitled to injunctive relief or a writ of mandamus issued by a court of competent jurisdiction restraining, compelling or requiring the district and its officials to observe and comply with the terms and provisions prescribed in the city's written consent to the inclusion of land within the district.

[Acts 1971, 62nd Leg., p. 775, ch. 84, § 1.]

**§ 54.017. Deposit**

(a) The petition shall be accompanied by a deposit of \$250 which shall be paid to the commission for the use of the state, and no part of the deposit shall be returned except as provided in Subsection (c) of this section.

(b) The deposit shall be deposited with the state treasurer to be held in trust outside the state treasury until the commission either grants or refuses the petition, at which time the commission shall direct the state treasurer to transfer the deposit to the general revenue fund.

(c) If at any time before the hearing the petitioners desire to withdraw the petition, the commission shall direct the refund of the deposit to petitioners, or their attorney of record, whose receipt for the deposit shall be sufficient.

[Acts 1971, 62nd Leg., p. 777, ch. 84, § 1.]

**§ 54.018. Establishing a Date of Hearing**

On the filing of a petition, the commission or someone authorized by the commission, shall fix a date, time, and place at which the petition shall be heard and shall issue notice of the date, time, and place of hearing. The notice shall inform all persons of their right to appear and present evidence and testify for or against the allegations in the petition, the form of the petition, the necessity and feasibility of the district's project, and the benefits to accrue.

[Acts 1971, 62nd Leg., p. 777, ch. 84, § 1.]

**§ 54.019. Notice of Hearing**

(a) Notice of the hearing shall be published in a newspaper with general circulation in the county or counties in which the district is located once a week for two consecutive weeks. The first publication shall be at least 14 days before the day of the hearing.

(b) Notice of the hearing shall also be given by mailing a copy of the notice to each city which has extraterritorial jurisdiction in the county or counties in which the proposed district is located and which has formally requested notice of the creation of all districts in the county or counties in which the city's extraterritorial jurisdiction is located.

(c) The request by a city for notice of hearings on the creation of districts shall be filed annually with

the commission during the month of January. The request shall state the names of not more than two persons who are to receive the notice on behalf of the city and the mailing address of the persons.

(d) A certificate of a representative of the commission that notice was mailed to all cities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice shall be conclusive evidence that notice was properly mailed to all these cities.

[Acts 1971, 62nd Leg., p. 777, ch. 84, § 1.]

#### § 54.020. Hearing

(a) At the hearing, the commission shall examine the petition to ascertain its sufficiency, and any person interested may appear before the commission in person or by attorney and offer testimony on the sufficiency of the petition and whether the project is feasible and practicable and is necessary and would be a benefit to all or any part of the land proposed to be included in the district.

(b) The commission shall have jurisdiction to determine all issues on the sufficiency of the petition and creation of the district.

(c) The hearing may be adjourned from day to day, and the commission shall have power to make all incidental orders necessary with respect to the matters before it.

[Acts 1971, 62nd Leg., p. 778, ch. 84, § 1.]

#### § 54.021. Granting or Refusing Petition

(a) After the hearing of the petition if it is found that the petition conforms to the requirements of Section 54.015 of this code and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.

(b) If the commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.

(c) If the commission finds that the petition does not conform to the requirements of Section 54.015 of this code or that the project is not feasible, practicable, necessary, or a benefit to the land in the district, the commission shall so find by its order and deny the petition.

(d) A copy of the order of the commission granting or denying a petition shall be mailed to each city having extraterritorial jurisdiction in the county or counties in which the district is located who requested notice of hearings as provided in Section 54.019 of this code.

[Acts 1971, 62nd Leg., p. 778, ch. 84, § 1.]

#### § 54.022. Temporary Directors

If the commission grants the petition, it shall appoint five temporary directors to serve until permanent directors are elected.

[Acts 1971, 62nd Leg., p. 778, ch. 84, § 1.]

#### § 54.023. Appeal From the Order of the Commission

Any person who signed the petition, any city, or any person who appeared in person or by attorney or agent and offered testimony for or against the creation of the district, may appeal from the order of the commission granting or refusing the petition within 30 days after the entry of the order.

[Acts 1971, 62nd Leg., p. 778, ch. 84, § 1.]

#### § 54.024. Supervision by Commission

The rights, powers, privileges, authority, and functions conferred on a district by granting of a petition for creation shall be subject to the continuing right of supervision of the state to be exercised by and through the commission.

[Acts 1971, 62nd Leg., p. 778, ch. 84, § 1.]

#### § 54.025. Qualification of Temporary Directors

After a district has been organized, each temporary director shall execute his bond in accordance with the provisions of Section 54.116 of this code and shall take his oath of office, and the board shall meet and organize.

[Acts 1971, 62nd Leg., p. 778, ch. 84, § 1.]

#### § 54.026. Confirmation and Director Election

Before issuing any bonds or other obligations an election shall be held within the boundaries of the proposed district to determine if the proposed district shall be established and to elect five permanent directors.

[Acts 1971, 62nd Leg., p. 779, ch. 84, § 1.]

#### § 54.027. Notice of Confirmation and Director Election

Notice of the confirmation and director election shall state the day and place or places for holding the election, the proposition to be voted on, and the candidates for director to be voted on. The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which the proposed district is located. The first publication of the notice shall be at least 14 days before the day set for the election.

[Acts 1971, 62nd Leg., p. 779, ch. 84, § 1.]

#### § 54.028. Conduct of Election

(a) Absentee balloting in the confirmation and director election shall begin 10 days before the election and shall end as provided in the Texas Election Code.

(b) The ballots for the election shall be printed to provide for voting "For District" and "Against District" and the names of the five persons appointed

by the commission who qualified as temporary directors. The ballots shall also have five blank places after the names of the temporary directors in which a voter may write the names of other persons for directors.

(c) In no event shall any voter vote for more than five persons for director.  
[Acts 1971, 62nd Leg., p. 779, ch. 84, § 1.]

**§ 54.029. Results of Election**

(a) Immediately after the confirmation and director election, the presiding judge shall make returns of the result to the temporary board of directors. The temporary board of directors shall canvass the returns and declare the results at the earliest practicable time.

(b) If a majority of the votes cast in the election favor the creation of the district, then the temporary board shall declare that the district is created and enter the result on its minutes. If a majority of the votes cast in the election are against the creation of the district, the temporary board shall declare that the district was defeated and enter the result in its minutes and file a copy of the order with the commission.

(c) The order canvassing the results of the confirmation election shall contain a description of the district's boundaries, and shall be filed with the commission and in the deed records of the county or counties in which this district is located.

(d) The temporary board shall also declare the five persons receiving the highest number of votes for directors to have been elected as permanent directors.

(e) Unless otherwise agreed, the two directors elected who received the fewest number of votes shall serve until the following January and the three who received the highest number of votes shall serve until the second succeeding January.  
[Acts 1971, 62nd Leg., p. 779, ch. 84, § 1.]

**§ 54.030. Conversion of Certain Districts Into Districts Operating Under This Chapter**

(a) Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district, or any other conservation and reclamation district created under Article XVI, Section 59, of the Texas Constitution, may be converted to a district operating under this chapter.

(b) The governing body of a district which desires to convert into a district operating under this chapter shall adopt and enter in the minutes of the governing body a resolution declaring that in its judgment, conversion into a municipal utility district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district. The resolution shall also request the commission to hold a hearing on the question of the conversion of the district.

(c) A copy of the resolution shall be filed with the commission along with a deposit for costs of \$250 which shall be used by the commission as provided in Section 54.017 of this code.  
[Acts 1971, 62nd Leg., p. 779, ch. 84, § 1.]

**§ 54.031. Establishing Date For Hearing**

When the resolution requesting conversion is filed, the commission, or someone authorized by the commission, shall fix a date, time, and place when the conversion hearing will be held.  
[Acts 1971, 62nd Leg., p. 780, ch. 84, § 1.]

**§ 54.032. Conversion of District: Notice**

(a) Notice of the conversion hearing shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located.

(b) The notice shall be published once a week for two consecutive weeks with the first publication to be made not less than 14 full days before the time set for the hearing.

(c) The notice shall:

- (1) state the time and place of the hearing;
- (2) set out the resolution adopted by the district in full; and
- (3) notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution.

[Acts 1971, 62nd Leg., p. 780, ch. 84, § 1.]

**§ 54.033. Conversion of District; Findings**

(a) After a hearing, if the commission finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, it shall enter an order making this finding and the district shall become a district operating under this chapter and no confirmation election shall be required.

(b) If the commission finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, it shall enter an order against conversion of the district into one operating under this chapter.

(c) The findings of the commission of a district entered under this section shall be subject to appeal or review within 30 days after entry of the order of the commission granting or denying the conversion.

(d) A copy of the commission order converting a district shall be filed in the deed records of the county or counties in which the district is located.  
[Acts 1971, 62nd Leg., p. 780, ch. 84, § 1.]

**§ 54.034. Effect of Conversion**

A district which is converted into a district operating under this chapter shall:

- (1) be constituted a municipal utility district operating under and governed by this chapter;

(2) be a conservation and reclamation district under the provisions of Article XVI, Section 59, of the Texas Constitution; and

(3) have and may exercise all the powers, authority, functions, duties, and privileges provided in this chapter in the same manner and to the same extent as if the district had been created under this chapter.

[Acts 1971, 62nd Leg., p. 780, ch. 84, § 1.]

#### § 54.035. Reservation of Certain Powers For Converted Districts

(a) Any district after converting into a municipal utility district may continue to exercise all necessary specific powers under any specific conditions provided by the chapter of this code under which the district was operating before conversion and may retain its original name.

(b) Any district converted into a municipal utility district shall continue to have the power to issue bonds voted before the conversion but yet unissued and levy and collect maintenance taxes, bond taxes, or other taxes which were voted before the conversion.

(c) At the time of making the order of conversion, the commission shall specify in the order the specific provisions of this code under which the district had been operating which are to be preserved and made applicable to the operations of the district after conversion into a district operating under this chapter and whether a new name will be assigned to the district or the old name retained.

(d) A reservation of a former power under Subsection (a) of this section may be made only if this chapter does not make specific provision concerning a matter necessary to the effectual operation of the converted district.

(e) In all cases in which this chapter does make specific provision, this chapter shall, after conversion, control the operations and procedure of the converted district.

[Acts 1971, 62nd Leg., p. 781, ch. 84, § 1.]

#### § 54.036. Directors to Continue Serving

The existing board of a district converted to a municipal utility district under the provisions of this chapter shall continue to serve as the board of the converted district until the second Saturday of the following January, at which time five directors shall be elected to serve for such period of time and in the same manner as provided in Section 54.029 of this code for directors first elected for a district.

[Acts 1971, 62nd Leg., p. 781, ch. 84, § 1.]

[Sections 54.037 to 54.100 reserved for expansion]

### SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

#### § 54.101. Board of Directors

A district shall be governed by a board of five directors.

[Acts 1971, 62nd Leg., p. 781, ch. 84, § 1.]

#### § 54.102. Qualifications for Directors

To be qualified to serve as a director, a person shall be at least 21 years old, a resident citizen of the State of Texas, and either own land subject to taxation in the district or be a qualified voter within the district.

[Acts 1971, 62nd Leg., p. 781, ch. 84, § 1.]

#### § 54.1021. Disqualification of Members of the Board

(a) A person is disqualified from serving as a member of the board of a district if:

(1) he is related within the third degree of affinity or consanguinity to a member of the board or the manager, engineer, or attorney for the district;

(2) he is or was within the two years immediately preceding his election or appointment an employee of any developer of property in the district or any other director, manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving or has served within the last two years immediately preceding his election or appointment to the board as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is or has been within the two years immediately preceding his election or appointment to the board:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who willfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land

into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Acts 1973, 63rd Leg., p. 1751, ch. 635, § 4, eff. Aug. 27, 1973.]

**§ 54.103. Election of Directors; Term of Office**

(a) An election shall be held in a district on the first Saturday in April.

(b) On the first Saturday in April following the confirmation election, an election shall be held in a district for the election of two directors who shall be elected to serve two years. On the first Saturday in April, following the confirmation election, an election shall be held in the district for the election of three directors who shall be elected to serve two years. Thereafter, on the first Saturday in April of each following year, there shall be an annual election of two directors in one year and three directors in the next year in continuing sequence.

(c) The permanent directors may assign position number to each director's office, in which case directors shall thereafter be elected by position and not at large.

[Acts 1971, 62nd Leg., p. 781, ch. 84, § 1; Acts 1973, 63rd Leg., p. 1540, ch. 559, § 4, eff. June 15, 1973.]

**§ 54.104. Application to Get on Ballot**

Except for the first elected board of directors, any candidate for the office of director shall file with the secretary of the board of directors or any agent who may be designated by the board his application to have his name printed on the ballot. An application shall be signed by a candidate, or by 10 qualified voters, and shall be filed at least 30 days before the election.

[Acts 1971, 62nd Leg., p. 782, ch. 84, § 1.]

**§ 54.105. Vacancies on the Board**

A vacancy in the office of director or any office on the board shall be filled by appointment of the board for the unexpired term. If at any time the number of qualified directors shall be less than three because of the failure or refusal of one or more directors to qualify or serve, because of death or incapacitation, or for any other reason, then the commission shall, upon the petition of any landowner in the district, appoint the necessary number of directors to fill all vacancies on the board.

[Acts 1971, 62nd Leg., p. 782, ch. 84, § 1.]

**§ 54.106. Organization of Board; Election of Officers**

After the directors elected at each election have qualified by executing a bond and taking the proper oath, they shall organize by electing a president, a vice president, a secretary, and any other officers as in the judgment of the board are considered necessary.

[Acts 1971, 62nd Leg., p. 782, ch. 84, § 1.]

**§ 54.107. Quorum; Officers' Duties**

(a) Three directors shall constitute a quorum and a concurrence of three shall be sufficient in all matters pertaining to the business of the district.

(b) The president shall preside at all meetings of the board and shall be the chief executive officer of the district. The vice president shall act as president in case of the absence or disability of the president.

(c) The secretary shall act as president if both the president and vice president are absent or disabled. The secretary shall act as secretary of the board of directors and shall be charged with the duty of seeing that all records and books of the district are properly kept.

(d) The board may appoint another director, the general manager, or any employee as assistant or deputy secretary to assist the secretary and any such person shall be entitled to certify as to the authenticity of any record of the district, including all proceedings relating to bonds, contracts, or indebtedness of the district.

[Acts 1971, 62nd Leg., p. 782, ch. 84, § 1.]

**§ 54.108. Bylaws**

The board is empowered to adopt bylaws to govern:

- (1) the time, place, and manner of conducting its meetings;
- (2) the powers, duties, and responsibilities of its officers and employees;
- (3) the disbursement of funds by checks, drafts, and warrants;
- (4) the appointment and authority of director committees;
- (5) the keeping of records and accounts; and
- (6) other matters as the board considers appropriate.

[Acts 1971, 62nd Leg., p. 782, ch. 84, § 1.]

**§ 54.109. Meetings and Notice**

(a) The board may establish regular meetings to conduct district business and may hold special meetings at other times as the business of the district requires. The board shall hold its meetings within the district unless the board, by a majority vote at a public meeting, votes to hold the meetings outside the district.

(b) Notice of the time, place, and purpose of any meeting of the board shall be given by posting at a

place convenient to the public within the district. A copy of the notice shall be furnished to the clerk or clerks of the county or counties in which the district is located, who shall post them on a bulletin board in the county courthouse used for such purpose. The notice of a meeting shall be posted for at least three days before a meeting, unless there is an emergency or urgent public necessity, in which case no posting of notice shall be required.

(c) Failure to post notice shall not affect the validity of any action taken at a regular meeting of the board of directors, but may affect the validity of action taken at a special meeting unless the board of directors declares in action taken at that special meeting that an emergency existed.

(d) Except as herein provided the provisions of Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), shall be applicable to meetings of the board of directors. Any interested person may attend any meeting of the board.

[Acts 1971, 62nd Leg., p. 782, ch. 84, § 1; Acts 1973, 63rd Leg., p. 619, ch. 263, § 5, eff. Aug. 27, 1973.]

#### § 54.110. District Office and Meeting Place

(a) After at least 25 qualified electors are residing in a district, the board shall designate, and establish a district office within the district and on majority vote of the board at a public meeting, the district may maintain an office outside the district. The meeting place may be a private residence or office provided that the board of directors in its order establishing the meeting place declares the same to be a public place and invites the public to attend any meeting of the board.

(b) After at least 25 qualified electors are residing in a district, on written request of at least five of these electors, the board shall designate a meeting place within the district. On the failure to designate the location of the meeting place within the district, five electors may petition the commission to designate a location, which may be changed by the board after the next election of members to the board.

(c) If the board of directors establishes a meeting place outside the district, it shall give notice of its location by filing a true copy of the resolution establishing the location of the district office with the commission and also by publishing notice of the location in a newspaper of general circulation in the county or counties in which the district is located. If the location of the meeting place outside the district is changed, notice of the change shall be given in the same manner.

[Acts 1971, 62nd Leg., p. 783, ch. 84, § 1; Acts 1973, 63rd Leg., p. 619, ch. 263, § 4, eff. Aug. 27, 1973.]

#### § 54.111. Management of District

(a) The board of directors shall have control over and management of all the affairs of the district and shall employ all persons, firms, partnerships, or corporations deemed necessary by the board for the

conduct of the affairs of the district, including, but not limited to, engineers, attorneys, financial advisors, a general manager, a utility operator, bookkeepers, auditors, and secretaries.

(b) The board of directors shall determine the term of office and the compensation of all employees and consultants by contracts or by resolution of the board.

(c) All employees may be removed by the board.

(d) The board of directors may require a bond of any officer or employee payable to the district and conditioned on the faithful performance of his duties.

[Acts 1971, 62nd Leg., p. 783, ch. 84, § 1.]

#### § 54.112. Supplies

The board shall also have the right to purchase all materials, supplies, equipment, vehicles, and machinery needed by the district.

[Acts 1971, 62nd Leg., p. 783, ch. 84, § 1.]

#### § 54.113. Seal

The directors shall adopt a seal for the district.

[Acts 1971, 62nd Leg., p. 783, ch. 84, § 1.]

#### § 54.114. Fees of Office

(a) The directors are entitled to receive as fees of office not more than \$25 a day for each day of service necessary to discharge their duties. The fees shall not exceed the sum of \$100 in any one month regardless of the number of days of necessary service during that month.

(b) Upon approval by the board, a director may be reimbursed for travel or other expenses incurred on behalf of the district upon presentation of a verified statement.

[Acts 1971, 62nd Leg., p. 784, ch. 84, § 1.]

#### § 54.115. General Manager

A director may be employed as general manager of the district at the compensation fixed by the other four directors, and when so employed, he shall continue to perform the duties of a director.

[Acts 1971, 62nd Leg., p. 784, ch. 84, § 1.]

#### § 54.116. Bond and Oath of Office

(a) As soon as practicable after a director is elected or appointed he shall execute a bond for \$10,000 payable to the district and conditioned on the faithful performance of his duties. In the event any temporary director is elected at the first director's election, he shall be confirmed as a director without the necessity of executing a new bond.

(b) All bonds of the directors, including the bonds of the temporary directors, shall be approved by the board.

(c) Each director shall take the oath of office prescribed by the Constitution for public officers.

(d) The bond and oath shall be filed with the district and retained in its records.

[Acts 1971, 62nd Leg., p. 784, ch. 84, § 1.]

§ 54.117. Records

(a) All original minutes and orders of the board of directors, all construction contracts and all related instruments, all bonds of the district's board of directors, and all bonds of the district's officers and employees shall be kept in a safe place and maintained as permanent records of the district.

(b) No minutes or orders of the board of directors shall be destroyed.

(c) Ad valorem tax records shall be maintained at the office of the tax assessor and collector and all records necessary for the district's annual audits and necessary to comply with the terms of its bond orders or resolutions shall be retained for at least one full year after the expiration of the preceding fiscal year. District contracts other than construction contracts, and the records relating to them shall be retained for at least four years after the performance thereof.

(d) Except for the foregoing, a district's records may be destroyed when the board determines that they are no longer needed or useful. As to any district records destroyed, the board shall designate the person or persons to destroy them and the manner of the destruction. If the board considers it advisable, it may have any instruments to be first inventoried or microfilmed before they are destroyed.

[Acts 1971, 62nd Leg., p. 784, ch. 84, § 1.]

§ 54.118. Director Interested in Contract

(a) A director who is financially interested in any contract with the district or a director who is an employee of a person who or firm which is financially interested in any contract with the district shall disclose that fact to the other directors, and the disclosure shall be entered into the minutes of the meeting.

(b) An interested director may not vote on the acceptance of the contract or participate in the discussion on the contract.

(c) The failure of a director to disclose his financial interest and to have it entered on the minutes shall invalidate the contract.

[Acts 1971, 62nd Leg., p. 784, ch. 84, § 1.]

§ 54.119. Suits

(a) All districts created under this chapter shall be governmental agencies and bodies politic and corporate and are declared to be defined districts within the meaning of Article XVI, Section 59, of the Texas Constitution, and may, through their directors, sue and be sued in any and all courts of this state in the name of the district. Service of process in any suit may be had by serving any two directors.

(b) All courts of this state shall take judicial notice of the establishment of any districts.

[Acts 1971, 62nd Leg., p. 785, ch. 84, § 1.]

§ 54.120. Contracts

A district shall contract and be contracted with in the name of the district.

[Acts 1971, 62nd Leg., p. 785, ch. 84, § 1.]

§ 54.121. Payment of Judgment

Any court in the state rendering judgment for debt against a district may order the board to levy, assess, and collect taxes or assessments to pay the judgment.

[Acts 1971, 62nd Leg., p. 785, ch. 84, § 1.]

§ 54.122. Elections

Unless otherwise provided, notice of all elections ordered by the board shall be given by publication once a week for two consecutive weeks with the first publication in a newspaper with general circulation in the county or counties in which a district may be located for at least 14 days before the election. The clerk or clerks for absentee voting need not be a resident or qualified voter in the district.

[Acts 1971, 62nd Leg., p. 785, ch. 84, § 1.]

§ 54.123. Tax Assessor-Collector; Deputies

(a) The board shall appoint a person to the office of tax assessor and collector and may appoint deputy tax assessors and collectors as considered necessary.

(b) Each shall qualify by executing bond for \$10,000 payable to the district and approved by the board, conditioned on the faithful performance of their duties and on paying over to the district depository all money coming into their hands as assessor and collector.

(c) Each shall be required to give additional security if, in the judgment of the board, it may become necessary.

(d) Compensation shall be fixed by the board.

(e) The board may require the assessor and collector or any deputy to perform duties other than assessing property and collecting taxes.

[Acts 1971, 62nd Leg., p. 785, ch. 84, § 1.]

§ 54.1231. Disqualification of Tax Assessor and Collector

(a) No person may serve as tax assessor and collector of a district if:

(1) he is related within the third degree of affinity or consanguinity to any developer in the district, a member of the board or the manager, engineer, or attorney for the district;

(2) he is or was within two years immediately preceding the assumption of his assessment and collection duties with the district an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) he owns an interest in or is employed by any corporation organized for the purpose of tax assessment and collection services, a substantial portion of the stock of which is owned

by a developer of property within the district, any director, manager, engineer, or attorney for the district; or

(4) he is himself or through a corporation developing land in the district, or is a director, engineer or attorney for the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as tax assessor and collector with a person who would not be disqualified.

(c) Any person who wilfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

[Acts 1973, 63rd Leg., p. 1538, ch. 558, § 4, eff. June 15, 1973.]

#### § 54.124. Dual Elections

(a) If the board of a district is uncertain about the proper class of voters to vote in an election on one or more propositions authorizing the issuance of bonds or otherwise lending the credit of the district, or spending money, or assuming any debt, the board may elect to call two simultaneous elections and submit the proposition or propositions to both the qualified electors of the district and to the duly qualified property taxpaying electors of the district.

(b) If the board submits the proposition or propositions in two separate simultaneous elections, the board may require that the votes of the qualified property taxpaying electors be cast separately from all other qualified electors of the district.

(c) In the event the board calls two separate simultaneous elections, the results of the election shall be canvassed in a manner which will show the results of the votes by the qualified property taxpaying electors, the results of the votes by all other qualified electors of the district, and the results of the votes by all qualified electors in the district including the qualified property taxpaying electors.  
[Acts 1971, 62nd Leg., p. 785, ch. 84, § 1.]

#### § 54.125. Employee Benefits

(a) The board may provide for and administer a retirement, disability, and death compensation fund for the officers and employees of the district, and may adopt a plan or plans to effectuate the purpose of this section, including the forms of insurance and

annuities which are considered advisable by the board. The board, after notice to the employees and a hearing, may change any plan, rule, or regulation.

(b) All money provided from the compensation of the officers and employees participating in the fund and plan authorized by this section and by the district for the retirement, disability, and death compensation fund after the money has been received by the district shall be invested as the board from time to time considers advisable. The money may be invested in the following manner:

(1) in bonds of the United States, the State of Texas, any county, city, or other political subdivision of this state, or in bonds issued by any agency of the United States, the payment of the principal and interest on which is guaranteed by the United States; and

(2) in life insurance policies, endowment or annuity contracts, or interest-bearing certificates of legal reserve life insurance companies authorized to write the contracts in the State of Texas.

(c) A sufficient amount of the money shall be kept on hand to meet the immediate payment of amounts likely to become due each year out of the fund as determined by the board.

(d) The recipients or beneficiaries from the fund shall not be eligible for any other pension, retirement fund, or direct aid from the State of Texas, unless the fund created under this Chapter is released to the State of Texas as a condition precedent to receiving the other pension, aid, or joining of any other system.

(e) The board may include hospitalization and medical benefits to their officers and employees as part of the compensation currently paid to the officers and employees and may adopt any plan, rule, or regulation in connection with it and amend or change the plan, rule, or regulation as it may determine.

[Acts 1971, 62nd Leg., p. 786, ch. 84, § 1.]

#### § 54.126. Workmen's Compensation

The board may also become a subscriber under the Texas Workmen's Compensation Act with any old line legal reserve insurance company authorized to write the policies in the State of Texas.

[Acts 1971, 62nd Leg., p. 786, ch. 84, § 1.]

[Sections 54.127 to 54.200 reserved for expansion]

### SUBCHAPTER D. POWERS AND DUTIES

#### § 54.201. Powers

(a) A district shall have the functions, powers, authority, rights, and duties which will permit accomplishment of the purposes for which it was created.

(b) A district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all

works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of its creation, including all works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to:

- (1) supply water for municipal uses, domestic uses, power, and commercial purposes and all other beneficial uses or controls;
- (2) collect, transport, process, dispose of, and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state;
- (3) gather, conduct, divert, and control local storm water or other local harmful excesses of water in a district;
- (4) irrigate the land in a district;
- (5) alter land elevation in a district where it is needed;
- (6) navigate coastal and inland waters of the district; and
- (7) provide parks and recreational facilities for the inhabitants in the district.

[Acts 1971, 62nd Leg., p. 786, ch. 84, § 1.]

**§ 54.202. Acquisition of Existing Facilities**

If a district acquires existing works, improvements, facilities, plants, equipment, and appliances which are completed or partially created or under construction, a district may assume the contracts and obligations of the previous owner and perform the obligations of the previous owner in the same manner and to the same extent that any other purchaser or assignee would be bound.

[Acts 1971, 62nd Leg., p. 787, ch. 84, § 1.]

**§ 54.203. Solid Waste**

A district may purchase, construct, acquire, own, operate, maintain, repair, improve, and extend a solid waste collection and disposal system inside and outside the district and make proper charges for it.

[Acts 1971, 62nd Leg., p. 787, ch. 84, § 1.]

**§ 54.204. Fees and Charges**

(a) A district may adopt and enforce all necessary charges, fees, or rentals, in addition to taxes, for providing any district facilities or service.

(b) A district may require a deposit for any service or facilities furnished and the district may or may not provide that the deposit will bear interest.

(c) A district may discontinue a facility or service to prevent an abuse or enforce payment of an unpaid charge, fee, or rental due the district including taxes which have been due for not less than six months.

[Acts 1971, 62nd Leg., p. 787, ch. 84, § 1.]

**§ 54.205. Adopting Rules and Regulations**

A district may adopt and enforce reasonable rules and regulations to:

- (1) secure and maintain safe, sanitary, and adequate plumbing installations, connections,

and appurtenances as subsidiary parts of its sanitary sewer system;

(2) preserve the sanitary condition of all water controlled by the district;

(3) prevent waste or the unauthorized use of water controlled by the district; and

(4) regulate privileges on any land or any easement owned or controlled by the district.

[Acts 1971, 62nd Leg., p. 787, ch. 84, § 1.]

**§ 54.206. Effect of Rules**

After the required publication, rules adopted by the district under Section 54.205 of this code shall be recognized by the courts as if they were penal ordinances of a city.

[Acts 1971, 62nd Leg., p. 787, ch. 84, § 1.]

**§ 54.207. Publication of Rules**

(a) The board shall publish once a week for two consecutive weeks a substantive statement of the rules and the penalty for their violation in one or more newspapers with general circulation in the area in which the district is located.

(b) The substantive statement shall be condensed as far as possible to intelligently explain the purpose to be accomplished or the act forbidden by the rules.

(c) The notice must advise that breach of the rules will subject the violator to a penalty and that the full text of the rules are on file in the principal office of the district where they may be read by any interested person.

(d) Any number of rules may be included in one notice.

[Acts 1971, 62nd Leg., p. 787, ch. 84, § 1.]

**§ 54.208. Effective Date of Rules**

The penalty for violation of a rule is not effective and enforceable until five days after the publication of the notice. Five days after the publication, the published rule shall be in effect and ignorance of it is not a defense to a prosecution for the enforcement of the penalty.

[Acts 1971, 62nd Leg., p. 788, ch. 84, § 1.]

**§ 54.209. Penalties For Violation of Rule**

(a) The board may set reasonable penalties for the breach of any rule of the district, which shall not exceed fines of more than \$200 or imprisonment for more than 30 days or both.

(b) These penalties shall be in addition to any other penalties provided by the laws of the state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office is located.

[Acts 1971, 62nd Leg., p. 788, ch. 84, § 1.]

**§ 54.210. Enforcement by Peace Officers**

A district may employ its own peace officers with power to:

- (1) make arrests when necessary to prevent or abate the commission of any offense against

the rules of the district and against the laws of the state when the offense or threatened offense occurs on any land, water, or easement owned or controlled by the district; and

(2) make an arrest in case of an offense involving injury or detriment to any property owned or controlled by the district.

[Acts 1971, 62nd Leg., p. 788, ch. 84, § 1.]

#### § 54.211. Acquisition of Land

(a) A district may acquire land, materials, waste grounds, easements, rights-of-way, and everything considered necessary for the purpose of accomplishing any one or more of the purposes provided in this chapter.

(b) A district shall have the right to acquire property by gift, grant, or purchase and the right to acquire property shall include property considered necessary for the construction, improvement, extension, enlargement, operation, or maintenance of the plants, works, improvements, facilities, equipment, or appliances of a district.

(c) A district may acquire either the fee simple title to or an easement on all land, both public and private, either inside or outside the boundaries and may acquire the title to or an easement on property other than land held in fee.

(d) A district may also lease property on such terms and conditions as the board may determine to be advantageous to the district.

[Acts 1971, 62nd Leg., p. 788, ch. 84, § 1.]

#### § 54.212. Eminent Domain

(a) A district may acquire any land, easements, or other property inside the district or within five miles of the district solely for sewer, water, storm drainage, and flood drainage connections when necessary by condemnation, and may elect to condemn either the fee simple title or an easement only.

(b) The right of eminent domain shall be exercised in the manner provided in Title 52, Revised Civil Statutes of Texas, 1925, as amended, except that a district shall not be required to give bond for appeal or bond for costs in any condemnation suit or other suit to which it is a party and shall not be required to deposit double the amount of any award in any suit.

(c) The proceedings shall be instituted under the direction of the board and in the name of the district.

[Acts 1971, 62nd Leg., p. 788, ch. 84, § 1.]

#### § 54.213. Costs of Relocation of Property

In the event that the district, in the exercise of the power of eminent domain or power of relocation, or any other power, makes necessary the relocation, raising, rerouting, or changing the grade of, or altering the construction of, any highway, railroad, electric transmission line, telephone or telegraph properties and facilities, or pipeline, all necessary relocations, raising, rerouting, changing of grade, or alter-

ation of construction shall be accomplished at the sole expense of the district.

[Acts 1971, 62nd Leg., p. 789, ch. 84, § 1.]

#### § 54.214. Sale of Surplus Land

Any property or land owned by the district which may be found to be surplus and not needed by the district may be sold under order of the board either by public or private sale or the property may be exchanged for other property.

[Acts 1971, 62nd Leg., p. 789, ch. 84, § 1.]

#### § 54.215. Leases

A district may lease to any person all or any part of any facilities constructed or acquired or to be constructed or acquired by it. The lease may contain the terms and provisions which the board determines to be advantageous to the district. The term of any lease shall not exceed 40 years from its date.

[Acts 1971, 62nd Leg., p. 789, ch. 84, § 1.]

#### § 54.216. Right to Enter Land

The directors, engineers, and employees of a district may go on any land inside or outside the district to make surveys and examine the land with reference to the location of works, improvements, plants, facilities, equipment, or appliances and to attend to any business of the district; provided that two weeks' notice be given to all landowners involved and that if any activities cause damage to the land or property, the land or property shall be restored as nearly as possible to the original state. The cost of restoration shall be borne by the district.

[Acts 1971, 62nd Leg., p. 789, ch. 84, § 1.]

#### § 54.217. Right to Use Road Right-of-Way

All districts are given right-of-way along and across all public, state, or county roads or highways, but they shall restore the roads crossed to their previous condition of use, as nearly as possible at the sole expense to the district.

[Acts 1971, 62nd Leg., p. 789, ch. 84, § 1.]

#### § 54.218. Contracts

(a) A district may contract with a person for the joint ownership and operation of any works, improvements, facilities, plants, equipment, and appliances necessary to accomplish any purpose or function permitted by a district, or a district may purchase an interest in any project used for any purpose or function permitted by a district.

(b) A district may enter into contracts with any person in the performance of any purpose or function permitted by a district.

(c) Without limiting the generality of the foregoing, a district may enter into contracts of not exceeding 40 years with persons on the terms and conditions the board may consider desirable, fair, and advantageous for:

- (1) the purchase and sale of water, or either;
- (2) the collection, transportation, treatment, and disposal of its domestic, industrial, and com-

munal wastes or the collection, transportation, treatment, and disposal of domestic, industrial, and communal wastes of other persons;

(3) the gathering, diverting, and control of local storm water, or other local harmful excesses of water;

(4) the continuing and orderly development of the land and property within the district through the purchase, construction, or installation of works, improvements, facilities, plants, equipment, and appliances which the district may otherwise be empowered and authorized to do or perform so that, to the greatest extent reasonably possible, considering sound engineering and economic practices, all of the land and property may be placed in a position to ultimately receive the services of the works, improvements, plants, facilities, equipment, and appliances;

(5) the maintenance and operation of any works, improvements, facilities, plants, equipment, and appliances of the district or of another person;

(6) the collection, treatment, and disposal of solid wastes collected inside or outside the district; and

(7) the exercise of any other rights, powers, and duties granted to a district.

[Acts 1971, 62nd Leg., p. 789, ch. 84, § 1.]

**§ 54.219. Source of Contractual Payments**

(a) A contract may provide that the district will make payment under the contract from proceeds from the sale of notes or bonds, from taxes, or from any other income of the district or any combination of these.

(b) A district may make payments under a contract from taxes other than maintenance taxes, after the provisions of the contract have been approved by a majority of the electors voting at an election held for that purpose.

(c) Any contract election may be held at the same time and in conjunction with an election to authorize bonds, and the procedure for calling the election, giving notice, conducting the election, and canvassing the returns shall be the same as the procedure for a bond election.

(d) If the contract is approved, it will constitute an obligation against the taxing power of the district to the extent provided in the contract.

[Acts 1971, 62nd Leg., p. 790, ch. 84, § 1.]

**§ 54.220. Contracts For Materials, Machinery, Construction, Etc., For More Than \$25,000**

(a) The board shall advertise a contract for more than \$25,000 for the purchase of materials, machinery, and all things to constitute the works, improvements, facilities, plants, equipment, and appliances of the district or for construction.

(b) The board shall advertise the letting of a contract, including the general conditions, time, and place of opening of sealed bids. The notice shall be published in one or more newspapers with general circulation in the state, and one or more newspapers published in each county in which part of the district is located. If there are more than four counties in the district, notice may be published in any newspaper with general circulation in the district. If no newspaper is published in the county or counties in which the district is located, publication in one or more newspapers with general circulation in the state is sufficient. The notice shall be published once a week for three consecutive weeks before the date that the bids are opened, and the first publication shall be at least 21 days before the opening of sealed bids.

(c) A contract may cover all the improvements to be provided by the district or the various elements of the improvements may be segregated for the purpose of receiving bids and awarding contracts. A contract may provide that the improvements will be constructed in stages over a period of years.

(d) A contract may provide for the payment of a total sum which is the completed cost of the improvement or may be based on bids to cover cost of units of the various elements entering into the work as estimated and approximately specified by the district's engineers or a contract may be let and awarded in any other form or composite of forms and to any responsible person or persons which, in the board's judgment, will be most advantageous to the district and result in the best and most economical completion of the district's proposed plant, improvements, facilities, works, equipment, and appliances.

[Acts 1971, 62nd Leg., p. 790, ch. 84, § 1.]

**§ 54.221. Additional Work; Change Orders**

After a contract has been awarded and the district determines that additional work is needed or that the character or type of work or facilities should be changed, the board may authorize change orders to the contract upon such terms as the board may approve provided the change does not increase nor decrease the total cost of the contract by more than 25 percent unless the order increasing or decreasing the work is approved by the commission or its duly appointed representative.

[Acts 1971, 62nd Leg., p. 791, ch. 84, § 1.]

**§ 54.222. Construction Bids**

(a) A person who desires to bid on proposed construction work shall submit to the board a written sealed bid together with a certified or cashier's check on a responsible bank in the state or a bidder's bond for at least two percent of the total amount of the bid.

(b) Bids shall be opened at the same time, and the board may reject any or all of the bids.

(c) If the successful bidder fails or refuses to enter into a proper contract with the district or fails

or refuses to furnish the bond required by law, he shall forfeit the amount of the check or bond which accompanied his bid.

(d) The district may specify reasonable additional requirements.

[Acts 1971, 62nd Leg., p. 791, ch. 84, § 1.]

#### § 54.223. Reports Furnished to Prospective Bidders

The board shall furnish to any person who desires to bid on construction work, and who makes a request in writing, a copy of the engineer's report which shows the work to be done and all details of it. The board may charge for each copy of the engineer's report an amount sufficient to cover the cost of making the copy.

[Acts 1971, 62nd Leg., p. 791, ch. 84, § 1.]

#### § 54.224. Provisions of Contracts For Construction Work

(a) Any contract made by the board for construction work shall conform to the provisions of this subchapter, and the provisions of this subchapter will be considered to be a part of the contract and shall prevail when the provisions of this chapter and the contract are in conflict.

(b) The contract shall contain, or have attached to it, the specifications, plans, and details for work included in the contract, and all work shall be done in accordance with these plans and specifications under the supervision of the board and the district engineer.

[Acts 1971, 62nd Leg., p. 791, ch. 84, § 1.]

#### § 54.225. Executing and Recording Construction Contract

(a) Contracts for construction work shall be in writing and signed by an authorized representative of the district and the contractor.

(b) The contract shall be kept in the district's records and be available for public inspection.

[Acts 1971, 62nd Leg., p. 791, ch. 84, § 1.]

#### § 54.226. Contractor's Bond

Any person, firm, partnership, or corporation to whom a contract is let must give good and sufficient performance and payment bonds in accordance with Article 5160, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1971, 62nd Leg., p. 791, ch. 84, § 1.]

#### § 54.227. Inspection of and Reports on Construction Work

(a) The board shall have control of construction work being done for the district under contract to determine whether or not the contract is being fulfilled and shall have the construction work inspected by the district engineer or his assistants.

(b) During the progress of the construction work, the district engineer shall submit to the board detailed written reports showing whether or not the

contractor is complying with the contract, and when the work is completed, the district engineer shall submit to the board a final detailed report including as-built plans of the facilities showing whether or not the contractor has fully complied with the contract.

[Acts 1971, 62nd Leg., p. 792, ch. 84, § 1.]

#### § 54.228. Payment For Construction Work

(a) The board may pay for construction work in partial payments as the work progresses on each stage, but partial payments shall not exceed 90 percent of the amount due at the time of the partial payment as shown by the report of the district's engineer.

(b) The district may elect to pay for the work in stages at the completion of each stage or may provide that the contract shall be payable in its entirety at the completion of the contract.

(c) When construction work is completed according to the terms of the contract, the board shall draw a warrant on the district depository to pay any balance due on the contract.

[Acts 1971, 62nd Leg., p. 792, ch. 84, § 1.]

#### § 54.229. Contracts For Materials, Machinery, and Construction of More Than \$5,000 But Less Than \$25,000

If the estimated amount of the proposed contracts for works, plant improvements, facilities other than land, or the purchase of equipment, appliances, materials or supplies is more than \$5,000 but less than \$25,000, or for a duration of more than two years, competitive bids on uniform written specifications shall be asked from at least three bidders. Contracts shall be written and shall be awarded to the lowest and best bidder.

[Acts 1971, 62nd Leg., p. 792, ch. 84, § 1.]

#### § 54.230. Contracts With Governmental Agencies

The provisions of this subchapter shall not prohibit a district from purchasing property from public agencies by negotiated contract or without the necessity of advertising for bids.

[Acts 1971, 62nd Leg., p. 792, ch. 84, § 1.]

#### § 54.231. Personal or Professional Services Contracts

The provisions of this subchapter shall not apply to contracts for personal or professional services or for a utility service operator.

[Acts 1971, 62nd Leg., p. 792, ch. 84, § 1.]

#### § 54.232. Grants and Gifts

A district may accept grants, gratuities, advances, and loans in any form from any source approved by the board, including the United States, the state or any of its agencies, any private or public corporation, and any other person and to make and enter into contracts, agreements, and covenants which the board considers appropriate in connection with acceptance of grants, gratuities, advances, and loans.

[Acts 1971, 62nd Leg., p. 792, ch. 84, § 1.]

**§ 54.233. Area-Wide Waste Treatment**

The powers and duties conferred on the district are granted subject to the policy of the state to encourage the development and use of integrated area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state, it being an objective of the policy to avoid the economic burden to the people and the impact on the quality of the water in the state which result from the construction and operation of numerous small waste collection, treatment, and disposal facilities to serve an area when an integrated area-wide waste collection, treatment, and disposal system for the area can be reasonably provided.

[Acts 1971, 62nd Leg., p. 792, ch. 84, § 1.]

[Sections 54.234 to 54.300 reserved for expansion]

**SUBCHAPTER E. GENERAL FISCAL PROVISIONS**

**§ 54.301. Expenditures**

A district's money may be disbursed only by check, draft, order, or other instrument which shall be signed by at least three directors. The general manager, treasurer, or other employee of the district when authorized by resolution of the board may sign checks, drafts, orders, or other instruments on any district operation account and these need not be signed by anyone else.

[Acts 1971, 62nd Leg., p. 793, ch. 84, § 1.]

**§ 54.302. Purposes For Borrowing Money**

The district may borrow money for any corporate purpose or combination of corporate purposes.

[Acts 1971, 62nd Leg., p. 793, ch. 84, § 1.]

**§ 54.303. Revenue Notes**

(a) The board, without the necessity of an election, may borrow money on negotiable notes of the district to mature over a term of not more than 20 years and to bear interest at a rate not more than 10 percent a year to be paid solely from the revenues derived from the ownership of all or any designated part of the district's works, plant, improvements, facilities, or equipment after deduction of the reasonable cost of maintaining and operating the facilities.

(b) The notes may be first or subordinate lien notes within the discretion of the board, but no obligation may ever be a charge on the property of the district or on taxes levied or collected by the district but shall be solely a charge on the revenues pledged for the payment of the obligation. No part of the obligation may ever be paid from taxes levied or collected by the district.

[Acts 1971, 62nd Leg., p. 793, ch. 84, § 1.]

**§ 54.304. Bond Anticipation Notes; Tax Anticipation Notes**

(a) The board may declare an emergency in the matter of funds not being available to pay principal of and interest on any bonds of the district payable in whole or in part from taxes or to meet any other needs of the district and may issue negotiable tax anticipation notes or negotiable bond anticipation notes to borrow the money needed by the district. Bond anticipation notes and tax anticipation notes may bear interest at any rate or rates not to exceed 10 percent and shall mature within one year of their date.

(b) Tax anticipation notes may be issued for any purpose for which the district is authorized to levy taxes, and tax anticipation notes shall be secured with the proceeds of taxes to be levied by the district in the succeeding 12-month period. The board may covenant with the purchasers of the notes that the board will levy a sufficient tax in the following October to pay principal of and interest on the notes and pay the costs of collecting the taxes.

(c) Bond anticipation notes may be issued for any purpose for which bonds of the district may have previously been voted or may be issued for the purpose of refunding previously issued bond anticipation notes. A district may covenant with the purchasers of the bond anticipation notes that the district will use the proceeds of sale of any bonds in the process of issuance for the purpose of refunding the bond anticipation notes, in which case the board will be required to use the proceeds received from sale of the bonds in the process of issuance to pay principal, interest, or redemption price on the bond anticipation notes.

[Acts 1971, 62nd Leg., p. 793, ch. 84, § 1.]

**§ 54.305. Repayment of Organizational Expenses**

The district's directors are authorized to pay all costs and expenses necessarily incurred in the creation and organization of a district, the cost of investigation and making plans, the cost of the engineer's report, legal fees, and other incidental expenses, and to reimburse any person for money advanced for these purposes. These payments may be made from money obtained from the issuance of notes or the sale of bonds first issued by the district or out of maintenance taxes or other revenues of the district.

[Acts 1971, 62nd Leg., p. 794, ch. 84, § 1.]

**§ 54.306. Premium on Directors or Employees Bonds**

The board may pay the premium on surety bonds required of officials or employees of the district out of any available funds of the district including proceeds from the sale of bonds.

[Acts 1971, 62nd Leg., p. 794, ch. 84, § 1.]

**§ 54.307. Depository**

(a) The board, by order or resolution, shall designate one or more banks inside or outside the district to serve as the depository for the funds of the

district. All funds of the district shall be deposited in the depository bank or banks unless otherwise required by orders or resolutions authorizing the issuance of the district's bonds.

(b) To the extent that funds in the depository bank or banks are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds of counties of the State of Texas.

(c) The board, by resolution, may authorize a designated representative to supervise the substitution of securities pledged to secure the district's funds. [Acts 1971, 62nd Leg., p. 794, ch. 84, § 1.]

#### § 54.308. Investments

(a) Funds of the district may be invested and reinvested by the board or its authorized representative in direct or indirect obligations of the United States, the state, or any county, city, school district, or other political subdivision of the state. Funds of the district may be placed in certificates of deposit of state or national banks or savings and loan associations within the state provided that they are secured in the manner provided for the security of the funds of counties of the State of Texas.

(b) The board, by resolution, may provide that an authorized representative of the district may invest and reinvest the funds of the district and provide for money to be withdrawn from the appropriate accounts of the district for the investments on such terms as the board considers advisable. [Acts 1971, 62nd Leg., p. 794, ch. 84, § 1.]

#### § 54.309. Accounts and Records; Audits

(a) A complete system of accounts shall be kept by the district and an audit of its affairs for each year shall be prepared by an independent certified public accountant or a firm of independent certified public accountants.

(b) The fiscal year of the district shall be from January 1 to December 31, until changed by the board.

(c) A signed copy of the audit report shall be delivered to each member of the board of directors not later than 120 days after the close of each fiscal year, and a copy of the audit shall be kept on file at the district office and shall constitute a public record open for inspection by any interested person during normal office hours.

(d) The board shall file a copy of each audit with the commission. [Acts 1971, 62nd Leg., p. 794, ch. 84, § 1.]

#### § 54.310. Paid Bonds, Coupons, Etc.

All district bonds and interest coupons or notes when paid shall be delivered to the district or destroyed and evidence of the destruction furnished the board.

[Acts 1971, 62nd Leg., p. 795, ch. 84, § 1.]

#### § 54.311. Maintenance Tax

(a) A district may levy and collect a tax for maintenance purposes, including funds for planning, maintaining, repairing, and operating all necessary plants, works, facilities, improvements, appliances, and equipment of the district and for paying costs of proper services, engineering, and legal fees, and organization and administrative expenses.

(b) A maintenance tax may not be levied by a district until it is approved by a majority of the electors voting at an election held for that purpose. [Acts 1971, 62nd Leg., p. 795, ch. 84, § 1.]

#### § 54.312. Maintenance Tax Election

The maintenance tax election may be held at the same time and in conjunction with the election to authorize bonds, and the procedure for calling the election, giving notice, conducting the election, and canvassing the returns shall be the same as the procedure for a bond election.

[Acts 1971, 62nd Leg., p. 795, ch. 84, § 1.]

[Sections 54.313 to 54.500 reserved for expansion]

### SUBCHAPTER F. ISSUANCE OF BONDS

#### § 54.501. Issuance of Bonds

The district may issue its bonds for the purpose of purchasing, constructing, acquiring, owning, operating, repairing, improving, or extending any district works, improvements, facilities, plants, equipment, and appliances needed to accomplish the purposes set forth in Section 54.012 of this code for which a district shall be created, including works, improvements, facilities, plants, equipment, and appliances needed to provide a waterworks system, sanitary sewer system, storm sewer system, solid waste disposal system, or to provide parks and recreation facilities.

[Acts 1971, 62nd Leg., p. 795, ch. 84, § 1.]

#### § 54.502. Form of Bonds

(a) A district may issue its bonds in various series or issues.

(b) Bonds shall mature serially or otherwise not more than 40 years from their date and shall bear interest at any rate permitted by the Constitution and laws of the state, all as shall be determined by the board.

(c) A district's bonds and interest coupons, if any, shall be investment securities under the terms of Chapter 8 of the Business & Commerce Code and may be issued registrable as to principal or as to both principal and interest and shall or may be made redeemable before maturity, at the option of the district or may contain a mandatory redemption provision all as may be provided by the board. A district's bonds may be issued in the form, denominations, and manner and under the terms, conditions, and details, and shall be signed and executed,

as provided by the board in the resolution or order authorizing their issuance.

[Acts 1971, 62nd Leg., p. 795, ch. 84, § 1.]

**§ 54.503. Manner of Repayment of Bonds**

The board may provide for the payment of principal of and interest and redemption price on the bonds in any one of the following manners:

(1) from the levy and collection of ad valorem taxes on all taxable property within the district;

(2) by pledging all or any part of the designated revenues to result from the ownership or operation of the district's works, improvements, facilities, plants, equipment, and appliances or under specific contracts for the period of time the board determines;

(3) a combination of the sources set forth in Subdivisions (1) and (2) of this section.

[Acts 1971, 62nd Leg., p. 795, ch. 84, § 1.]

**§ 54.504. Additional Security For Bonds**

(a) The bonds, within the discretion of the board, may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district, and franchises, easements, water rights, and appropriation permits, leases, and contracts and all rights appurtenant to such properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers and authority necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may contain provisions prescribed by the board for the security of the bonds and the preservation of the trust estate, and may make provisions for amendment or modification, and may condition the right to spend district money or sell district property on approval of a registered professional engineer selected as provided in the trust indenture and may make provisions for investment of funds of the district.

(c) Any purchaser under a sale under the deed of trust or mortgage lien, where one is given, shall be absolute owner of the properties, facilities, and rights purchased and shall have the right to maintain and operate them.

[Acts 1971, 62nd Leg., p. 796, ch. 84, § 1.]

**§ 54.505. Election on Tax Bonds**

Bonds payable solely from revenues may be issued by resolution or order of the board, but no bonds, except refunding bonds, payable wholly or partially from ad valorem taxes shall be issued until authorized by a majority vote of the resident electors of the district voting in an election called and held for that purpose.

[Acts 1971, 62nd Leg., p. 796, ch. 84, § 1.]

**§ 54.506. Engineer's Report**

Before an election is held to authorize the issuance of bonds, there shall be filed in the office of the district and open to inspection by the public an engineer's report covering the plant, improvements, facilities, plants, equipment, and appliances to be purchased or constructed and their estimated cost, together with maps, plats, profiles, and data fully showing and explaining the report.

[Acts 1971, 62nd Leg., p. 796, ch. 84, § 1.]

**§ 54.507. Notice of Bond Election**

(a) Notice of a bond election shall be given as provided for confirmation elections and the notice shall contain the proposition or propositions to be voted upon, with an estimate of the probable cost of construction and incidental expenses connected with construction and an estimate of the cost of the purchase of improvements, if any, or the purchase of the improvements and the construction of additions to the improvements.

(b) All or any part of any facilities or improvements which may be acquired by a district by the issuance of its bonds may be included in one single proposition to be voted on at the election or the bonds may be submitted in several propositions. A bond election may also be held on the same day as the confirmation election. The bond election may be called by a separate election order or as a part of the order calling the confirmation election.

(c) If a majority of the votes cast at the election are in favor of the issuance of the bonds, the bonds may be issued by the board if the confirmation election results favorably to the confirmation of the district.

[Acts 1971, 62nd Leg., p. 796, ch. 84, § 1.]

**§ 54.508. Form of Ballots**

(a) At any election to authorize bonds payable wholly from ad valorem taxes, in addition to the requirements of the Texas Election Code, the ballots shall be printed to provide for voting for or against the proposition: "The issuance of bonds and the levy of taxes in payment of the bonds."

(b) At any election to authorize bonds payable from both ad valorem taxes and revenues, the ballots shall be printed to provide for voting for or against: "The issuance of bonds and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the bonds."

[Acts 1971, 62nd Leg., p. 797, ch. 84, § 1.]

**§ 54.509. Absentee Voting**

Absentee balloting in bond elections shall not commence until 10 days before the election.

[Acts 1971, 62nd Leg., p. 797, ch. 84, § 1.]

**§ 54.510. Provisions of Bonds**

(a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds, the estab-

ishment and maintenance of the interest and sinking fund, the reserve fund, and other funds, and may make additional covenants with respect to the bonds and the pledged revenues and the operation and maintenance of those works, improvements, plants, facilities, equipment, and appliances the revenue of which is pledged, including provisions for the operation or for the leasing of all or any part of the improvements and the use or pledge of money derived from the operation contracts and leases, as the board may consider appropriate.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued, subject to the conditions which may be set forth in the orders or resolutions.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine, not prohibited by the Constitution or by this chapter.

(d) The board may adopt and cause to be executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

[Acts 1971, 62nd Leg., p. 797, ch. 84, § 1.]

#### § 54.511. Use of Bond Proceeds

The district may use bond proceeds to pay interest, administrative and operating expenses expected to accrue during the period of construction which shall not be more than three years as may be provided in the bond orders or resolutions, and to pay all expenses incurred and to be incurred in the issuance, sale, and delivery of the bonds.

[Acts 1971, 62nd Leg., p. 797, ch. 84, § 1.]

#### § 54.512. Sale or Exchange of Bonds

(a) The board shall sell the bonds on the best terms and for the best possible price but none of the bonds may be sold for less than 95 percent of face value.

(b) The district may exchange bonds for property acquired by purchase or in payment of the contract price of work done or services performed for the use and benefit of the district.

[Acts 1971, 62nd Leg., p. 797, ch. 84, § 1.]

#### § 54.5121. Notice of Bond Sale

(a) Except for refunding bonds, bonds sold to a state or federal agency, and bonds registered with any federal agency, after any bonds are finally approved and before they are sold by a district, the board shall publish an appropriate notice of the sale:

(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation which is published in the county or counties in which the district is located; and

(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the attorney general.

(b) If a newspaper publication required by Subdivision (1), Subsection (a), of this section is not published in the county, then notice may be published in any newspaper of general circulation in such county. [Acts 1973, 63rd Leg., p. 616, ch. 262, § 4, eff. Aug. 27, 1973.]

#### § 54.513. Approval by Attorney General; Registration by Comptroller

(a) All bonds issued by a district shall be submitted to the Attorney General of the State of Texas for examination.

(b) If he finds that the bonds have been authorized in accordance with law, he shall approve them, and they shall be registered by the Comptroller of Public Accounts of the State of Texas.

(c) After the approval and registration of bonds by the comptroller they shall be incontestable in any court or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

(d) When any bonds payable from net revenue recite that they are secured partially or otherwise by a pledge of the proceeds of a contract or a lease made between the district and another party or parties, a copy of the contract or lease and the proceedings authorizing the contract or lease may or may not be submitted to the attorney general along with the bond records, and if submitted, the approval by the attorney general of the bonds shall constitute an approval of the contract or lease, and the contract or lease shall be incontestable.

[Acts 1971, 62nd Leg., p. 797, ch. 84, § 1.]

#### § 54.514. Refunding Bonds

(a) A district may issue bonds to refund all or any part of its outstanding bonds, notes, or other obligations including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 40 years from their date and shall bear interest at any rate or rates permitted by the Constitution and laws of the state.

(c) Refunding bonds may be payable from the same source as the bonds, notes, or other obligations being refunded or from other additional sources.

(d) The refunding bonds shall be approved by the attorney general as in the case of other bonds and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they shall be sold and the proceeds deposited in the place or places where the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded provided an amount sufficient to pay the interest on and principal of the bonds being refund-

ed to their maturity dates, or to their option dates if the bonds have been duly called for payment prior to maturity according to their terms, has been deposited in the place or places where the bonds being refunded are payable. The comptroller shall register them without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons shall be investment securities under the provisions of Article 8 of the Business & Commerce Code.

(g) In lieu of the method set forth in Section 54.514(a)-(f) of this code, a district may refund bonds, notes, or other obligations as provided by the general laws of the state.

[Acts 1971, 62nd Leg., p. 798, ch. 84, § 1.]

**§ 54.515. Obligations, Legal Investments; Security For Funds**

All bonds, notes, and other obligations issued by a district shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, and trustees, and for all interest and sinking funds and other public funds of the State of Texas, and all agencies, subdivisions, and instrumentalities of the state including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. A district's bonds, notes, and other obligations shall be eligible and lawful security for all deposits of public funds of the State of Texas, and all agencies, subdivisions, and instrumentalities of the state including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, notes, and other obligations when accompanied by any unmatured interest coupons attached to them.

[Acts 1971, 62nd Leg., p. 798, ch. 84, § 1.]

**§ 54.516. Authority of Commission Over Issuance of District Bonds**

(a) The commission shall investigate and report on the organization and feasibility of all districts that issue bonds, other than refunding bonds, under this chapter.

(b) Any district that desires to issue bonds under this chapter other than refunding bonds shall submit to the commission a written application for investigation, together with copies of the engineer's report and data, profiles, maps, plans, and specifications prepared in connection with the engineer's report.

(c) The commission or its designated agents shall examine the application and accompanying documents and shall visit and carefully inspect the project. The commission or its designated agents may request and shall be supplied with additional data and information requisite to a reasonable and

careful investigation of the project and proposed improvements.

(d) The commission or its designated agents shall file in its office written suggestions for changes and improvements and shall furnish a copy of the report to the board of the district.

(e) If the commission approves or refuses to approve the project or the issuance of bonds for the improvements, it shall make a full written report which it shall file in its office and a copy of the report shall be furnished to the district.

[Acts 1971, 62nd Leg., p. 799, ch. 84, § 1.]

**§ 54.517. Commission Supervision of Projects and Improvements**

(a) During construction of projects and improvements approved by the commission, no substantial alterations may be made in the plans and specifications without the approval of the commission.

(b) The commission or its designated agent may inspect the improvements at any time during construction to determine if the project is being constructed in accordance with the plans and specifications approved by the commission.

(c) If the commission finds that the project is not being constructed in accordance with the approved plans and specifications, it shall give written notice immediately by certified mail to each member of the board of the district and the district's manager.

(d) If within 10 days after the notice is mailed the board does not take steps to insure that the project is being constructed in accordance with the approved plans and specifications, the commission shall give written notice of this fact to the attorney general.

(e) After the attorney general receives this notice, he may bring an action for injunctive relief or quo warranto proceedings against the directors. Venue for either suit is exclusively in a district court in Travis County.

[Acts 1971, 62nd Leg., p. 799, ch. 84, § 1.]

**§ 54.518. Mandamus by Bondholders**

In addition to all other rights and remedies provided by the laws of the state, in the event the district defaults in the payment of principal, interest, or redemption price on its bonds when due, or in the event it fails to make payments into any fund or funds created in the order or resolution authorizing the issuance of the bonds, or defaults in the observation or performance of any other covenants, conditions, or obligations set forth in the resolution or order authorizing the issuance of its bonds, the owners of any of the bonds shall be entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the district and its officials to observe and perform the covenants, obligations, or conditions prescribed in the order or resolution authorizing the issuance of the district's bonds.

[Acts 1971, 62nd Leg., p. 799, ch. 84, § 1.]

### § 54.519. Service to Areas Outside the District

(a) A district may purchase, construct, acquire, own, operate, repair, improve, or extend all works, improvements, facilities, plants, equipment, and appliances necessary to provide a water system and a sewer system for areas contiguous to or in the vicinity of the district provided the district does not duplicate a service of another public agency. A district shall not provide a water or a sanitary sewer system to serve areas outside the district which is also within a city without securing a resolution or ordinance of the city granting consent for the district to serve the area within the city.

(b) To secure money for this purpose, a district is authorized to issue and sell negotiable bonds and notes which are payable from the levy and collection of ad valorem taxes on all taxable property within the district or from all or any designated part of the revenues received from the operation of the district's works, improvements, facilities, plants, equipment, and appliances or from a combination of taxes and revenues.

(c) Any bonds and notes may be issued upon the terms and conditions set forth in this chapter.

(d) A district is authorized to establish, maintain, revise, charge, and collect the rates, fees, rentals, tolls, or other charges for the use, services, and facilities of the water and sewer system which provide service to areas outside the district which are considered necessary and which may be higher than those charged for comparable service to residents within the district.

(e) The rates, fees, rentals, tolls, or other charges shall be at least sufficient to meet the expense of operating and maintaining the water and sewer system serving areas outside the district and to pay the principal of and interest and redemption price on bonds issued to purchase, construct, acquire, own, operate, repair, improve, or extend the system.

[Acts 1971, 62nd Leg., p. 800, ch. 84, § 1.]

### § 54.520. Cancellation of Unsold Bonds

(a) The board, by order or resolution, may provide for the cancellation of all or any part of any bonds which have been submitted to and approved by the attorney general and registered by the comptroller, but not yet sold, and provide for the issuance of new bonds in lieu of the old bonds in the manner as provided by law for the issuance of the original bonds including their approval by the attorney general and their registration by the comptroller.

(b) The order or resolution of the board shall describe the bonds to be cancelled, and shall also describe the new bonds to be issued in lieu of the old bonds.

(c) A certified copy of the order or resolution of the board providing for the cancellation of the old bonds, together with the old bonds, shall be delivered to the comptroller, who shall cancel and destroy the old bonds and make a record of the cancellation.

[Acts 1971, 62nd Leg., p. 800, ch. 84, § 1.]

[Sections 54.521 to 54.600 reserved for expansion]

## SUBCHAPTER G. TAXES

### § 54.601. Tax Levy For Bonds

At the time bonds payable in whole or in part from taxes are issued, the board shall levy a continuing direct annual ad valorem tax for each year while all or part of the bonds are outstanding on all taxable property within the district in sufficient amount to pay the interest on the bonds as it becomes due and to create a sinking fund for the payment of the principal of the bonds when due or the redemption price at any earlier required redemption date and to pay the expenses of assessing and collecting the taxes.

[Acts 1971, 62nd Leg., p. 801, ch. 84, § 1.]

### § 54.602. Establishment of Tax Rate in Each Year

(a) On or before October 1 in each year or as soon after that time as practicable, the board shall consider the taxable property in the district and determine the actual rate per \$100 valuation of taxable property which is to be levied in that year and levy the tax against all taxable property in the district.

(b) In determining the actual rate to be levied in each year, the board shall consider among other things:

(1) the amount which should be levied for maintenance and operation purposes, if a maintenance tax has been authorized;

(2) the amount which should be levied for the payment of principal, interest, and redemption price of each series of bonds or notes payable in whole or in part from taxes;

(3) the amount which should be levied for the purpose of paying all other contractual obligations of the district payable in whole or in part from taxes; and

(4) the percentage of anticipated tax collections and the cost of collecting the taxes.

(c) In determining the amount of taxes which should be levied each year, the board may consider whether proceeds from the sale of bonds have been placed in escrow to pay interest during construction and whether the board reasonably expects to have revenue or receipts available from other sources which are legally available to pay principal of or interest or redemption price on the bonds. The board shall levy a tax in the first full year after issuance of its first series of bonds.

[Acts 1971, 62nd Leg., p. 801, ch. 84, § 1.]

### § 54.603. Mandamus by Bondholders

In the event the board fails or refuses to levy a sufficient tax in each year which, together with other revenues or receipts which may be legally used for these purposes, will be sufficient to pay the required principal of or interest or redemption price on the bonds, notes, or other contractual obligations when due, or to pay the district's other contractual obligations payable from taxes in addition to all

other remedies which may be available, the owner of the district's bonds, notes, or other contractual obligations shall be entitled to a writ of mandamus issued by a court of competent jurisdiction to compel the board to levy a sufficient tax to meet the district's obligations to the owners of its bonds, notes, or other contractual obligations.  
[Acts 1971, 62nd Leg., p. 801, ch. 84, § 1.]

**§ 54.604. Assessment of District Property**

The assessor and collector shall assess all taxable property in the district.  
[Acts 1971, 62nd Leg., p. 801, ch. 84, § 1.]

**§ 54.605. Law Governing Property Subject to Taxation**

The property subject to taxation in the district shall be determined by and governed by the law relating to taxation for state and county purposes except as specifically provided by this chapter.  
[Acts 1971, 62nd Leg., p. 802, ch. 84, § 1.]

**§ 54.606. Rendition of Property**

(a) The assessor and collector shall compile a record of all taxpayers and those subject to taxation in the district, all taxable property, and the name and post office address of the owners.

(b) Each owner of taxable property in the district shall file in the office of the assessor and collector a full, accurate, and complete statement under oath of all property owned by him in the district which is subject to taxation.

(c) The statement shall include the market value of all property listed and owned by the party rendering it.

(d) The statement shall be filed on or before April 30 of each year.  
[Acts 1971, 62nd Leg., p. 802, ch. 84, § 1.]

**§ 54.607. Failure or Refusal to File Rendition**

A person who fails or refuses to file, under oath, a true, full, and complete statement and rendition of all property owned by him which is subject to district taxation shall be precluded from making an objection, protest, or contest against the assessment made against him by the district.  
[Acts 1971, 62nd Leg., p. 802, ch. 84, § 1.]

**§ 54.608. Property Owner's Oath**

(a) The statement and rendition shall have attached to it substantially the following oath: "I \_\_\_\_\_, on my oath, state that the foregoing statement and rendition is a true, full and complete statement of all property owned by me, or for whom this rendition is made or by whom this rendition is made, subject to taxation in the district. I have correctly stated the description, location, and value thereof and of each item thereof."

(b) The statement and oath shall be signed and made before an officer authorized by law to take oaths and acknowledgments.

(c) The officer taking the oath shall place on the oath his certificate substantially as follows: "Subscribed and sworn to by \_\_\_\_\_ before me this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_." (The officer also shall attach his official seal and signature.)  
[Acts 1971, 62nd Leg., p. 802, ch. 84, § 1.]

**§ 54.609. Agent May File Rendition Statement**

The statement and rendition may be filed by any authorized agent of the owner of any property, but the agent shall state in the statement and rendition that he is filing as an agent.  
[Acts 1971, 62nd Leg., p. 802, ch. 84, § 1.]

**§ 54.610. Verification of Rendition; Rendition of Property Not Already Rendered**

(a) The assessor and collector shall check, investigate, and verify each rendition of property and shall note on the rendition in writing his report. He shall include in the report any property omitted from the rendition with his estimate of the value of all the property not rendered at its full value or if the property is rendered at more than its full value.

(b) The assessor and collector shall make and file a rendition of all property in the district which is not rendered for taxation and shall file the rendition before June 1 of each year or as soon after that time as possible.

(c) In making the rendition of unrendered property, the assessor and collector shall include all property which is not rendered by the owner or his agent, and if the owner is unknown, the property shall be listed as being owned by "owner unknown."

(d) Property whose owner is unknown shall be taxed and taxes collected even though the owner is unknown.  
[Acts 1971, 62nd Leg., p. 802, ch. 84, § 1.]

**§ 54.611. Rendition of Property at a Later Date**

On creation of the district, if it becomes necessary to have property rendered for taxation at a later date than provided for regular assessment, the board shall fix the time for the rendition to be made and the other necessary functions connected with it. After the first year, the assessments shall be made as provided in this chapter.  
[Acts 1971, 62nd Leg., p. 803, ch. 84, § 1.]

**§ 54.612. Authority to Administer Oaths**

The assessor and collector and any deputy assessor collector may administer oaths to fully carry out his duties and the assessment of property for taxation.  
[Acts 1971, 62nd Leg., p. 803, ch. 84, § 1.]

**§ 54.613. Laws and Penal Statutes Applicable to Rendition of Property**

The laws and penal statutes of this state providing for rendition of property for state and county pur-

poses and providing penalties for making false oaths and for failing to render property shall apply to rendition of property by a district except as provided in this chapter.

[Acts 1971, 62nd Leg., p. 803, ch. 84, § 1.]

#### § 54.614. Appointment of Board of Equalization

(a) At their first meeting or as soon after that time as practicable and each following year, the board shall appoint a chairman and two other commissioners to the board of equalization, one of whom may be a member of the board.

(b) Each person appointed to the board of equalization shall own taxable property in the district or be a resident in the district.

[Acts 1971, 62nd Leg., p. 803, ch. 84, § 1.]

#### § 54.615. First Meeting of Board of Equalization

(a) The chairman appointed by the board shall fix a time and place for the first meeting.

(b) The board of equalization shall convene at the time and place designated by the chairman to receive all assessment lists or books of the assessor and collector for examination, correction, equalization, appraisalment, and approval.

[Acts 1971, 62nd Leg., p. 803, ch. 84, § 1.]

#### § 54.616. Oath of Board of Equalization

(a) Before the board of equalization begins to perform its duties, each commissioner shall take and subscribe the following oath: "I do solemnly swear (or affirm) that I will, to the best of my ability, make a full and complete examination, correction, equalization, and appraisalment of all property contained in the district as shown by the assessment lists or books of the assessor and collector for the district and add all property not included of which I have knowledge."

(b) The oath shall be recorded in the minutes of the board of equalization and shall be kept by the secretary of the board of equalization.

[Acts 1971, 62nd Leg., p. 803, ch. 84, § 1.]

#### § 54.617. Compensation of Board of Equalization

Members of the board of equalization shall receive the compensation fixed by the board.

[Acts 1971, 62nd Leg., p. 803, ch. 84, § 1.]

#### § 54.618. Secretary of Board of Equalization

At its first meeting the board of equalization shall appoint a secretary who shall keep a permanent record of all the proceedings of the board of equalization.

[Acts 1971, 62nd Leg., p. 803, ch. 84, § 1.]

#### § 54.619. Annual Meeting Date of Board of Equalization

The board of equalization shall convene on the date designated by the chairman and shall complete its work by September 1 or as soon after that time as possible.

[Acts 1971, 62nd Leg., p. 803, ch. 84, § 1.]

#### § 54.620. Powers and Duties of Board of Equalization

(a) At the time the board of equalization convenes, the assessor and collector shall bring to the meeting all assessment lists and books for examination so that the board of equalization may see whether or not each person has rendered his property at its full value.

(b) The board of equalization may subpoena persons and papers, administer oaths to persons who testify, and ascertain the value of all property subject to taxation.

(c) The board of equalization may raise or lower the valuation of any of the property, may correct any and all errors of assessments and renditions, and may add any unrendered property to the tax rolls.

(d) The board of equalization shall equalize as nearly as possible the value of all property rendered for taxation and fix the value of it for taxation.

[Acts 1971, 62nd Leg., p. 804, ch. 84, § 1.]

#### § 54.621. Complaints Filed with Board of Equalization

Any person may file with the board of equalization a complaint relating to the rendition and assessment of his own property or to any other property and the board of equalization shall consider all complaints.

[Acts 1971, 62nd Leg., p. 804, ch. 84, § 1.]

#### § 54.622. Lists of Persons and Property Not on Tax Rolls Submitted to Board of Equalization

(a) Anyone may file with the board of equalization lists of property omitted from the tax rolls, and the board of equalization shall add to the tax rolls any property which has been omitted from them.

(b) The assessor and collector shall file with the board of equalization a list of all persons who fail or refuse to render their property.

[Acts 1971, 62nd Leg., p. 804, ch. 84, § 1.]

#### § 54.623. Hearing

After the board of equalization has passed on the renditions, it shall set a date to hear protests from persons whose renditions have been raised.

[Acts 1971, 62nd Leg., p. 804, ch. 84, § 1.]

#### § 54.624. Notice of Hearing

At least 10 days before the hearing, the secretary of the board of equalization shall mail written notice of the time and place of the hearing to all persons whose assessments have been raised. Failure to give the notice does not relieve the owner of the property of his duty to take notice of the hearing and to attend.

[Acts 1971, 62nd Leg., p. 804, ch. 84, § 1.]

#### § 54.625. Hearing Procedure

At the hearing, the board of equalization shall hear and consider all complaints and protests, recon-

sider the valuation of all property whose valuation is raised by them, and finally fix the valuation on all property.

[Acts 1971, 62nd Leg., p. 804, ch. 84, § 1.]

**§ 54.626. Final Approval of Tax Rolls**

(a) After the assessor and collector makes his final tax rolls, the board of equalization shall meet and consider the tax rolls and make necessary corrections and endorse their approval on the rolls.

(b) The action of the board of equalization in approving the tax rolls is final and is not subject to revision by the board of directors or any other tribunal except for fraud or clerical error.

[Acts 1971, 62nd Leg., p. 804, ch. 84, § 1.]

**§ 54.627. Preservation of Official Documents**

(a) The assessor and collector shall prepare the tax rolls which shall be retained in his office.

(b) The minutes of the board of equalization, renditions, protests, and other papers filed in connection with the rendition of property and preparation of the tax rolls shall be preserved as official records in the district office.

[Acts 1971, 62nd Leg., p. 804, ch. 84, § 1.]

**§ 54.628. Date Taxes Are Due**

All taxes are due and payable on October 1 of each year and shall be paid on or before January 31 of the following year.

[Acts 1971, 62nd Leg., p. 805, ch. 84, § 1.]

**§ 54.629. Delinquent Taxes**

(a) All taxes which are not paid by January 31 become delinquent on February 1 of each year and shall be and remain a lien on the property for which they were assessed although the owner is unknown, the property is listed under the name of a person who is not the owner, or the ownership has changed.

(b) The property may be sold under a judgment of a court for all taxes, interest, penalty, and costs assessed against the property at any time after taxes become delinquent.

(c) The district may file suit to collect the delinquent taxes, and if the owner of the property is unknown, the suit may be filed against the unknown owner and the property sold under judgment of the court.

(d) Taxes are not barred by any statute of limitation, and no law providing for a period of limitation as to debts or actions shall apply to these taxes.

[Acts 1971, 62nd Leg., p. 805, ch. 84, § 1.]

**§ 54.630. Interest and Penalty on Delinquent Taxes**

All delinquent taxes shall have a penalty of 10 percent of their amount added to them, which shall accrue at the time the taxes become delinquent. The delinquent taxes also shall bear interest at the rate of 10 percent a year from the date on which they become delinquent.

[Acts 1971, 62nd Leg., p. 805, ch. 84, § 1.]

**§ 54.631. Preparing and Filing Delinquent Tax Roll**

The assessor and collector shall prepare and file with the board a delinquent tax roll on or before October 1 of each year. The delinquent tax roll shall show all charges on the tax rolls which have not been paid. The delinquent tax list shall include:

- (1) the name of the owner;
- (2) a description of the property; and
- (3) the total amount of taxes due.

[Acts 1971, 62nd Leg., p. 805, ch. 84, § 1.]

**§ 54.632. Notice of Delinquent Tax List**

The board may publish the delinquent tax list in a newspaper published in the county in which the district or part of the district is located.

[Acts 1971, 62nd Leg., p. 805, ch. 84, § 1.]

**§ 54.633. Attorney to File Suits to Collect Delinquent Taxes**

The board may employ an attorney to file suits to collect all delinquent taxes at the compensation provided by the board.

[Acts 1971, 62nd Leg., p. 805, ch. 84, § 1.]

**§ 54.634. Delinquent Tax Suit**

(a) A delinquent tax suit shall be filed as any other civil suit.

(b) If the owner of the property against which delinquent taxes are owed is unknown, the suit may be filed against the unknown owner and citation published in the manner provided for state and county taxes.

(c) All tax suits shall be for the collection of the amount due and foreclosure of the lien on the property against which the delinquent taxes are assessed.

(d) Costs of the suit shall be taxed in the order of sale.

[Acts 1971, 62nd Leg., p. 805, ch. 84, § 1.]

**§ 54.635. Sale of Property to Pay Delinquent Taxes**

(a) Property on which delinquent taxes are owed shall be sold under order of sale.

(b) If more property is covered by the lien fixed by the judgment than is necessary to secure the amount due, the property may be divided and sold in parcels as necessary to collect the amount due.

(c) The officer executing the order of sale shall make deeds to the purchaser which shall be held to vest a good and perfect title in the purchaser, subject to contest only for fraud.

[Acts 1971, 62nd Leg., p. 805, ch. 84, § 1.]

**§ 54.636. Redemption of Property on Which Delinquent Taxes Are Owed**

A person may redeem property on which delinquent taxes are owed in accordance with the laws governing redemption of property sold for delinquent taxes by a county.

[Acts 1971, 62nd Leg., p. 806, ch. 84, § 1.]

**§ 54.637. Using Tax Assessor Collector of Other Political Subdivision**

(a) Instead of proceeding for the assessment, equalization, and collection of taxes in the manner previously provided, the board may adopt an order to have the district taxes assessed and collected by the assessor and collector of taxes of a city or any other political subdivision of the state.

(b) On the adoption of the order the taxes shall be assessed and collected by these officials and turned over to the district depository.

(c) The compensation of these officials shall be as agreed upon by the officials and the board.

[Acts 1971, 62nd Leg., p. 806, ch. 84, § 1.]

[Sections 54.638 to 54.700 reserved for expansion]

**SUBCHAPTER H. ADDING AND EXCLUDING TERRITORY; CONSOLIDATING AND DISSOLVING DISTRICTS**

**§ 54.701. Excluding Land from District**

(a) Before the board calls an election for the authorization of bonds payable in whole or in part from taxes, the board may on its own motion call a hearing on the question of the exclusion of land from the district under the provisions of Sections 54.702-54.707 of this code, if the exclusions are practicable, just, or desirable.

(b) The board must call a hearing on the exclusion of land or other property from the district on the written petition of any landowner or property owner in the district filed with the secretary of the board before the time the first election on the question of the issuance of bonds payable in whole or in part from taxes is called.

[Acts 1971, 62nd Leg., p. 806, ch. 84, § 1.]

**§ 54.702. Hearing to Announce Proposed Exclusions and to Receive Petitions**

If the board determines that an exclusion hearing should be held or if a written petition requesting an exclusion hearing is filed with the secretary of the board as provided in Section 54.701 of this code, the board shall give notice of a time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to receive petitions for exclusion of land or other property.

[Acts 1971, 62nd Leg., p. 806, ch. 84, § 1.]

**§ 54.703. Notice of Hearing**

(a) The board shall publish notice of the hearing once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall appear at least 14 days before the day of the hearing.

(b) The notice shall advise all interested property owners of their right to present petitions for exclusions of land or other property and to offer evidence in support of the petitions and their right to contest any proposed exclusion based on either a petition or

the board's own conclusions and to offer evidence in support of the contest.

[Acts 1971, 62nd Leg., p. 806, ch. 84, § 1.]

**§ 54.704. Petition**

(a) A petition for exclusion of land must accurately describe by metes and bounds or lot and block number the land to be excluded. A petition for exclusion of other property must describe the property to be excluded.

(b) A petition for exclusion shall be filed with the district at least seven days before the hearing and shall state clearly the particular grounds on which the exclusion is sought. Only the stated grounds shall be considered.

[Acts 1971, 62nd Leg., p. 806, ch. 84, § 1.]

**§ 54.705. Grounds for Exclusion**

Exclusions from the district may be made on the grounds that:

(1) to retain certain land or other property within the district's taxing power would be arbitrary and unnecessary to conserve the public welfare, would impair or destroy the value of the property desired to be excluded, and would constitute the arbitrary imposition of a confiscatory burden;

(2) to retain any given land or other property in the district and to extend to it, either presently or in the future, the benefits, service, or protection of the district's facilities would create an undue and uneconomical burden on the remainder of the district; or

(3) the land desired to be excluded cannot be bettered as to conditions of living and health, or provided with water or sewer service or protected from flood, or drained, or freed from interruption of traffic caused by excess of water on the roads, highways, or other means of transportation serving the land, or otherwise benefited by the district's proposed improvements.

[Acts 1971, 62nd Leg., p. 807, ch. 84, § 1.]

**§ 54.706. Hearing Procedure**

The board may adjourn the hearing from one day to another and until all persons desiring to be heard are heard. The board immediately shall specifically describe all property which it proposes to exclude on its own motion and shall hear first any protests and evidence against exclusions proposed on the board's own motion.

[Acts 1971, 62nd Leg., p. 807, ch. 84, § 1.]

**§ 54.707. Order Excluding Land**

After considering all engineering data and other evidence presented to it, the board shall determine whether the facts disclose the affirmative of the propositions stated in Subsection (1) or (2) or, if appropriate, in Subsection (3) of Section 54.705 of this code. If the affirmative exists, the board shall enter an order excluding all land or other property

falling within the conditions defined by the respective subsections and shall redefine in the order the boundaries of the district to embrace all land not excluded. A copy of the order excluding land and redefining the boundaries of the district shall be filed in the deed records of the county or counties in which the district is situated.

[Acts 1971, 62nd Leg., p. 807, ch. 84, § 1.]

**§ 54.708. Suit to Review Exclusion**

Any person owning an interest in land affected by the order may file a petition within 20 days after the effective date of the order to review, set aside, modify, or suspend the order.

[Acts 1971, 62nd Leg., p. 807, ch. 84, § 1.]

**§ 54.709. Venue of Suit**

The venue in any action shall be in any district court which has jurisdiction in the county in which the district is located. If the district includes land in more than one county, the venue shall be in the district court having jurisdiction in the county in which the major portion of the acreage of the land sought to be excluded from the district is located.

[Acts 1971, 62nd Leg., p. 807, ch. 84, § 1.]

**§ 54.710. Appeal**

A person may appeal from the judgment or order of a district court in a suit brought under the provisions of Sections 54.708–54.709 of this code to the court of civil appeals and supreme court as in other civil cases in which the district court has original jurisdiction. The appeal is subject to the statutes and rules of practice and procedure in civil cases.

[Acts 1971, 62nd Leg., p. 807, ch. 84, § 1.]

**§ 54.711. Adding Land by Petition of Landowner**

The owner or owners of land contiguous to the district or otherwise may file with the board a petition requesting that there be included in the district the land described in the petition by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district.

[Acts 1971, 62nd Leg., p. 808, ch. 84, § 1.]

**§ 54.712. Assumption of Bonds**

If the district has bonds, notes, or other obligations outstanding or bonds payable in whole or in part from taxes which have been voted but are unissued, the board may require the petitioner or petitioners to assume their share of the outstanding bonds, notes, or other obligations and the voted but unissued tax bonds of the district and authorize the board to levy a tax on their property in each year while any of the bonds, notes, or other obligations payable in whole or in part from taxation are outstanding to pay their share of the indebtedness.

[Acts 1971, 62nd Leg., p. 808, ch. 84, § 1.]

**§ 54.713. Petition Signed and Executed**

The petition of the landowner to add land to the district shall be signed and executed in the manner provided by law for the conveyance of real estate.

[Acts 1971, 62nd Leg., p. 808, ch. 84, § 1.]

**§ 54.714. Hearing and Determination of Petition**

(a) The board shall hear and consider the petition and may add to the district the land described in the petition if it is considered to be to the advantage of the district and if the water, sewer, and drainage system and other improvements of the district are sufficient or will be sufficient to supply the added land without injuring land already in the district.

(b) If the district has bonds payable in whole or in part from taxation which are voted but unissued at the time of an annexation, and the petitioners assume the bonds and authorize the district to levy a tax on their property to pay the bonds, then the board may issue the voted but unissued bonds even though the boundaries of the district have been altered since the authorization of the bonds.

[Acts 1971, 62nd Leg., p. 808, ch. 84, § 1.]

**§ 54.715. Recording Petition**

A petition which is granted adding land to the district shall be filed for record and shall be recorded in the office of the county clerk of the county or counties in which the land is located.

[Acts 1971, 62nd Leg., p. 808, ch. 84, § 1.]

**§ 54.716. Adding Land by Petition of Less Than All the Landowners**

In addition to the method of adding land to a district which is described in Sections 54.711–54.715 of this code, defined areas of land, whether or not they are contiguous to the district, may be annexed to the district in the manner set forth in Sections 54.717–54.724 of this code.

[Acts 1971, 62nd Leg., p. 808, ch. 84, § 1.]

**§ 54.717. Filing of Petition**

A petition requesting the annexation of a defined area signed by a majority in value of the owners of land in the defined area, as shown by the tax rolls of the county or counties in which such area is located, or signed by 50 landowners if the number of landowners is more than 50, shall be filed with the secretary of the board.

[Acts 1971, 62nd Leg., p. 808, ch. 84, § 1.]

**§ 54.718. Hearing on Petition**

It shall be the duty of the board to pass an order fixing a time and place at which the petition for annexation shall be heard which shall not be less than 30 days from the day of the order calling the hearing.

[Acts 1971, 62nd Leg., p. 808, ch. 84, § 1.]

**§ 54.719. Notice of Hearing**

The secretary shall issue a notice setting forth the time and place of the hearing and describing the area proposed to be annexed. Notice of the hearing shall be given by posting copies of the notice in three public places in the district, and in one public place in the area proposed to be annexed for at least 14 days before the day of the hearing and by publishing a copy of the notice in a newspaper of general circulation in the county or counties in which the area proposed to be annexed is located one time at least 14 days before the day of the hearing.

[Acts 1971, 62nd Leg., p. 809, ch. 84, § 1.]

**§ 54.720. Order Adding Defined Area**

If upon the hearing of the petition it is found by the board that the proposed annexation of the area to the district is feasible and practicable and would be of benefit both to the area and to the district, then the board, by order entered in its minutes, may receive the proposed area as an addition to and to become a part of the district. The order adding the proposed territory to the district need not include all of the land described in the petition, if on the hearing a modification or change is found necessary or desirable by the board.

[Acts 1971, 62nd Leg., p. 809, ch. 84, § 1.]

**§ 54.721. Filing of Order Adding Land**

(a) A copy of the order annexing land to the district, signed by a majority of the members of the board and attested by the secretary of the board, shall be filed and recorded in the deed records of the county or counties in which the district is located if the land is finally annexed to the district.

(b) After the order is recorded the area shall be a component part of the district.

[Acts 1971, 62nd Leg., p. 809, ch. 84, § 1.]

**§ 54.722. Election to Assume Obligation and Unissued Bonds and to Authorize Additional Bonds**

(a) The annexed area shall bear its pro rata share of all bonds, notes, or other obligations or taxes which may be owed, contracted, or authorized by the district to which it has been added.

(b) Before the added area shall be subject to all or any part of the bonds, notes, obligations, or taxes, created before the annexation of the area to the district, the board shall order an election to be held in the district, as enlarged by reason of the annexation of the area, on the question of the assumption of the bonds, notes, obligations, and taxes by the annexed area.

(c) At the same election, the board may also submit a proposition on the question of whether the annexed area should assume its part of the bonds of the district payable in whole or in part from taxes which have been voted previously but not yet issued or sold and the levy of an ad valorem tax on all taxable property within the area annexed along with

a tax on the rest of the district for the payment of the bonds.

(d) If the election results favorably, the district shall be authorized to issue its voted but unissued tax bonds even though the boundaries of the district have been changed since the original election approving of the bonds.

(e) At the election called for the purpose of determining whether the annexed area shall assume the bonds, notes, or other obligations or taxes of the district, the board in a separate proposition, may also submit the question of whether the board should be authorized to issue bonds payable in whole or in part from taxes to provide service to the area annexed.

[Acts 1971, 62nd Leg., p. 809, ch. 84, § 1.]

**§ 54.723. Unfavorable Assumption Election or Bond Election**

(a) In the event that the district has bonds, notes, or obligations or taxes which may be owed, contracted, or authorized at the time an area is annexed or if the district has voted but unissued bonds payable in whole or in part from taxes at the time of an annexation, the board may provide in its order annexing an area to the district that the annexation will not be complete or final unless the indebtedness, tax or bond, note, or other obligation assumption elections result favorably to the assumption of the district's outstanding bonds, notes, or other obligations and voted but unissued bonds.

(b) If the board elects to submit the question of whether the board should be authorized to issue bonds to provide service to the area annexed, the board may also provide in its order annexing an area to the district that the annexation will not be complete unless the election results favorably to the issuance of bonds to serve the annexed area.

[Acts 1971, 62nd Leg., p. 810, ch. 84, § 1.]

**§ 54.724. Notice of Assumption Election**

Whenever an election is ordered to be held in the district for the purpose of the assumption of bonds, notes, or other obligations or taxes or the assumption of voted but unissued bonds by reason of the annexation of any area, then the election shall be held and notice given as provided for bond elections held by the district.

[Acts 1971, 62nd Leg., p. 810, ch. 84, § 1.]

**§ 54.725. Suit to Review Annexation**

The provisions of Sections 54.708-54.710 of this code with respect to an appeal from an order excluding land from the district shall apply to review of an order annexing land to the district.

[Acts 1971, 62nd Leg., p. 810, ch. 84, § 1.]

**§ 54.726. Right to Serve New Land Included in District**

The district has the same right and duty to furnish service to the annexed land that it previously had to furnish service to other land in the district

and the board shall endeavor to serve all land in the district without discrimination.

[Acts 1971, 62nd Leg., p. 810, ch. 84, § 1.]

**§ 54.727. Duty to Advise Commission**

The board shall furnish the commission a detailed description of any land excluded from or annexed to the district within 30 days after the exclusion or annexation or as soon after that time as practicable.

[Acts 1971, 62nd Leg., p. 810, ch. 84, § 1.]

**§ 54.728. Consolidation of Districts**

Two or more districts governed by the provisions of this chapter may consolidate into one district as provided by Sections 54.729–54.733 of this code.

[Acts 1971, 62nd Leg., p. 810, ch. 84, § 1.]

**§ 54.729. Elections to Approve Consolidation**

(a) After the board of each district has agreed on the terms and conditions of consolidation, which may include the assumption by each district of the other district's bonds, notes, or other obligations and voted but unissued bonds payable in whole or in part from taxation, the levy of taxes to pay for the bonds, and adoption of a name for the consolidated district, the board shall order an election in each district to determine whether the districts should be consolidated.

(b) The directors of each district shall order the election to be held on the same day in each district and shall give notice of the election for the time and in the manner provided by law for bond elections.

(c) The districts may be consolidated only if the electors in each district vote in favor of the consolidation.

[Acts 1971, 62nd Leg., p. 810, ch. 84, § 1.]

**§ 54.730. Governing Consolidated Districts**

(a) After two or more districts are consolidated, they become one district and are governed as one district, except for the payment of debts created before consolidation if the conditions of consolidation do not provide for the assumption by each district of the other's bonds, notes, or other obligations and voted but unissued bonds.

(b) During a period of 90 days after the date of the election to approve consolidation, the officers of each district shall continue to act jointly as officers of the original districts to settle the affairs of their respective districts.

(c) The consolidation agreement may provide that the officers of the original districts shall continue to act jointly as officers of the consolidated district until the next general election or name persons to serve as officers of the consolidated district until the next general election if all officers of the original districts agree to resign. At the next general election, directors will be elected for the consolidated district in the same manner and for the same term as directors elected at a confirmation election.

(d) New officers of the consolidated district must qualify as officers of the district within the period of 90 days after the election and shall assume their offices at the expiration of the 90-day period.

(e) The current board shall approve the bond of each new officer.

[Acts 1971, 62nd Leg., p. 810, ch. 84, § 1.]

**§ 54.731. Debts of Original Districts**

(a) After two or more districts are consolidated, the debts of the original districts shall be protected and may not be impaired. These debts may be paid by taxes levied on the land in the original districts as if they had not consolidated or from contributions from the consolidated district on terms stated in the consolidation agreement.

(b) If each district assumed the other's bonds, notes, and other obligations, taxes may be levied uniformly on all taxable property within the consolidated district in payment of the debts.

[Acts 1971, 62nd Leg., p. 811, ch. 84, § 1.]

**§ 54.732. Assessment and Collection of Taxes**

After consolidation, the district shall assess and collect taxes on property in the original districts to pay debts created by the original districts unless each district has assumed the other district's bonds, notes, or other indebtedness payable in whole or in part from taxation.

[Acts 1971, 62nd Leg., p. 811, ch. 84, § 1.]

**§ 54.733. Voted But Unissued Bonds**

In the event either district has voted but unissued bonds payable in whole or in part from taxation and the consolidated district assumed the voted but unissued bonds and the consolidated district was authorized to levy taxes to pay for the bonds, then the consolidated district shall be authorized to issue the voted but unissued bonds in the name of the consolidated district and levy a uniform tax on all taxable property in the consolidated district to pay for the bonds.

[Acts 1971, 62nd Leg., p. 811, ch. 84, § 1.]

**§ 54.734. Dissolution of District Prior to Issuance of Bonds**

(a) If the board considers it advisable before the issuance of any bonds, notes, or other indebtedness, the board may dissolve the district and liquidate the affairs of the district as provided in Sections 54.734–54.738 of this code.

(b) If a majority of the board finds at any time before the authorization of bonds, notes, or other obligations or the final lending of its credit in another form that the proposed undertaking for any reason is impracticable or apparently cannot be successfully and beneficially accomplished, the board may issue notice of a hearing on a proposal to dissolve the district.

[Acts 1971, 62nd Leg., p. 811, ch. 84, § 1.]

**§ 54.735. Notice of Hearing**

The board shall post notice of the hearing on the bulletin board at the courthouse door of each county in which the district is located and at three or more other public places within the boundaries of the district and shall publish notice of the hearing two times in a newspaper with general circulation in the district. The notice must be posted and published at least 14 days before the hearing on the proposed dissolution of the district.

[Acts 1971, 62nd Leg., p. 811, ch. 84, § 1.]

**§ 54.736. Hearing**

The board shall hear all interested persons and shall consider their evidence at the time and place stated in the notice.

[Acts 1971, 62nd Leg., p. 812, ch. 84, § 1.]

**§ 54.737. Board's Order to Dissolve District**

If the board unanimously determines from the evidence that the best interests of the persons and property in the district will be served by dissolving the district, the board shall enter the appropriate findings and order in its records dissolving the district. Otherwise the board shall enter its order providing that the district has not been dissolved.

[Acts 1971, 62nd Leg., p. 812, ch. 84, § 1.]

**§ 54.738. Judicial Review of Board's Order**

The board's decree to dissolve the district may be judicially reviewed in the manner set forth in Sections 54.708-54.710 of this code for the review of an order excluding land from the district.

[Acts 1971, 62nd Leg., p. 812, ch. 84, § 1.]

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SUBCHAPTER A. GENERAL PROVISIONS

§ 55.001. Definitions

In this chapter:

- (1) "District" means a water improvement district created under this chapter.
- (2) "Board" means the board of directors of a water improvement district.
- (3) "Commission" means the Texas Water Rights Commission.

[Acts 1971, 62nd Leg., p. 428, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.002 to 55.020 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT;  
CONVERSION TO ARTICLE XVI,  
SECTION 59, DISTRICT

§ 55.021. Creation of District

A water improvement district may be created in the manner prescribed by this subchapter, either under and subject to the limitations of Article III, Section 52, of the Texas Constitution, or under Article XVI, Section 59, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 428, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.022. District Wholly Within One County

The commissioners court of a county, at any regular or called session, may create one or more water improvement districts in the county as provided by this subchapter.

[Acts 1971, 62nd Leg., p. 428, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.023. District May Include Cities, Towns, Etc.

A district may include all or part of one or more cities, towns, villages, and municipal corporations, but no land may be included in more than one district at any one time.

[Acts 1971, 62nd Leg., p. 428, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.024. Petition

(a) A petition requesting creation of a district may be presented to the commissioners court. The petition must be signed by a majority of the persons who hold title to land in the proposed district, representing a total value of more than 50 percent of the value of all the land in the proposed district as indicated by the county tax rolls. However, if there are more than 50 persons holding title to land in the proposed district, the petition is sufficient if signed by 50 of them. The petition must set out the boundaries of the district and designate a name for the district.

(b) The petition may be signed and presented to the commissioners court in several copies. In this case the county clerk shall make a certified copy of the petition, including a list of the names of all signers, and shall file the certified copy and the original copies. The certified copy of the petition shall be considered the petition in all proceedings under this chapter.

[Acts 1971, 62nd Leg., p. 428, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.025. Date Set for Hearing

The commissioners court shall set a date for a hearing on the petition, to be held at a regular or special session not less than 15 days nor more than 40 days after the day the petition is presented.

[Acts 1971, 62nd Leg., p. 429, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.026. Notice of Hearing

(a) The county clerk shall issue a notice of the hearing directed to the sheriff giving the date and place of the hearing, and a copy of the order of the court setting the hearing. The sheriff shall serve the notice in the manner provided by law.

(b) The sheriff shall post copies of the notice in three public places in the proposed district, and shall post one copy at the courthouse door or on the bulletin board used for public notices. These notices shall be posted for 10 full days before the date of the hearing. The notice shall also be published once in a newspaper of general circulation in the county, if a newspaper is published in the county, at least five days before the date of the hearing. The sheriff shall make return of a true copy of the notice, showing the times and places of posting and publication. The county clerk shall record the return in the minutes of the court.

(c) Any person interested may inspect the boundaries of the district as set out in the petition, and any person may inspect the petition in the office of the county clerk.

[Acts 1971, 62nd Leg., p. 429, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.027. Hearing

(a) At the hearing, any person whose land is included in and would be affected by the district may support or oppose creation of the district and may offer testimony to show that the district is or is not necessary, would or would not be of public utility, or would or would not be feasible or practicable.

(b) Except as otherwise provided by this chapter, the commissioners court has exclusive jurisdiction to hear and determine all contests and objections to creation of the district and all other matters pertaining to creation of the district.

(c) The commissioners court may adjourn the hearing from day to day.

(d) The judgment rendered by the commissioners court is final, except as otherwise provided by this chapter.

[Acts 1971, 62nd Leg., p. 429, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.028. Findings; Order

The commissioners court shall make and enter its findings in the record. If it finds that creation of the district and the construction or purchase of the proposed irrigation system, or cooperation with the United States as provided by Section 55.161 of this code, is feasible, practicable, and necessary, and would be a public benefit and a benefit to the land included in the district, then the court shall make and enter an order granting the petition and directing that an election be held in the proposed district. Otherwise, the court shall dismiss the petition at the cost of the petitioners.

[Acts 1971, 62nd Leg., p. 430, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.029. Appeal

(a) Any petitioner or any landowner in the district aggrieved by the order of the commissioners court may appeal the order to the district court. Notice of appeal must be filed with the commissioners court at the time of the hearing, and an appeal bond must be filed with the county clerk within 10 days after the day notice of appeal is given. At the time notice of appeal is given, the commissioners court shall fix the amount of the appeal bond at not less than \$2,000 nor more than \$5,000; and the bond shall be made payable to the county judge for the benefit of adverse parties.

(b) Except as otherwise provided by this section, the appeal shall be tried de novo under the rules prescribed for practice in the district court and shall be de novo.

(c) The county clerk shall transfer to the district clerk the judgment and all records filed in the commissioners court within 10 days after the day the appeal bond is filed, and no other pleadings need be filed.

(d) The final judgment on appeal shall be certified to the commissioners court for its action within 10 days after the day the judgment becomes final. [Acts 1971, 62nd Leg., p. 430, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.030. Notice of Election

(a) After the election is ordered, notices of the election shall be posted at four places in the proposed district, and one shall be posted at the courthouse door, for the 20 days preceding the date of the election.

(b) The notice of the election shall state the time and places the election will be held, the boundaries of the proposed district, the presiding officers appointed to hold the election, the propositions to be voted on, and the offices to be filled at the election. [Acts 1971, 62nd Leg., p. 430, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.031. Voting Precincts

(a) The commissioners court, at the time it orders the election, shall order creation of one or more election precincts in the district and shall designate polling places in each precinct.

(b) The election precincts created under this section shall remain the election precincts of the district until changed by an order of its board.

[Acts 1971, 62nd Leg., p. 430, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.032. Election Officials

The commissioners court shall appoint two judges and two clerks for each polling place, and designate one of the judges to be presiding judge. If an officer fails to serve, his place shall be filled in the manner provided by the general election law.

[Acts 1971, 62nd Leg., p. 430, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.033. Ballots

The ballot for the election shall have printed on it only the following:

(1) the heading, "Official Ballot";

(2) the proposition, "(FOR) (AGAINST) Creation of the water improvement district";

(3) the proposition, "(FOR) (AGAINST) Issuance of notes by the water improvement district"; and

(4) five blank lines for writing in the names of persons for the office of director, under the heading, "FOR DIRECTORS, FIVE TO BE ELECTED."

[Acts 1971, 62nd Leg., p. 431, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.034. Conduct of Elections

Except as otherwise provided by this subchapter, the election shall be conducted as provided by the general election law.

[Acts 1971, 62nd Leg., p. 431, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.035. Returns; Canvass

The officers of the election shall return the result of the election for each polling place, and the commissioners court shall canvass the returns.

[Acts 1971, 62nd Leg., p. 431, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.036. Order; Creation of District

The commissioners court shall enter an order declaring the results of the election. If a majority of the votes favor creation of the district, the court shall enter an appropriate order declaring the district to be created and describing its boundaries by metes and bounds.

[Acts 1971, 62nd Leg., p. 431, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.037. Directors**

The commissioners court shall declare the five persons receiving the most votes to be elected directors. If not all five positions can be determined because of a tie vote, the commissioners court shall fill the necessary positions by selecting among the tying candidates.

[Acts 1971, 62nd Leg., p. 431, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.038. Issuance of Notes**

(a) If the proposition to issue notes carries, the board of directors shall issue notes of the district, in an amount not to exceed four percent of the cost of the proposed improvements, for the purpose of creating a fund to pay the cost of organizing the district and the cost of all surveys, investigations, engineering, issuance of bonds, making and filing of maps and reports, legal expenses, and all other costs and expenses authorized or made necessary by the provisions of this chapter. The board shall sell the notes or exchange them in payment of the costs and expenses.

(b) The notes shall be secured by the levy, assessment, and collection of taxes as provided for payment of bonds. The notes shall be paid out of the proceeds of the district's bonds when they are issued and sold. If the bond election fails to carry, then the notes shall be paid out of the tax revenue.

[Acts 1971, 62nd Leg., p. 431, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.039. Recordation of Order**

After the commissioners court makes and enters in its minutes the order creating the district or an order changing the name of a district, the court shall file a certified copy of the order with the county clerk, who shall have it recorded and indexed in the deed records of the county. Recordation of the order has the same effect, as to notice, as the recordation of a deed. The district shall pay the cost of making and recording copies of the order.

[Acts 1971, 62nd Leg., p. 432, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.040. Multi-County District: Petition**

Creation of a district composed of land in two or more counties may be initiated by presenting a petition to the Texas Water Rights Commission signed by the owners of more than half the land in the proposed district or by 50 qualified property taxpaying electors of the territory of the proposed district. The petition shall describe the boundaries of the proposed district, request a hearing to determine the advisability of creating the district, and request an order for an election.

[Acts 1971, 62nd Leg., p. 432, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.041. Multi-County District: Notice of Hearing**

On the filing of the petition, the commission shall set a date for a hearing which must be held not less than 15 days nor more than 30 days after the date the petition is filed. The commission shall give notice, stating the time and place of the hearing, to

the commissioners court of each county where land in the proposed district is located. The county clerk of each county shall post a notice of the time and place of the hearing at the courthouse door.

[Acts 1971, 62nd Leg., p. 432, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.042. Multi-County District: Hearing**

At the hearing, any person whose land would be affected by creation of the district may appear and support or oppose creation of the proposed district, and may offer competent testimony to show that the district would or would not serve a beneficial purpose, be practicable, or accomplish the purposes intended.

[Acts 1971, 62nd Leg., p. 432, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.043. Multi-County District: Findings**

(a) If the commission finds that the plan of water conservation, irrigation, and use presented in the petition is practicable and would be a public utility, the commission shall enter the findings in its records and shall send a certified copy of the findings to the commissioners court in each county in which part of the proposed district is located. The commission shall also inform each commissioners court of a date set by the commission on which an election shall be held in the area of the proposed district to determine whether the district will be created and to elect five directors for the district.

(b) If the commission finds that creation of the district is not practicable, that it would not serve a beneficial purpose, and that it would not be possible to accomplish through its creation the purposes proposed, the commission shall enter its findings in its records and shall dismiss the petition.

[Acts 1971, 62nd Leg., p. 432, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.044. Multi-County District: Notice of Election**

On receiving a certified copy of the findings of the commission authorizing the election, the commissioners court of each county shall have notices of the election posted, in the manner provided for an election to create a single-county district, for not less than 15 nor more than 30 days before the date of the election.

[Acts 1971, 62nd Leg., p. 432, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.045. Multi-County District: Rules Governing Election**

Except as provided by the succeeding sections, the election shall be held, the returns made and canvassed, and the results declared, as provided in the case of a single-county district.

[Acts 1971, 62nd Leg., p. 433, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.046. Multi-County District: Election Returns, Canvass, Result**

(a) The commission shall designate the county judge of one of the counties in the proposed district to act as a canvassing board to receive and canvass the votes cast and to declare the result of the election.

(b) In each county, the officers appointed by the commissioners court to hold the election shall return the results to the commissioners court and shall return all ballot boxes to the county clerk.

(c) On receiving the returns of the election, the commissioners court shall canvass the returns and certify the result of the election in the county to the county judge appointed to act as canvassing board.

(d) When the county judge receives the returns from all the counties, he shall canvass the returns and certify the result of the election to the commissioners court of each county, which shall enter the result of the election in its permanent records.

(e) If the proposition to create the district is carried, the county judge acting as the canvassing board shall make and transmit to each commissioners court an appropriate order declaring that the district is created and describing its boundaries. He shall also issue certificates of election to the persons elected as directors, who shall proceed with the organization of the district as otherwise provided by this chapter.

[Acts 1971, 62nd Leg., p. 433, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.047. Exclusion of City, Unincorporated Area, or County Voting Against District

(a) As used in this section:

(1) "city" includes town or other municipal corporation; and

(2) "unincorporated area" means an area not included within the boundaries of a city.

(b) Each city included within the boundaries of the proposed district shall be treated as a separate voting unit, and the votes cast in the city shall be counted and canvassed to show the result of the election in the city. No city shall be included in the district unless the majority of the votes cast in the city favor creation of the district.

(c) If the proposed district includes both incorporated and unincorporated areas in a county, the unincorporated area shall not be included in the district unless the majority of the votes cast in the unincorporated area favor creation of the district.

(d) No district, the major portion of which is in one county, shall be organized to include land in another county unless the majority of the votes cast in the other county favor creation of the district.

(e) If any portion of a proposed district, under the provisions of this section, votes against creation of the district, and the remaining area of the proposed district votes for the district, then the proposition shall be adopted and the district confirmed except as to the territory voting against the district.

(f) All property in the territory of the district as originally proposed is subject to taxation for the payment of all debts and obligations, including organization expenses, incurred while part of the district.

(g) If at least 10 percent of the qualified electors of the area remaining in the district file a petition

with the board of directors requesting a new election on creation of the district, then a new election shall be ordered and held for the remaining area, or the district organization may be dissolved by order of the board of directors and a new district formed. [Acts 1971, 62nd Leg., p. 433, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.048. Name of District

(a) The name of a district wholly within one county shall include the name of the county and a number. Districts wholly within one county shall be numbered consecutively as created, and no two districts may have the same number.

(b) The name of a district with territory in two or more counties may include the names of those counties, or the district may adopt any appropriate name. The name may include a number, but the number may not be the same as the number of a district in any of the counties. The number of a district created in any county may not be the same as the number of a district with territory in that county and other counties.

[Acts 1971, 62nd Leg., p. 434, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.049. Survey of District Boundaries

Immediately after the directors are qualified, the board shall order a survey of the boundaries of the district to be made according to the boundaries designated in the petition for creation of the district, or the board shall adopt, in whole or in part, the boundaries already established, and order the boundaries marked by suitable monuments.

[Acts 1971, 62nd Leg., p. 434, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.050. Chapter Applicable to Irrigation Districts

Irrigation districts created under the laws of 1905, 1913, and 1915 (Chapter 50, Acts of the 29th Legislature, 1905; Chapter 172, Acts of the 33rd Legislature, 1913; and Chapter 138, Acts of the 34th Legislature, 1915), are governed by the provisions of this chapter.

[Acts 1971, 62nd Leg., p. 434, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.051. Change of District Name

(a) An irrigation district created under the law of 1905, 1913, or 1915 (Chapter 50, Acts of the 29th Legislature, 1905; Chapter 172, Acts of the 33rd Legislature, 1913; and Chapter 138, Acts of the 34th Legislature, 1915), may change the name of the district to the name provided in this chapter by filing a declaration to change the name with the commissioners court of the county in which the district is located.

(b) The declaration to change the district's name shall be in the form of a deed of conveyance and shall be acknowledged by the president and secretary of the board. It shall include a copy of the minutes of the board and the resolution adopted to change the name.

(c) After the declaration is recorded, the name of the district shall be changed.  
 [Acts 1971, 62nd Leg., p. 434, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.052. Suits Contesting Creation of District, Etc.**

Except as otherwise provided by this chapter, no suit may be brought enjoining creation of a district, contesting the validity of the proceedings creating the district, enjoining the issuance of bonds or contesting their validity, or enjoining the execution of a contract with the United States or contesting its validity, except by the attorney general, in the name of the State of Texas, on his own motion or on the motion of any affected party on good cause shown.  
 [Acts 1971, 62nd Leg., p. 435, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.053. Conversion of Article III, Section 52 District to Article XVI, Section 59 District**

(a) A water improvement district created subject to the limitations of Article III, Section 52, of the Texas Constitution, may be converted into a water improvement district operating under the authority of Article XVI, Section 59, of the Texas Constitution, as provided by this section.

(b) On the petition of 20 percent of the owners of land in the district, the board of directors shall order an election to determine whether the district shall be converted to a district operating under Article XVI, Section 59, of the Texas Constitution. The election shall be conducted under the rules applicable to general elections in the district. The ballots shall be printed to provide for voting for or against: "Conservation and Reclamation."

(c) The board shall canvass the returns, make an order declaring the result of the election, and have the order recorded in the deed records of the county or counties in which the district is located. If the result of the election is affirmative, the district begins operating under Article XVI, Section 59, of the Texas Constitution, without change of name or impairment of its obligations, when the order is recorded.

[Acts 1971, 62nd Leg., p. 435, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.054 to 55.100 reserved for expansion]

**SUBCHAPTER C. ADMINISTRATIVE PROVISIONS**

**§ 55.101. Board of Directors**

The governing body of a district is the board of directors.

[Acts 1971, 62nd Leg., p. 435, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.102. Qualifications of Directors**

To be qualified for election as a director, a person must be a resident of the state, own land subject to taxation in the district, and be more than 21 years of age at the time of the election.

[Acts 1971, 62nd Leg., p. 435, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.103. Application to Get on Ballot**

(a) A person qualified to serve as a director may file an application with the secretary to have his name printed on the election ballots. The application must be signed by the applicant or by at least 10 qualified electors of the district and must be filed at least 20 days before the date of the election.

(b) Only persons for whom applications are filed under this section may have their names printed on the ballots. However, nothing in this section prevents write-in votes.

[Acts 1971, 62nd Leg., p. 435, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.104. Election Date: General Rule**

Except as provided by Section 55.106 of this code, the general election of five directors shall be held in the district on the second Tuesday of January in each even-numbered year.

[Acts 1971, 62nd Leg., p. 436, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.105. Conduct of Elections**

All district elections shall be held in accordance with the general election law except as otherwise provided by this chapter. The board of directors shall appoint necessary election officers, designate the polling places, receive and canvass the election returns, declare the result, and perform all other duties necessary to the proper conduct of the elections.

[Acts 1971, 62nd Leg., p. 436, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.106. Term of Office**

Except as provided by Section 55.107 of this code, a director holds office for a term of two years and until his successor is elected and has qualified.

[Acts 1971, 62nd Leg., p. 436, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.107. Optional Conversion to Staggered Terms**

(a) The board, by resolution adopted before December 1 of any year on the vote of at least four directors, may adopt the system of staggered two-year terms of office as provided by this section.

(b) On the second Tuesday in January immediately succeeding adoption of the resolution, five directors shall be elected. Of the five elected, the two receiving the fewest votes shall serve for one year and the other three shall serve for two years. However, if the vote is such that two of them do not receive fewer votes than the other three, then the directors shall determine by lot which two will serve one year and which three will serve two years.

(c) After the election provided for in Subsection (b) of this section, an election shall be held on the second Tuesday of January of each year to elect successors for the directors whose terms expire, to hold office for terms of two years.

[Acts 1971, 62nd Leg., p. 436, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 55.108. Appointment of Directors in Certain Districts

(a) If the petition to create a district proposes a district which would contain no more than 12,000 acres of land, and if at least 60 percent of the land is owned by persons who do not reside in the district, the petition may request that the directors be appointed by the commissioners court. If so, the directors shall be appointed instead of elected. The commissioners court shall appoint the directors at the time otherwise fixed for electing directors, or if the court is not in session at that time, it shall appoint the directors as soon as possible.

(b) The owners of land in the district may file petitions with the commissioners court expressing their choice of persons to be selected as directors. If the owners of at least 60 percent of the land agree on the persons to be appointed, the commissioners court shall appoint those persons. Otherwise, the court shall appoint suitable, qualified persons as directors.

[Acts 1971, 62nd Leg., p. 436, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 55.109. Oath and Bond

(a) Each director shall take the oath of office prescribed by law for county commissioners, except that the name of the district shall be substituted for the name of the county.

(b) Within 10 days after the commissioners court enters its order declaring the result of the election and the creation of the district, or as soon after that time as practicable, each director shall execute a good and sufficient bond for \$5,000, payable to the district, conditioned on the faithful performance of his duties.

(c) The bond of each director elected in the election to create the district is subject to the approval of the commissioners court. After the organization of the district, all bonds required to be given by any director, officer, or employee of the district are subject to the approval of the board.

(d) The county clerk shall record each bond and oath in the official bond records of the county and shall deliver them to the district depository to be preserved as a part of the records of the district.

[Acts 1971, 62nd Leg., p. 437, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 55.110. Additional Bonds

(a) If a district is appointed fiscal agent of the United States or is authorized to collect money for and in behalf of the United States in connection with any federal reclamation project, the assessor and collector and each director shall execute an additional bond in an amount set by the secretary of the interior, conditioned on the faithful performance of the duties of his office and the faithful performance by the district of its duties as fiscal or other agent of the United States.

(b) The additional bonds shall be approved, recorded, and filed as provided for other official bonds. The additional bonds may be sued on by the

United States or by any person injured by failure of the officer or the district to perform fully, promptly, and completely the required duties.

[Acts 1971, 62nd Leg., p. 437, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 55.111. Compensation of Directors

(a) A director is entitled to receive not more than \$25 a day for each day he actually spends performing his duties as a director.

(b) Before a director may receive compensation for his services, he shall file with the secretary an affidavit stating the number of days actually spent in the service of the district. The affidavit shall be filed on the last Saturday of each month, or as soon after that time as practicable.

[Acts 1971, 62nd Leg., p. 437, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 942, ch. 154, § 1, eff. Aug. 30, 1971.]

### § 55.112. Officers; Quorum

(a) After each regular election, the board shall elect one director president and one secretary. The board may elect a president pro tem and a secretary pro tem, who shall act in the absence or inability of the president or secretary.

(b) Three directors constitute a quorum for any meeting; and a concurrence of three is sufficient for transacting any business of the district except letting construction contracts and drawing warrants on the depository, which require the concurrence of four directors. Warrants to pay current expenses, salaries, and labor and material accounts may be drawn by an officer or employee designated by standing order of the directors when these accounts have been contracted and ordered paid by the directors.

[Acts 1971, 62nd Leg., p. 437, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 55.113. Vacancies on Board

(a) Except as otherwise provided by this section, all vacancies on the board shall be filled by appointment of the board.

(b) If the number of directors is reduced for any cause to fewer than three, then the vacancies shall be filled by special election ordered by the president of the board or by two directors. If the president or two directors fail or refuse to order an election, then five persons who are either taxpayers or bondholders of the district may petition the judge of any judicial district in which land of the district is located, and the judge shall order the election.

(c) If an election is ordered under this section, then notice shall be given and the election shall be held as provided for general elections.

(d) If less than a quorum exists to approve the bonds of elected directors, then the bond for each director shall be approved by the commissioners court of the county of his residence.

(e) A director appointed or elected under this section holds office until the next general election and until his successor is elected and has qualified.

[Acts 1971, 62nd Leg., p. 438, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.114. General Manager**

- (a) The board may employ a general manager.
- (b) In addition to other powers granted and duties imposed by the board, the general manager shall:
  - (1) manage the district's water distribution system, subject to the rules and regulations of the board;
  - (2) appoint and discharge district employees, except the tax assessor and collector;
  - (3) purchase and contract for all supplies necessary for the water distribution system, after the board has authorized the purchases;
  - (4) collect the assessments for operation and maintenance; and
  - (5) execute, on behalf of the district, water contracts and other contracts not required to be executed by the board or by the president and secretary.

[Acts 1971, 62nd Leg., p. 438, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.115. Director as Manager**

A director may be employed as general manager with compensation fixed by the other four directors. When so employed, he shall also perform the duties of a director without the compensation specifically provided for directors.

[Acts 1971, 62nd Leg., p. 438, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.116. District Tax Assessor and Collector**

The board may appoint one person to the office of tax assessor and collector, or it may order an election to fill that office.

[Acts 1971, 62nd Leg., p. 438, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.117. Tax Assessor and Collector's Bond**

(a) The tax assessor and collector shall execute a good and sufficient bond signed by two good and sufficient sureties and approved by the board. The bond shall be conditioned on the faithful performance of his duties and on paying over to the depository all money or other things of value that he receives in his capacity as tax assessor and collector.

(b) The amount of the assessor and collector's bond shall be determined in the same manner provided by law for determining the amount of the county assessor and collector's bond.

(c) The board may require the tax assessor and collector to give additional bonds or security or a larger bond at any time.

[Acts 1971, 62nd Leg., p. 438, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1767, ch. 518, § 1, eff. May 31, 1971.]

**§ 55.118. Deputy Tax Assessor and Collectors**

(a) The board may appoint one or more deputies to assist the tax assessor and collector for a period not to exceed one year.

(b) Each deputy shall perform duties as determined by the board, and the board may discharge a deputy at any time.

(c) Each deputy shall execute a bond in an amount determined by the board at the time of his appointment and at any other time as ordered by the board.

[Acts 1971, 62nd Leg., p. 439, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.119. Compensation of Tax Assessor and Collector and Deputies**

The board shall fix the compensation of the tax assessor and collector and each deputy.

[Acts 1971, 62nd Leg., p. 439, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1767, ch. 518, § 1, eff. May 31, 1971.]

**§ 55.120. Additional Duties**

The board may require the tax assessor and collector to perform duties other than those specified in this chapter and may provide additional compensation for performing the additional duties.

[Acts 1971, 62nd Leg., p. 439, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.121. Other Employees**

The general manager, or the board if no general manager is appointed, shall employ the employees necessary for the proper operation of the district, including attorneys, bookkeepers, engineers, water-masters, and necessary assistants and laborers.

[Acts 1971, 62nd Leg., p. 439, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.122. Employees: Compensation and Terms of Employment**

The manager and the employees shall be employed for the period of time and on terms and conditions deemed most favorable for the district. However, no employment contract may be made for a period of more than one year, and the salary or compensation shall be fixed at the time of employment.

[Acts 1971, 62nd Leg., p. 439, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.123. Surety Company Bond**

(a) An officer or employee of a district who is required to execute a bond or give security may execute a bond of a surety company, subject to the approval of the board. The surety company furnishing the bond shall file with the county clerk a power of attorney, executed by the officers of the company and bearing the company seal, showing that the person who signed the bond for the company had the authority to do so.

(b) The power of attorney shall be kept on file in the county clerk's office, and the bond shall be preserved as property of the district.

[Acts 1971, 62nd Leg., p. 439, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.124. District Office**

The board shall maintain a regular office suitable for conducting the affairs of the district. The office shall be located within the district, or in a city or town proximate to the district and in the same county or counties, if the city or town is best suited for transacting the business of the district and is accessible to the residents of the district.

[Acts 1971, 62nd Leg., p. 440, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.125. Meetings**

(a) The board shall hold all meetings at the district office.

(b) The board shall hold regular meetings at 10 a. m. on the first Monday in February, May, August, and November of each year, and may hold other regular or special meetings.

(c) Any resident taxpayer or interested person may attend any meeting of the board and present matters for the board's consideration, but no person may participate in any meeting without the consent of the board, and no person other than the directors may vote on any matter considered by the board. [Acts 1971, 62nd Leg., p. 440, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.126. Suits**

A district may sue and be sued in the courts of this state in the name of the district. All courts of this state shall take judicial notice of the creation of the district and of its boundaries.

[Acts 1971, 62nd Leg., p. 440, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.127. Contracts**

District contracts shall be executed by the board in the name of the district.

[Acts 1971, 62nd Leg., p. 440, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.128. Prohibited Interests of Directors**

(a) No director, district engineer, or district employee, either for himself or as agent for anyone else, may be directly or indirectly interested in any contract for the purchase or construction of any improvements by the district.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100 or by confinement in jail for not less than six months nor more than one year, or by both.

[Acts 1971, 62nd Leg., p. 440, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.129 to 55.160 reserved for expansion]

**SUBCHAPTER D. POWERS AND DUTIES****§ 55.161. Purposes of District**

(a) A water improvement district may provide for irrigation of the land within its boundaries.

(b) A district operating under Article XVI, Section 59, of the Texas Constitution, may furnish water for domestic, power, and commercial purposes.

(c) A district may be formed to cooperate with the United States under the federal reclamation laws for the purpose of:

(1) construction of irrigation and drainage facilities necessary to maintain the irrigability of the land;

(2) purchase, extension, operation, or maintenance of constructed facilities; or

(3) assumption, as principal or guarantor, of indebtedness to the United States on account of district lands.

[Acts 1971, 62nd Leg., p. 440, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.162. Machinery, Supplies, Etc.**

The district may purchase work animals, machinery, and supplies needed in the construction, operation, and repair of district improvements.

[Acts 1971, 62nd Leg., p. 441, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.163. Improvements: Purchase or Construction**

A district may purchase or construct improvements and facilities necessary for irrigation of land in the district, and if operating under Article XVI, Section 59, of the Texas Constitution, improvements and facilities necessary to supply, deliver, and sell water for domestic, power, and commercial purposes.

[Acts 1971, 62nd Leg., p. 441, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.164. Land; Rights-of-Way**

The district may acquire by gift, grant, purchase, or condemnation, any land or right-of-way necessary or incident to the successful operation of its improvements, including rights-of-way for the enlargement, extension, or improvement of existing canals or ditches for the purpose of raising the canals or ditches jointly with the owners.

[Acts 1971, 62nd Leg., p. 441, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.165. Drainage Ditches: Levees**

The board may include in the plans of the district the necessary drainage ditches, or other facilities for drainage, and levees for the protection of land in the district. The district may purchase all or part of any system belonging to a drainage district. However, the purchase contract shall provide for paying or assuming the debts of the drainage district, and the amount of the debts paid or assumed shall be considered in determining the bond-issuing capacity of the district.

[Acts 1971, 62nd Leg., p. 441, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.166. Constructing Bridges and Culverts Across and Over County and Public Roads**

The district shall build necessary bridges and culverts across and over district canals, laterals, and ditches which cross county or public roads. Funds of the district shall be used to construct the bridges and culverts.

[Acts 1971, 62nd Leg., p. 441, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.167. Constructing Culverts and Bridges Across and Under Railroad Tracks and Roadways**

(a) The district, at its own expense, may build necessary bridges and culverts across or under any railroad tracks or roadways to enable the district to construct and maintain any canal, lateral, or ditch which is a necessary part of its improvements.

(b) Before the district proceeds to build bridges and culverts, the board shall deliver to the legal agent, division superintendent, or roadmaster written notice. The railroad company shall have 30 days in which to build the bridges and culverts at its own expense and according to its own plans.

(c) The bridges and culverts shall be placed at points designated by the board or the district engineer and shall be constructed so that they will not interfere with the free and unobstructed flow of water passing through the canal or ditch.

[Acts 1971, 62nd Leg., p. 441, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.168. Right to Enter Land**

(a) The board, the district engineer, and the employees of the district may enter any land inside the district to examine the land, to locate reservoirs, canals, dams, pumping plants, and other improvements, and to make maps and profiles of the land. The board, the district engineer, and the district's employees may also go outside the boundaries of the district to accomplish the same purposes for which they may enter land inside the district and for any other purposes related to those listed.

(b) A person who wilfully violates Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100 for each day he violates the law.

[Acts 1971, 62nd Leg., p. 442, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.169. Construction Contracts**

The board shall enter into contracts with the lowest responsible bidders for construction of reservoirs, dams, canals, laterals, pumping plants, check gates, sluice gates, and other improvements for the district. This section does not apply to contracts made by the district with the United States.

[Acts 1971, 62nd Leg., p. 442, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.170. Notice of Taking Bids for Construction**

The board shall give notice that it is taking bids for construction under Section 55.169 of this code by publishing notice once a week for four consecutive weeks in one or more newspapers with general circulation in the state and in one newspaper published in the county if a newspaper is published in the county and one newspaper published in the district if a newspaper is published in the district. Also, the board shall post notice for at least 20 days at the courthouse door and at five other public places in the district.

[Acts 1971, 62nd Leg., p. 442, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.171. Reports Furnished to Prospective Bidders**

The board shall furnish to any person who desires to bid on construction work and who requests it a copy of the engineer's report and profile which show the work to be done. The board may charge for each copy of the engineer's report and profile an amount sufficient to cover the actual cost of having them made and furnished.

[Acts 1971, 62nd Leg., p. 442, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.172. Construction Bids**

Any person who desires to bid on proposed construction work shall submit to the president or the secretary of the board a written sealed bid together with a certified check for at least two percent of the total amount of the bid. Bids shall be opened at the same time, and the board may reject any or all of the bids. If the successful bidder refuses to enter into a proper contract with the district, he forfeits the amount of the certified check which accompanied his bid.

[Acts 1971, 62nd Leg., p. 442, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.173. Provisions of Contracts for Construction Work**

Any contract made by the board for construction work shall conform to the provisions of this chapter, and the provisions of this chapter will be considered to be a part of the contract and shall prevail when the provisions of this chapter and the contract are in conflict. The contract shall include a full statement of the specifications for work included in the contract, and all work shall be done in accordance with these specifications under the supervision of the board and the district engineer.

[Acts 1971, 62nd Leg., p. 442, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.174. Executing and Recording Construction Contract**

Contracts for construction work shall be in writing and signed by the board and the contractor. A copy of the contract shall be filed with the county clerk, and the county clerk shall record the contract in a book kept for that purpose. The contract shall be available for public inspection.

[Acts 1971, 62nd Leg., p. 443, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.175. Contractor's Bond**

The contractor shall execute a bond in an amount determined by the board, not to exceed the contract price, payable to the district and approved by the board, conditioned on the faithful performance of the obligations, agreements, and covenants of the contract. The bond shall provide that if the contractor defaults on the contract, he will pay to the district all damages sustained as a result of the default. The bond shall be deposited in the district depository, and a copy of the bond shall be kept in the office of the board.

[Acts 1971, 62nd Leg., p. 443, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.176. Inspection of and Reports on Construction Work**

(a) The board shall inspect construction work being done for the district under contract to determine whether or not the contract is being fulfilled.

(b) During the progress of the construction work, the district engineer shall submit to the board detailed reports showing whether or not the contractor is complying with the contract, and when the work is completed, the district engineer shall submit to the board a final detailed report showing whether or

not the contractor has fully complied with the contract and stating any particular instances in which the contract was not fulfilled. The board is not bound by the report of the district engineer and may investigate the work to determine if the contractor complied with the contract.

[Acts 1971, 62nd Leg., p. 443, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.177. Payment for Construction Work

When construction work is completed according to the terms of the contract, the board shall draw a warrant on the district depository payable to the contractor or his assignee in the amount owed the contractor under the contract.

[Acts 1971, 62nd Leg., p. 443, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.178. Partial Payment of Construction Work

In order to obtain more favorable contracts, the board may authorize construction work to be paid for in partial payments as the work progresses. The total amount of partial payments made under the contract may not be more than the amount due for 85 percent of the work done under the contract. The district engineer shall indicate the amount of work completed in a certified report.

[Acts 1971, 62nd Leg., p. 443, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.179. Joint Ownership Contracts

Two or more districts may enter into a contract to jointly own and construct irrigation works and reservoirs. The contract may include provisions for joint construction and operation, but the terms and conditions may not conflict with the laws providing for the organization and operation of the districts. The parties joining in the contract shall have the terms of their agreement incorporated into a written or printed contract.

[Acts 1971, 62nd Leg., p. 444, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.180. Election to Approve a Joint Ownership and Construction Contract

(a) Before the districts may be bound by a joint ownership and construction contract made under Section 55.179 of this code, an election to approve the contract must be held in each of the districts.

(b) The election to approve the contract shall be held on the same day in each district.

(c) At least 15 days before the day of the election, a copy of the contract must be filed in the office of each of the districts and be made available for public inspection. During the 15-day period immediately preceding the day of the election, each district must furnish a copy of the contract to any elector who appears at the office and requests a copy.

(d) If a majority of the electors in each district approve the contract at the election, the contract is adopted and is binding.

(e) The contract may be amended in the manner provided for adopting the original contract.

[Acts 1971, 62nd Leg., p. 444, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.181. General Manager for Joint Projects

The boards of the districts which are parties to a joint ownership and construction contract may employ a general manager for the joint project. The duties of the general manager may be included in the provisions of the joint contract.

[Acts 1971, 62nd Leg., p. 444, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.182. Transactions in District Names Under Joint Ownership and Construction Contracts

All bids, bonds, contracts, and other transactions made under a joint ownership and construction contract may be made in the names of the districts which are parties to the contract.

[Acts 1971, 62nd Leg., p. 444, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.183. Joint Projects Under Joint Ownership and Construction Contracts

(a) When districts operating under a joint ownership and construction contract plan to construct any improvements, the districts may call jointly for bids on these improvements.

(b) The bids may be opened and considered at the office of any of the districts which are parties to the contract.

(c) The boards shall approve the award of the contract and the contractor's bond. The boards may meet for this purpose either at an office outside the districts or at an office established for transaction of all business of the joint project.

[Acts 1971, 62nd Leg., p. 444, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.184. Additional Powers of Districts Under Joint Ownership and Construction Contracts

Districts which are acting under a joint ownership and construction contract may exercise jointly all powers which may be exercised by a single district.

[Acts 1971, 62nd Leg., p. 445, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.185. Contract With The United States

The board may enter into a contract or other obligation with the United States for the following purposes:

(1) to construct, operate, and maintain necessary facilities to deliver and distribute water;

(2) to drain district land;

(3) to assume debt for district land;

(4) to rent temporarily United States water for use on district land under the federal reclamation laws; or

(5) to furnish a water supply to the district under any act of Congress which authorizes it.

[Acts 1971, 62nd Leg., p. 445, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.186. Payments Made By a District Under a Contract With The United States

(a) If a district enters into a contract with the United States, the district may deposit with the

United States district bonds at 90 percent of par value to pay the amount owed by the district under the contract. The district shall pay interest on the bonds in the same manner that other bonds of the district are paid. Interest shall be paid regularly to the United States and applied in the manner provided in the contract.

(b) If bonds are not deposited as provided in Subsection (a) of this section, the board shall include in any levy or assessment made by the district an amount sufficient to make annual payments under the terms of the contract.

[Acts 1971, 62nd Leg., p. 445, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.187. District as Fiscal Agent for United States**

The board may accept on behalf of the district appointment as the fiscal agent for the United States on any federal reclamation project. As fiscal agent, the district may assume the duties and perform the acts incident to this capacity and shall do anything required by federal statutes and rules and regulations established by any department of the federal government.

[Acts 1971, 62nd Leg., p. 445, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.188. Conveying Property to the United States**

If the district enters into a contract with the United States, the board may convey to the United States any property which is necessary for constructing, operating, and maintaining improvements for the benefit of the district.

[Acts 1971, 62nd Leg., p. 445, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.189. Contracts and Agreements With Other Districts**

(a) The board may enter into a contract or other obligation with any other water improvement district, any water control and improvement district, or any conservation and reclamation district to construct, operate, and maintain necessary facilities for the delivery and distribution of water from the other district or to drain district land and may enter into a contract with the same district for that district to pump and supply water.

(b) The contract may include provisions for the joint construction and operation of necessary facilities for delivery and distribution of the water supply, but the terms and conditions of the contract may not conflict with the law providing for the organization and operation of the districts.

(c) The agreement of the parties shall be included in a written contract. The contract shall be acknowledged in the manner and form provided by law for conveyance of real estate, and shall be recorded in the real estate records of the county or counties in which the districts are located.

(d) The boards of the districts which are parties to the contract may amend the contract by mutual agreement.

[Acts 1971, 62nd Leg., p. 445, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.190. Issuing Bonds to Pay Cost of Projects Under Contracts With Other Districts**

Any district which enters into a contract under Sec. 55.189 of this code may issue bonds to pay for carrying out the provisions of and paying obligations under the contract. The district may issue the bonds separately or as part of a general bond issue of the district, in the manner and subject to the regulations, terms, conditions, and provisions of other bonds issued under this chapter.

[Acts 1971, 62nd Leg., p. 446, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.191. Providing Facilities for Water Supply Obtained From Other Districts**

Any district which has entered into a contract to obtain a water supply under Section 55.189 of this code may make or purchase improvements necessary to receive and distribute the water supply to lands in the district for district purposes.

[Acts 1971, 62nd Leg., p. 446, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.192. Acquiring Water Rights**

Any district may acquire water rights in the manner provided by law.

[Acts 1971, 62nd Leg., p. 446, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.193. Selling Water Rights**

(a) Any district which has a permit issued by the Texas Water Rights Commission to construct a reservoir and to appropriate water from a stream or watershed for irrigation or other purposes may convey to another district an interest in the reservoir or water rights.

(b) The conveyance shall be recorded in the office of the county clerk of the county in which the property is located and in the office of the Texas Water Rights Commission.

(c) The conveyance, when filed, shall convey all rights in the interest conveyed which were held under the permit by the district conveying the interest.

(d) After the conveyance is filed in the office of the Texas Water Rights Commission, the rights conveyed vest in the district to which the conveyance was made as if the rights were granted directly by the Texas Water Rights Commission.

[Acts 1971, 62nd Leg., p. 446, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.194. Transfer of Water Right**

If there is land in a district which has a water right from a source of supply acquired by the district but the land is difficult or impracticable to irrigate from that source of supply, the district may allow transfer of the water right to other land which is adjacent to the district. The adjacent land may be admitted to the district with the same right of water service as other land already in the district.

[Acts 1971, 62nd Leg., p. 446, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.195. Supplying Water to Cities Outside the District**

When a district acquires an established irrigation system which supplies water to landowners in a city, town, or village which is not included in the district, the district shall continue to supply water to the landowners at a reasonable annual rate.

[Acts 1971, 62nd Leg., p. 447, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.196. Selling Waterpower Privileges**

The district may enter into a contract to sell waterpower privileges if power can be generated from water flowing from the district's reservoirs and irrigation system. The sale of waterpower privileges may not interfere with the district's obligation to furnish an adequate supply of water for irrigation and for municipal purposes in districts which furnish water for municipal purposes.

[Acts 1971, 62nd Leg., p. 447, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.197. Selling Surplus Water**

The district may sell to any person who owns or uses land in the vicinity of the district any surplus district water for use in irrigation or for domestic or commercial uses.

[Acts 1971, 62nd Leg., p. 447, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.198. Pumping and Delivering Water to Land Near District**

The district may enter into a contract with a person who owns or uses land in the vicinity of the district and who has a permit from the Texas Water Rights Commission to appropriate water for use in irrigation or for domestic or commercial uses to pump or deliver the water to the person's land.

[Acts 1971, 62nd Leg., p. 447, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.199. Sale of Land Which is No Longer Needed for District Purposes**

(a) The board may sell to the highest bidder at a public sale any land or interest in land which was acquired by the district to carry out its plans and which is no longer necessary to carry out that purpose.

(b) Before the land is sold, the district must publish notice of the sale once a week for two consecutive weeks in one or more newspapers which have general circulation in the district. The first notice must be published at least 10 days before the sale.

(c) The district may use the proceeds from the sale to add to or improve district improvements for which other funds are not available, and any funds which are not needed for this purpose shall be placed in the interest and sinking fund to retire the district's outstanding bonds. The board may use for any other lawful purpose any remaining funds which are not required to accomplish the purposes stated above.

[Acts 1971, 62nd Leg., p. 447, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.200. Sale of Land Acquired by a District for Other Than District Purposes**

The district may sell to the highest bidder at a public sale any land acquired by the district through foreclosure of liens for maintenance and operation assessments or acquired by the district for any purpose other than carrying out its plans. The board may use proceeds from the sale for making improvements in the district, for maintenance and operation of the district's system, or for carrying on district business.

[Acts 1971, 62nd Leg., p. 447, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.201. Use of Excess District Money**

After all district improvements are completed and all expenses are paid, the board may use any remaining money to preserve, maintain, and repair district improvements.

[Acts 1971, 62nd Leg., p. 448, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.202. Board's Semiannual Report**

On the first day of January and July of each year, the board shall make and verify a report which shows in detail the kind, character, and amount of improvements constructed in the district, the cost of the improvements, the amount of each warrant paid, the person to whom each warrant was paid, the purpose for which each warrant was paid, and other data necessary to show the condition of improvements made. The report shall be filed with the county clerk in the county or counties in which the district is located and made available for public inspection.

[Acts 1971, 62nd Leg., p. 448, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.203. Court Actions**

Any district through its board of directors may bring suit

(1) to protect its water supply and other rights and property;

(2) to prevent unlawful or unwarranted interference with or diversion of the water supply;

(3) to protect its bonds and other indebtedness; and

(4) to maintain its taxable and assessable values.

[Acts 1971, 62nd Leg., p. 448, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.204. Waiver of District Tort Immunity**

If the board finds that it is in the best interest of the district and that it is necessary to enable the district to enter into a contract to employ Mexican laborers, it may enter into a written contract to waive in advance the district's immunity from liability in damages for personal injuries and sickness which is proximately caused by torts of the district or negligence of agents or employees of the district and which is suffered by Mexican laborers employed by the district under the terms of the Migrant Labor Agreement of 1951 between the United States and

Mexico or any subsequent agreement of a similar nature.

[Acts 1971, 62nd Leg., p. 448, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.205 to 55.240 reserved for expansion]

SUBCHAPTER E. REGULATORY POWERS

§ 55.241. Purpose

The powers granted to the district and its board under this subchapter are for the purpose of helping the district to maintain the purity of district water, to protect the preservation and use of the water, to protect the lives of persons who desire to go on, over, or across the water, and to insure the safety of persons using the water.

[Acts 1971, 62nd Leg., p. 448, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.242. Rules and Regulations

The board may make and adopt reasonable rules and regulations which are necessary

- (1) to preserve the sanitary condition of water controlled by the district;
- (2) to prevent waste or unauthorized use of water; and
- (3) to regulate residence, boating, camping, and recreational and business privileges on any land or water owned or controlled by the district.

[Acts 1971, 62nd Leg., p. 449, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.243. Notice of Rules and Regulations

(a) Before a rule or regulation providing for a penalty may be effective, the district must publish a substantial statement of the rule or regulation and the penalty in one or more newspapers with general circulation in the district once a week for two consecutive weeks.

(b) The published statement shall be as condensed as possible so that the object to be accomplished or the act which is forbidden by the rule or regulation can be easily understood.

(c) The publication of notice may include notice of any number of rules and regulations.

(d) The notice shall include a statement that the violation of a rule or regulation will subject the person who violates it to a penalty and that a complete copy of the rule or regulation is on file in the principal office of the district and may be inspected.

(e) A rule or regulation shall be effective five days after the second publication of the notice, and ignorance of the rule or regulation does not constitute a defense to prosecution for enforcement of the penalty.

[Acts 1971, 62nd Leg., p. 449, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.244. Judicial Notice of Rules and Regulations

The courts shall take judicial notice of rules and regulations made and adopted under this subchapter.

The rules and regulations shall be considered to be similar in nature to valid penal ordinances of a city.

[Acts 1971, 62nd Leg., p. 449, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.245. Contracts for Toll Bridges and Ferry Services

(a) The board has the exclusive right to enter into a contract with any responsible person to construct and operate toll bridges over water regulated by the district or to provide ferry service or other means of passenger transportation on water regulated by the district.

(b) A contract for construction and operation of a toll bridge may not extend for a period of more than 20 years and a contract providing for ferry service or other types of transportation may not extend for a period of more than 10 years.

(c) The contract may provide for forfeiture of the franchise or rights granted for failure of the licensee or other contracting party to render adequate and safe public service.

[Acts 1971, 62nd Leg., p. 449, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.246. Bond

The board shall require any person with whom it enters into a contract under Section 55.245 of this code to execute an adequate bond in an amount not to exceed \$1,000, payable to the district and conditioned as the board requires.

[Acts 1971, 62nd Leg., p. 450, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.247. License, Franchise, and Fee

(a) Before a person may keep or operate for hire on district water a ferry or other type of transportation, the person must obtain a license or franchise from the board.

(b) The board may fix the fee to be charged for the license or franchise in an amount not to exceed \$250 a year, and shall fix the fee according to the type of boat used.

[Acts 1971, 62nd Leg., p. 450, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.248. Charges for Use of Toll Bridge Facilities and Ferry Service

The board may fix a reasonable amount of compensation to be charged by the owner or operator of a toll bridge or a ferry service or other type of transportation service for use of the facilities.

[Acts 1971, 62nd Leg., p. 450, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 55.249. Regulating Boats

(a) The district may prescribe the type of boats to be used on district water to carry persons for hire and for recreational purposes and may require the owner of a boat to submit the boat at a reasonable time to inspection to determine if the boat is serviceable.

(b) In an effort to protect the lives of the occupants of boats and persons using district water, the district may prescribe reasonable requirements for the use and manner in which they are used.

[Acts 1971, 62nd Leg., p. 450, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.250. Responsibilities of Boat Owners and Operators**

(a) The owner or operator of a boat used as a ferry or other type of transportation shall keep the boat and boat landings in good and safe condition.

(b) The district is not liable for any negligent act or failure of duty on the part of the owner or operator of the boat.

[Acts 1971, 62nd Leg., p. 450, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.251. Peace Officers**

The district may employ and constitute its own peace officers. The peace officers may make arrests when necessary to prevent or abate the commission of an offense against the regulations of the district or state laws if the offense occurs or is about to occur on land or water owned or controlled by the district. Arrests also may be made any place where an offense is being committed which involves injury or detriment to any property owned or controlled by the district.

[Acts 1971, 62nd Leg., p. 450, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.252. Penalty for Violation of Subchapter**

(a) A person who violates the provisions of this subchapter or rules and regulations of the district upon conviction is punishable by a fine of not more than \$100 or by confinement in the county jail for not more than 30 days, or by both.

(b) The penalties provided by this section are in addition to other penalties provided by Texas law, and may be enforced by a complaint filed in a court of competent jurisdiction in the county in which the district's principal office is located.

[Acts 1971, 62nd Leg., p. 450, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.253. Injunction**

In addition to the penalties provided by this subchapter, the district may seek an injunction in a court of competent jurisdiction in the county in which district water is located to enforce the provisions of this subchapter and rules and regulations of the district.

[Acts 1971, 62nd Leg., p. 451, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.254 to 55.290 reserved for expansion]

**SUBCHAPTER F. EMINENT DOMAIN**

**§ 55.291. Power of Eminent Domain**

(a) Except as otherwise provided in this subchapter, the district may exercise the power of eminent domain to acquire by condemnation any property interest for the purposes stated in Section 55.292 of this code. The district also may acquire by condemnation from any land located in the district or within one mile of any district improvements earth, gravel, stone, clay, or any other materials which are needed to accomplish any of the purposes for which the district may condemn land.

(b) Land acquired under Subsection (a) of this section may be private or public and may be located inside or outside the district.

[Acts 1971, 62nd Leg., p. 451, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.292. Purposes for Which Land May be Condemned**

The district may condemn land for the following purposes:

(1) to construct, maintain, operate, police, and protect dams, reservoirs, canals, laterals, pumping sites, drainage ditches, levees, and other improvements necessary and proper for the district;

(2) to provide sites for construction and working purposes; and

(3) to provide passways and roadways along or to and from any dams, reservoirs, canals, laterals, pumping sites, drainage ditches, levees, and other district improvements.

[Acts 1971, 62nd Leg., p. 451, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.293. Land Exempt from Condemnation**

The district may not condemn any property used to supply water under Texas law and necessary to make reservoirs, canals, laterals, pumping sites, levee or drainage ditches, or other appurtenant works. If the district is not operating under Article XVI, Section 59, of the Texas Constitution, it may not condemn property used for cemetery purposes.

[Acts 1971, 62nd Leg., p. 451, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.294. Right to Remove Timbers and Other Materials from Condemned Land**

The district is entitled to remove from any property which it takes by condemnation any timber or other materials necessary to construct, maintain, and operate any of the district's improvements or other structures.

[Acts 1971, 62nd Leg., p. 452, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.295. Compensation Paid for Property Taken by Condemnation**

The owner of property which is taken, damaged, or destroyed through the exercise of the power of eminent domain shall receive adequate compensation.

[Acts 1971, 62nd Leg., p. 452, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.296. Law Governing Eminent Domain Proceedings**

Except as otherwise provided in this subchapter, procedure for condemnation, appeal, and payment and for assessing damages shall conform to the law found in Title 52, Revised Civil Statutes of Texas, 1925, as amended.<sup>1</sup>

[Acts 1971, 62nd Leg., p. 452, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Civil Statutes, art. 3264 et seq.

**§ 55.297. Condemnation Proceedings**

Condemnation proceedings shall be handled in the name of the district and under the direction of the board.

[Acts 1971, 62nd Leg., p. 452, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.298. Simultaneous Condemnation of Several Parcels of Property**

A petition for condemnation may include several parcels of property located in the same county whether the parcels are owned by the same person or persons or by several different persons. Compensation or damages paid for parcels of property which are owned by the same person or persons may be assessed separately or together, but if the parcels of property are separately owned by several different persons, compensation shall be assessed separately for each ownership.

[Acts 1971, 62nd Leg., p. 452, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.299. Jurisdiction Over Persons Who are Unknown or Under a Disability**

In condemnation proceedings, the jurisdiction of the court may be invoked by alleging that the person owning the land or an interest in the land to be condemned cannot be found after a diligent search, that his residence is unknown, or that he is a minor or has some other legal disability. This allegation is a sufficient statement that the district and the owner are unable to agree on the value of the land or on the amount of damages.

[Acts 1971, 62nd Leg., p. 452, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.300. Title Disputes Involving Condemned Property**

(a) A district court in the county in which condemnation proceedings are pending shall have jurisdiction to determine conflicting and adverse claims to property and to award damages.

(b) If title to property is in dispute between two or more parties or there are conflicting or adverse claims, the damages shall be paid to the court until the dispute is resolved and then shall be paid to the rightful owner.

[Acts 1971, 62nd Leg., p. 452, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1767, ch. 518, § 1, eff. May 31, 1971.]

**§ 55.301. Omitting Property Owners from Proceedings and Failing to Notify Property Owners of Proceedings**

If a property owner is omitted from the condemnation proceedings or fails to receive notice of the proceedings, the omission or failure does not invalidate the proceedings and judgment of condemnation covering any person who was a party to the proceedings and who received proper legal notice. The property or interest in property which belongs to a person was omitted from the proceedings or who failed to receive notice may be acquired by condemnation in subsequent condemnation proceedings.

[Acts 1971, 62nd Leg., p. 453, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.302. Payment of Compensation and Damages**

Compensation and damages awarded in condemnation proceedings shall be paid from the construction and maintenance fund of the district.

[Acts 1971, 62nd Leg., p. 453, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.303. Title Disputes and Appeals from Damage Assessments Not to Suspend Work of District**

The work of the district in connection with property to be acquired by condemnation may not be suspended because of delay in determining the rightful owner of the property or because of appeal from the finding and assessment of damages.

[Acts 1971, 62nd Leg., p. 453, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.304. Suits Against the District**

If a district is sued for any property occupied by it or taken by it for any of its purposes or if sued for damages to the property, the court in which the suit is pending may determine all matters in dispute between the parties. On petition or cross-bill of the defendant, the court may consider condemnation of the property.

[Acts 1971, 62nd Leg., p. 453, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.305 to 55.330 reserved for expansion]

SUBCHAPTER G. DISTRICT SURVEY

**§ 55.331. District Engineer**

After the district is established and the members of the board have qualified, the board may employ an engineer for the district.

[Acts 1971, 62nd Leg., p. 453, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.332. Duties of the Engineer**

The engineer shall make a complete survey of the land included in the district and make a map and profile of the canals, laterals, reservoirs, dams, and pumping sites located in the district and extending beyond the limits of the district.

[Acts 1971, 62nd Leg., p. 453, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.333. Maps**

(a) The map shall show the name and number of each survey and the area in the district in number of acres.

(b) The map shall show the relation that each canal and lateral bears to each tract of land through which it passes and the shapes into which it divides each tract. If the canal or lateral cuts off any less than 20 acres from any tract, the map shall show the number of acres in the whole tract and the shape of the small tract and its relationship to the canal or lateral.

(c) The map shall show how much and what part of each tract can be irrigated by the canal or lateral.

(d) The profile map shall also show in detail the number of cubic yards which need to be excavated

or moved to make the reservoir, canal, or lateral, and the specifications for other works necessary to the construction of improvements proposed for the district, and the estimated cost of each.

[Acts 1971, 62nd Leg., p. 453, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.334. Adopting Old Surveys

(a) The engineer may adopt any surveys made in the past by any person who has applied for or appropriated any water for irrigation under state law.

(b) The engineer also may adopt any surveys for canals, laterals, reservoirs, dams, or pumping sites shown on these maps or plats or may adopt other maps, plats, and surveys which he is satisfied are correct.

[Acts 1971, 62nd Leg., p. 454, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.335. Additional Improvements

If additional improvements of canals, ditches, laterals, reservoirs, or pumping plants are to be constructed, the report shall contain the detailed information with reference to these additional improvements.

[Acts 1971, 62nd Leg., p. 454, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.336. Existing Improvements

If the district contains any pumping plants, canals, dams, ditches, or reservoirs which the district is planning to acquire or purchase, the map or plat and the estimates required in this subchapter shall show these improvements and the price or probable price at which they may be acquired or purchased.

[Acts 1971, 62nd Leg., p. 454, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.337. Signing and Filing Engineer's Report, Map, and Profile

After the map, profile, specifications, and estimates are completed, the engineer shall sign them and file them with the secretary of the board.

[Acts 1971, 62nd Leg., p. 454, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.338. Maps and Data Unnecessary Under Contract With United States

None of the maps and data prescribed by this subchapter are required under a contract with the United States except for maps and data needed to make assessments and levies.

[Acts 1971, 62nd Leg., p. 454, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.339 to 55.350 reserved for expansion]

### SUBCHAPTER H. WATER ASSESSMENTS

#### § 55.351. Statement Estimating Water Requirements and Payment of Charge

Each person desiring to receive water at any time during the year shall furnish the secretary of the board a written statement of the acreage he intends to irrigate and the different crops he intends to plant with the acreage of each crop. At the time

the acreage estimate is furnished to the secretary, each person applying for water shall pay the portion of the water charge or assessment set by the board for immediate payment. If any person applying for water from the district does not furnish the statement of estimated acreage or does not pay the part of the water charge or assessment set by the board before the date for fixing the assessment, the district is not obligated to furnish water to that person during that year.

[Acts 1971, 62nd Leg., p. 455, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.352. Assessments for Maintenance and Operating Expenses

The board, on or as soon as practicable after a date fixed by standing order of the board, shall estimate the expenses of maintaining and operating the irrigation system for the next 12 months.

[Acts 1971, 62nd Leg., p. 455, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.353. Methods for Determining Maintenance and Operating Expenses

The board may make assessments for maintenance and operating expenses as provided in this subchapter on the basis of the quantity of water used.

[Acts 1971, 62nd Leg., p. 455, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.354. Distribution of Assessment

(a) Not less than one-third nor more than two-thirds of the estimated maintenance and operating expenses shall be paid by assessment against all land in the district to which the district can furnish water through its irrigation system or through an extension of its irrigation system. The assessments shall be levied against all irrigable land in the district on a per acre basis, whether or not the land is actually irrigated. The board shall determine from year to year the proportionate amount of the expenses which will be borne by water users under this subsection.

(b) The remainder of the estimated expenses shall be paid by assessments against persons in the district who use or who make application to use water. The board shall prorate the remainder as equitably as possible among the applicants for water and may consider the acreage each applicant will plant, the crop he will grow, and the amount of water per acre he will use. All persons using water to plant the same crop will pay the same price per acre for the water.

[Acts 1971, 62nd Leg., p. 455, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.355. Notice of Assessments

(a) Public notice of all assessments shall be given by posting printed notices of the assessment in at least three public places in the district.

(b) Printed notices shall be mailed to each landowner at the address which the landowner shall furnish to the board.

(c) The notice shall be posted in a public place and mailed to the landowner five days before the assess-

ment is due, and notice of special assessments shall be given within 10 days after the assessment is levied.

[Acts 1971, 62nd Leg., p. 455, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.356. Payment of Assessments**

All assessments shall be paid in installments at the times fixed by the board. If a crop for which water was furnished by the district is harvested before the due date of any installment payment, the entire unpaid assessment becomes due at once and shall be paid within 10 days after the crop is harvested and before the crop is removed from the county or counties in which it was grown.

[Acts 1971, 62nd Leg., p. 456, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.357. Collection of Assessments By Tax Assessor and Collector**

(a) Under the direction of the board, the assessor and collector of taxes, or other person designated by the board, shall collect all assessments for maintenance and operating expenses made under the provisions of this subchapter.

(b) The assessor and collector of taxes shall give bond in an amount determined by the board, conditioned upon the faithful performance of his duties and accounting for all money collected.

(c) The assessor and collector of taxes shall keep an account of all money collected and shall deposit the money as collected in the district depository. He shall file with the secretary of the board a statement of all money collected once each week. He shall use duplicate receipt books, give a receipt for each collection made, and retain in the book a copy of each receipt, which shall be kept as a record of the district.

[Acts 1971, 62nd Leg., p. 456, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.358. Contracts With Person Using Water**

(a) The board may require each person who desires to use water during the year to enter into a contract with the district which states the acreage to be watered, the crops to be planted, the amount to be paid for the water, and the terms of payment.

(b) The contract is not a waiver of the lien given to the district under Section 55.359 of this code against the crops of a person using water for the service furnished to him.

(c) If a person irrigates more land than his contract specifies, he shall pay for the additional service under the provisions of this subchapter.

(d) The directors also may require a person using water to execute a negotiable note or notes for all or part of the amount owed under the contract.

[Acts 1971, 62nd Leg., p. 456, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.359. Lien Against Crops**

(a) The district shall have a first lien, superior to all other liens, against all crops grown on each tract of land in the district to secure the payment of the assessments, interest, and collection or attorney's fees.

(b) When the district obtains a water supply under contract with the United States, the board may, by resolution entered in their minutes and with the consent of the secretary of the interior, waive the lien in whole or in part.

[Acts 1971, 62nd Leg., p. 456, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.360. List of Delinquent Assessments**

Within 10 days after any assessment is due, the board shall post in a public place in the district a list of all persons who are delinquent in paying their assessments and shall keep posted a correct list of all delinquent assessments. If persons who owe assessments have executed notes and contracts as provided in Section 55.358 of this code, they shall not be placed on the delinquent list until after the maturity of the notes and contracts.

[Acts 1971, 62nd Leg., p. 457, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.361. Water Service Discontinued**

If a landowner shall fail or refuse to pay any water assessment when due, his water supply shall be cut off, and no water shall be furnished to the land until all back assessments are fully paid. The discontinuance of water service is binding on all persons who own or acquire any interest in land for which assessments are due.

[Acts 1971, 62nd Leg., p. 457, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.362. Suits for Delinquent Assessments**

Suits for delinquent water assessments may be brought either in the county in which the irrigation district is located or in the county in which the defendant resides. All landowners are personally liable for all assessments provided in this subchapter.

[Acts 1971, 62nd Leg., p. 457, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.363. Interest and Collection Fees**

(a) All assessments shall bear interest from the date payment is due at the rate of 10 percent a year.

(b) If suit is filed to foreclose a lien on crops or if a delinquent assessment is collected by any legal proceeding, an additional amount of 10 percent on unpaid principal and interest shall be added as collection or attorney's fees.

[Acts 1971, 62nd Leg., p. 457, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.364. Rights of the United States**

If the board enters into a contract with the United States, the remedies in this subchapter available to the district also shall apply to enforce payment of charges due to the United States. The Reclamation Extension Act, approved August 13, 1914, and as amended, and all other federal reclamation laws apply. The directors shall distribute and apportion all water acquired by the district under a contract with the United States in accordance with acts of Congress, rules and regulations of the secretary of the interior, and provisions of the contract.

[Acts 1971, 62nd Leg., p. 457, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.365. Surplus Assessments**

If assessments made under this subchapter are more than sufficient to pay the necessary expenses of the district, the balance shall be carried over to the next year.

[Acts 1971, 62nd Leg., p. 458, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.366. Insufficient Assessments**

If the assessments made under this subchapter are not sufficient to pay the necessary expenses of the district, the unpaid balance shall be assessed, pro rata, in accordance with the assessments made for the current year. The additional assessments shall be paid under the same conditions and penalties within 30 days from the date of assessment.

[Acts 1971, 62nd Leg., p. 458, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.367. Land Not Subject to Assessments**

If a district fails to furnish sufficient water to irrigate land in the district for two years after its organization, the nonirrigated land is relieved of all assessments and charges except taxes until the district constructs the necessary canals and furnishes the necessary water to irrigate the land.

[Acts 1971, 62nd Leg., p. 458, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.368. Loans for Maintenance and Operating Expenses**

The board may borrow money to pay maintenance and operating expenses at an interest rate of not more than 10 percent a year and may pledge as security any of its notes or contracts with water users or accounts against them.

[Acts 1971, 62nd Leg., p. 458, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.369. Fixed Charges for Maintenance Expenses**

If maintenance charges are based on the quantity of water used, a fixed charge may be made on all land or water connections entitled to receive and use water. An additional charge may be made, or a graduated scale adopted, for the use of more water than that covered by the minimum charge. The board may install proper measuring devices.

[Acts 1971, 62nd Leg., p. 458, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.370. Charge to Cities and Towns**

If a district includes a city or town or contracts with a city or town to supply water to it, the charge for the use of water and the time and manner of payment shall be determined by a standing order of the board.

[Acts 1971, 62nd Leg., p. 458, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.371. Authority to Determine Rules and Regulations**

The directors may adopt, alter, and rescind rules, regulations, and standing and temporary orders which do not conflict with the provisions of this chapter and which govern:

- (1) methods, terms and conditions of water service;

- (2) applications for water;
- (3) assessments for maintenance and operation;
- (4) payment and the enforcement of payment of the assessments;
- (5) furnishing of water to persons who did not apply for it before the date of assessment; and
- (6) furnishing of water to persons who wish to take water for irrigation in excess of their original applications or for use on land not covered by their original applications.

[Acts 1971, 62nd Leg., p. 458, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.372 to 55.400 reserved for expansion]

### SUBCHAPTER I. SUPPLYING WATER TO MILITARY CAMPS

**§ 55.401. Authority of Districts With Military Base to Issue Bonds**

Any district operating under Article XVI, Section 59, of the Texas Constitution, which contains all or part of a United States military camp or base may issue negotiable revenue bonds to provide funds for acquiring or constructing filtration and pumping equipment, pipelines, and other facilities for supplying water to military camps or bases.

[Acts 1971, 62nd Leg., p. 459, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.402. Bond Election**

The district may issue negotiable revenue bonds with a total par value of not more than \$100,000 without the necessity of holding an election, but it may not issue bonds with a total par value of more than \$100,000 unless the bond issue is approved at an election held under the law governing bond elections.

[Acts 1971, 62nd Leg., p. 459, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.403. Interest Rate and Maturity Date**

Bonds issued under this subchapter shall mature not more than five years after the date of issuance.

[Acts 1971, 62nd Leg., p. 459, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.404. Security for Bonds**

(a) Bonds issued under this subchapter may be secured by all or part of the net revenue to be received from a contract for the sale of water by the district to the United States for use at military camps or bases and from all renewals, extensions, or substitutions of the contract.

(b) In addition, the bonds may be secured by a deed of trust lien on the equipment, facilities, and property acquired or constructed with the funds from the sale of the bonds.

[Acts 1971, 62nd Leg., p. 459, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.405. Approval; Registration**

After bonds are authorized under this subchapter but before they are issued, the bonds, the resolution of the board authorizing the bonds to be issued, and other certificates and records relating to the issuance of the bonds shall be submitted to the Attorney General of Texas for his examination. The attorney general shall approve the bonds if they are issued in accordance with the provisions of this subchapter and the constitution, and the bonds shall be registered with the comptroller.

[Acts 1971, 62nd Leg., p. 459, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.406. Validity of Bonds**

After bonds are approved by the attorney general and registered with the comptroller, they shall be held valid and binding in any action, suit, or proceeding in which their validity is questioned. In any action brought to enforce collection of the bonds, the certificate of approval by the attorney general, or a certified copy of the certificate, shall be admitted as evidence of the validity of the bonds. The only defense which can be offered against the validity of the bonds is forgery or fraud.

[Acts 1971, 62nd Leg., p. 459, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.407. Payment of Bonds**

The holder of bonds issued under the provisions of this subchapter is not entitled to payment of the bonds from funds derived from taxes levied on property in the district.

[Acts 1971, 62nd Leg., p. 460, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.408. Advertising for Bids**

A contract for constructing or acquiring filtration and pumping equipment, pipelines, or other facilities to supply water to military camps or bases may be awarded only after advertising for bids for a period of time to be determined by the board. The advertisement for bids shall be published in a newspaper of general circulation in the district at least one time not less than 10 days before awarding the contract.

[Acts 1971, 62nd Leg., p. 460, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.409 to 55.420 reserved for expansion]

**SUBCHAPTER J. GENERAL FISCAL PROVISIONS**

**§ 55.421. Construction and Maintenance Fund**

The expenses, debts, and obligations incurred in creating, establishing, and maintaining the district shall be paid from the construction and maintenance fund. The construction and maintenance fund shall consist of money received by the district from the sale of bonds or from other sources provided by this chapter.

[Acts 1971, 62nd Leg., p. 460, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.422. Maintenance and Operating Fund**

(a) The district shall create a maintenance and operating fund which shall consist of any money collected by assessment or other methods for the maintenance and operation of property owned by

the district and for temporary rent owed to the United States.

(b) The district shall pay all operating expenses and any balance due on construction work, extensions, and improvements from the maintenance and operating fund with warrants executed in the manner provided in this chapter.

(c) If the district intends to enter into a contract with the United States for the construction of the irrigation system, the expenses, debts, and obligations may be paid from the maintenance and operating fund.

[Acts 1971, 62nd Leg., p. 460, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.423. District Vouchers**

Except as provided in Section 55.112 of this code, vouchers issued by the district shall include a reference to the book and page number which authorize the expenditure and shall be signed by at least four members of the board. The vouchers shall be issued from a regular duplicate book containing a duplicate of the voucher, which shall be kept by the district.

[Acts 1971, 62nd Leg., p. 460, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.424. District Depository**

(a) The board shall select a depository for the district in the manner provided for selection of a county depository, and the board, in selecting the depository, shall act in the same capacity and perform the same duties as provided by law for the county judge and county commissioners in selecting a county depository.

(b) The duties of the district depository shall be the same as provided by law for county depositories.

[Acts 1971, 62nd Leg., p. 461, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.425. Selecting a Bank as Depository in Which a District Director Has an Interest**

(a) If the highest and best bidder to become the district depository is a bank in which a district director is a stockholder or a director, the remaining members of the board, if they constitute a majority, may select the bank as the district depository and approve the bond.

(b) Before the order of the board selecting the bank as the depository and approving the bond is effective, a copy of the order must be filed with the county judge in the county in which the district is located.

(c) If the county judge fails to approve the depository selected or the bond, the bank will not become the district depository, and new bids shall be requested and another bank selected as district depository.

[Acts 1971, 62nd Leg., p. 461, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1768, ch. 518, § 5, eff. May 31, 1971.]

**§ 55.426. Report of the District Depository**

(a) The district depository shall make a report each month of money it receives and pays out on behalf of the district. This report together with the

vouchers shall be filed in the district's records which are in the depository's vault, and a copy of the report shall be furnished to the district's board.

(b) The report shall be available for inspection by taxpayers and residents of the district.

(c) The records shall be kept as property of the district and shall be delivered to the successor of the depository.

[Acts 1971, 62nd Leg., p. 461, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.427. District Records and Accounts

The board shall keep a record of its meetings and proceedings and shall have a complete book of accounts kept for the district.

[Acts 1971, 62nd Leg., p. 461, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.428. Protection and Custody of Records and Documents

The board shall keep the contracts, records and notices, duplicate vouchers, duplicate receipts, and accounts and records of the district in a fireproof vault or safe, and shall deliver them to their successors in office. These records and other documents are the property of the district.

[Acts 1971, 62nd Leg., p. 461, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.429. District Audit

(a) Except as provided in Subsection (c) of this section, on September 1 of each year the board shall select a competent auditor for the district who shall file an audit report by November 1 of each year.

(b) The auditor shall examine the accounts, books, and reports of the depository, the assessor and collector, and the board and shall include a full report of his findings in the audit report. A copy of the report shall be filed with the depository, the board and the county clerk of the county in which the district is located.

(c) In districts which adopt the calendar year as the fiscal year, the auditor shall be appointed by January 15 following the end of the year and his report shall cover the preceding calendar year.

[Acts 1971, 62nd Leg., p. 461, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.430. Adopting the Calendar Year as the Fiscal Year

The board, by an order entered in its minutes, may adopt the calendar year as the fiscal year, and in districts adopting the calendar year, the board's annual report shall cover the calendar year, and shall be filed by January 30th of the succeeding year.

[Acts 1971, 62nd Leg., p. 462, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.431 to 55.450 reserved for expansion]

### SUBCHAPTER K. BORROWING MONEY

#### § 55.451. District May Incur Debt for District Purposes

(a) The district may incur debt evidenced by contract, notes, warrants, or bonds to pay any debt or obligation incurred for any lawful purpose.

(b) The purposes for which debt may be incurred, include:

(1) purchasing, constructing, securing, or acquiring any reservoir, rights-of-way, water rights, and any property, plants, and improvements;

(2) carrying out any of the purposes for which the district was created;

(3) maintaining and operating property, plants, and improvements of the district; and

(4) constructing repairs, extensions, and other improvements on the property.

[Acts 1971, 62nd Leg., p. 462, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.452. Adopting Method for Payment of Debts

(a) When a district incurs a debt or obligation, it shall provide for payment of the debt or obligation by levying, assessing, and collecting either a general ad valorem tax or a tax on a benefit basis.

(b) Any district which has previously issued bonds or obligations payable on either basis may adopt a different basis of taxation in the creation of an additional debt or obligation.

(c) Each debt or obligation shall be paid in the manner provided at the time it was incurred.

[Acts 1971, 62nd Leg., p. 462, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.453. Election

(a) Before any debt is incurred under this subchapter, the district shall submit to the voters of the district the proposition of whether or not the debt should be created. The proposition shall also state the method of taxation to be used to pay principal and interest on the debts.

(b) Notice of the election and the conduct of the election shall be in the manner provided by law for holding elections in the district.

(c) The proposition is adopted if it is approved by a majority of the persons voting in the election.

[Acts 1971, 62nd Leg., p. 462, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.454. Incurring Debt Without Voter Approval

None of the provisions of this subchapter shall prevent the board from creating any debt or obligation without voter approval if the debt or obligation is created to defray ordinary maintenance and operating expenses or if the debt or obligation is to be retired from current revenues.

[Acts 1971, 62nd Leg., p. 463, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.455. Taxes on Uniform Basis

(a) Any district which has the principal function of furnishing water for irrigation in the district may provide for the payment of principal and interest on any debts or obligations by levying taxes on land in the district on an equal or uniform basis with an equal charge per acre on each acre of land to be irrigated.

(b) The tax collector shall prepare a special tax roll showing each tract of land in the district, the

number of acres in each tract, the total assessment of benefits on each tract, and the amount to be paid each year on each tract, and the roll shall be prepared or amended annually. Each owner shall make a rendition of his property to the tax collector.

(c) The tax roll shall be examined, corrected, and approved by the board of equalization of the district.

(d) The property shall be rendered and assessed for taxation and the tax roll prepared at the time and in the manner provided by law. The valuation fixed on property shall be the assessment charge against each acre of land at the time the debt or obligation is incurred.

[Acts 1971, 62nd Leg., p. 463, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.456. Obtaining Loan When Bonds Cannot be Sold**

If the district has any bonds which were issued under the provisions of this code but which cannot, in the opinion of the board, be sold on terms which are advantageous to the district, the district may obtain a loan in an amount of not more than the amount of the unsold bonds. The money may be used for any of the purposes for which the bonds were issued, and the bonds may be pledged as a guarantee or assurance that the loan will be paid. The amount of bonds pledged may not exceed the amount of the loan by more than 15 percent.

[Acts 1971, 62nd Leg., p. 463, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.457. Using Revenue From Sale of Water, Power, and Other Services to Pay Debts**

(a) The district may fix charges for the use and sale of water, power, and other services to pay debts and to accomplish other lawful purposes of the district.

(b) The district may borrow money for any purpose in the manner provided in this subchapter and pledge for payment of these debts, income and revenue from the sale of water, power, and other services sufficient in amount to pay principal, interest, and other charges which may accrue.

[Acts 1971, 62nd Leg., p. 463, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.458. Loan Fund**

(a) The board may pay or contract to pay on any bonds which it has sold or pledged, in addition to taxes, other funds derived from:

- (1) water charges for use of water in the district;
- (2) sale or supply of water to any city, town, municipal corporation, district, or land or user of water outside the boundaries of the district;
- (3) sale of water to any commercial or industrial enterprise;
- (4) sale of hydroelectric power; or
- (5) any or all of these sources of revenue.

(b) The board shall fix the amount to be derived from these sources for this purpose and shall enforce

and collect it in the same manner provided to collect charges or assessments for maintenance and operation. All liens and remedies provided by law to secure and enforce the collection of charges and assessments for maintenance and operation of the district are applicable to securing and enforcing the collection of these funds.

(c) Money collected under this section shall be kept in a separate fund called the "loan fund" and shall be used only for the purpose of paying the principal and interest on the bonds for as long as the bonds remain unpaid.

(d) The charge created by this section is an additional and distinct charge and a source of income of the district over and above its income for maintenance and operation and other purposes.

(e) After the loan fund is created and pledged, the action of the board in fixing the amount of the charge and in fixing the total annual charges for maintenance and operation may not be reviewed by the Texas Water Rights Commission regardless of any law to the contrary.

[Acts 1971, 62nd Leg., p. 464, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.459 to 55.490 reserved for expansion]

SUBCHAPTER L. ISSUANCE OF BONDS

**§ 55.491. Bond Election**

After the district is created, the members of the board are qualified, the maps, profiles, specifications, and estimate are filed, and after the assessor and collector has made and returned the assessment roll, the board may order a bond election to be held in the district at the earliest possible legal time.

[Acts 1971, 62nd Leg., p. 464, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.492. Content of Notice**

(a) The notice of the election shall include:

- (1) the maximum amount of bonds to be issued;
- (2) the maximum interest rate on the bonds;
- (3) the maximum maturity date of the bonds;
- (4) a summary of the engineer's estimate of the cost of constructing proposed improvements and purchasing existing improvements with additions;
- (5) a substantial statement of the proposition; and
- (6) the time and place or places for holding the election.

(b) If the election is for the purpose of voting on a contract with the United States, the notice shall include the maximum amount of money to be paid for construction purposes exclusive of penalties and interest.

[Acts 1971, 62nd Leg., p. 464, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.493. Publication of Notice**

The secretary of the board, on order of the board, shall post notice of the bond election at the courthouse door in the county in which the district is located and at four public places in the district for at least 20 days before the day of the election. Also, the secretary shall publish the notice in the manner provided in Section 55.609 of this code.

[Acts 1971, 62nd Leg., p. 465, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.494. Conduct of Bond Election**

The board shall select a polling place in each voting precinct or part of a voting precinct located in the district and shall appoint two judges, one of whom shall be the presiding judge, and two clerks for each polling place designated in the order.

[Acts 1971, 62nd Leg., p. 465, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.495. Ballots**

(a) The board shall provide one and one-half times as many ballots for the election as there are qualified property taxpaying electors in the district as shown on the county tax rolls.

(b) The ballots shall be printed to provide for voting for or against the following proposition: "The issuance of bonds and the levy of a tax to pay for the bonds." This is the only proposition which may appear on the ballot.

(c) If the election is for the purpose of voting on a contract with the United States, the ballots shall be printed to provide for voting for or against the following proposition: "The contract with the United States and levy of taxes to make payments under the contract." This is the only proposition which may appear on the ballot.

[Acts 1971, 62nd Leg., p. 465, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.496. Returns; Result**

(a) Immediately after the election, the presiding judge of each polling place shall transmit to the secretary of the district the result of the election in the manner provided by law for general elections. The secretary shall keep the results in a safe place and deliver them together with the returns from each polling place to the board.

(b) At a regular meeting or special meeting the board shall canvass the returns and declare the result of the election.

(c) If the canvass of the returns shows that the bond issue or the contract with the United States and the tax levy were approved, the board shall declare the result to be in favor of the proposition and shall enter the results in the minutes.

[Acts 1971, 62nd Leg., p. 465, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.497. Necessary Vote**

(a) In a district operating under the authority of Article III, Section 52, of the Texas Constitution, a two-thirds vote of persons voting in the election is required to adopt a proposition to issue bonds or to enter into a contract with the United States.

(b) In a district operating under the authority of Article XVI, Section 59, of the Texas Constitution, a majority vote of persons voting in the election is required to adopt a proposition to issue bonds or to enter into a contract with the United States.

[Acts 1971, 62nd Leg., p. 465, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.498. Ordering Issuance of Bonds**

After the vote is canvassed and a favorable result is declared, the board shall make and enter an order authorizing the issuance of bonds or the execution of a contract with the United States.

[Acts 1971, 62nd Leg., p. 466, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.499. Amount of Bonds**

The bonds shall be sufficient in amount to pay for the proposed improvements together with necessary incidental expenses connected with the improvements, but the amount shall not be more than the amount specified in the order and notice of election. The total amount of the bonds shall include:

- (1) the amount of the engineer's estimate;
- (2) incidental expenses;
- (3) organization expenses; and
- (4) cost of additional work caused by any change or modification made by the directors.

[Acts 1971, 62nd Leg., p. 466, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.500. Limitation of Indebtedness**

In districts organized under Article III, Section 52, of the Texas Constitution, the amount of bonds or the amount of the contract indebtedness with the United States may not be more than one-fourth of the actual assessed value of the real property in the district as shown by an assessment made for this purpose or by the last annual assessment made under this chapter. This limitation does not apply to districts operating under the authority of Article XVI, Section 59, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 466, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.501. Special Interest Procedure**

(a) The maximum amount of bonds issued by a district may include a sufficient sum to pay the first one, two, or three years' interest to accrue on the bonds, and no taxes shall be levied against property located in the district for this period except for a sufficient tax to pay notes provided for in Section 55.038 of this code.

(b) The board may designate the period of interest to begin either with the date of the bonds fixed in the order which authorizes their issuance or from the date or dates of the actual sale, issuance, and delivery of the bonds or any installments.

(c) Any money left in the interest fund at the end of the designated period still may be used to pay interest on the bonds.

[Acts 1971, 62nd Leg., p. 466, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.502. Formal Requirements of Bonds**

(a) The board shall issue bonds in the name of the district, and the president shall sign the bonds, the secretary shall attest to them, and the district's seal shall be impressed on them.

(b) The bonds shall be issued in denominations of not less than \$100 nor more than \$1,000 each.

(c) The bonds shall be payable annually or semiannually and shall mature not more than 40 years after they are issued.

(d) The bonds may be issued to mature in serial form at any date which does not come later than the date specified in the notice of election and may bear any rate of interest which is not more than the rate of interest specified in the notice.

(e) The terms of the bonds shall include the time, place, manner, and conditions of payment and the interest rate which are ordered by the board.

[Acts 1971, 62nd Leg., p. 466, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.503. Texas Water Rights Commission to Investigate and Report on Districts Issuing Bonds**

(a) The Texas Water Rights Commission shall investigate and report on the organization and feasibility of all districts issuing bonds under Texas law.

(b) Any district which desires to issue bonds shall submit to the commission a written application for investigation, together with a copy of the engineer's report and a copy of the data, profiles, maps, plans, and specifications prepared in connection with the report.

(c) The commission shall examine these documents and shall visit the project and carefully inspect it, and may request and shall be supplied with additional data and information necessary to a reasonable and careful investigation of the project and proposed improvements.

(d) The commission shall file in its office written suggestions for changes and improvements and furnish a copy to the board of directors of the district.

(e) If the commission finally approves or refuses to approve the project or the issuance of the bonds for any improvement, it shall make a full written report, file the report in its office, and furnish a copy of the report to the board of directors of the district.

[Acts 1971, 62nd Leg., p. 467, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.504. Suit to Determine Validity of Bonds or Contract**

(a) Before any bonds are offered for sale, the district shall bring suit in any district court within the judicial district in which the district is located or in any district court in Travis County to determine the validity of the bonds. On request of the secretary of interior, any district entering into a contract with the United States shall bring suit in one of the same courts to determine the validity of the contract.

(b) The action shall be in the nature of a proceeding in rem, and jurisdiction over all interested parties may be obtained by publishing notice once a week for at least two consecutive weeks in a newspaper with general circulation in the county in which the district is located. If there is no newspaper published in the county, the notice shall be published in the county nearest to the district in which a newspaper is published.

[Acts 1971, 62nd Leg., p. 467, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.505. Notice to Attorney General**

(a) Notice of a validation suit shall be served on the attorney general in the manner provided for serving a notice in civil suits.

(b) The attorney general may waive service if he is furnished a full transcript of the proceedings held in the formation of the district and held in connection with the issuance of the bonds or the authorization of the contract with the United States and is furnished a copy of the contract.

[Acts 1971, 62nd Leg., p. 467, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.506. Attorney General to Examine Proceedings and File Answer Tendering Issue**

The attorney general shall make a careful examination of the district's organizational proceedings and proceedings held in connection with the issuance of bonds or the authorization of a contract with the United States and shall require any further evidence and make any further investigation he considers necessary. The attorney general shall then file an answer tendering the issue of whether or not the bonds are legal and binding obligations of the district or whether or not the contract with the United States is legal and binding on the district. This issue shall be tried and determined by the court and a judgment entered on the finding.

[Acts 1971, 62nd Leg., p. 468, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.507. Right of Persons to Intervene and Participate in Suit**

At the trial of a validation suit the court may permit persons having an interest in the issues to be determined to intervene and participate in the trial of the issues.

[Acts 1971, 62nd Leg., p. 468, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.508. Suits to Have Preference**

Suits brought under the provisions of this subchapter have preference over all other actions so that the matters involved may have a speedy determination.

[Acts 1971, 62nd Leg., p. 468, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.509. Judgment Rendered**

(a) If the judgment of the court in a validation suit is against the district, the district may accept the judgment and may correct the error pointed out in the proceedings in the manner directed by the court.

(b) After the corrections are made, the judgment of the court shall be rendered showing that the corrections have been made and that the bonds or the contract is a binding obligation on the district.

(c) The final judgment, when it is entered, is res judicata in any case arising in connection with the bonds or their interest or in connection with the collection of money required under the contract with the United States and in all matters relating to the validity of the organization of the district, the district's bonds, or the contract with the United States. [Acts 1971, 62nd Leg., p. 468, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.510. Court's Decree

(a) After the district court enters a final judgment in a validation suit, the clerk of the court shall make a certified copy of the decree which shall be a part of the orders and decree connected with the election.

(b) The court's decree shall be filed with the comptroller and he shall record the decree in a book kept for that purpose.

(c) The certified copy of the decree or a certified copy of the record made by the comptroller shall be received as evidence in any litigation which may affect the validity of the bonds or contract with the United States and shall be conclusive evidence of the validity.

[Acts 1971, 62nd Leg., p. 468, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.511, 55.512. Repealed by Acts 1971, 62nd Leg., p. 1769, ch. 518, § 10, eff. May 31, 1971.

#### § 55.513. County Clerk's Fees

The county clerk is entitled to receive:

- (1) for registering the bonds, 10 cents for each bond which is registered;
- (2) for entering the payment of a bond, 10 cents; and
- (3) for recording district instruments required to be recorded and for which no fee is provided, the same fees provided by law for recording deeds.

[Acts 1971, 62nd Leg., p. 469, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.514. Sale of Bonds

(a) After the bonds are issued and registered by the comptroller, the board shall offer the bonds for sale and shall sell them on the best terms and for the best possible price.

(b) After all the bonds are sold, the board shall pay to the district depository all money received from the sale.

(c) The board may exchange the bonds for property to be acquired by purchase under contract or in payment of the contract price for work to be done for the use and benefit of the district.

[Acts 1971, 62nd Leg., p. 469, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.515. Emergency Loans and Interim Bonds

(a) The district may create emergency loans and issue interim bonds for the purposes, in the manner, and under the restrictions and limitations provided in Sections 51.444–51.449 of this code.

(b) It is the purpose of this section to confer on the district the same power and authority with respect to emergency loans and issuance of interim bonds as that conferred by law on water control and improvement districts.

[Acts 1971, 62nd Leg., p. 469, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.516. Tax Levy

(a) After bonds have been voted, the board shall levy a tax on all property in the district sufficient to pay the interest on the bonds together with an additional amount to be placed in the sinking fund to discharge and redeem the bonds at maturity, and the board shall annually levy or have assessed and collected taxes on all property in the district sufficient to pay for the expenses for assessing and collecting the taxes.

(b) The board may issue the bonds in serial form or to be paid in installments.

(c) The tax levy shall be sufficient to pay the interest on the bonds, to meet the proportional amount of the principal of the next maturing series of the bonds, and to pay expenses of assessing and collecting the taxes for the year.

(d) If a contract is entered into with the United States, the board shall levy a tax sufficient to meet all installments as they are due and to pay interest. The directors shall make an annual levy until the contracts and obligations are discharged.

[Acts 1971, 62nd Leg., p. 469, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.517. Adjustment of Tax Levy

The tax which is levied in connection with the original bond issue shall remain in force for that purpose until a new levy is made. The board may, from time to time, increase or diminish the tax for the purpose of adjusting the tax to the taxable values of taxable property in the district and the amount to be collected, and the increase or decrease in the tax shall be sufficient to provide enough money in the interest and sinking fund to make annual payments on outstanding bonds.

[Acts 1971, 62nd Leg., p. 470, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.518. Interest and Sinking Fund

(a) The district shall have an interest and sinking fund which shall consist of all taxes collected under the provisions of this chapter for this fund.

(b) Money in the interest and sinking fund shall be paid out only:

- (1) to satisfy and discharge interest on the bonds;
- (2) to pay the bonds;
- (3) to defray the expense of assessing and collecting the tax; and

(4) to pay principal and interest due to the United States under a contract with the district under which bonds have not been deposited with the United States.

(c) The board shall order money from the fund to be paid out by warrants drawn as provided in this chapter. When funds are paid out, the depository shall receive and cancel the interest coupon or bond paid, and the interest coupon or bond shall be delivered to the board to be cancelled and destroyed. [Acts 1971, 62nd Leg., p. 470, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.519. Investment of Sinking Funds**

The board may invest sinking funds of the district in bonds of the United States, the State of Texas, any county, any incorporated city or town, any independent school district, or any school district authorized to issue bonds, or they may invest the funds in irrigation or water improvement bonds. The board may not purchase any bonds which under their terms would mature subsequent to the maturity date of bonds for which the sinking fund was created.

[Acts 1971, 62nd Leg., p. 470, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.520. Refunding Bonds**

(a) The board of a district which has issued bonds under the provisions of this chapter, by resolution, may issue refunding bonds to replace the original bonds. The refunding bonds may be issued in any amount, in any denomination, and for any period of maturity and may bear any rate of interest provided in the board's resolution.

(b) The refunding bonds shall be issued subject to the limitations provided in this subchapter for the issuance of bonds.

(c) The refunding bonds may be exchanged for the original bonds at the original bonds' face value or at a discount, or the refunding bonds may be sold and the net proceeds applied to the purchase of the original bonds at face value or at a discount.

[Acts 1971, 62nd Leg., p. 470, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.521. Registering Refunding Bonds**

(a) The comptroller may not register any refunding bonds until the original bonds for which the refunding bonds are issued are presented to him for cancellation or until a contract for the purchase of a corresponding number of the original bonds has been entered into and filed with the comptroller.

(b) After the refunding bonds are registered, the comptroller shall keep them in his possession until the original bonds are surrendered to him and cancelled by him, at which time he shall deliver the new bonds to the proper party or parties.

(c) The original bonds may be presented for payment in installments and an equal amount of refunding bonds registered and delivered as provided in this subchapter.

[Acts 1971, 62nd Leg., p. 471, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.522. Issuing Refunding Bonds for the Same Amount and With the Same Maturity Date as the Original Bonds**

(a) Refunding bonds for the same amount and with the same maturity date as the bonds which they are to replace may be authorized by resolution of the board and issued without an election to approve them.

(b) These refunding bonds shall be registered by the comptroller in the manner provided in Section 55.521 of this code after a copy of the resolution providing for the issuance of the refunding bonds and the cancellation of the original bonds is filed with the comptroller.

(c) After the original bonds are cancelled and the refunding bonds are registered by the comptroller, the refunding bonds are valid and binding obligations of the district without further proceedings and have the same force, validity, and effect as the original bonds which they have replaced.

[Acts 1971, 62nd Leg., p. 471, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.523. Issuing Refunding Bonds Which Place a Greater Burden on the District**

If the district issues refunding bonds for a greater amount, for a greater rate of interest, or for a longer period of maturity than the bonds which they are to replace or if the refunding bonds in any other respect create a greater burden on the district, the district shall submit the question of whether or not it should issue the refunding bonds to the voters of the district.

[Acts 1971, 62nd Leg., p. 471, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.524. Law Governing Refunding Bonds**

(a) The provisions of this subchapter governing the election and the issuance, approval, validation, registration, and sale of bonds shall apply to refunding bonds.

(b) Refunding bonds shall be registered and delivered in the manner provided in Section 55.521 of this code.

[Acts 1971, 62nd Leg., p. 471, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.525. Limiting District's Power to Incur Debt**

(a) The board of any district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, may limit the power of the district to incur debt and issue bonds in the manner provided by this subchapter.

(b) The board may adopt a resolution declaring that for a period of not more than 10 years the district may not issue bonds in excess of 25 percent of the assessed value of taxable property of the district according to the last assessment for district purposes.

[Acts 1971, 62nd Leg., p. 472, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.526. Notice of Limitation of Debt**

Once a week for two consecutive weeks in a newspaper published in the district, the board shall

publish notice of the adoption of a resolution to limit the district's power to incur debt. The notice shall state that the resolution will take effect unless a petition against the proposed limitation signed by 10 percent of the qualified property taxpaying electors of the district is presented within 30 days after the first publication of notice.

[Acts 1971, 62nd Leg., p. 472, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.527. Limitation Election

(a) If a petition is filed under Section 55.526 of this code, the limitation of the power to incur debt will not take effect unless it is approved at a general or special election held in the district. The election will be held in the manner provided for holding other general and special elections in the district.

(b) The ballots for the election shall be printed to provide for voting for or against the following proposition: "Limiting during the term of \_\_\_\_\_ years, the maximum debt of the district to 25 percent of the assessed value of the real property."

[Acts 1971, 62nd Leg., p. 472, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.528. Operating Under a Limitation on Power to Incur Debt

(a) If no petition is presented under Section 55.526 of this code or if the limitation on the power to incur debt is approved at the election, the district, during the limitation period, may not issue bonds under any statute or the constitution in excess of the limited amount except to complete construction work for which bonds may be issued within the limitation.

(b) The board shall issue bonds in excess of the limitation to complete these works only after the Texas Water Rights Commission has approved the plans and specifications of the original and uncompleted works together with the estimates of their cost.

[Acts 1971, 62nd Leg., p. 472, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.529. Issuing Bonds in Excess of Debt Limitation

(a) If the plans, specifications, and estimates under Section 55.528 of this code are approved by the Texas Water Rights Commission, the district shall publish notice once a week for three weeks that it intends to issue bonds in excess of the debt limitation to complete the works. The notice shall include the amount of the proposed bond issue and the time when a hearing will be held.

(b) The hearing to issue the additional bonds shall be held not less than 30 days from the date of the first publication of notice, and any property taxpayer, bondholder or other creditor, or interested person may appear and be heard.

(c) If the determination after the hearing is to issue the bonds in the amount stated in the notice, the question of whether or not the bonds should be issued shall be submitted to the voters of the district at an election held in the manner provided by law.

[Acts 1971, 62nd Leg., p. 472, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.530. Additional Projects For the District

(a) After district bonds have been authorized or issued or after a contract with the United States has been authorized or executed, if the board thinks it is necessary, it may authorize:

- (1) modifications in the district and its improvements;
- (2) purchase or construction of additional improvements and issuance of additional bonds based on the engineer's report; or
- (3) a supplemental contract with the United States.

(b) Before any of the projects under Subsection (a) of this section are undertaken, the board shall enter its findings in the minutes and shall give notice that an election will be held to approve the issuance of bonds or the execution of a contract with the United States. The election shall be held within the time and the returns made and the result determined in the same manner provided for the original bond election.

[Acts 1971, 62nd Leg., p. 473, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.531. Issuance of Additional Bonds

(a) If an election held under Section 55.530 of this code favors the issuance of additional bonds or execution of a contract with the United States, the board may issue the bonds or negotiate and execute a supplemental contract with the United States in the manner provided in this chapter.

(b) If a contract is made with the United States under Section 55.185 of this code and bonds are not deposited with the United States, the district is not required to issue bonds, and if the district is required to raise funds in addition to the amount of the contract, the district shall issue the bonds only for the additional amount which is needed.

[Acts 1971, 62nd Leg., p. 473, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.532. Funds to Repair Damaged Improvements

(a) If improvements of the district are damaged, the district may issue bonds or notes to secure funds to repair the damage.

(b) The district's notes may not be for a term of more than 20 years. The board may issue the notes in serial form to mature in installments.

(c) Before the notes are issued, the board shall order an election to be held to approve the issuance of the notes and shall give notice of the election in the manner provided for bond elections. The notice shall include the purpose for which the notes are being issued, the rate of interest, the term of the notes, and the time and place of the election.

(d) The ballots for the election shall be printed to provide for voting for or against the following proposition: "Issuance of notes."

(e) The election shall be held and returns made and canvassed in the manner provided for bond elections.

(f) If two-thirds of the persons voting in the election vote in favor of issuing the bonds, the board may issue and sell the bonds for the benefit of the district.

(g) When the notes are issued or sold, the board shall levy a tax to pay interest on the bonds and to create a sinking fund sufficient to pay the interest and the notes before they mature.

[Acts 1971, 62nd Leg., p. 473, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.533. Preferred Lien in Favor of the United States**

A lien for the payments due the United States under a contract between the district and the United States under which bonds have not been deposited with the United States shall be a preferred lien to that of any issue of bonds or any series of any issue of bonds subsequent to the date of the contract.

[Acts 1971, 62nd Leg., p. 474, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.534. Default in Paying Principal and Interest on Bonds by a District Obtaining Its Water Supply From the United States**

(a) If a district which obtains its water supply from the United States defaults in the payment of principal and interest on bonds issued by the district, the board, if it considers it advisable, may authorize the issuance of bonds to fund or refund the debt including bonds, debt and accrued interest on debt, and interest on notes lawfully issued to pay for construction or acquisition of irrigation and drainage works.

(b) Before any bonds are issued under this section, the district shall submit to the voters of the district the question of whether or not the bonds should be issued.

(c) The board may issue the bonds either in serial form or in a form which provides for annual payment of principal and interest in a single amount, represented by coupons, and the board may prescribe the form and contents of the bonds and coupons. Amortization of both principal and interest on the bonds shall be accomplished in not more than 40 years from the date the bonds are issued.

(d) If bonds are issued in serial form, they shall be numbered consecutively beginning with one and continuing in numerical order. The bonds shall mature serially in annual amounts which are approximately equal. The board may set the bonds to not less than 5 years nor more than 40 years.

(e) If the bonds provide for the annual payment of principal and interest in a single amount which is represented by coupons, the coupons for the first five years may be for any amount which in the judgment of the board is economically sound and within the ability of the district to pay. For the remainder of the term of the bonds, the coupons shall be paid annually in equal amounts which are sufficient to liquidate the remainder of the bonds within 40 years from the date the bonds were issued.

(f) Any funding or refunding bonds issued under this section shall be negotiable.

(g) The district is not bound by the provisions of Sections 55.504–55.505 of this code, and the exercise of the provisions of those sections is left to the discretion of the board. If a suit is instituted, the suit is subject to the provisions and governed by the statutes relating to these suits.

(h) Except as otherwise provided in this section, the laws governing the issuance of bonds and the form and contents of bonds shall apply to bonds issued under this section.

[Acts 1971, 62nd Leg., p. 474, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.535 to 55.580 reserved for expansion]

**SUBCHAPTER M. AD VALOREM TAXATION**

**§ 55.581. Assessor and Collector to Make Assessment**

As soon as the assessor and collector has qualified, he shall make an assessment of all taxable property in the district and shall make another assessment each year.

[Acts 1971, 62nd Leg., p. 475, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.582. Assessment Date**

The assessment shall be made on all taxable property in the district on January 1 of each year and shall be completed and the lists and books ready for delivery on or before June 1 of each year.

[Acts 1971, 62nd Leg., p. 475, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.583. Contents of Assessment**

(a) Each assessment shall be made on blanks provided by the board.

(b) The assessment shall include a full statement of all taxable property in the district which is owned by the party who renders it and a statement of the value of the property.

(c) An affidavit made by the owner or agent rendering the property shall be attached to the assessment. The affidavit shall state that the assessment or rendition contains a true and complete statement of all property which is owned by the person who is making the rendition and which is subject to district, county, and state taxation.

(d) In addition to assessments or renditions made by the property owners or agents of property owners, the assessor and collector shall make a similar list of all property in the district subject to county and state taxation which has not been rendered for taxation.

[Acts 1971, 62nd Leg., p. 475, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.584. Rendition of Taxable Property**

(a) Each person who owns taxable property in the district shall render the property for taxation. The property owner shall make the rendition on or before June 1 of each year unless the assessor and collector requests it before that date.

(b) Civil and penal laws relating to securing the rendition of property for state and county taxes and providing penalties for failure to render the property apply to all persons owning or holding property in the district.

(c) The assessor and collector may administer oaths to carry out fully the provisions of this section. [Acts 1971, 62nd Leg., p. 475, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.585. Board of Equalization

(a) The board, at its first meeting or as soon after its first meeting as practicable, shall appoint three commissioners to compose the board of equalization for the district. The board shall appoint members to the board of equalization on an annual basis, and any person appointed shall be an elector of the district.

(b) At the meeting at which the initial commissioners are appointed, the board shall set the time for the first meeting of the board of equalization, and the board of equalization shall meet at this time to receive the assessment lists or books of the assessor and collector for examination, correction, equalization, appraisal, and approval.

(c) The secretary of the board of directors shall act as secretary of the board of equalization at all its meetings and shall keep a permanent record of all the proceedings.

(d) Instead of appointing the board of equalization under Subsection (a) of this section, the board, at its option, may enter on its minutes a resolution constituting itself as the board of equalization for the district. The board of equalization constituted under this subsection shall have the same powers, duties, and responsibilities delegated to a board of equalization constituted under Subsection (a) of this section.

[Acts 1971, 62nd Leg., p. 475, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.586. Oath

Before assuming the duties of the board of equalization, each member shall subscribe to the following oath: "I \_\_\_\_\_ do solemnly swear (or affirm) that I will, to the best of my ability, make a full and complete examination, correction, equalization, and appraisal of all property contained in the district, as shown by the assessment lists or books of the assessor and collector of the district, and add thereto all property not included therein of which I have knowledge." The secretary shall enter the oath in the minutes.

[Acts 1971, 62nd Leg., p. 476, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.587. Compensation of Board of Equalization and Secretary

Members of the board of equalization and secretary to the board of equalization are entitled to receive the compensation for their services which is fixed by the board. The compensation for each person may not be more than \$6 a day for the time he actually engages in the discharge of his duties. [Acts 1971, 62nd Leg., p. 476, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.588. Examination and Correction of Assessment Lists

(a) The board of equalization shall have the assessor and collector furnish all the assessment lists or books for the district so that the board may examine them to determine that each person has rendered his property at full value.

(b) The board of equalization may send for persons and papers and may administer oaths and qualify persons to testify in an effort to determine the value of the property.

(c) If the board of equalization finds that the property valuation is too high, it shall lower the valuation; and if the board of equalization finds that the property valuation is too low it shall raise the valuation.

(d) The board of equalization may correct any errors that appear on the assessor and collector's lists or books and may add any property which was omitted.

[Acts 1971, 62nd Leg., p. 476, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.589. Determination of Assessment and Appeal

(a) The board of equalization shall equalize the value of all property in the district as nearly as possible. In making the determination, the board shall consider the location of the property and the improvements situated on the property.

(b) Before final action is taken by the board of equalization, any person may file a complaint to the assessment of his or any other person's property. The board of equalization shall hear the complaint, and the complainant may examine witnesses to sustain the complaint to the assessment of the property or the failure to render any property which has not been properly assessed.

[Acts 1971, 62nd Leg., p. 476, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.590. Furnishing Lists of Persons Who Refuse to Take Oath or Fail or Refuse to Render Property

(a) The assessor and collector shall furnish to the board of equalization, at the time he delivers his lists and books, a certified list of the names of all persons who refuse to swear to or sign the oath or who fail or refuse to list their property.

(b) The board shall examine the list and appraise the property listed by the assessor and collector. [Acts 1971, 62nd Leg., p. 477, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.591. Contesting Increased Assessments and Addition of Land to Tax List

(a) After the board of equalization has examined fully the lists and corrected all errors, if it raises the valuation of any property appearing on the lists or books of the assessor and collector or adds property to the lists or books, it shall adjourn for not less than 10 nor more than 15 days. The board of equalization shall then reconvene to hear from any person whose property valuation was raised or whose property was added to the lists or books. The date on which the

board of equalization will reconvene shall be set in the order of adjournment.

(b) The board of equalization shall have the secretary give written notice of the date on which it will reconvene to any owner of property whose valuation was increased or whose property was added to the list or the person who rendered the property. The notice may be served by mail.

(c) The owner or person rendering the property may appear before the board of equalization when it reconvenes and show cause why the valuation should not be raised or the property should not be added to the list.

[Acts 1971, 62nd Leg., p. 477, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.592. Meeting to Hear Persons Whose Property Valuation is Raised**

The board of equalization shall meet at the time specified in the order under Section 55.591 of this code and shall hear any person whose property valuation has been raised. If the board of equalization decides that it has raised the valuation too high, it shall lower the valuation to the proper level.

[Acts 1971, 62nd Leg., p. 477, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.593. Returning Lists of Equalized Property**

After the board of equalization has examined and equalized the value of all property on the assessor and collector's lists or books, it shall approve the lists or books and return them together with the lists of unrendered property to the assessor and collector, who shall use them to make the general tax rolls.

[Acts 1971, 62nd Leg., p. 477, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.594. Approving General Tax Rolls**

After the general tax rolls are completed, the board of equalization shall reconvene to examine the rolls and approve them if they are correct. The action of the board of equalization is final and is not subject to revision by the board of equalization or any other tribunal.

[Acts 1971, 62nd Leg., p. 477, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.595. Dates for Equalization of Taxes and Preparation of Tax Roll**

(a) After the initial meeting, the board of equalization shall meet annually on the first Monday in June of each year to receive the assessment lists or books for examination, correction, equalization, appraisal, and approval and for addition of any property which is unrendered.

(b) The board of equalization shall complete and deliver the lists and rolls to the assessor and collector by the third Monday in July of the same year.

(c) The assessor and collector shall complete the tax rolls and the board of equalization shall approve the tax rolls and return them to the assessor and collector by the first Monday in October of each year.

[Acts 1971, 62nd Leg., p. 478, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.596. Permanent Tax Rolls**

(a) After the assessment lists and books are approved by the board of equalization and returned to the assessor and collector, he shall compile the assessment of all taxable property in the district on duplicate tax rolls.

(b) After these tax rolls are approved by the board of equalization, one copy of the tax roll shall be retained in the office of the assessor and collector and one copy shall be delivered to the board which shall keep it as a permanent record.

[Acts 1971, 62nd Leg., p. 478, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.597. Retaining Lists and Books as Permanent Records**

The assessor and collector shall have all the lists and books substantially bound and shall keep them as a permanent record of his office. The assessor and collector shall deliver the bound lists and books together with the other records of his office to his successor, after the successor is elected and has qualified, or if a vacancy occurs in the office of assessor and collector, the records shall be delivered to the board.

[Acts 1971, 62nd Leg., p. 478, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.598. Duty to Collect and Deposit Taxes and Make Report**

(a) The assessor and collector shall collect all taxes which are owed to the district and shall, at the end of each week, pay all the money which has been collected by him to the district depository.

(b) On the fourth Saturday in each month, the assessor and collector shall report to the board all money which has been collected by him and paid to the depository.

[Acts 1971, 62nd Leg., p. 478, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.599. Date Taxes are Due**

Taxes levied under this subchapter are due on November 1 of each year and shall be paid before the following February 1.

[Acts 1971, 62nd Leg., p. 478, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.600. Tax Office**

For the convenience of district taxpayers, the assessor and collector shall maintain an office with the board. The office shall serve as a place where taxes may be paid.

[Acts 1971, 62nd Leg., p. 478, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.601. Additional Duties of the Assessor and Collector**

The board may prescribe other duties for the assessor and collector which duties shall be performed in the manner prescribed in the board's rules and regulations.

[Acts 1971, 62nd Leg., p. 479, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.602. Records of Tax Collections**

(a) The board shall charge the assessor and collector with the total assessment which is shown by the

assessment rolls. The charge shall be kept in a permanent finance ledger kept for that purpose.

(b) The assessor and collector shall receive proper credit for all money paid to the district depository as shown by the monthly reports.

(c) On the final settlement, the assessor and collector shall make a full and complete report of all taxes which have not been collected, and this report shall be audited by the board and proper credit shall be given for the unpaid taxes. The final annual settlement shall be made on the first Monday in September of each year.

[Acts 1971, 62nd Leg., p. 479, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.603. Delinquent Tax Liens

(a) Any land or property against which delinquent taxes are due shall have a lien against it for the payment of the delinquent taxes.

(b) The district may file suit to enforce the lien against any land or other property.

(c) If the person who is the record owner of the land or other property on the date the suit is filed is made a party to the suit and receives proper notice, the land may be sold under a judgment of the court to recover the taxes, interest, penalty, and the costs due for any preceding years even if the owner is unknown, the land is listed in the name of a person who is not the owner, or the ownership changes.

(d) Any laws providing for a period of limitation on debt or actions do not apply to taxes accruing after the district is created.

[Acts 1971, 62nd Leg., p. 479, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.604. Assessment Liens

Assessments made by the board for maintenance and operation of the district are liens against the land on which the assessments were made and remain liens on the land until the assessments are paid. No law which provides for a period of limitation against actions for debt shall apply under this section, and these debts cannot be barred by limitation.

[Acts 1971, 62nd Leg., p. 479, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.605. Interest and Penalty on Delinquent Taxes

(a) If any person fails or refuses to pay the taxes on his property until after January 31 following the return of the assessment roll of the district, a penalty of 10 percent on the entire amount of the delinquent taxes shall be collected and paid to the district.

(b) Delinquent taxes and penalties shall bear interest from August 1 after they become due at a rate of six percent a year.

[Acts 1971, 62nd Leg., p. 479, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.606. Collection of Delinquent Taxes

The assessor and collector of taxes, using the tax roll, shall sell enough of the personal property to

produce a sufficient amount to pay the taxes together with the penalty, interest, and costs. If the assessor and collector cannot find any personal property to sell, he shall prepare and file with the secretary of the district the delinquent tax list provided in Section 55.608 of this code, charging against the property all taxes, interest, and penalties assessed against it and the owner.

[Acts 1971, 62nd Leg., p. 479, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.607. Delinquent Tax Roll

(a) The board shall have the assessor and collector prepare or shall have prepared at the expense of the district a list of all land in the district on which taxes are unpaid on January 31 of each year. This list shall be called the delinquent tax roll.

(b) The delinquent tax roll shall be delivered to the secretary of the district to be kept as part of the records in his office.

(c) The delinquent tax roll shall include a sufficient description to identify property on which delinquent taxes are due. The description may be made by reference to lot or block number.

[Acts 1971, 62nd Leg., p. 480, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.608. Recording Delinquent Tax Roll

When the board receives the delinquent tax roll, it shall record the roll in a book which is labeled, "The Delinquent Tax Record of \_\_\_\_\_ County, Water Improvement District No. \_\_\_\_\_", and shall include with the tax roll an index which shall contain the names of all delinquent taxpayers in alphabetical order.

[Acts 1971, 62nd Leg., p. 480, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.609. Publication of Delinquent Tax Record

(a) On completion of the delinquent tax record by the district, the board shall publish the record once a week for three consecutive weeks in a newspaper published in the county in which the district is located.

(b) If there is no newspaper published in the county in which the district is located, the board shall enter into a contract with a newspaper outside the district to publish the notice. The district may pay a publisher's fee of not more than 25 cents for each tract of land advertised.

(c) Publication may be proven by an affidavit which specifies the time when the record was published and which is signed by the proprietor of the newspaper, the foreman, or the principal clerk of the newspaper. The affidavit shall be attached to a copy of the publication.

[Acts 1971, 62nd Leg., p. 480, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1768, ch. 518, § 6, eff. May 31, 1971.]

#### § 55.610. Suit to Collect Delinquent Taxes

(a) Twenty days after notice is published under Section 55.609 of this code or as soon after that time

as practicable, the board shall employ an attorney to bring suit to collect all taxes, interest, penalty, and costs due on the land. The suit shall be brought in the name of the district in the district court of the county in which the district is located.

(b) The petition

(1) shall describe the land on which taxes and penalties remain unpaid;

(2) shall state the total amount of taxes and penalties due on the land with interest computed to the time of sale at a rate of six percent a year;

(3) shall request judgment for the amount stated;

(4) shall request that the lien against the land be fixed, established, and foreclosed and that the land be sold to satisfy the judgment for taxes, interest, penalty, and costs; and

(5) shall request other relief to which the district is entitled under the law and facts.

(c) Suits to enforce the collection of taxes under this section shall have priority over all other suits pending in the district court.

[Acts 1971, 62nd Leg., p. 480, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.611. Publication Not Prerequisite to Filing Tax Suit**

The publication of the delinquent tax rolls is not a prerequisite to filing tax suits, and the suits may be filed without publication of the notice.

[Acts 1971, 62nd Leg., p. 481, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.612. Conduct of Foreclosure Suit**

The proper persons shall be made defendants in foreclosure suits and shall have process served on them in the manner provided by law for other suits of the same kind. In case of foreclosure, an order of sale shall be issued in the manner provided for other foreclosure suits.

[Acts 1971, 62nd Leg., p. 481, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.613. Redeeming Lands on Which Delinquent Taxes are Owed**

Any delinquent taxpayer whose land has been returned delinquent or anyone who has an interest in the land may redeem the land at any time before it is sold under the provisions of this subchapter. The land may be redeemed by paying to the assessor and collector the taxes due on the land together with interest, penalty, and costs.

[Acts 1971, 62nd Leg., p. 481, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.614. Sale of Foreclosed Land in Several Small Tracts**

If the defendant or his attorney, at any time before the land is sold, shall file with the sheriff or other officer who has an order to sell the land a written request that the land be divided and sold in several tracts, the sheriff or other officer shall sell only as many tracts as may be necessary to satisfy the judgment, interest, penalties, and cost. The

written request shall include a description of the division which the defendant requests, and the defendant's divisions shall be adopted if it is reasonable.

[Acts 1971, 62nd Leg., p. 481, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.615. Disposition of Excess Sale Price**

After the payment of taxes, interest, penalties, and costs from the money obtained at a sale of land on which a judgment of foreclosure has been made, the sheriff or other officer executing the order of sale shall pay to the defendant or his attorney any remaining portion of the money obtained at the sale.

[Acts 1971, 62nd Leg., p. 481, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.616. Deed for Land Sold for Delinquent Taxes**

After land is sold to pay delinquent taxes, the sheriff or other officer selling the land or his successor in office may give a deed for the land sold to the purchaser or to any other person designated by the purchaser. The deed shall be held by any court in this state to vest a good and perfect title in the purchaser of the land, and the title may be impeached only for actual fraud.

[Acts 1971, 62nd Leg., p. 481, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.617. Attorneys' Compensation**

The attorneys who represent the district in suits against delinquent taxpayers are entitled to receive from the delinquent taxes collected the compensation fixed by the board. The compensation paid to the attorneys shall not be more than 15 percent of the amount of delinquent taxes collected.

[Acts 1971, 62nd Leg., p. 482, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.618. Attorney's Fees Added to Taxes**

If a district employs an attorney to collect delinquent taxes, the attorney's fee fixed under Section 55.616<sup>1</sup> of this code shall be added as collection fees to the taxes in an amount of not more than 10 percent of the delinquent taxes as collection. These fees may be recovered in the judgment rendered in the delinquent tax suit.

[Acts 1971, 62nd Leg., p. 482, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Possibly should read 55.617.

**§ 55.619. Fees of Other Officers**

The sheriff, district clerk, and other officers executing any writ or performing any service in the foreclosure of delinquent taxes on land in the district are entitled to receive for their services the same fees provided by law for the same services performed in the discharge of their official duties.

[Acts 1971, 62nd Leg., p. 482, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.620. General Powers and Regulations**

(a) No district may become a party to, purchase, hold under, assign, seek to enforce, or receive benefits from a contract between a landowner and a private canal company which was entered into before the district was created. Rights and privileges owned or possessed by the district are those arising or inherent in the district under this chapter.

(b) The district may not:

(1) acquire or enforce any lien against the land which was fixed by a contract entered into before the district was created;

(2) prosecute or have prosecuted any suit to recover water taxes or assessments which accrued before the district was created;

(3) foreclose any lien on land for unpaid water taxes or assessments which accrued before the district was created;

(4) avail itself of any rights under a private contract relating to the land which contract was entered into before the district was created; and

(5) be held liable for the private contract.

(c) The two-year statute of limitation and the provisions of this section may be pleaded as a bar to an action to recover water rents or other assessments which accrued on land in the district before the district was created.

[Acts 1971, 62nd Leg., p. 482, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.621. Alternative Method of Assessment and Equalization**

(a) Any district assessing taxes on the ad valorem basis may adopt the county assessments and equalization of values on property as a basis for the levy and collection of district taxes.

(b) The district may obtain from the assessor and collector of the county a list of tax renditions covering property in the district and may have the assessor and collector for the district use this list as the tax roll for the district instead of making an independent assessment.

[Acts 1971, 62nd Leg., p. 482, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.622. Authorizing County to Assume Collection of District Taxes**

(a) If officers of a district fail to perform and discharge their duties to assess and evaluate property in the district and collect taxes, any bondholder or other person interested in the district and the payment of its obligations may request the commissioners court to order the assessor and collector of the county to perform the duties provided in Section 55.623 of this code.

(b) The commissioners court shall investigate the matter, and if it finds the alleged conditions to exist, it shall enter an order directing the assessor and collector of the county to proceed to collect the taxes. No assessor and collector of a county may collect taxes for a district until ordered to do so by the commissioners court.

(c) If a dispute arises over whether or not the district officers are performing their duties, the dispute shall be determined by a suit against the officers in the district court for a writ of mandamus or an injunction to prevent the officers from interfering with the collection of the taxes and the payment of the obligations by the assessor and collector of the county and the commissioners court. A decision of

the district court may be appealed to the court of civil appeals whose judgment is final.

(d) The provisions of Sections 55.622 and 55.623 of this code do not authorize anyone to interfere with the district officers if they are actively discharging their duties, but if the officers fail to perform their duties or a vacancy occurs in the offices, the duties in these sections shall be exercised.

[Acts 1971, 62nd Leg., p. 483, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.623. Assessor and Collector of County to Collect Taxes**

(a) If the assessor and collector for the district and the district directors fail or refuse to properly assess property, equalize tax values, and prepare a tax roll, taxes levied at the time bonds or other obligations of the district are issued shall be collected by the assessor and collector for the county by entering on his rolls the tax against all property located in the district for the year or years which the officers failed to perform their duties.

(b) If the tax levy is not sufficient because of decreased valuations, they shall be increased by order of the commissioners court.

(c) Taxes collected under this section shall be deposited in the county depository in a special fund devoted to the payment of principal of and interest on the bonds or other obligations and the money shall be paid from the fund on order of the commissioners court.

(d) If the assessor and collector of the county fails or refuses to perform the duties under this section, any holder of the bonds and obligations may seek a writ of mandamus in a court of competent jurisdiction to compel the assessor and collector of the county to perform the duties.

(e) The assessor and collector of the county is entitled to receive for his services under this section a reasonable fee fixed by the commissioners court in an amount not to exceed the rate of compensation provided by law for the performance of similar duties in the collection of county taxes.

[Acts 1971, 62nd Leg., p. 483, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.624. Districts in Two or More Counties**

If a district includes territory in two or more counties, the duties provided in Sections 55.622 and 55.623 of this code shall be performed by the assessor and collector of each county and the commissioners court of each county for property located in their respective counties.

[Acts 1971, 62nd Leg., p. 483, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.625 to 55.650 reserved for expansion]

**SUBCHAPTER N. TAXATION ON A BENEFIT BASIS**

**§ 55.651. Election to Determine Method of Taxation**

(a) A district which operates under the provisions of Article XVI, Section 59, of the Texas Constitu-

tion, may, at the time the district is created or before bonds are issued, submit to the voters of the district the question of whether the district will levy, assess, and collect taxes on the ad valorem basis or on the benefit basis.

(b) The question shall be presented to the voters at the time and in the manner provided by the board.

(c) The ballots for the election shall be printed to provide for voting for or against the following proposition: "The levy of taxes on the benefit basis instead of the ad valorem basis."

(d) The election shall be governed by the provisions of this chapter.

(e) If a majority of the persons voting in the election favor the proposition, the district shall levy, assess, and collect its taxes on the benefit basis. [Acts 1971, 62nd Leg., p. 484, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.652. Assessment Record**

When necessary, the board shall apportion and assess the benefits conferred on property in the district and shall make a record showing the amount and value of benefits to accrue on property in the district and the amount of taxes to be levied and collected on the property. No taxes assessed or adjudged against the property may be more than the benefit which accrues to the property from the organization, operation, and maintenance of the district and its improvements.

[Acts 1971, 62nd Leg., p. 484, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.653. Notice of Taxes**

After the board makes the record specified in Section 55.652 of this code, the board shall mail to each property owner whose name appears in the record, notice of the amount of taxes levied on his property and the date and place at which the property owner may appear and contest the correctness and equitableness of the tax.

[Acts 1971, 62nd Leg., p. 484, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.654. Decision After Hearing**

After the hearing, the board shall determine whether or not the tax is equitable and shall sustain, reduce, or increase the tax to an amount which in the board's judgment is equitable.

[Acts 1971, 62nd Leg., p. 484, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.655. Applicable Law**

The provisions of this chapter relating to levy, assessment, and collection of taxes which are not inconsistent with the provisions of this subchapter shall apply.

[Acts 1971, 62nd Leg., p. 484, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.656. Districts Adopting Benefit Plan of Taxation**

In any district other than a district operating under a contract with the United States which is operating under the provisions of Article XVI, Sec-

tion 59, of the Texas Constitution, and which adopted the assessment of benefit plan of taxation, tax values shall be fixed, levied, assessed, equalized, and collected in the manner provided in Sections 55.657-55.669 of this code.

[Acts 1971, 62nd Leg., p. 484, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.657. Commissioners of Appraisalment**

As soon as practicable after the approval of the engineer's report and the adoption of the plan for improvements to be constructed, the board shall appoint three disinterested commissioners of appraisalment. The commissioners shall be freeholders but not owners of land within the district which they represent.

[Acts 1971, 62nd Leg., p. 485, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.658. Compensation of Commissioners**

On approval by the board, each commissioner is entitled to receive \$10 a day for each day he actually serves, plus all necessary expenses.

[Acts 1971, 62nd Leg., p. 485, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.659. Notice of Appointment and Meeting**

Immediately after the commissioners of appraisalment are appointed, the secretary of the board shall give written notice to each appointee of his appointment and of the time and place of the first meeting of the commissioners.

[Acts 1971, 62nd Leg., p. 485, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.660. First Meeting of Commissioners**

(a) The commissioners shall meet at the time specified in the notice from the secretary or as soon thereafter as possible.

(b) At the meeting the commissioners shall take an oath to faithfully and impartially discharge their duties as commissioners and make a true report of the work which they perform. They shall then organize by electing one commissioner as chairman and one commissioner as vice-chairman.

(c) The secretary of the board or, in his absence, a person appointed by the board shall serve as secretary to the commissioners of appraisalment and shall furnish to the commissioners any information and assistance which is necessary for the commissioners to perform their duties.

[Acts 1971, 62nd Leg., p. 485, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.661. Assistance For Commissioners**

Within 30 days after the commissioners qualify and organize, they shall begin to perform their duties, and in the exercise of their duties, they may obtain legal advice and information relative to their duties from the district's attorney and, if necessary, may require the presence of the district engineer or one of his assistants at any time and for as long as necessary to properly perform their duties.

[Acts 1971, 62nd Leg., p. 485, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.662. Viewing Land and Other Property and Improvements in District**

The commissioners shall view the land in the district which will be affected by the district's reclamation plans and the public roads, railroads, rights-of-way, and other property and improvements located in the district and shall assess the amount of the benefits and damages that will accrue to the land, roads, railroads, rights-of-way, or other property or improvements in the district from the construction of the improvements.

[Acts 1971, 62nd Leg., p. 485, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.663. Commissioners Report**

(a) The commissioners shall prepare a report and file it with the secretary of the board. The report shall be signed by at least a majority of the commissioners.

(b) The report shall include:

- (1) the name of the owner of each tract of land which is subject to assessment;
- (2) a description of the property;
- (3) the amount of the benefits or damages assessed on each tract of land;
- (4) the time and place at which a hearing will be held on the report to hear objections; and
- (5) the number of days each commissioner served and the actual expenses incurred during his service as commissioner.

(c) The date set in the report for the hearing may not be earlier than 20 days after the report is filed.  
[Acts 1971, 62nd Leg., p. 486, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.664. Notice of Hearing**

(a) After the commissioners' report is filed, the secretary of the board shall publish notice of the hearing on the report at least once a week for two consecutive weeks in a newspaper published in each county in which part of the district is located. The secretary also shall mail written notice of the hearing to each person whose property will be affected if his address is known.

(b) The notice shall state:

- (1) the time and place of the hearing;
- (2) that the commissioners' report has been filed;
- (3) that interested persons may examine the report and make objections to it; and
- (4) that the commissioners will meet at the time and place indicated to hear and act on objections to the report.

(c) On the day of the hearing, the secretary shall file in his office the original notice and his affidavit stating the manner of publication, the names of persons to whom notice was mailed, and the names of persons to whom notice was not mailed because the secretary by reasonable diligence could not ascertain their addresses. Copies of the notice and affidavit also shall be filed with the commissioners

of appraisal and the clerk of the commissioners court.

[Acts 1971, 62nd Leg., p. 486, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.665. Hearing**

(a) At or before the hearing on the commissioners' report, an owner of land which is affected by the report or the reclamation plans may file exceptions to all or part of the report.

(b) At the hearing, the commissioners shall hear and form opinions on the objections submitted and for the objections which are sustained, the commissioners may make necessary changes and modifications in the report.

[Acts 1971, 62nd Leg., p. 486, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.666. Witnesses at the Hearing**

At the hearing, interested parties not only may appear in person or by attorney, but are entitled, on demand, to have the chairman of the commissioners issue process for witnesses. The commissioners shall have the same power as a court of record to enforce the attendance of witnesses.

[Acts 1971, 62nd Leg., p. 486, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.667. Costs of Hearing**

The commissioners may adjudge and apportion the cost of the hearing in any manner they consider equitable.

[Acts 1971, 62nd Leg., p. 487, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.668. Commissioners' Decree**

(a) After the commissioners have made a final decision based on the hearing, they shall issue a decree confirming their report insofar as it remains unchanged, and shall approve and confirm changes in the report.

(b) The final decree and judgment of the commissioners shall be entered in the minutes of the board, and certified copies shall be filed as a permanent record with the county clerk of each county in which part of the district is located and shall be notice to all persons of the contents and purpose of the decree.

(c) The findings of the commissioners which relate to benefits and damages to land and other property in the district are final and conclusive.

[Acts 1971, 62nd Leg., p. 487, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.669. Effect of Final Judgment and Decree**

The final judgment and decree of the commissioners shall form the basis for all taxation in the district. Taxes shall be apportioned and levied on each tract of land and other real property in the district in proportion to the net benefits to the land or other property stated in the final judgment and decree.

[Acts 1971, 62nd Leg., p. 487, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.670. Fixing Tax as Equal Sum on Each Acre**

At the election at which the plan of taxation is determined or at any other time before the bonds are issued, the voters of a district which is not operating under a contract with the United States may vote on the proposition of whether or not benefits for tax purposes shall be fixed as an equal sum on each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. The benefit per acre shall be voted on as it is applied to land in the district that can be irrigated by gravity flow from the irrigation system and also the benefit to land in the district that cannot be irrigated by gravity flow.

[Acts 1971, 62nd Leg., p. 487, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.671. Election**

(a) If the board desires to submit the question of whether or not to adopt the method of assessing benefits provided in Section 55.670 of this code, it shall order an election to be held in the district and shall submit the proposition in the manner provided for other district elections.

(b) The ballots for the election shall be printed to provide for voting for or against: "Uniform assessment of benefits of \$\_\_\_\_\_ per acre on all irrigable land in the district, and the assessment of \$\_\_\_\_\_ per acre on all nonirrigable land in the district."

(c) The board shall determine the amounts which shall fill the spaces in the proposition. The amount of charge per acre may be found by dividing the number of acres of land into the amount of debt to be incurred by the district in providing for irrigation.

(d) If a majority of the persons voting in the election vote in favor of the proposition, it shall be adopted.

[Acts 1971, 62nd Leg., p. 487, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.672. Excluding Nonirrigable Land From District**

If the owner of land which is classed as nonirrigable under the uniform acreage valuation objects to the amount of charges fixed against him by the order calling the election or by the result of the election, he may have his nonirrigable land excluded from the district by filing an application for exclusion as provided by law within 10 days after the election is held.

[Acts 1971, 62nd Leg., p. 488, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.673. Setting Annual Value of Land Unnecessary**

If the district adopts the uniform acreage valuation for taxation, the valuation shall be applied to all land, and it is not necessary for the assessor and collector or the board of equalization to annually fix the value of the land or equalize the values. It is also unnecessary for the board to appoint a commission to ascertain or fix the value of the improvement to particular land.

[Acts 1971, 62nd Leg., p. 488, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.674. Preparing Tax Rolls**

(a) The board of equalization shall examine the renditions and tax rolls to determine if all property subject to taxation appears on the tax rolls under the proper classification. The board of equalization shall add to the tax roll any property which was left off or was not rendered for taxation and shall examine, correct, and certify the tax roll.

(b) Any property owner may protest to the board of equalization that his property has not been properly classified. The board of equalization shall consider the protest, hear evidence, and enter its findings in the minutes in the manner provided by law.

[Acts 1971, 62nd Leg., p. 488, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.675. Rendition of Property**

Land which is taxed on the uniform acreage valuation shall be rendered for taxation as either subject to irrigation or not subject to irrigation. When land is rendered, the value need not be stated, and it is unnecessary for the person rendering the property to include the value of the land in an affidavit or for the assessor to set a value on the land.

[Acts 1971, 62nd Leg., p. 488, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.676. Law Governing Administration of Benefit Tax Plan**

The rate of taxation, the collection of taxes, the assessment of property, and the rendition of property for taxation shall be governed by the law relating to ad valorem taxes.

[Acts 1971, 62nd Leg., p. 488, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.677. Irrigating Nonirrigable Land**

If land which is classed as nonirrigable is later irrigated by the district, before the owner of the land receives the water, he shall pay to the district an amount equal to the entire amount that would have been charged to the owner if the land had been originally classed as irrigable.

[Acts 1971, 62nd Leg., p. 488, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.678 to 55.710 reserved for expansion]

**SUBCHAPTER O. ADDING AND EXCLUDING TERRITORY, AND CONSOLIDATING DISTRICTS**

**§ 55.711. Excluding Land by Order of Directors**

Prior to the issuance of bonds or other fixed obligations by the district, the district may exclude from the district land included within its boundaries that cannot be irrigated by gravity flow from the irrigation system as constructed.

[Acts 1971, 62nd Leg., p. 489, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.712. Director's Order**

The board shall enter an order in its minutes specifying the land and the owners of the land to be excluded and declaring the land to be in a position

that prevents it from being irrigated by gravity flow from the canals constructed or to be constructed. [Acts 1971, 62nd Leg., p. 489, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.713. Notice of Order

Within 10 days after the board's order excluding land from the district is made and entered in the minutes, notice of the order shall be given by publishing a copy of the order once a week for two weeks in a newspaper of general circulation in the county in which the land is located.

[Acts 1971, 62nd Leg., p. 489, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.714. Protest by Owners

(a) If a protest to the exclusion is not filed with the board within 15 days after the final publication of notice, the board's order shall become final on all land included in the order whose owners have not filed a protest.

(b) If the owner of land or any part of land included in the board's order shall file a protest with the board contesting the exclusion of the land and requesting the board not to take the land out of the district, the board shall annul the part of the order which relates to the land, and the land shall remain in the district.

[Acts 1971, 62nd Leg., p. 489, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.715. Returning Excluded Land to a District

If land is excluded from a district by order of the board and later the district desires to return the land to the district, the land may be included in the district on application of the owners of the land in the manner provided by this subchapter for adding lands to an established district.

[Acts 1971, 62nd Leg., p. 489, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.716. Excluding Land by Petition of Landowner

Before the issuance of bonds by the district, the owner of any land included in the district may file a petition with the board requesting that land owned by him be excluded from the district. The petition shall describe the lands which the petitioners desire to have excluded by metes and bounds and the petition must be acknowledged in the manner and form required by law for the conveyance of real estate.

[Acts 1971, 62nd Leg., p. 489, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.717. Petition

When the petition to exclude land from the district is filed with the board, the board shall immediately set the date of the hearing on the petition. The hearing shall be not later than 20 days from the date the petition is filed.

[Acts 1971, 62nd Leg., p. 489, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.718. Notice of Hearing

The board shall give notice of the hearing on a petition to exclude land by posting written or print-

ed notices of the time and place of the hearing at three public places in the district. The notice shall contain a copy of the petition for exclusion and shall be posted for at least eight days before the hearing. [Acts 1971, 62nd Leg., p. 490, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.719. Hearing

(a) At the hearing, the board shall hear the petition and all objections to the petition to determine whether or not all or part of the land should remain in the district or be excluded from it.

(b) During the course of a hearing, the board may adjourn the hearing from time to time.

(c) If the board finds that all or part of the land cannot be irrigated by gravity flow from the irrigation system as constructed or to be constructed, or if they find for other reasons that the land should be excluded, they shall grant the petition in whole or in part.

[Acts 1971, 62nd Leg., p. 490, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.720. Rights of Excluded Land and Owners

If the board finds that land should be excluded from the district, the excluded land and the owners of excluded land waive all right to receive water from the district or from the irrigation system of the district.

[Acts 1971, 62nd Leg., p. 490, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.721. Exclusion of Nonagricultural and Nonirrigable Land From District

Land located in the district which is classified as nonagricultural and nonirrigable may be excluded from the district in the manner provided in Sections 51.702-51.713 of this code.

[Acts 1971, 62nd Leg., p. 490, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.722. Directors' Resolution Excluding Land in or Near a City

When there is inside the district land lying inside or adjoining the territorial limits of an incorporated city or town which was not included in the district at the time the district was created, and when the land has been subdivided into town lots and blocks, with streets or other thoroughfares dedicated to the use of the public, and when a map and the dedication have been filed for record with the county clerk of the county in which the land is located, the board of the district may by resolution discontinue the land as a part of the district. When the resolution is passed, the secretary of the district shall enter it in the minutes of the board of directors of the district, and from that time, the territory is excluded from the district and is no longer entitled to be served with water by the district.

[Acts 1971, 62nd Leg., p. 490, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.723. Owners' Petition to Exclude Land

The owner or owners of the fee of land containing at least 10 acres inside a district, may file a petition with the board asking that the land be excluded

from the district. The petition must describe the land by metes and bounds. When the petition is filed with the secretary of the district, the board shall order an election to be held at convenient places in the district within 30 days. If a majority of the qualified electors of the district who vote in the election vote to discontinue the land as a part of the district, the board by order shall declare the land to be excluded from the district. The order must be entered in the minutes of the board. After the order is entered, the land is excluded from the district and is no longer entitled to be served with water by the district.

[Acts 1971, 62nd Leg., p. 490, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.724. Taxes on Excluded Land**

If land is excluded from a district at a time when the district has outstanding debt, the excluded land is not released from the payment of its pro rata share of the indebtedness. The district shall continue to levy taxes each year on the property at the same rate levied on other property of the district, until the taxes collected from the excluded land equals its pro rata share of the indebtedness of the district at the time of the exclusion of the land. The taxes so collected shall be charged only with the cost of levying and collecting the taxes, and shall be applied exclusively to the payment of the pro rata share of the indebtedness. The owner of all or part of the excluded land may pay in full, at any time, his pro rata share of the indebtedness, both principal and interest, of the district.

[Acts 1971, 62nd Leg., p. 491, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.725. Adding Land by Petition of Landowner**

The owner or owners of land in the vicinity of the district may file a written petition with the board requesting that the land described by metes and bounds in the petition be included in the district.

[Acts 1971, 62nd Leg., p. 491, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.726. Survey of Land to be Added**

When the petition to include land in the district is filed with the board, they shall have a survey made of the land described in the petition and the boundaries marked on the ground.

[Acts 1971, 62nd Leg., p. 491, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.727. Annexation Authority**

The directors may include in the district the land described in the petition if it can be irrigated without impairing the irrigation rights of any of the land already in the district.

[Acts 1971, 62nd Leg., p. 491, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.728. Liability of Included Land**

If the land described in the petition is included in the district, the land shall immediately become liable for its proportionate share of taxes or bonded indebtedness which has been created against the district and for a reasonable assessment by the board to

pay part of maintenance, operation or other necessary expenses.

[Acts 1971, 62nd Leg., p. 491, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.729. Petition and Order by Directors Recorded**

If the land described in the petition is included in the district, the petition for inclusion must be signed and acknowledged in the manner provided for acknowledging deeds, and the petition and the order of the board including the land in the district must be recorded in the deed records of the county in which the district is located.

[Acts 1971, 62nd Leg., p. 491, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.730. Adding Land by Petition of 50 Landowners of the Territory**

Landowners of a defined area of territory not included in a district may file a petition with the board signed by 50 or a majority of the landowners in the territory requesting that the land described by metes and bounds in the petition be included in the district.

[Acts 1971, 62nd Leg., p. 492, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.731. Hearing on Petition**

When a petition to include land in the district is filed with the board, the board by order shall set the time and place of the hearing on the petition. The board may not hold the hearing before the expiration of the 30th day after the day of the order.

[Acts 1971, 62nd Leg., p. 492, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.732. Notice of Hearing**

(a) The secretary of the board shall issue notice of the time and place of the hearing, and the notice shall describe the territory proposed to be annexed.

(b) The secretary shall post copies of the notice in three public places in the district and in two public places in the territory proposed to be annexed. The notices shall be posted for at least 15 days immediately preceding the day of the hearing.

(c) The secretary also shall publish the notice one time in a newspaper of general circulation in the county. The notice shall be published before the beginning of the 15-day period immediately preceding the day of the hearing.

[Acts 1971, 62nd Leg., p. 492, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.733. Procedure at Hearing**

At the time and place stated in the notice, the directors shall hear the petition to annex land to the district in the manner provided by Section 55.027 of this code.

[Acts 1971, 62nd Leg., p. 492, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.734. Resolution to Add Territory**

On hearing the petition if the board finds that the addition would be of benefit both to the territory and to the district, it may add the territory to the district by resolution entered on its minutes. The

board need not include all the land described in the petition if it finds that a modification or change is necessary or desirable.

[Acts 1971, 62nd Leg., p. 492, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.735. Elections to Ratify Annexation of Land

Annexation of the territory is not final until ratified at separate elections held in the district and in the territory proposed to be added to determine whether the land will be added to the district. If the district has outstanding debts or taxes, the same election shall also determine whether or not the territory to be added will assume its proportion of the debts or taxes if the land is added to the district.

[Acts 1971, 62nd Leg., p. 492, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.736. Date of Elections

The board shall order elections to be held on the same day and not more than 30 days after the board enters its resolution tentatively adding the land to the district.

[Acts 1971, 62nd Leg., p. 493, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.737. Notice of Elections

The board shall give notice of the elections to determine whether land shall be added to a district by posting copies of the notice of election at three public places in the district and at least two public places in the territory proposed to be added for at least 20 days immediately preceding the date of the elections.

[Acts 1971, 62nd Leg., p. 493, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.738. Judges and Clerks to Conduct Elections

(a) The directors shall appoint two judges, one of whom shall be the presiding judge, and two clerks for each polling place in the district, who shall conduct the election in the district and make returns of the election.

(b) The directors shall designate one or more polling places in the territory proposed to be added to the district, and shall appoint two judges, one of them shall be the presiding judge, and two clerks for each of the polling places, who shall conduct the election in the territory and make returns of the election.

[Acts 1971, 62nd Leg., p. 493, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.739. Election Ballots

(a) The ballots for the election to determine whether land shall be added to the district shall be printed to allow for voting for or against: "Addition to water improvement district."

(b) If the question of whether or not the added territory will assume its proportion of the outstanding debts or taxes of the district is submitted, the ballots for the election shall be printed to allow for voting for or against: "Addition to water improvement district and assumption of proportionate part of outstanding debts and taxes."

[Acts 1971, 62nd Leg., p. 493, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.740. Provisions Governing Elections

Except as otherwise provided in this chapter, the manner of holding each of the elections to determine whether land shall be added to a district and the qualifications of persons voting in the elections are governed by the provisions of this chapter applying to the election held to create a district.

[Acts 1971, 62nd Leg., p. 493, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.741. Election Expenses

The district shall pay all expenses of the election held to determine whether land shall be added to the district.

[Acts 1971, 62nd Leg., p. 493, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.742. Vote Required to Approve Annexation of Land

(a) In a district organized and operating under the provisions of Article III, Section 52, of the Texas Constitution, a two-thirds vote of the electors voting at each election is required to ratify annexation of land to the district.

(b) In a district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, a majority vote of the electors voting at each election is required to ratify annexation of land to the district.

[Acts 1971, 62nd Leg., p. 493, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.743. Final Annexation Upon Favorable Vote

If the proposition to add land to a district receives the vote required in Section 55.742 of this code, the land added becomes an integral part of the district on the date of the election. The added land is subject to all laws governing the district from the date of the election and shall bear its pro rata part of all debts or taxes owned, contracted, or authorized by the district to which it is added.

[Acts 1971, 62nd Leg., p. 494, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.744. Affairs of the District After Annexation

Annexing land to a district does not in any manner affect the officers, employees, or affairs of the district, but the voters of the added territory have the right to participate in all district matters considered or voted on after the land is added.

[Acts 1971, 62nd Leg., p. 494, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.745. Addition of Land in Adjoining County

Land in an adjoining county may be included in a district in the same manner that land in the same county is added to a district.

[Acts 1971, 62nd Leg., p. 494, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 55.746. Annexation of Land Owned by District Directors

(a) A director of a district operating under Article XVI, Section 59, of the Texas Constitution, may have land owned by him annexed to the district under the provisions of this subchapter.

(b) A director seeking to have land which he owns annexed to the district shall not participate in the proceedings of the board to consider the acceptance or rejection of the application. The remaining directors of the district may determine conditions and terms of annexation of a director's land which are not inconsistent with the provisions of this chapter. [Acts 1971, 62nd Leg., p. 494, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.747. Consent Necessary if United States has Contract**

No land may be added to a district which is under contract with the United States without the written consent of the secretary of the interior.

[Acts 1971, 62nd Leg., p. 494, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.748. Land Which Becomes Part of District as if Originally Included**

If land entitled to be served by an established irrigation system is not originally included in the district in the manner provided by law and later is included in the district, it shall become part of the district as if originally included and is entitled to water service on an equal basis with land originally included in the district.

[Acts 1971, 62nd Leg., p. 494, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.749. Liability of Lands Added to a District**

(a) If land is added to a district operating under Article XVI, Section 59, of the Texas Constitution, the order of the board adding the land to the district may contain an agreement that the added land will be taxed on the benefit plan of taxation instead of general ad valorem tax. The agreement may provide that the added land will be taxed on a uniform acreage basis or on the plan of a definite annual payment.

(b) The board, in its order adding land to the district, shall set the amount of the debts to be paid by the owner of the added land and levy annual taxes against the land to pay the debts. The taxes assessed by the board constitute a lien against the added land in the same manner and to the same extent as if the land had been a part of the district at the time the indebtedness was incurred or authorized by an election held for that purpose.

(c) The added land is a part of the district and is liable for debts subsequently incurred by the district in the same manner as other land, in the district. [Acts 1971, 62nd Leg., p. 494, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.750. Consolidation of Districts**

Two or more districts governed by the provisions of this chapter may consolidate into one district as provided by Sections 55.751-55.754.

[Acts 1971, 62nd Leg., p. 495, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.751. Elections to Approve Consolidation**

(a) After the directors of each district have agreed upon the terms and conditions of consolidation, they shall order an election in each district to

determine whether the districts should be consolidated.

(b) The directors of each district shall order an election to be held on the same day in each district and shall give notice of the election for at least 20 days in the manner provided by law for other elections.

(c) The districts may be consolidated only if the electors in each district vote in favor of the consolidation.

[Acts 1971, 62nd Leg., p. 495, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.752. Governing Consolidated Districts**

(a) When two or more districts are consolidated, they become one district, except for the payment of debts created prior to consolidation, and are governed as one district.

(b) During a period of 90 days after the date of the election to approve consolidation, the officers of each district shall continue to act jointly as officers of the district to wind up the affairs of their respective districts.

(c) The consolidation agreement may provide that the officers of the original districts shall continue to act jointly as officers of the consolidated district until the next election or name persons to serve as officers of the consolidated district until the next election if all officers of the original districts agree to resign.

(d) New officers of the consolidated district must qualify as officers of the district within the period of 90 days after the election and shall assume their offices at the expiration of the 90-day period.

(e) The current boards shall approve the bond of each new officer.

[Acts 1971, 62nd Leg., p. 495, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.753. Debts of Original Districts**

(a) When two or more districts are consolidated, the debts of the original districts are protected and are not impaired.

(b) These debts may be paid by taxes or assessments levied on the land in the original district as if it had not consolidated or contributions from the consolidated district on terms stated in the consolidation agreement.

[Acts 1971, 62nd Leg., p. 496, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 55.754. Taxes of the Original District**

(a) After consolidation, the officers of the consolidated district shall assess and collect taxes on property in the original district to pay debts created by the original district.

(b) If the officers of the consolidated district fail or refuse in due time to assess and collect taxes on property in the original district to pay the obligations of the original district, the taxes may be assessed and collected and paid on the obligations by a receiver acting under orders of a district court. A creditor or five or more taxpayers in the district

may bring suit in a district court to have a receiver appointed.

[Acts 1971, 62nd Leg., p. 496, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 55.755 to 55.800 reserved for expansion]

#### SUBCHAPTER P. DISSOLUTION OF DISTRICT

##### § 55.801. Failure to Function

Subject to the provisions of Sections 50.251–50.256 of this code, if any district does not begin to acquire the necessary canals, ditches, flumes, laterals, reservoirs, sites, damsites, pumping plants, or other things necessary to the successful operation of the district or does not diligently pursue the purposes for which it was created within two years after its organization, the district may be dissolved without formal action.

[Acts 1971, 62nd Leg., p. 496, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 55.802. Rights of Debtors if District Failed to Function

Any person with an interest in the district or a debt owed by the district may collect the debt in the manner provided for the collection of a debt due by any person, association of persons, or corporation. A court of competent jurisdiction may render judgment making the debt a lien against the property of the district and providing for the payment of the debt and judgment in the manner that a judgment for debt is enforced against a city or town that has been dissolved.

[Acts 1971, 62nd Leg., p. 496, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 55.803. Dissolution Using Procedure for Organization of Districts

If all debts and obligations of the district have been paid and discharged, a district may dissolve voluntarily by the same vote and in the same manner provided in this chapter for the organization of districts. The election shall be held in the manner provided in this chapter for holding elections in the district.

[Acts 1971, 62nd Leg., p. 496, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 55.804. Dissolution Using Procedure for Abolition of Districts in Chapter 56

A district may dissolve voluntarily in the manner provided for the dissolution of districts in Chapter 56 of this code, and the provisions in that chapter shall control the abolition of the district and the legal consequences of abolition.

[Acts 1971, 62nd Leg., p. 497, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 55.805. Payment of Debts on Dissolution of District

(a) All debts of districts dissolved under the provisions for the dissolution of districts in this subchapter shall be prorated against the lands in the district in accordance with the assessed valuation for the preceding year of the lands owned by each separate

landowner, according to the tax rolls in the office of the tax collector of the county in which the land is located.

(b) The pro rata assessments shall be paid within five years from the date of dissolution in five equal annual installments or at any time within the five-year period.

(c) Any allowed claim owned by a landowner against whom a pro rata assessment has been made shall be credited on the liquidation of the assessment. All prior payments made by any landowner of the dissolved district shall be credited on the assessment against him and his land.

(d) The issuance of a receipt for the payment of the assessment by the proper official as provided in Chapter 56 of this code shall release the owner of the assessments and his land from the liens. The receipts may be recorded in the real estate records of the county or counties in which the land of the owner is located.

(e) When the assessment has been paid, the landowner is released automatically from the debt, and his land is released from all liens existing as security for the assessment.

[Acts 1971, 62nd Leg., p. 497, ch. 58, § 1, eff. Aug. 30, 1971.]

## CHAPTER 56. DRAINAGE DISTRICTS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 56.001. Definitions

In this chapter:

- (a) "District" means any drainage district organized under this chapter.
- (b) "Board" means the governing body of a drainage district.
- (c) "Commissioners court" means the commissioners court of the county in which the district is organized.

[Acts 1971, 62nd Leg., p. 497, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 56.002 to 56.010 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT;  
CONVERSION TO ARTICLE XVI,  
SECTION 59, DISTRICT

§ 56.011. Creation of District

A drainage district may be created in the manner prescribed by this subchapter, either under and subject to the limitations of Article III, Section 52, of the Texas Constitution, or under Article XVI, Section 59, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 498, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.012. Name of Each District**

The name of each district shall include the name of the county in which it is located and each district shall be numbered in consecutive order.

[Acts 1971, 62nd Leg., p. 498, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.013. Area Included in a District**

A district may include all or part of any village, town, or municipal corporation, but land included in one district may not be included in any other drainage district.

[Acts 1971, 62nd Leg., p. 498, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.014. Petition**

(a) Any person may present a petition to the commissioners court requesting the creation of a district. The petition shall be signed by at least 25 of the resident freehold taxpayers of the proposed district, or by at least one-third of the resident freehold taxpayers of the district if there are less than 75 of them, whose land might be affected by creation of the district.

(b) The petition shall state:

(1) the necessity, public utility, and feasibility of the proposed district;

(2) the proposed boundaries of the district; and

(3) the proposed name for the district.

[Acts 1971, 62nd Leg., p. 498, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.015. Deposit**

(a) Any person filing a petition shall deposit with the clerk of the commissioners court \$200 in cash, which shall be held by the clerk until the result of the election to create the district and issue bonds is officially announced.

(b) If the result of the election favors creating the district, the clerk shall return the deposit to the petitioners or their agent or attorney, but if the result of the election is against the creation of the district, the clerk shall pay the cost and expenses of the election from the deposit with vouchers signed by the county judge and return the balance of the deposit to the petitioners or their agent or attorney.

[Acts 1971, 62nd Leg., p. 498, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.016. Time of Hearing**

At the same meeting at which the petition is presented, the commissioners court shall schedule a hearing on the petition at a regular or special meeting of the commissioners court. The hearing must be held during the period beginning on the 30th day and ending with the 60th day after the day the petition is presented.

[Acts 1971, 62nd Leg., p. 498, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.017. Notice**

(a) The commissioners court shall order the clerk to give notice of the time and place of the hearing on the petition by posting a copy of the petition and order of the commissioners court during the 20-day

period immediately preceding the day of the hearing in five public places in the county. The clerk shall post one of the copies at the courthouse door and the four other copies within the boundaries of the proposed district.

(b) The clerk is entitled to receive five cents a mile for each mile necessarily traveled in posting the notices.

[Acts 1971, 62nd Leg., p. 499, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.018. Hearing on the Petition**

At the hearing on the petition, any person whose land would be affected by creating the district may appear before the commissioners court and may contest the creation of the district or contend for its creation. The person may offer testimony to show that the district is or is not necessary and would or would not be a public utility and that creating the district would or would not be feasible or practicable.

[Acts 1971, 62nd Leg., p. 499, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.019. Findings**

(a) At the hearing on the petition, if it appears to the commissioners court that drainage of the proposed district is feasible and practicable and is needed and would be conducive to public health or would be a public benefit or a public utility, the commissioners court shall make findings to this effect.

(b) If the commissioners court finds any of the issues in Subsection (a) of this section in the negative, it shall dismiss the petition at the cost of the petitioners.

(c) The findings of the commissioners court shall be recorded.

[Acts 1971, 62nd Leg., p. 499, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.020. Engineer**

(a) If the findings of the commissioners court under Section 56.019 of this code favor creating the district, the commissioners court shall appoint a competent civil engineer, who shall be entitled to as many assistants as necessary.

(b) The engineer and his assistants are entitled to the compensation and allowances for transportation, supplies, and other expenses agreed on by the engineer and the commissioners court.

[Acts 1971, 62nd Leg., p. 499, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.021. Engineer's Bond**

The engineer shall execute a bond for \$500 with two or more sureties approved by the commissioners court, payable to the county judge for the use and benefit of the district, conditioned on the faithful performance of his duties under this chapter.

[Acts 1971, 62nd Leg., p. 499, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.022. Survey and Preliminary Plans**

(a) Within the time prescribed by the commissioners court, the engineer shall make a careful survey of the land proposed to be drained and protected by

levees. For the purposes of the survey, the engineer may go on land located inside or outside the district, including land located in a different county.

(b) The engineer shall obtain information regarding land and outlets inside the proposed district from the Texas Water Development Board and from other sources, and he shall cooperate with the Texas Water Development Board in the discharge of its duties.

(c) The engineer shall use the survey to make preliminary plans:

- (1) locating approximately the necessary canals, drains, ditches, laterals, and levees;
- (2) designating the streams and bayous necessary to be cleaned, deepened, and straightened;
- (3) estimating the cost in detail of each contemplated improvement; and
- (4) estimating the probable annual cost of maintaining the improvements.

(d) The engineer shall ascertain and procure proper and necessary outlets for the proposed canals, drains, and ditches necessary to drain the district.

(e) The engineer shall immediately make a report of his work to the commissioners court.  
[Acts 1971, 62nd Leg., p. 499, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.023. Map**

(a) The engineer shall include with his report a map showing:

- (1) the beginning point and outlets of canals, drains, ditches, and laterals;
- (2) the length, width, depth, and slopes of the banks of any cut or excavation and the estimated number of cubic yards of earth necessary to be removed from each; and
- (3) the location and size of levees and the estimated number of cubic yards of earth necessary to construct them.

(b) The engineer will comply sufficiently with Subsection (a) of this section if he describes the boundaries and provides the other information required by that subsection on a copy of the official land office map of the county in which the proposed district is located.  
[Acts 1971, 62nd Leg., p. 500, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.024. Hearing on Preliminary Report**

(a) At the first regular or special meeting of the commissioners court after the engineer files his preliminary report with the clerk, the commissioners court shall schedule the report for hearing at a regular or special meeting, which must be held during the period beginning on the 20th day and ending with the 30th day after the day the commissioners court schedules the hearing.

(b) The clerk shall post notice of the hearing on the preliminary report in the manner provided in Section 56.017 of this code.

(c) At the hearing, any resident or nonresident freehold taxpayer whose land may be affected by

the improvements, may appear and object to any of the improvements because they are not located at the proper places or they are not sufficient in number or capacity to properly drain the territory.

[Acts 1971, 62nd Leg., p. 500, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.025. Changing the Preliminary Report**

(a) The commissioners court may change the location of any improvement shown in the preliminary report or may add to or reduce the number of improvements. The commissioners court may order the engineer to locate any additional canals, drains, ditches, or levees for the purpose of conducting water from the land of the district or to prevent overflow of water from streams or other bodies of water onto the land of the district to be drained.

(b) The commissioners court may refer the entire preliminary report to the engineer for compliance with its orders and may require the engineer to submit a further report.

(c) If material changes or alterations are made in the preliminary report, the clerk shall give notice, and the commissioners court shall hold a hearing in the manner provided for the original preliminary report.

[Acts 1971, 62nd Leg., p. 500, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.026. Adopting the Preliminary Report**

If there are no objections to the preliminary report or if the commissioners court finds that objections to the report are not valid, the report shall be approved and the approval entered in the minutes.  
[Acts 1971, 62nd Leg., p. 501, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.027. Election Order**

After the engineer's report is approved, the commissioners court shall order an election held in the proposed district at the earliest legal time to determine whether or not the district should be created and whether or not the district should issue bonds and levy taxes to pay for the bonds.

[Acts 1971, 62nd Leg., p. 501, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.028. Notice of the Election**

(a) The clerk shall post notice of the election as provided in Section 56.017 of this code.

(b) The notice shall state:

- (1) the proposed creation of the district;
- (2) the amount of bonds to be issued;
- (3) the time and places the election will be held;
- (4) the propositions to be voted on; and
- (5) the purposes for which the bonds are to be issued.

(c) The amount of the bonds stated in the notice may not be greater than the engineer's estimate and the cost of additional work made necessary by changes in the preliminary report.

[Acts 1971, 62nd Leg., p. 501, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.029. Conduct of Election

(a) The commissioners court shall name a polling place for each precinct or part of a precinct in the proposed district and shall appoint judges and other election officials.

(b) The ballots shall be printed to provide for voting for or against: "The creation of the drainage district and the issuance of bonds and the levy of taxes to pay for the bonds."

(c) The proposition must be approved by a two-thirds vote at the election before it will carry.

[Acts 1971, 62nd Leg., p. 501, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.030. Returns; Canvass

Immediately after the election, each presiding judge shall make and deliver the returns in the same manner as returns are made and delivered in general elections and shall deliver the ballot boxes to the county clerk, who shall keep them in a safe place until he delivers them together with the returns to the commissioners court at its next regular meeting or at a special meeting called to canvass the vote.

[Acts 1971, 62nd Leg., p. 501, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.031. Declaration of Result

(a) If the proposition carries, the commissioners court shall declare the result and enter the result in the minutes.

(b) The order of the commissioners court declaring the result shall read substantially as follows:

"\_\_\_\_\_ and \_\_\_\_\_ others having petitioned for the creation of \_\_\_\_\_ County Drainage District No. \_\_\_\_; an election having been held in the proposed district on \_\_\_\_\_; and a two-thirds majority of the votes cast in the election having favored creation of the district, issuance of bonds, and levy of a tax; now, therefore, the commissioners court declares that \_\_\_\_\_ County Drainage District No. \_\_\_\_ is created, within the following metes and bounds: (Field Notes)."

[Acts 1971, 62nd Leg., p. 502, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.032. Authorizing Existing Districts to Operate Under Article XVI, Section 59, of the Texas Constitution

(a) Any existing district may be authorized to operate under the provisions of Article XVI, Section 59, of the Texas Constitution without change of name or impairment of obligations.

(b) To operate under Article XVI, Section 59, of the Texas Constitution, the district shall present the petition and make the deposit required by Sections 56.014 and 56.015 of this code. The commissioners court, by order entered in its minutes, shall give notice and hold a hearing on the petition as required by Sections 56.017 and 56.018 of this code and may by order authorize the district to operate under the provisions of Article XVI, Section 59, of the Texas Constitution.

(c) Any district operating under the provisions of this section is governed and controlled by the laws under which it was organized.

(d) Limitations imposed by Article III, Section 52, of the Texas Constitution and this chapter on debts to be incurred and taxes to be levied are not applicable to districts operating under Article XVI, Section 59, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 502, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 56.033 to 56.060 reserved for expansion]

## SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

### § 56.061. Creation of Board

When a district is established, the commissioners court shall appoint three directors for the district.

[Acts 1971, 62nd Leg., p. 502, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.062. Qualification of Directors

To qualify as a director, a person must

(1) be a resident of the county in which the district is located or an adjoining county;

(2) be a freehold taxpayer of the district; and

(3) be a qualified elector of the county of his residence.

[Acts 1971, 62nd Leg., p. 502, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.063. Term of Office, Removal, and Succession

(a) Directors hold office for a term of two years and until their successors have qualified, and on expiration of a director's term or on resignation of a director, the commissioners court by a majority vote shall appoint a successor.

(b) The commissioners court by majority vote may remove a director from office for malfeasance in office.

[Acts 1971, 62nd Leg., p. 503, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.064. Election of Directors

(a) On petition of a majority of the real property taxpayers of a district requesting an election of district directors, the commissioners court shall immediately order an election to be held at the earliest legal time. The election shall be held as other elections under this chapter.

(b) The commissioners court shall declare the three persons receiving the highest number of votes elected, and if two or more persons tie for the third-highest vote, the commissioners court shall elect the third director from those tying for the place.

(c) On qualifying for office, directors elected under this section are the legal and rightful directors of the district within the full meaning and purpose of this law.

(d) The first elected directors of the district hold office until the next regular election for state and county officers, and subsequent directors of the dis-

trict are elected every two years at the general election.

[Acts 1971, 62nd Leg., p. 503, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.065. Director's Oath**

Before beginning to perform his duties, each director shall take and subscribe before the county judge an oath to discharge faithfully the duties of his office without favor or partiality and to render a true account of his activities when requested by the commissioners court. The clerk of the court shall file the oath, and the oath shall be a part of the district records.

[Acts 1971, 62nd Leg., p. 503, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.066. Director's Bond**

Before beginning to perform his duties, each director shall execute a good and sufficient bond for \$1,000, payable to the county judge for the use and benefit of the district, conditioned on the faithful performance of his duties.

[Acts 1971, 62nd Leg., p. 503, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.067. Director's Compensation**

(a) The directors of any district are entitled to receive for their services not more than \$7.50 a day for the time actually engaged in the work of the district. The commissioners court shall establish the amount of compensation by order.

(b) Before the directors' accounts are approved, the directors shall submit to the commissioners court a detailed written report, under oath, showing the time actually spent in working for the district and describing the work done. The commissioners court shall audit the report and allow the amount determined by it.

[Acts 1971, 62nd Leg., p. 503, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.068. Organization of Board**

(a) The board of directors shall organize by electing one director as president and one director as secretary.

(b) Two directors constitute a quorum to transact all business of the district.

[Acts 1971, 62nd Leg., p. 504, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1768, ch. 518, § 7, eff. May 31, 1971.]

**§ 56.069. Transfer of Board's Power to Commissioners Court**

(a) The functions, powers, rights, and duties exercised by or relating to the board of any district may be transferred to the commissioners court of the county in which the district is wholly located, but before the transfer is made, the commissioners court and the board must pass resolutions authorizing the transfer.

(b) After the transfer is made, the commissioners court shall be the sole governing body of the district and shall exercise the functions, powers, rights, and duties transferred.

(c) The members of the commissioners court are not entitled to receive any compensation for the exercise of these functions, powers, rights, and duties.

(d) On the passage of a resolution at a meeting of the board of the district, the commissioners court may be authorized to receive an allowance of not more than \$150 a month for travel expense incurred by the commissioners incident to the discharge of their duties as members of the board of the district.

[Acts 1971, 62nd Leg., p. 504, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1780, ch. 653, § 4, eff. June 16, 1973.]

**§ 56.070. Treasurer**

The county treasurer is the treasurer of the district.

[Acts 1971, 62nd Leg., p. 504, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.071. Treasurer's Bond**

(a) The county treasurer shall execute a good and sufficient bond payable to and approved by the board, conditioned on the faithful performance of his duties as treasurer. The bond shall be in an amount equal to the amount of the bonds issued.

(b) If a district depository is selected, the county treasurer shall execute a bond conditioned on the faithful performance of his duties pursuant to the law relating to county treasurers in counties which have county depositories.

[Acts 1971, 62nd Leg., p. 504, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.072. Treasurer's Compensation**

The treasurer is entitled to receive for his services one-fourth of one percent of the money received by him for the account of the district and one-eighth of one percent of the money paid out by him on order of the district. The treasurer is not entitled to receive any commissions on district money he receives from his predecessor in office.

[Acts 1971, 62nd Leg., p. 504, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.073. Tax Assessor and Collector**

The county assessor and collector shall be charged by the commissioners court with the district's assessment rolls.

[Acts 1971, 62nd Leg., p. 504, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.074. Tax Assessor and Collector's Bond**

(a) The commissioners court shall require the assessor and collector to execute an additional bond or security in any amount it considers proper and safe to secure the collection of the taxes.

(b) If the assessor and collector refuses to give the additional security within the time provided by law for this purpose, the commissioners court shall suspend him from office, and immediately after suspension, he shall be removed from office as provided by law.

[Acts 1971, 62nd Leg., p. 504, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.075. Tax Assessor and Collector's Compensation**

The assessor and collector shall be allowed the same compensation for collecting the taxes of the district that is allowed for collecting other taxes. [Acts 1971, 62nd Leg., p. 505, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.076. Board of Equalization**

The commissioners court shall serve as the board of equalization for the district, and laws governing boards of equalization for state and county taxing purposes shall govern the district board. [Acts 1971, 62nd Leg., p. 505, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.077. Separate Assessor and Collector, and Board of Equalization**

(a) After a district is created and on the petition of 25 resident freeholders of the district, the commissioners court may order an election to determine whether or not the district will have a separate tax assessor and collector and board of equalization to assess, collect, and equalize taxes. Notice of the election shall be given as in the original election.

(b) If the proposition is approved by a two-thirds vote, the commissioners court shall appoint a suitable person as assessor and collector, and the appointee shall execute a bond and exercise the same powers and perform the same duties as the county assessor and collector. The board shall exercise the powers relating to equalizing taxes conferred on the commissioners court by this chapter.

(c) The general law relating to assessing, collecting, and equalizing taxes applies to assessing, collecting, and equalizing district taxes. [Acts 1971, 62nd Leg., p. 505, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.078. District Engineer**

The board shall appoint a competent civil engineer, who may appoint necessary assistants. [Acts 1971, 62nd Leg., p. 505, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.079. Engineer's and Assistant's Compensation and Expenses**

The engineer and his assistants are entitled to receive the pay, transportation allowance, supplies, and other things agreed on by the engineer and the board and approved by the commissioners court. [Acts 1971, 62nd Leg., p. 505, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.080. District Lawyer**

The board may employ a lawyer

- (1) to prepare contracts for the district;
- (2) to conduct proceedings for the district in and out of court; and
- (3) to be the board's legal adviser.

[Acts 1971, 62nd Leg., p. 505, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.081. Lawyer's Compensation**

The lawyer is entitled to receive the fees agreed on by him and the board and approved by the county

judge. The board shall draw warrants to pay for the legal services.

[Acts 1971, 62nd Leg., p. 506, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.082. Hearing; Powers of the Commissioners Court**

(a) Except as otherwise provided in this chapter, the commissioners court has exclusive jurisdiction to hear and determine

- (1) contests and objections to creating a district;
- (2) matters relating to creating a district; and
- (3) all proceedings of a district after it is organized.

(b) The commissioners court may adjourn a hearing from day to day, and the judgment of the commissioners court rendered under Subsection (a) of this section is final.

[Acts 1971, 62nd Leg., p. 506, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.083. Court Actions**

(a) A district through its board may sue and be sued in the courts of this state in the name of the district, and the courts of this state shall take judicial notice of the establishment of all drainage districts.

(b) Only suits in the name of the state by the attorney general on his own motion or on motion of any affected party showing good cause may be brought in courts of this state to enjoin the formation of a district or to contest the validity of any district or its bonds.

[Acts 1971, 62nd Leg., p. 506, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 56.084 to 56.110 reserved for expansion]

**SUBCHAPTER D. POWERS AND DUTIES**

**§ 56.111. Control and Repair of District Improvements**

The board may control and supervise the construction and maintenance of canals, drains, ditches and levees, and other improvements of the district and shall keep them in repair.

[Acts 1971, 62nd Leg., p. 506, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.112. Report of the Board**

(a) The board shall make semiannual reports of their actions, including a financial statement showing receipts and disbursements of funds subject to orders of the board.

(b) The board's report shall state in detail

- (1) the kind, amount, and character of work done by the district;
- (2) the cost of work done by the district;
- (3) the amounts paid out in orders of the board;
- (4) the purposes for which the amounts were paid;

(5) the persons to whom the amounts were paid;

(6) dates, amounts, and details of receipts and disbursements; and

(7) other data to show the condition of improvements made under this chapter.

(c) The board shall file the report with the county clerk on or before the first day of January and July of each year and shall publish a copy of the report once a week for two consecutive weeks immediately following the first day of January and July of each year in a newspaper published in the county.

[Acts 1971, 62nd Leg., p. 506, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.113. Authority to Go on Land Inside and Outside the District**

The board and the engineer, together with necessary teams, help, tools, and implements, may go on land located inside and outside the district to examine the land, to locate canals, drains, ditches, levees, and necessary outlets and to make plans, surveys, maps, and profiles.

[Acts 1971, 62nd Leg., p. 507, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.114. Resisting District Officer**

Any person who wilfully prevents or prohibits any officer from entering land for the purposes stated in Section 56.113 of this code, upon conviction, is punishable by a fine of not more than \$25 for each day he prevents or hinders the officer.

[Acts 1971, 62nd Leg., p. 507, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.115. Duties of the Engineer**

(a) The engineer shall make a map of the district showing:

- (1) the boundary lines of the district;
- (2) the original surveys within the boundaries of the district; and
- (3) the number of acres in an original survey which are included in the district if the boundary lines of the district cross the original survey.

(b) The engineer shall make maps and profiles of the canals, drains, ditches, and levees located in the district and their outlets extending beyond the boundaries of the district.

(c) A copy of the land office map of the county which shows the name and number of each survey and the area or number of acres within the district is sufficient to comply with the requirement for a map of the district, and any recognized map of a city or town in the district is sufficient to comply with the requirement for a map of that city or town.

[Acts 1971, 62nd Leg., p. 507, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.116. Maps and Estimates**

(a) The map and profile shall include the relation that each canal, drain, ditch, or levee bears to each tract of land through which it passes and the shape into which the canal, drain, ditch, or levee divides each tract.

(b) If any canal, drain, ditch, or levee cuts off any tract containing less than 20 acres of land, the map shall show:

- (1) the number of acres divided from the tract;
- (2) the number of acres in the whole tract;
- (3) the shape of the small tract; and
- (4) the relation of the small tract to the canal, ditch, drain, or levee.

(c) The profile may show the number of cubic yards necessary to be excavated to make each canal, drain, or ditch and to build any levee located in the district and may give the estimated cost of each.

(d) When the map, profile, and estimates are completed, the engineer shall sign them in his official capacity and file them with the clerk of the commissioners court.

[Acts 1971, 62nd Leg., p. 507, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.117. Duty to Construct Improvements**

Improvements included in the engineer's report and adopted by the commissioners court shall be constructed.

[Acts 1971, 62nd Leg., p. 508, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.118. Right-of-Way**

The board may acquire by gift, grant, purchase, or condemnation the necessary rights-of-way for all canals, drains, ditches and levees, and other necessary improvements. If the rights-of-way are acquired by purchase, the commissioners court must approve it.

[Acts 1971, 62nd Leg., p. 508, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.119. Eminent Domain**

(a) Any district may exercise the power of eminent domain to condemn and acquire the right-of-way over and through public and private lands necessary for making canals, drains, levees, and improvements in the district and for making necessary outlets to any county in the state. A district which is not operating under Article XVI, Section 59, of the Texas Constitution may not condemn property used for cemetery purposes. No district may condemn right-of-way through any part of any incorporated city without the consent of the lawful authorities.

(b) Eminent domain proceedings shall be in the name of the district and under the direction of the board, and expenses arising from the proceedings shall be paid from the construction and maintenance fund.

(c) An appeal from the finding and assessment of damage made by commissioners appointed for that purpose shall not suspend work of the board in providing drainage.

[Acts 1971, 62nd Leg., p. 508, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.120. Railroad Culverts**

(a) At the expense of the district, the board may construct necessary bridges and culverts across or under a track or right-of-way of a railroad to enable the district to construct and maintain a necessary canal, drain, or ditch.

(b) Before the board constructs a bridge or culvert, the board shall give notice to the railroad authorities authorized to build or construct bridges and culverts and shall allow the railroad 30 days to build the bridge or culvert at its own expense and according to its own plans.

(c) Bridges or culverts shall be constructed so they will not interfere with the free and unobstructed flow of water passing through the canals and drains and shall be placed at points designated by the engineer.

[Acts 1971, 62nd Leg., p. 508, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.121. Road Culverts**

The board shall build necessary bridges and culverts across or over canals, drains, ditches, laterals, and levees which cross a county or public road and shall pay for the construction with funds of the district.

[Acts 1971, 62nd Leg., p. 508, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.122. Constructing Bridges and Culverts in Certain Counties**

(a) If it is necessary to build a bridge or culvert across or over a state highway located in a county having a population of more than 350,000 inhabitants, according to the last preceding federal census, the board may construct or assist in constructing the bridge or culvert.

(b) After the bridge or culvert is constructed, the board may pay or may join with any county or other governmental agency or subdivision to pay the expenses of making necessary and needed repairs. The expenses shall be paid from the funds of the district.

[Acts 1971, 62nd Leg., p. 508, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.123. Change in Plans Without Additional Expenditures**

(a) After the commissioners court authorizes bonds to be issued, the board may make changes in the district or its improvements which will be an advantage to the district but which will not increase the cost of the proposed work beyond the amount of bonds authorized.

(b) The board may make the changes by entering on their minutes a notation of the changes, with the district maps and profiles showing the changes. Notice of the changes shall be given by publishing the notation with the book and page number of the minutes for two consecutive weeks in a newspaper of general circulation published in the English language in the county in which the district is located.

[Acts 1971, 62nd Leg., p. 509, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.124. Change in Plans With Additional Expenditures**

(a) If the board decides that changes or additions in the preliminary survey would be of advantage to the district but would necessitate issuing additional bonds of the district, it shall certify to the commissioners court the need for additional bond authorization and transmit the certification with maps and profiles prepared by the district engineer showing the changes and their estimated cost.

(b) At the first regular meeting after the documents are filed, the commissioners court shall give notice of an election to determine whether or not the changes and improvements should be made and shall order the election held within the time and the returns made as provided in the original election.

(c) If two-thirds of the electors of the district vote in favor of the proposition, the board shall enter the approval in the records and shall order the bonds issued as in the manner provided for issuance of the original bonds.

[Acts 1971, 62nd Leg., p. 509, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.125. Additional Improvements**

(a) After completion of improvements, including bridges and culverts, and after payment of all expenses, if surplus money or bonds remain to the credit of the district, the board may order the engineer to make a detailed report of additional or supplemental drains, ditches, levees, or other surface drainage improvements, including tile drainage, which are needed by the district. The engineer shall make the report and the board shall act on the report in the manner provided in this chapter for the initial report of the engineer.

(b) After the engineer's report is approved or modified by the commissioners court, the court shall order an election to be held in the district at the earliest legal time. The only proposition that may be submitted at the election is whether or not the district will construct additional improvements and pay for them with funds currently available. A majority of those persons voting at the election must approve the proposition for it to carry.

(c) Notice of the election shall be given, election officials appointed, returns made and canvassed, and the result declared as provided in Sections 56.027-56.031 of this code. The notice of election shall state:

- (1) the character and scope of the proposed improvements;
- (2) the estimated cost of the proposed improvements; and
- (3) the time and place for holding the election.

(d) The provisions of this chapter relating to awarding contracts, constructing improvements, and the authority of the board and the commissioners court to award contracts and construct improvements apply as far as applicable to constructing and paying for additional improvements.

(e) The estimated cost of the additional improvements may not be more than the amount of surplus money or bonds to the credit of the district.  
[Acts 1971, 62nd Leg., p. 509, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.126. Changes, Additions, and Improvements**

When the board determines that a necessity exists, it may make changes in, additions to, and improvements in the drainage system of the district and shall pay for the changes, additions, and improvements with funds collected under the provisions of Section 56.242 of this code.  
[Acts 1971, 62nd Leg., p. 510, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.127. Maintenance Report**

(a) On or before the first day of July of each year, the board shall file with the commissioners court a detailed maintenance report. The report shall include:

- (1) the condition of improvements previously made in the district;
- (2) an estimate of the probable cost of maintenance and repairs during the next year;
- (3) an inventory of funds, effects, property, and accounts belonging to the district; and
- (4) a list of lawful demands, debts, and obligations of the district.

(b) The board shall verify the report, and the commissioners court shall carefully investigate it before any taxes are levied under Section 56.241 of this code.  
[Acts 1971, 62nd Leg., p. 510, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.128. Injuring Drainage Canal or Ditch**

Any person who wilfully fills up, cuts, injures, destroys, or impairs the usefulness of any canal, drain, ditch, watercourse, or other work constructed, repaired, or improved by a district to drain and protect from overflow of water, upon conviction is punishable by confinement in the county jail for not more than two months or by a fine of not more than \$100.  
[Acts 1971, 62nd Leg., p. 510, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.129. Bid Procedure**

(a) Before awarding any contracts for construction or necessary work, the board shall advertise for bids once a week for four consecutive weeks in one or more newspapers of general circulation in the state and shall post notice that the board is taking bids for at least 25 days at five public places in the county, including one copy posted at the courthouse door and at least two copies posted elsewhere in the district.

(b) On application, the board shall furnish to any person who desires to bid on construction work advertised under Subsection (a) of this section a copy of the engineer's report showing the locations, profiles, and estimates on the work.

(c) Each bid shall be in writing, sealed, and accompanied by a certified check for five percent of

the total amount of the bid and shall be delivered to the chairman of the board. If a bidder whose bid is accepted by the district refuses to enter into a proper contract with the district, the bidder shall forfeit the certified check which accompanied his bid.

(d) The board shall award the contract to the lowest bidder and may reject any bid it considers to be too high. The contracts may be awarded separately or together.  
[Acts 1971, 62nd Leg., p. 510, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.130. Requisites of a District Contract**

Each contract shall be in writing, signed by the contractor and the board, and approved by the county judge, and a copy of the contract shall be filed with the county clerk.  
[Acts 1971, 62nd Leg., p. 511, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.131. Contract Payments**

(a) On completion of any contract except a contract awarded on a partial payment plan, the board shall draw a warrant on the treasurer in favor of the contractor or his assignee for the amount of the contract price.

(b) To obtain more favorable contracts, the board may advertise and contract for work to be paid for in partial payments as the work progresses, but the aggregate amount of the partial payments may not be more than 75 percent of the total amount to be paid under the contract.

(c) The engineer shall make a certified report showing the amount of work completed under any contract, and payment shall not be made for incomplete work.  
[Acts 1971, 62nd Leg., p. 511, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.132. Contractor's Bond**

The contractor shall execute a bond for the amount of the contract price, payable to the board and approved by the board and the county judge, conditioned on the faithful performance of the obligations, agreements, and covenants in the contract and that in the event of default, the contractor will pay to the district damages sustained as a result of the default.  
[Acts 1971, 62nd Leg., p. 511, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.133. Duties of the Engineer**

(a) The engineer shall furnish to the contractor a sectionized profile of the contract work. The profile shall show:

- (1) the depth, width, and slope of canals, drains, ditches, and levees;
- (2) the number of cubic yards of earth to be removed; and
- (3) other work to be done by the contractor.

(b) The contractor shall do the work under the supervision of the engineer, who shall indicate to the contractor the points at which the laterals shall intersect the main canal.

(c) The contractor may not deposit earth at a place at which it will interfere with constructing laterals or other improvements in the district or building bridges or other improvements on the public roads.

(d) After the work is completed under the contract, the engineer shall make a detailed report to the board showing whether or not the contract has been complied with fully, and if not, the extent of noncompliance.

[Acts 1971, 62nd Leg., p. 511, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.134. Inspection of Work

The board shall inspect any work done under contract as the work progresses.

[Acts 1971, 62nd Leg., p. 512, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.135. Interest in Drainage Contract

A county judge, county commissioner, drainage commissioner, or drainage engineer who becomes interested in any contract for construction of any work by the district or in any fee paid by the district from which he will receive money, consideration, or other thing of value, upon conviction is punishable by confinement in the county jail for not less than six months nor more than one year.

[Acts 1971, 62nd Leg., p. 512, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.136. Purchases of and Contracts for Less Than \$50 by Districts in Certain Counties

(a) On requisition signed by at least two directors, the board of any district located in a county having a population of more than 350,000 inhabitants, according to the last preceding federal census, may make purchases or contracts in any amount of not more than \$50.

(b) In cases of emergency, the board does not have to take bids.

(c) Before the purchase or contract is made, the commissioners court shall issue the requisition in triplicate with copies to be delivered to the person from whom the purchase is being made or with whom the contract is being made and to the county auditor. A copy also shall be filed with the board.

[Acts 1971, 62nd Leg., p. 512, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.137. Purchases of and Contracts for More Than \$50 But Less Than \$500 by Districts in Certain Counties

(a) If purchases or contracts to be made by any district located in a county having a population of more than 350,000 inhabitants, according to the last preceding federal census, are in an amount more than \$50 but not more than \$500, the district shall ask for sealed bids from at least three persons and shall accept as many more bids as are offered. It is not necessary to advertise for sealed bids.

(b) The bids shall be based on written specifications filed with the county auditor before the beginning of the 48-hour period immediately preceding the time for the bidding to open.

(c) The board shall award the contract to the lowest and best bidder, but before the contract is executed or the supplies furnished, at least two of the directors shall issue to the contractor a requisition. A copy of the requisition shall be filed with the county auditor.

[Acts 1971, 62nd Leg., p. 512, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.138. Expenditures Exceeding \$500 by Districts in Certain Counties

(a) If any district located in a county having a population of more than 350,000 inhabitants, according to the last preceding federal census, plans to spend more than \$500 on any contract or purchase, the district shall prepare and file with the county auditor specifications covering the material or supplies to be purchased or the work to be performed.

(b) The county auditor shall advertise for bids once a week for two consecutive weeks in a newspaper published in the county in which the district is located. The advertisement shall include the time and place for opening the bids and the place at which the specifications may be obtained.

(c) Each bidder shall include with his bid a certified check on a Texas bank for five percent of the amount of the bid, conditioned that the successful bidder will enter into a contract, and a bond in an amount equal to the amount of the contract executed by a surety company authorized to do business in Texas.

(d) At an open meeting, the commissioners shall award the contract to the lowest and best bidder. The contract shall be made in writing, and together with the bond and original bids shall be filed in the office of the county auditor as part of the records of his office.

(e) Before any supplies are furnished or delivered or any work performed, at least two directors of the district shall issue and file with the county auditor a requisition covering the contract or purchase. The contract or purchase is not binding until the requisition is issued and filed.

[Acts 1971, 62nd Leg., p. 512, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.139. County Auditor's Endorsement

Before a requisition is issued or a contract approved under Section 56.136, 56.137, or 56.138 of this code, the county auditor must endorse on the requisition or contract his certificate that the contract is made or the requisition is authorized in conformity with law and that funds are available or will be available to make payment when due.

[Acts 1971, 62nd Leg., p. 513, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.140. Public and Private Improvements

(a) Canals, drains, ditches, and levees which are constructed by a district and watercourses which are cleaned or constructed by a district are the public property of the district.

(b) A person who owns land in the district may drain into one or more of the public drains, and at

his own expense, the landowner may make drains according to the natural slope of the land through other lands intervening between his land and the nearest public drain or watercourse or along any public highway.

(c) Before constructing any drains, the landowner shall notify the board of his intention to construct a drain through another person's land or along a public highway, and the directors shall go on the premises and acting as a jury of view shall determine the place for constructing the drain.

[Acts 1971, 62nd Leg., p. 513, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.141. Outside Drains**

(a) Before a person artificially drains adjacent land located outside the district into the canals, drains, or ditches of the district, the person must submit a written application to the board, and the board must grant permission to make the connections. The application shall include the width, depth, and length of the connecting drains and ditches.

(b) When the application is filed with the board, the engineer shall estimate the quantity of water which the connecting drains or ditches would probably empty into the established canals or drains and shall indicate whether or not the established canals or drains have sufficient capacity to carry the excess water without risk or damage to the canals, drains, or adjacent territory. The engineer shall report to the board the result of his examination and his estimate.

(c) Unless an agreement is reached with the applicants, the commissioners may authorize the connection on condition that the applicant first pay to the construction and maintenance fund an amount of money which bears the same ratio to the cost of the original canal or drain from the point of connection to its outlet as the water to be emptied into the canal or drain by the connecting drains bears to the water then flowing into and being carried by the original canal or drain as estimated by the engineer. [Acts 1971, 62nd Leg., p. 513, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.142. Enlargement of Canals, Drains, and Other Outlets**

(a) If the engineer's report indicates that the capacity of the canals, drains, or outlets of the district are insufficient to carry the excess water that would be discharged into them by connecting drains or that the additional discharge of water will endanger the canals and drains or the lands and property adjacent to them, the commissioners court in the county in which the district is located may give the applicant permission to construct connecting drains and secure the desired outlet on condition that the applicant make necessary enlargements of the canals and drains of the district at the applicant's own expense. The increased capacity of the canals of the district shall be sufficient to carry any increase of water caused by the connection without danger to canals and drains or lands adjacent to them.

(b) The engineer shall supervise and direct the enlargement of the canals and drains, and after the work is completed to his satisfaction, the engineer shall report to the commissioners court under his official certificate. The report shall show:

- (1) the kind of work done;
- (2) the extent of the work;
- (3) the new capacity to be sufficient to carry excess water from the connecting drain;
- (4) the number of days spent by the engineer supervising the work; and
- (5) the amount due to the engineer for his services.

(c) On approving the engineer's report, the commissioners court shall issue an order authorizing the connections to be made with the canals and drains on payment of the amount due to the engineer as shown by the engineer's report and shall order the applicant to pay the engineer's salary.

[Acts 1971, 62nd Leg., p. 514, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.143. Contract for Improvements With the United States**

(a) Any district which is converted under Section 56.032 of this code and which lies wholly within one county may enter into contracts with the United States, including the Bureau of Reclamation of the Department of Interior, to construct improvements.

(b) The board must approve the project, plans and specifications, and methods of constructing or reconstructing the improvements.

(c) After approval, the board may execute a contract for a specified number of years or until the plans or programs of the district are completed and shall pay the obligations incurred under the contract by issuing bonds that are approved by the voters in the manner provided for issuing other bonds of the district. The board shall deliver the bonds to the United States.

[Acts 1971, 62nd Leg., p. 514, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 56.144 to 56.180 reserved for expansion]

**SUBCHAPTER E. GENERAL FISCAL PROVISIONS**

**§ 56.181. Duties of the Treasurer**

(a) The county treasurer shall open an account for each district and shall keep an accurate account of money received by him and paid out by him for each district.

(b) The county treasurer shall pay out money only on vouchers signed by the board and countersigned by the county judge, and he shall keep a file of all orders for payment of money.

(c) On request of the board or the commissioners court, the county treasurer shall render a correct account of matters relating to the financial condition of the district.

[Acts 1971, 62nd Leg., p. 515, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.182. District Funds**

(a) The construction and maintenance fund consists of money, effects, property, and proceeds received by the district from any source except that portion of tax collections necessary to pay principal and interest on bonded indebtedness.

(b) The interest and sinking fund consists of that portion of tax collections necessary for paying principal and interest on bonded indebtedness, and this fund may be invested for the benefit of the district in bonds and securities approved by the attorney general.

(c) Each fund shall be held for the purpose for which it was created, and if money is improperly paid from either fund, the commissioners court may have the county treasurer transfer money in the two funds to restore the fund which was improperly used.

[Acts 1971, 62nd Leg., p. 515, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.183. Payment of Expenses, Debts, and Obligations of the District**

After any district is established, legal and just expenses, debts, and obligations, except bonded indebtedness, arising and created after the filing of the petition to create the district and necessarily incurred in creating, establishing, operating, and maintaining the district shall be paid from the construction and maintenance fund.

[Acts 1971, 62nd Leg., p. 515, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.184. District Depository**

(a) The board may provide for a district depository under the laws relating to the designation of a county depository and may exercise the same powers with relation to district funds that are exercised by the commissioners court in designating a county depository.

(b) The depository shall execute a good and sufficient bond, approved by the board, as provided by law for county depositories.

[Acts 1971, 62nd Leg., p. 515, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 56.185 to 56.200 reserved for expansion]

**SUBCHAPTER F. ISSUANCE OF BONDS****§ 56.201. Authority to Issue Bonds**

Any district may issue bonds as provided in this chapter to pay for drainage improvements.

[Acts 1971, 62nd Leg., p. 515, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.202. Issuance of Bonds**

When maps, profiles, and estimates are filed, the commissioners court shall issue an order directing the issuance of bonds sufficient to pay for proposed improvements together with necessary, actual, and incidental expenses. The bonds may not be issued in an amount greater than the amount specified in the order and notice of election, and in districts operating under Article III, Section 52, of the Texas Con-

stitution, the bonds may not be issued in an amount greater than one-fourth of the assessed valuation of the real property of the district.

[Acts 1971, 62nd Leg., p. 516, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.203. Record Book for Bonds**

(a) Before any bonds are issued, the commissioners court shall provide a well-bound book in which the county clerk shall keep a record of:

- (1) all bonds which have been issued;
- (2) the numbers of the bonds;
- (3) the amount of the bonds;
- (4) the rate of interest on the bonds;
- (5) the date of issuance of the bonds;
- (6) the date on which the bonds are due;
- (7) the place where the bonds are payable;
- (8) the amount received for the bonds;
- (9) the annual rate of assessment to pay interest on and provide a sinking fund for the bonds; and
- (10) the payment of each bond.

(b) The county clerk shall keep the book open at all times for public inspection by district taxpayers and bondholders.

(c) The county clerk is entitled to receive for recording district bonds and other instruments the same fees allowed by law for recording other similar records.

[Acts 1971, 62nd Leg., p. 516, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.204. Bonds: Requisites**

(a) Bonds shall be issued in the name of the district, signed by the county judge, and attested by the county clerk, and each bond shall have the seal of the commissioners court affixed to it.

(b) The bonds shall be issued in denominations of not less than \$100 nor more than \$1,000 and shall bear interest which is payable annually or semiannually.

(c) The terms of the bonds shall include the time, places, manner, and conditions of payment and the rate of interest determined and ordered by the commissioners court.

(d) The bonds shall be paid not later than 40 years from the date they are issued.

[Acts 1971, 62nd Leg., p. 516, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.205. Bonds: Approval**

(a) Before any bonds are offered for sale, the district shall submit to the attorney general

- (1) a copy of the bonds;
- (2) a certified copy of the commissioners court order levying a tax to pay interest and create a sinking fund;
- (3) a statement of the district's total bonded indebtedness including the value of the bonds proposed to be issued and the value of taxable property in the district as shown by the last official assessment of the county; and

(4) other information the attorney general requires.

(b) The attorney general shall examine the bonds carefully and shall certify them if he finds that they conform to the constitution and laws of this state and are valid and binding obligations of the district. [Acts 1971, 62nd Leg., p. 516, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.206. Bonds: Registration**

(a) When the attorney general approves the bonds, the comptroller shall register them in a book kept for that purpose and shall record the attorney general's certificate for use in possible future litigation. After the bonds are registered, they are prima facie valid and binding obligations in any action, suit, or proceeding.

(b) In a suit to enforce collection of the bonds, the attorney general's certificate or a certified copy of it shall be admitted and received in evidence as prima facie proof of the validity of the bonds and attached coupons, and the only defense against the validity of the bonds is forgery or fraud.

[Acts 1971, 62nd Leg., p. 517, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.207. Bonds: Sale**

(a) When the bonds are registered, the county judge, under the direction of the commissioners court, shall advertise and sell the bonds on the best terms and for the best price possible.

(b) The county judge shall pay to the county treasurer all money from the sale of the bonds as it is received, and the county treasurer shall place the money in the construction and maintenance fund to the credit of the district.

(c) The county judge is entitled to receive one-half of one percent of the amount received from the sale of bonds sold by him as payment for his services. [Acts 1971, 62nd Leg., p. 517, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.208. Bond of County Judge**

(a) After the bonds are registered, the county judge shall immediately execute a good and sufficient bond in an amount not less than the amount of the bonds issued, payable to and approved by the board, conditioned on the faithful discharge of his duties.

(b) If the bond is executed by a satisfactory surety company, the district may pay a reasonable amount as premium on the bond. The premium shall be paid from the construction and maintenance fund on presentation to the board of a bill for the premium. The board may deduct the premium from the commissions allowed the county judge on the sale of bonds.

(c) If there is any controversy as to the reasonableness of the amount claimed as premium, the controversy may be settled by any court of competent jurisdiction.

[Acts 1971, 62nd Leg., p. 517, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.209. Use of Unsold Bonds for Maintenance Purposes**

If any bonds remain unsold which are not required to complete improvements, the commissioners court may enter its consent on the public record to sell the bonds and place the proceeds in the construction and maintenance fund for use in accomplishing the purposes stated in Section 56.242 of this code.

[Acts 1971, 62nd Leg., p. 517, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.210. Refunding Bonds**

(a) With the consent of the bondholders, a district may refund outstanding bonds by issuing new coupon bonds in their place.

(b) Interest is shown by coupons attached to the bonds. The commissioners court may pay the interest on the bonds annually or semiannually.

(c) The commissioners court may pay the refunding bonds serially, or in any other manner they choose, but in districts which are not operating under Article XVI, Section 59, of the Texas Constitution, it shall pay the bonds not later than 40 years from the date the bonds are issued.

(d) The district shall issue the bonds in denominations of \$100 or a multiple of \$100, and shall levy a tax sufficient to meet the payment of principal and interest of the refunding bonds before the bonds are delivered.

(e) The commissioners court shall issue refunding bonds in the manner provided for other district bonds, and shall deduct any sum on hand to the credit of any sinking fund account in ascertaining the amount of refunding bonds to be issued. This sum shall be applied to the payment of the outstanding bonds.

(f) The commissioners court shall not issue refunding bonds until they are approved by the attorney general and registered by the comptroller. The comptroller shall not register the refunding bonds until the old bonds being replaced are presented to him for cancellation. After the comptroller registers the new bonds, he shall cancel the old bonds and interest coupons and deliver the new bonds to the proper bondholders. The district may present the old bonds for cancellation in installments, and the comptroller may register and deliver a like amount of the new bonds.

(g) In a district operating under Article XVI, Section 59, of the Texas Constitution, if the holders of outstanding bonds do not consent to the exchange of their bonds for refunding bonds, the refunding bonds may be sold and the proceeds applied to the purchase of the outstanding bonds when they become payable under an option of prepayment contained in the bonds or when the bondholders will accept payment.

[Acts 1971, 62nd Leg., p. 518, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.211. Refunding Bond Election**

(a) If indebtedness to be refunded includes obligations other than voted bonds, in any district operat-

ing under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, before the refunding bonds may be issued, a majority of the electors of the district voting at an election called for that purpose must vote in favor of issuing the refunding bonds and levying a tax to pay for the bonds.

(b) The commissioners court shall call the election and the clerk of the court shall give notice of the time and places for holding the election.

(c) The notice shall be signed by the clerk and shall

- (1) state the purpose of the election;
- (2) state the proposition to be voted on;
- (3) define the election precincts;
- (4) prescribe the polling places in the district; and
- (5) list the names of the election officers.

(d) The notice shall be published once a week for three consecutive weeks in a newspaper of general circulation in the county in which the district is located, but if a newspaper is not published in the county, the notice shall be published in the nearest county. The first publication shall be at least 20 days before the day of the election.

[Acts 1971, 62nd Leg., p. 518, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1768, ch. 518, § 8, eff. May 31, 1971.]

#### § 56.212. Approval and Issuance of Refunding Bonds

(a) If the commissioners court declares the result of the election under Section 56.211 of this code to favor the issuance of refunding bonds and the levy of a tax to pay for the bonds, refunding bonds with the seal of the commissioners court affixed to them may be issued in the name of the district. The bonds shall be signed by the county judge, attested by the county clerk, and registered by the county treasurer.

(b) The bonds together with the record relating to them shall be submitted to the attorney general for his approval.

(c) When the attorney general approves the bonds, they shall be delivered to the comptroller who shall register them and deliver them in exchange for or on release of the obligations being refunded at the time, in the manner, and in the amounts prescribed in the order of the commissioners court. If the obligations being refunded are evidenced by outstanding securities, the comptroller shall cancel the outstanding securities concurrently with the registration and delivery of the bonds.

(d) When the refunding bonds are approved by the attorney general and registered and delivered by the comptroller, the bonds are valid and binding obligations of the district and are incontestable for any cause.

[Acts 1971, 62nd Leg., p. 519, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 56.213 to 56.240 reserved for expansion]

### SUBCHAPTER G. TAXATION PROVISIONS

#### § 56.241. Levy of Taxes to Pay for Bonds

After bonds are authorized at an election, the commissioners court shall have taxes annually assessed and collected on all property in the district sufficient to pay interest and principal on the bonds. Taxes collected under this section shall be placed in the interest and sinking fund.

[Acts 1971, 62nd Leg., p. 519, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.242. Maintenance Tax

(a) At the same time that taxes are levied to pay bonded indebtedness, the commissioners court shall have a tax assessed and collected on district property sufficient to maintain, repair, and preserve district improvements and to pay legal debts, demands, and obligations of the district, but in districts operating under Article III, Section 52, of the Texas Constitution, the tax may not be in an amount greater than one-half of one percent of the total assessed valuation of the district for that year.

(b) Taxes collected under this section shall be placed in the construction and maintenance fund.

[Acts 1971, 62nd Leg., p. 519, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.243. Powers of the Assessor and Collector

Unless this chapter makes some other provision, the county tax assessor and collector has the same powers and is governed by the same rules and proceedings in assessing and collecting district taxes that are provided for assessing and collecting state and county taxes.

[Acts 1971, 62nd Leg., p. 520, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.244. Assessment of Taxes

(a) On order of the commissioners court, the assessor and collector shall assess all property in the district and list the assessed property in the books provided by the commissioners court and shall return the books at the time he returns the state and county tax rolls for correction and approval.

(b) The commissioners court shall provide necessary additional books for the assessor and collector and the county clerk to use for recording assessments and listing all property in the district and shall charge the cost of the books to the district.

(c) If the commissioners court finds the district tax rolls to be correct, it shall approve the rolls and direct the county clerk to issue a warrant to the assessor and collector, payable from district funds. The commissioners court shall pay the assessor and collector an amount they consider proper.

(d) If the assessor and collector fails or refuses to comply with the order to assess district property, the commissioners court shall suspend him from the further discharge of his duties, and he shall be removed from office in the manner provided for removing county officers.

[Acts 1971, 62nd Leg., p. 520, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.245. Collection of Taxes**

(a) The commissioners court may fix the time and determine the date taxes become due, but if the date and time are not designated, the taxes shall become due at the same time as state and county taxes.

(b) Taxes authorized by this chapter are a lien on the property for which they are assessed. Any person who fails to pay the taxes when due is subject to the penalty for failure to pay state and county taxes at maturity.

[Acts 1971, 62nd Leg., p. 520, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.246. Delinquent Taxes**

(a) The assessor and collector shall make a certified list of all property on which tax has not been paid and deliver the list to the commissioners court.

(b) The commissioners court shall collect the tax by selling the property to collect state and county taxes, and the board may purchase any of this property for the benefit of the district.

[Acts 1971, 62nd Leg., p. 520, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.247. Levying Taxes on the Benefit Basis**

A district operating under Article XVI, Section 59, of the Texas Constitution, may levy taxes on the benefit basis, which means the levy of a tax on an equal or uniform basis or rate on each acre of land in the district.

[Acts 1971, 62nd Leg., p. 520, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.248. Authorizing Taxation on the Benefit Basis for Newly Created Districts**

(a) In a petition to create a district under Article XVI, Section 59, of the Texas Constitution, the petitioner may request that taxes in the proposed district be levied on the benefit basis, and the notice of hearing on the petition shall state this request in addition to other information required by Section 56.017 of this code.

(b) At the hearing on the petition, the commissioners court shall consider whether or not it will be fair and equitable to levy taxes on the benefit basis, and any person who would be affected by creation of the district may appear before the commissioners court and support or oppose the levy of taxes on the benefit basis.

(c) If the commissioners court finds that creation of and drainage of the district is feasible and practicable under Section 56.019 of this code, the commissioners court shall further determine whether or not the levy of taxes on the benefit basis would be fair and equitable to the landowners in the district.

(d) If the commissioners court determines that levying taxes on a benefit basis would not be fair and equitable to the landowners, the order of the commissioners court shall state these findings, and if the district is created, district taxes shall be levied on an ad valorem basis.

(e) If the commissioners court favors creation of the district and determines that levying taxes on a benefit basis will be fair and equitable to the land-

owners, the order of the commissioners court shall include these findings and an election shall be called to create the district and levy taxes on the benefit basis.

(f) Findings of the commissioners court relating to the basis on which taxes will be levied are final and conclusive on all parties.

[Acts 1971, 62nd Leg., p. 521, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.249. Authorizing Taxation on the Benefit Basis for Existing District**

(a) A district operating under Article XVI, Section 59, of the Texas Constitution, may levy taxes on the benefit basis as provided in this section.

(b) Any person may present to the commissioners court a petition, signed by 75 of the resident freehold taxpayers of the district whose land would be affected or by one-third of the freehold resident taxpayers of the district whose land would be affected if there are less than 75 in the district, requesting that taxes of the district be levied on the benefit basis and showing that the levy of taxes on the benefit basis will be fair and equitable to all landowners in the district.

(c) At the same meeting at which the petition is presented, the commissioners court shall schedule a hearing on the petition for either a regular meeting or a special meeting called for that purpose to be held during the period beginning on the 30th day and ending with the 60th day after the day the petition is presented.

(d) The commissioners court shall order the clerk to give notice of the time and place of the hearing by posting a copy of the petition and the order of the commissioners court at five public places in the county during the 20-day period immediately preceding the day of the hearing. The clerk shall post one of the copies at the courthouse door and the other four copies at four places within the boundaries of the district, and the district shall pay the clerk \$1 for each notice he posts and five cents a mile for each mile traveled in posting the notices.

(e) At the hearing, any person whose land would be affected may appear before the commissioners court and may support or oppose the levy of taxes on a benefit basis and may offer testimony to show whether or not the levy of taxes on the benefit basis will be fair and equitable to landowners in the district. The commissioners court has exclusive jurisdiction to hear and determine this issue and matters relating to it and has exclusive jurisdiction in all subsequent proceedings. The commissioners court may adjourn the hearing from day to day, and judgments of the commissioners court are final.

(f) If the commissioners court finds that levying taxes on the benefit basis will not be fair and equitable to landowners in the district, an order shall be entered dismissing the petition, and the district shall continue to levy taxes on an ad valorem basis, but if the commissioners court finds that levying taxes on the benefit basis will be fair and equitable

to landowners in the district, the commissioners court shall order an election to be held in the district.

(g) An election to approve the levy of taxes on the benefit basis must be held during the period beginning on the 30th day and ending with the 60th day after the date of the election order. Notice of the election shall be given in the same manner as notice is given for the hearing on the petition. The commissioners court shall name polling places within the district and shall appoint judges and other necessary election officers. The ballots shall be printed to provide for voting for or against the following proposition: "The levy of taxes in the district on the benefit basis."

(h) At least two-thirds of those persons voting in the election must vote in favor of the proposition for it to carry.

(i) If the proposition carries at the election, the order of the commissioners court canvassing the election shall provide that taxes of the district are to be levied on the benefit basis, but if the proposition fails to carry at the election, the order of the commissioners court canvassing the election shall provide that taxes of the district are to continue to be levied on an ad valorem basis.

[Acts 1971, 62nd Leg., p. 521, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.250. Law Governing Districts Levying Taxes on the Benefit Basis

Any district which levies its taxes on the benefit basis is governed by the provisions of this chapter except the district need not have a board of equalization to equalize taxes in the district.

[Acts 1971, 62nd Leg., p. 522, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.251. Determining Acreage in the District

(a) In districts levying taxes on the benefit basis, the commissioners court shall appoint three freehold taxpaying voters in the county as a board to determine the number of acres of land owned by each landowner in the district. The person appointed by the commissioners court shall qualify by taking an oath to fairly and impartially hold hearings and determine acreage.

(b) The board to determine acreage shall give notice of the time and place of the hearing on the acreage before the 10-day period immediately preceding the day of the hearing.

(c) At the hearing each landowner may testify about the amount of land owned by him in the district. The board has final jurisdiction to determine the exact acreage of each landowner in the district.

(d) After the board makes its determination, the land in the district shall be annually placed on the tax rolls according to the acreage determined without rendition of taxes.

[Acts 1971, 62nd Leg., p. 521, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 56.252 to 56.290 reserved for expansion]

### SUBCHAPTER H. DISSOLUTION

#### § 56.291. Authority to Dissolve a District

Subject to the provisions of Sections 50.251–50.256 of this code, a district created under this chapter may be dissolved as provided in this subchapter.

[Acts 1971, 62nd Leg., p. 523, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.292. Petition

At a regular meeting of the commissioners court, any person may present a petition signed by at least 50 of the resident freehold taxpayers of the district, or if there are less than 100 resident freehold taxpayers in the district, then by one-third of them requesting the dissolution of the district, and the commissioners court shall order an election to be held in the district at the earliest legal time to determine whether or not the district should be dissolved.

[Acts 1971, 62nd Leg., p. 523, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.293. Deposit

(a) Any person filing a petition shall deposit with the county clerk \$200 in cash which shall be held by the county clerk until the result of the election to dissolve the district is officially announced and entered in the record of the commissioners court.

(b) If the result of the election favors dissolving the district, the county clerk shall return the deposit to the petitioners or their agent or attorney, and the cost and expenses of holding the election shall be charged to the district and collected as other debts in this subchapter, but if the result of the election is against dissolving the district, the county clerk shall pay the cost and expenses of the election from the deposit with vouchers signed by the county judge and return the balance of the deposit to the petitioners or their agent or attorney.

[Acts 1971, 62nd Leg., p. 523, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.294. Election

(a) Notice of the election to dissolve the district shall be posted and the election shall be held as provided by this chapter for elections to create a district.

(b) The ballots for the election shall be printed to provide for voting for or against the following proposition: "Dissolution of the drainage district."

(c) For the proposition to carry, two-thirds of those persons voting at the election must vote to dissolve the district.

[Acts 1971, 62nd Leg., p. 523, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 56.295. Result of the Election

(a) The returns of the election shall be made and the votes canvassed as provided in this chapter.

(b) If the proposition carries, the commissioners court shall declare the result and enter it in its minutes substantially as follows:

“\_\_\_\_\_ and \_\_\_\_\_ others having petitioned for the dissolution of \_\_\_\_\_ County Drainage District No. \_\_\_\_\_; an election having been held in the district on \_\_\_\_\_; and a two-thirds majority of the votes cast in the election having favored dissolution of the district; now, therefore, the commissioners court declares that \_\_\_\_\_ Drainage District No. \_\_\_\_\_ is dissolved.”

(c) If the proposition fails to carry, another election for the same purpose may not be held for at least two years after the results of the election are declared.

[Acts 1971, 62nd Leg., p. 523, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.296. Settlement of Debts**

(a) When the district is dissolved, the commissioners court shall provide for settlement of debts of the district, including costs and expenses of holding the dissolution election, and may levy and collect a tax on property in the district in the amount necessary to pay all valid debts and obligations of the district except district bonds.

(b) Unless district bonds are retired as provided in Section 56.299 of this code, the bonds shall be paid according to their terms by levy and collection of an annual tax.

[Acts 1971, 62nd Leg., p. 524, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.297. Dissolution Tax**

(a) The commissioners court shall determine the amount of debt owed by the district and shall apportion the amount of the debt among the property taxpayers of the district, and a tax shall be levied on each piece of property in the district to pay for its proportionate share of the debt. Each taxpayer may pay his tax annually or in one payment, and the amount of debt apportioned to each tract of land is a lien on that piece of land for the payment of the debt.

(b) Payment of taxes under this section may be made either in money or by surrender of bonds or other evidences of debt of the district. Any holder or owner of debt owed by the district may surrender his bonds and coupons or approved accounts to the district tax collector to pay for taxes owed on property in the district which is owned by the holder or owner of the debt, and when surrendered, the bonds or evidences of debt shall be marked paid and a receipt issued for them. The holder of bonds and coupons may only surrender coupons that are matured at the time of their surrender, and unmatured bonds are eligible only to pay unmatured tax liability in advance and only for the year in which the bonds mature.

(c) After taxes are paid as provided in this section, the taxpayer and his property are released from further liability for debts of the district, and

the district tax collector shall issue a release and a receipt for the taxes which shall be filed with the clerk of the county court in the county in which the property is located in the manner provided by law for filing documents relating to real estate.

[Acts 1971, 62nd Leg., p. 524, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.298. Compensation of Officers**

(a) The county assessor and collector is entitled to receive for assessing and collecting taxes the same compensation that is paid for assessing and collecting other taxes under this chapter.

(b) The compensation of the commissioners court shall be provided in its order levying taxes.

[Acts 1971, 62nd Leg., p. 524, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.299. Retirement of Bonds**

If there are outstanding bonds at the time the district is dissolved, the commissioners court may immediately enter into negotiations with the bondholders to retire the bonds before maturity, and if under their terms or by agreement between the commissioners court and the bondholders, the bonds can be retired at an earlier date than appears on their face and if the commissioners court considers retirement to be feasible and practicable, an agreement may be made by the commissioners court providing for paying and retiring the bonds.

[Acts 1971, 62nd Leg., p. 525, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.300. Trustee**

On filing and approval of a bond, the county treasurer becomes the trustee for the dissolved district.

[Acts 1971, 62nd Leg., p. 525, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.301. Trustee's Bond**

The county treasurer shall execute a good and sufficient bond in a sum to be determined by the commissioners court, payable to and approved by the county judge, conditioned on the faithful performance of his duties as treasurer and trustee of the district and on paying to the parties entitled to it all money and other property which he receives as trustee and treasurer. The bond shall be recorded in the minutes of the commissioners court, and on approval shall supersede the bond given by the county treasurer as treasurer of the district.

[Acts 1971, 62nd Leg., p. 525, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.302. Trustee's Compensation**

(a) The trustee is entitled to receive for his services one percent of all money received by him for the dissolved district and one percent on all money he pays out under this subchapter, but he is not entitled to receive a commission on money controlled by him when the district was dissolved or money relinquished by him at the expiration of his trusteeship.

(b) Only one compensation shall be paid to the trustee for his services as trustee and ex officio treasurer of the dissolved district.

[Acts 1971, 62nd Leg., p. 525, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.303. Powers of the Trustee

(a) The commissioners court shall provide for disposition and sale of district property, and after giving the required bond, the trustee shall assume control from the commissioners court of the district's property, including money in the district treasury and books, notes, accounts, and choses of action.

(b) The trustee may sue any person in possession of property of the district or owing a debt to the district as though the district were still organized and may employ counsel to assist him in all suits and in the care and management of the business of the dissolved district.

[Acts 1971, 62nd Leg., p. 525, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.304. Expenses of the Trustee

(a) The trustee shall charge against the trust estate all reasonable expenses incurred by him in caring for, conducting, and controlling the business of the district, in employing counsel for the district, and in conducting or defending suits, and on posting notice as required in cases of other claims, the trustee shall present the charges to the commissioners court annually at a regular meeting.

(b) On approval by the commissioners court, the expenses become a valid and subsisting claim against the district and may be retained by the trustee out of funds controlled by him as treasurer of the dissolved district.

(c) If the claim for expenses is rejected either in whole or in part, the trustee may appeal the decision as other claimants appeal decisions under this subchapter.

[Acts 1971, 62nd Leg., p. 526, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.305. Presentation of Claims

(a) Within the six-month period immediately following approval of the trustee's bond any person who has a claim against the district shall present the claim duly verified to the trustee, and if the trustee finds that the claim is correct, he shall allow the claim, and the claimant shall file the claim with the clerk of the commissioners court before the beginning of the 20-day period immediately preceding the next regular meeting of the commissioners court.

(b) The clerk shall immediately issue notice of the filing to all persons interested in the district, and the notice shall be posted in three public places and at the courthouse door before the beginning of the 20-day period immediately preceding the next regular meeting of the commissioners court.

[Acts 1971, 62nd Leg., p. 526, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.306. Approval of Claim

(a) At a regular meeting, the commissioners court shall determine the validity of the claim, and if the commissioners court finds that the claim is correct, it shall approve the claim and enter an order of approval in its minutes.

(b) After the claim is approved, it is a valid and subsisting claim against the district and shall be

filed with the trustee who shall pay the claim in the order it was filed from the district treasury or from funds collected as liquidation taxes.

[Acts 1971, 62nd Leg., p. 526, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.307. Appeal

If any claimant is not satisfied with the judgment of the commissioners court, he may appeal the judgment in the manner that cases are appealed from the justice court.

[Acts 1971, 62nd Leg., p. 526, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.308. Rejection of Claim

(a) If the trustee finds any claim unjust either in whole or in part, he shall endorse on the claim his refusal to allow it.

(b) If the whole claim is refused, the claimant may bring suit to collect the claim against the trustee in a court of competent jurisdiction in the county, and if the claim is judged valid by the court, the judgment shall be filed with the trustee and paid in its order as other claims.

(c) If the claim is refused only in part and the claimant waives his claim to the part refused, he shall file the claim in the commissioners court for approval, but if the claimant does not waive his claim to the part refused, he shall withdraw his claim from the trustee and may bring suit as provided in Subsection (b) of this section.

[Acts 1971, 62nd Leg., p. 526, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.309. Bonds and Approved Claims

Bonds and approved claims which were outstanding debts of the district before its dissolution are valid and subsisting claims against the district without further approval under this subchapter, but they are subject to contest according to the provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 527, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 56.310. Contesting Claim

(a) If any district taxpayer files with the trustee a protest against any claim which was allowed by the former drainage commissioners before the district was dissolved and which was unpaid at the time the district was dissolved, the trustee shall refuse to pay the claim. The protest shall be accompanied by a bond in double the amount of the claim with sufficient sureties to be approved by the trustee and payable to the trustee, conditioned on payment by the contestant of all costs of suit if the claimant establishes his claim.

(b) After the trustee rejects the claim, the claimant may bring suit against the trustee to recover the claim as in other suits of a civil nature, and the contestant and his bondsman shall be parties to the suit. The trustee shall make all defenses urged against the claim by the contestant. If the claimant recovers, judgment shall be rendered against the contestant and his bondsman for costs incurred in the suit, and the claimant shall file the judgment

with the trustee who shall pay the claim as other claims are paid under this subchapter.  
 [Acts 1971, 62nd Leg., p. 527, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 56.311. Final Report of Trustee**

(a) When all claims against the district are paid and all costs and expenses incurred in controlling and managing the district are satisfied, the trustee shall file with the commissioners court his account for final settlement.

(b) The trustee's account shall include a complete statement of all money received and paid out, of all property controlled and disposed of by the trustee, and of all other matters relating to management of the district's affairs.

(c) On approval of the account, the commissioners court shall direct the trustee to turn over to persons entitled to it as found by the commissioners court all money and property remaining in the control of the trustee, and on compliance with this order, the trustee shall report to the commissioners court, and the commissioners court shall enter an order discharging the trustee and his bondsman and closing the trust estate.

[Acts 1971, 62nd Leg., p. 527, ch. 58, § 1, eff. Aug. 30, 1971.]

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## CONVERSION TABLE

*A conversion table is provided following this Code to enable the user to trace the disposition in the Texas Water Code of the subject matter of articles repealed by Acts 1971, Chapter 58, which enacted the Code.*

## SUBCHAPTER A. GENERAL PROVISIONS

## § 57.001. Definitions

In this chapter:

- (1) "District" means levee improvement district.
- (2) "Board" means the board of directors of a levee improvement district.
- (3) "Water development board" means the Texas Water Development Board.
- (4) "Commissioners court" means the commissioners court of the county in which the district is located or the commissioners court of the county of jurisdiction.

[Acts 1971, 62nd Leg., p. 528, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 57.002 to 57.010 reserved for expansion]

## SUBCHAPTER B. CREATION OF DISTRICT

## § 57.011. Creation

A levee improvement district may be created in the manner prescribed by this chapter under Article XVI, Section 59, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 528, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 57.012. Petition

(a) Before a district is created, a petition must be presented to the commissioners court or to the county judge of the county if the commissioners court is not in session.

(b) The petition, signed by the owners of a majority of the acreage of the proposed district, shall:

- (1) describe the proposed boundaries of the district;
- (2) state the general nature of the proposed improvements and their necessity and feasibility;

(3) state whether the taxes proposed to be levied in the district are to be levied on the ad valorem basis or on the benefit basis; and

(4) designate a name for the district which shall include the name of the county in which the district is located.

(c) If the proposed district is composed of land in two or more counties, the petition must designate one of the counties in which any part of the district is to be located as the county of jurisdiction, and this county has jurisdiction over all matters concerning the district.

[Acts 1971, 62nd Leg., p. 528, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 57.013. Deposit

(a) A petition for creation of a district shall be accompanied by a deposit of \$50, and if the district is to be composed of more than one county, the deposit shall be \$75.

(b) The deposit shall be paid to the clerk of the commissioners court and the clerk shall use the

deposit to pay all expenses incident to the hearing on the petition. The clerk shall pay the expenses with vouchers approved by the county judge.

(c) If any of the deposit is left after the expenses are paid, the clerk shall return the excess to the petitioners or their attorney.

[Acts 1971, 62nd Leg., p. 528, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.014. Hearing on Petition**

The commissioners court or the county judge to which the petition is presented shall fix a time and place for the hearing on the petition before the commissioners court. The hearing must be held during the period beginning with the 15th day and ending with the 30th day after the date of the order.

[Acts 1971, 62nd Leg., p. 529, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.015. Notice of Hearing**

(a) The commissioners court shall order the county clerk to issue notice informing all persons concerned of the time and place of the hearing, and of their right to appear at the hearing to contend for or contest the creation of the district, and the county clerk shall deliver the notice to any adult person who is willing to post it.

(b) The notice shall be posted at the courthouse door and at four different places inside the proposed district. If the district is located in more than one county, the person posting the notice shall post a copy at the courthouse door in each county in which any portion of the proposed district is located and at four separate places inside the boundaries of that portion of the district located in each county. The notice shall be posted for at least 10 days before the date of the hearing.

(c) Any person who posts the notice shall make an affidavit before some officer authorized by law to administer oaths that he posted the notices. The affidavit is conclusive of the sworn facts.

(d) The order of the commissioners court shall direct the county clerk to mail notice of the hearing to the water development board in Austin, Texas. The notice shall state that the petition has been filed and shall include a statement of the petition's general purpose and the time and the place of the hearing.

[Acts 1971, 62nd Leg., p. 529, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.016. Investigation by Water Development Board**

(a) When the water development board receives the notice provided for in Section 57.015(d), it shall examine the proposed district, and do the work required to determine the necessity, feasibility, and probable costs of reclaiming the land of the district from overflow and of draining it properly. The water development board shall also determine the costs of organizing the district and maintaining it for two years.

(b) A representative of the water development board shall attend the hearing on the petition to create the district and file a written report with the

commissioners court on matters which have been investigated. The board shall furnish the commissioners court any additional information that is required.

[Acts 1971, 62nd Leg., p. 529, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.017. Hearing Procedure**

(a) The commissioners court has exclusive jurisdiction to determine all issues with respect to the creation of the district and all issues involved in proceedings with respect to the district after it has been created.

(b) The commissioners court may adjourn the hearing from day to day and from time to time.

(c) The commissioners court may make all incidental orders deemed proper with respect to the matters before it.

[Acts 1971, 62nd Leg., p. 529, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.018. Conduct of Hearing**

At the hearing, the commissioners court shall hear the petition and all issues with respect to the creation of the proposed district. Any person interested, or his attorney, may appear and contend for or contest the creation of the district and offer testimony pertinent to any issue presented.

[Acts 1971, 62nd Leg., p. 530, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.019. Findings and Judgment**

(a) Before the commissioners court determines that the district should be created, it must find:

- (1) that the petition is signed by the owners of a majority of the acreage in the proposed district;
- (2) that notice of the hearing was given;
- (3) that the proposed improvements are desirable, feasible, and practicable; and
- (4) that the proposed improvements would be a public utility and a public benefit and would be conducive to public health.

(b) If the commissioners court determines that the district should be created, it shall render a judgment which recites its findings and establishes the district.

(c) The commissioners court shall include its findings and judgment in an order which shall be recorded in the minutes of the commissioners court. The order shall define the boundaries of the district, but it does not have to include all of the land described in the petition if at the hearing a modification or change in the district is found to be necessary.

[Acts 1971, 62nd Leg., p. 530, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.020. Appeal of Dismissal of Petition**

If at the hearing on the petition the commissioners court enters an order dismissing the petition, the petitioners or any one of them or any taxpayer in the district may appeal the order to the district court of the county.

[Acts 1971, 62nd Leg., p. 530, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.021. Notice of Appeal**

(a) Notice of the appeal shall be given by announcement at the time the order of the commissioners court is recorded or by written notice within the two-day period immediately following the entry of the order.

(b) If the notice is announced at the time the order is entered, the notice shall be entered in the minutes of the commissioners court.

(c) Written notice given under this section shall include a simple statement that the undersigned is appealing the order of the commissioners court and shall be filed with the county clerk.

[Acts 1971, 62nd Leg., p. 530, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.022. Appeal Bond**

Within five days from the date the order is recorded, the appellant must file an appeal bond with two or more good and sufficient sureties, payable to the county judge, approved by the county clerk, and conditioned upon the due prosecution of the appeal and payment of all costs incident to the appeal. No extension of time will be granted for filing the appeal bond.

[Acts 1971, 62nd Leg., p. 530, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.023. Time for Appeal**

Unless the appeal is perfected according to Sections 57.021–57.022 of this code within five days after the order is rendered, the order shall be final and conclusive.

[Acts 1971, 62nd Leg., p. 531, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.024. Transfer of Records and Orders**

Within five days after the appeal bond is filed, the county clerk must transfer to the clerk of the district court all the records filed with the commissioners court which relate to the establishment of the district and a transcript of the orders of the commissioners court. No additional pleadings are required.

[Acts 1971, 62nd Leg., p. 531, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.025. Trial of Appeal and Judgment**

(a) The district court shall set the appeal for a hearing and shall give it precedence over all other cases. The appeal shall be tried de novo.

(b) The judgment of the district court shall be final and conclusive, and the decision shall be certified to the commissioners court for its further action.

[Acts 1971, 62nd Leg., p. 531, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.026. Authorizing Districts to Operate Under This Chapter**

(a) Districts that are organized under the laws of this state for the purpose of reclaiming lands through a system of levees and drainage and that are not governed by the provisions of laws of this state are entitled to and may exercise all the rights, powers, and privileges conferred by this chapter on districts created under it. They are also entitled to

exercise all of the enlarged powers which may be conferred under Article XVI, Section 59, of the Texas Constitution.

(b) Before a district may operate under the provisions of this chapter, the owners of a majority of the acreage of the district must present to the commissioners court of the county in which the district is located a petition requesting that a hearing be ordered to determine whether or not the district may avail itself of the provisions of this chapter.

(c) The commissioners court shall fix a time and place for the hearing, and give notice according to the provisions of Section 57.015 of this code.

(d) At the hearing the commissioners court shall hear evidence for and against the issue presented by the petition. If it finds that the interests of the district would be promoted by granting the petition, it shall enter a judgment in the record, declaring that:

(1) it is in the interest of the district to avail itself of all rights, powers, and privileges conferred by this chapter on districts created under it;

(2) the district on behalf of which the petition is filed is entitled to and may exercise all rights, powers, and privileges conferred by this chapter on districts created by it; and

(3) the district may exercise all the rights, powers, and privileges as if it were created under this chapter, and shall proceed as if it were created under this chapter.

(e) The decree of the commissioners court shall not in any way injuriously affect any financial liability of the district.

[Acts 1971, 62nd Leg., p. 531, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 57.027 to 57.050 reserved for expansion]

**SUBCHAPTER C. ADMINISTRATIVE PROVISIONS****§ 57.051. Appointment of Board of Directors**

The commissioners court which creates a levee improvement district under this chapter, by majority vote, shall appoint three directors for the district.

[Acts 1971, 62nd Leg., p. 532, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.052. Organization of Board**

After the members of the board have qualified, the board shall organize by electing one of its members chairman and one member as vice chairman. The board shall elect a secretary, who need not be a member of the board, and shall certify its organization and the name of the engineer to the court of jurisdiction.

[Acts 1971, 62nd Leg., p. 532, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.053. Term of Office, Removal, and Succession**

(a) Each director shall hold office for a period of two years and until his successor is appointed and has qualified.

(b) A vacancy on the board shall be filled by majority vote of the court of jurisdiction, and the court shall appoint directors so that the board will always have full membership.

(c) The court of jurisdiction, by majority vote, may remove a member of the board.

[Acts 1971, 62nd Leg., p. 532, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.054. Director's Bond**

(a) Before beginning to perform his duties, each director must execute a bond for \$1,000 with good and sufficient security, approved by the county judge, payable to the district, conditioned that the director will faithfully perform his duties and will render true accounts of his expenses and services.

(b) The commissioners court which has jurisdiction may fix the bond for a larger amount if, in its judgment, the interest of the district requires it.

(c) The bonds shall be filed with the clerk of the commissioners court having jurisdiction, and the clerk shall enter the bonds in the records in his office and retain the bonds in the file.

[Acts 1971, 62nd Leg., p. 532, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.055. Director's Oath**

Before beginning to perform his duties, each director shall take and subscribe before some officer authorized to administer oaths an oath to discharge faithfully and impartially his duties as director and to render true accounts of his services and expenses.

[Acts 1971, 62nd Leg., p. 532, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.056. Compensation**

Each director is entitled to receive for his services not more than \$25 a day and all his expenses for the time he is actually engaged in work of the district. The commissioners court shall determine the amount of per diem to which a director is entitled, and the expenses will be paid on rendition of a sworn account approved by the county judge of the county which has jurisdiction.

[Acts 1971, 62nd Leg., p. 533, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.057. Election of Board of Directors**

After creation of a district with boundaries which are the same as the boundaries of the county in which it is located, an election may be held to determine whether or not directors for the district will be elected rather than appointed.

[Acts 1971, 62nd Leg., p. 533, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.058. Number of Elected Directors**

In districts which have elected boards, there shall be five directors on the board. One director shall be elected by the electors of the entire district and one director elected from each county commissioners precinct by the electors of that precinct.

[Acts 1971, 62nd Leg., p. 538, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.059. Qualifications for Elected Directors**

To be qualified for election as a director, a person must be a qualified property taxpaying elector of the precinct and county from which he is elected and be eligible under the constitution and laws of this state to hold the office to which he is elected.

[Acts 1971, 62nd Leg., p. 533, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.060. Petition**

Before an election is held under Section 57.057 of this code, a petition, signed by at least 25 electors in each county commissioners precinct who are qualified to vote at an election for directors, shall be presented to the county judge requesting that an election be held in the district to determine whether or not directors for the district should be elected and, if so, to elect directors to serve until the next regular election for state and county officers. The petition shall include the name of one or more nominees for each director's position.

[Acts 1971, 62nd Leg., p. 533, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.061. Procedure for Election**

(a) After the petition is presented under Section 57.060 of this code, the county judge shall order an election to determine the propositions presented in the petition. The election shall be held not less than 30 days from the date of the order calling the election, or the propositions may be determined at a general election.

(b) The election order shall designate the polling places which shall be the same as the polling places used in the last general election in the county. If there have been any changes in the polling places since the last general election, the election order shall designate the places as they were changed.

(c) The county clerk shall issue notice of the election and shall have the notice published in a newspaper of general circulation in the county once a week for two consecutive weeks. The first publication must be not less than 14 days before the day of the election.

(d) The sheriff shall post a copy of the notice at least 20 days before the day of the election at each polling place designated in the election order.

(e) The county shall pay all expenses incident to calling and holding the election.

[Acts 1971, 62nd Leg., p. 533, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.062. Terms; Vacancies**

(a) The initial directors elected under Section 57.061 of this code shall serve until the next general election for state and county officers, and subsequent directors shall be elected for two-year terms and shall be elected at each general election.

(b) Vacancies in the office of director shall be filled by the remaining directors.

[Acts 1971, 62nd Leg., p. 534, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.063. Compensation**

Each elected director is entitled to receive as compensation for his services \$20 for each official meeting which he attends, but he is not entitled to receive more than \$40 in any one month.

[Acts 1971, 62nd Leg., p. 534, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.064. District Treasurer**

The county treasurer of the county whose commissioners court has jurisdiction of the district shall serve as treasurer of the district.

[Acts 1971, 62nd Leg., p. 534, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.065. Treasurer's Bond**

(a) The treasurer shall execute a good and sufficient bond, approved by the board, payable to the district, in an amount equal to one and one-fourth of the taxes that are estimated will be collected in any one year, or any further amount the board may require.

(b) The treasurer's bond is conditioned on the faithful performance of his duties as treasurer of the district.

(c) The bond may be made by any guaranty or surety company approved by the board, and the premiums may be paid out of the district's maintenance fund.

[Acts 1971, 62nd Leg., p. 534, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.066. Treasurer's Compensation**

The treasurer is entitled to receive as compensation for his services not more than one-fourth of one percent of all money received by him for the district.

[Acts 1971, 62nd Leg., p. 534, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.067. Engineer and Other Employees**

The board shall employ an engineer and other employees or assistants needed to successfully carry on and complete the work and business of the district.

[Acts 1971, 62nd Leg., p. 534, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.068. Compensation of Other Officers**

(a) A person who performs a service for the district under this chapter is entitled to receive the same compensation as he would receive for similar services rendered as an officer of the county, unless his compensation is expressly provided for in this chapter.

(b) A clerk recording an order under this chapter is entitled to receive the same compensation as a county clerk for recording deeds. A person who posts notice under this chapter is entitled to receive the same compensation as a sheriff would receive for posting notices required by law to be posted by him.

[Acts 1971, 62nd Leg., p. 534, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.069. Court Actions**

The district may sue and be sued in its own name in all state courts. State courts shall take judicial notice of the existence of the district.

[Acts 1971, 62nd Leg., p. 535, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.070. District Seal**

Districts created under this chapter shall have a common seal, which shall be circular with the name of the district and a five-pointed star in the center.

[Acts 1971, 62nd Leg., p. 535, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 57.071 to 57.090 reserved for expansion]

**SUBCHAPTER D. POWERS AND DUTIES****§ 57.091. Purposes of District**

A district may be created for the following purposes:

(1) to construct and maintain levees and other improvements on, along, and contiguous to rivers, creeks, and streams;

(2) to reclaim lands from overflow from these streams;

(3) to control and distribute the waters of rivers and streams by straightening and otherwise improving them; and

(4) to provide for the proper drainage and other improvement of the reclaimed land.

[Acts 1971, 62nd Leg., p. 535, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.092. General Powers of District**

(a) The district may enter into all necessary and proper contracts and employ all persons and means necessary to build, construct, complete, carry out, maintain, protect, and in case of necessity, add to and rebuild all works and improvements within the district necessary or proper to fully accomplish a reclamation plan lawfully adopted for the district.

(b) The powers granted in this section are subject to the supervision and direction of the water development board or other authority created by law.

[Acts 1971, 62nd Leg., p. 535, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.093. Approval of Plans by Water Development Board**

(a) Before a district constructs or maintains any levees or other improvements, the water development board must approve the plans for the levees or other improvements.

(b) If a district undertakes construction or maintenance of a levee or other improvement without first obtaining approval of the plans by the water development board, the attorney general, on the request of the water development board, shall file suit in one of the district courts in Travis County, Texas, to enjoin the construction or maintenance of the levee or other improvement.

[Acts 1971, 62nd Leg., p. 535, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.094. Protesting Decision of Water Development Board**

(a) If the board or any interested person is dissatisfied with the action of the water development board in finally approving or disapproving any plan of reclamation for the district, the board or the

person may, within 15 days after the final action, file suit against the water development board in the district court of the county in which the court of jurisdiction is located. The district shall be made a party defendant if the suit is on behalf of any other complaining person.

(b) The petition shall include the cause or causes of objection to the water development board's action and shall show what interests of the petitioner are injuriously affected by the action.

(c) Process shall issue as in other cases, and the case shall have preference of trial in the court in which it is filed.

(d) Upon final hearing, the court shall render its judgment and decree approving or disapproving the plan of reclamation, in whole or in part, in the manner that it may find to be equitable and just. The judgment stands for the action of the water development board in such matters.

(e) An appeal may be taken, as in ordinary cases, from the judgment of the trial court, and the appeal shall have preference of hearing in the court of civil appeals. The judgment of the court of civil appeals is final and shall stand for the action of the water development board with respect to the matters at issue in the suit.

[Acts 1971, 62nd Leg., p. 536, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.095. Authority to Go on Land**

(a) The board, the engineer, the employees of the district, and representatives of the water development board are authorized to enter any land or go on any water for the purpose of examining the land with reference to the location of levees, drainage ditches, and all other kinds of improvements to be constructed for the district and for any other lawful purpose connected with their plan of reclamation, and may take any necessary teams, help, and instruments on the land or water.

(b) Any person who wilfully prevents or hinders any district officer from entering the land or going on the water for the purposes authorized by Subsection (a) of this section shall be fined not more than \$25 for each day he prevents or hinders the officer from entering the land or going on the water.

[Acts 1971, 62nd Leg., p. 536, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.096. Acquiring Rights-of-Way**

The board may acquire by gift or condemnation any rights-of-way necessary to construct and maintain the levees and other necessary improvements authorized by this chapter and any levee or other improvements already constructed.

[Acts 1971, 62nd Leg., p. 536, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.097. Rights-of-Way Across Roads**

Districts have the right-of-way across all public or county roads, and shall restore roads which are crossed as near to their previous condition of use as possible.

[Acts 1971, 62nd Leg., p. 536, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.098. Power of Eminent Domain**

The district may exercise the power of eminent domain to acquire the fee simple title, easement or right-of-way to, over, and through private and public land, water, or land under water, within, bordering upon, adjacent to, or opposite to the district necessary for making, constructing, and maintaining levees and other improvements to prevent the overflow of rivers, creeks, or streams inside or bordering on the district.

[Acts 1971, 62nd Leg., p. 537, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.099. Eminent Domain Procedure**

(a) The district may acquire property by condemnation for the purposes stated in Section 57.098 of this code if for any reason the board of appraisers has not condemned it under the provisions of Section 57.271 of this code.

(b) Eminent domain proceedings are brought in the name of the district.

(c) Adequate compensation must be paid to the owners of any property taken, damaged, or destroyed for the purposes stated in Section 57.098 of this code.

(d) A district created under this chapter may elect to take advantage of the condemnation procedure provided in Subchapter F of Chapter 51 of this code.

[Acts 1971, 62nd Leg., p. 537, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.100. Construction of Levees**

(a) The district may construct the necessary levees, bridges, and other improvements across or under

(1) railroad embankments, tracks, or rights-of-way;

(2) public or private roads or the rights-of-way for the roads; or

(3) levees, other public improvements, and rights-of-way of other districts.

(b) A district may join its improvements to improvements in another district.

[Acts 1971, 62nd Leg., p. 537, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.101. Construction of Levees by Railroad Companies and Other Authorities**

(a) Before the district may construct a levee, bridge, or other improvement across or under any railroad improvement or right-of-way, any road, or any improvement of another district, the board must notify the proper railroad authorities, or other authorities of the additions or changes to result from the improvements planned by the district.

(b) The railroad authorities, or other authorities shall have 30 days from the day they receive the notice to agree or not to agree to do the work at their own expense to construct the improvements in their own manner.

(c) If a railroad or other authority undertakes to construct an improvement for the district, the design or manner of construction must be satisfactory to

the district and must be approved by the water development board.

[Acts 1971, 62nd Leg., p. 537, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.102. Unlawfully Constructing Levees

(a) A person, corporation, or district may not construct or maintain a levee or other improvement on, along, or near any stream of this state which is subject to floods, freshets, or overflows to control, regulate, or otherwise change the floodwaters of the stream without first obtaining the approval of the plans for the structure from the water development board.

(b) A person who violates the provisions of Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year or by both. A separate offense is committed each day a structure constructed in violation of this section is maintained.

(c) The provisions of this section do not apply to dams, canals, or other improvements made by individuals or corporations for the purpose of irrigation or water improvement.

[Acts 1971, 62nd Leg., p. 538, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.103. Injuring Levees

A person who wrongfully or purposely cuts, injures, destroys, or in any manner impairs the usefulness of a levee or other reclamation improvement, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year or by both.

[Acts 1971, 62nd Leg., p. 538, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.104. Duty to Construct Approved Improvements

The district shall construct all improvements included in the plan of reclamation approved by the water development board.

[Acts 1971, 62nd Leg., p. 538, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.105. Notice of Bids

Before the board may award a construction contract, it must publish notice of the intention to award the contract once a week for three consecutive weeks in one or more newspapers with general circulation in the state. A contract may be awarded without publishing notice if the contract is approved jointly by the board and the owners of a majority of the acreage in the district.

[Acts 1971, 62nd Leg., p. 538, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.106. Award of District Contract

The board shall award contracts to construct levees and other improvements necessary to the district to the lowest and best bidder, and shall execute a written contract which shall be in duplicate and signed by the contractor.

[Acts 1971, 62nd Leg., p. 538, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.107. Interest in a District Contract

If the county judge, a county commissioner, a district director, or the district engineer becomes directly or indirectly interested in a contract for work to be done by the district so that he receives any money consideration or other thing of value other than the compensation provided in this chapter, he shall be confined in the county jail for not less than six months nor more than one year.

[Acts 1971, 62nd Leg., p. 538, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.108. Conditions of Contract

(a) In order to complete the construction of planned improvements for the amount of money or bonds available for that purpose, the contract shall include all improvements proposed and authorized by the approved plan of reclamation.

(b) Contracts may be awarded in sections, but in order to insure that the total cost of the work is within the amount of funds available, no contract for a part of the work is valid unless and until all sections of the work have been awarded under the provisions of Sections 57.104–57.106 of this code.

[Acts 1971, 62nd Leg., p. 539, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.109. Contractor's Bond

The contractor shall execute a corporate surety bond for the full amount of the contract price to guarantee the completion of the contract. The bond must be approved by the county judge.

[Acts 1971, 62nd Leg., p. 539, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.110. Funds Required Before Contract Awarded

(a) Before the board may award a contract to construct any part of the improvements proposed and authorized by the plan of reclamation, there must be sufficient funds available for the purpose of completing improvements. If a contract is made before sufficient funds are available to complete the improvements, the contract is void and unenforceable in any state court.

(b) A district taxpayer may bring suit to enjoin the performance of or payment of money on a contract made before sufficient funds are available for the completion of the planned improvements.

(c) In case of an urgent necessity or present calamity which makes it necessary to act at once to repair a levee in order to preserve the property in the district, the board may award a contract without sufficient funds being available to complete the improvement.

[Acts 1971, 62nd Leg., p. 539, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.111. Conditioning Contract on Sale of Bonds

After the approval and registration of bonds by the proper state officials as provided in this chapter, the board may award contracts conditioned on the sale of bonds in an amount equal to the contract price.

[Acts 1971, 62nd Leg., p. 539, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.112. Contract Payments**

(a) The district shall immediately notify the county treasurer that a contract has been executed.

(b) The county treasurer shall set aside an amount of money in the construction and maintenance fund of the district known as "Special Fund Under Contract, dated \_\_\_\_\_" (inserting date of contract). This special fund shall be for the full amount of the contract price.

(c) The county treasurer shall pay warrants against the special fund only on accounts sworn to by the contractor and duly audited and approved by the board.

(d) Use or payment of any part of this special fund for any purpose other than the purpose for which it was designated is a diversion of the fund, punishable as provided in Article 94, Texas Penal Code.

[Acts 1971, 62nd Leg., p. 539, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.113. Payment of Contract With Bonds**

The board, with the written consent of the county judge, may pay the contractor for improvements constructed in conformity with the contract with bonds of the district, and the bonds may be delivered in installments based on estimates of the engineer as the work progresses.

[Acts 1971, 62nd Leg., p. 540, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.114. Payment for Work Done**

(a) The board shall inspect the progress of work under the contract, and on completion of any improvement in accordance with the contract, the board shall draw a warrant on the treasurer for the unpaid amount of the contract.

(b) If the board pays for work as it is completed, it may not pay more than 85 percent of the contract price for that part of the work that is completed.

(c) The amount of work completed shall be shown by estimates of the engineer.

[Acts 1971, 62nd Leg., p. 540, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.115. Duty to Supervise**

The board and the engineer shall supervise all work included in the contract to assure that the work is done in accordance with the specifications.

[Acts 1971, 62nd Leg., p. 540, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.116. Engineer's Report**

(a) As the work on the plan of reclamation progresses, the engineer shall make a report to the board, showing in detail whether or not the contract is being fulfilled.

(b) When the work is completed, the engineer shall make a detailed report to the board, showing whether or not the contract has been completely fulfilled, and if not, in what particular it has not been fulfilled.

[Acts 1971, 62nd Leg., p. 540, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.117. Inspection and Report by Water Development Board**

(a) The water development board shall inspect the construction of a levee or other improvement once every 60 days after the construction work has commenced, and if it finds that the work has been done in strict accordance with the contract, the water development board shall certify this fact, and its certificate shall give a full description of the work done up to the date of inspection.

(b) If the water development board finds that the work has not been done in strict accordance with the contract, it shall officially certify this fact, and in the certificate it shall state where the contractor has failed to comply with the approved plan of reclamation.

[Acts 1971, 62nd Leg., p. 540, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.118. Compliance With Contract**

After the board receives a report that the contractor has failed to comply with the contract, it shall demand that the contractor comply with the requirements of the approved plan of reclamation at his own expense, and no further accounts, claims, or vouchers submitted by the contractor shall be approved or paid until the contractor complies with the requirements of the water development board by constructing the improvement in accordance with the plan of reclamation.

[Acts 1971, 62nd Leg., p. 540, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.119. Interference With Work**

A person who wilfully destroys or defaces any corner, line, mark, bench mark, or other object fixed or established in connection with authorized work is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not less than 30 days or by both.

[Acts 1971, 62nd Leg., p. 541, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.120. Authority to Act Jointly**

A district may act jointly with other districts, with cities and towns and other political subdivisions of the state, with the State of Texas, with other states, and with the United States in the performance of any of the powers and duties permitted by this chapter. The joint acts shall be done on terms agreed upon by the board, subject to the approval of the water development board.

[Acts 1971, 62nd Leg., p. 541, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1767, ch. 518, § 1, eff. May 31, 1971.]

**§ 57.121. Interpretation of District Powers**

Except as expressly provided, specific powers authorized by this chapter may not operate as a limitation on the general powers authorized by this chapter.

[Acts 1971, 62nd Leg., p. 541, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 57.122 to 57.150 reserved for expansion]

## SUBCHAPTER E. PLAN OF RECLAMATION

## § 57.151. Authority of Engineer

The engineer, subject to the authority of the water development board, shall control the engineering work of the district.

[Acts 1971, 62nd Leg., p. 541, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 57.152. Permission to Make Survey

The district may apply in writing to the water development board for authority to obtain information by proper surveys on the feasibility of reclaiming lands which may be later incorporated in the district, and if the water development board is satisfied that the applicant is competent and acting in good faith, it shall issue to the applicant express written authority to make surveys to obtain the desired information.

[Acts 1971, 62nd Leg., p. 541, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 57.153. Authority to Enter Land

After the engineer receives written authority to make surveys under Section 57.152 of this code, he may enter any land proposed to be incorporated in the district to examine the land and locate boundary lines and to obtain other information to be used in the formation of the district.

[Acts 1971, 62nd Leg., p. 541, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 57.154. Survey and Report

(a) The engineer shall make a survey of the land inside the boundaries of the district, and land surrounding the district, that will be improved or reclaimed by the system of levees and drainage to be adopted and shall prepare for the board a written report, with maps and profiles, of the results of his survey.

(b) A duplicate of the engineer's report shall be filed with and approved by the water development board.

[Acts 1971, 62nd Leg., p. 541, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 57.155. Contents of Report

(a) The engineer's report shall contain a complete plan for draining land, constructing levees on land, and reclaiming land of the district from overflow or damage by waters from streams inside or adjacent to the district which may affect land in the district. The report shall also include a description of the physical characteristics of the land within the district and the location of any public roads, railroads, rights-of-way and roadways, and other improvements on the land of the district.

(b) The plan may include, and where necessary must include, the costs of straightening streams which may injure the land of the district.

[Acts 1971, 62nd Leg., p. 542, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 57.156. Plan of Reclamation

(a) Before the engineer's report is adopted, the water development board or the board, with the approval of the water development board, may modify the report.

(b) When the engineer's report is approved by the water development board and adopted by the board, it shall be known as "The Plan of Reclamation."

(c) An approved plan of reclamation cannot be modified or changed in any manner if the cost of the plan is over \$1,000, unless a petition, signed by the owners of a majority of the acreage in the district is presented to and approved by the water development board.

(d) A copy of the plan of reclamation and of any amendments to it shall be filed with the county clerk in each county in which any land lies which will be affected by the plan of reclamation. The filing is notice of the contents of the plan of reclamation to all persons owning or having any interest in any lands in the county in which it is filed.

[Acts 1971, 62nd Leg., p. 542, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 57.157 to 57.170 reserved for expansion]

## SUBCHAPTER F. GENERAL FISCAL PROVISIONS

## § 57.171. May Borrow Money

A district may borrow money to accomplish the purposes stated in Section 57.092 of this code.

[Acts 1971, 62nd Leg., p. 542, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 57.172. District Depository

(a) The board shall select a depository for funds of the district, and the county treasurer shall deposit the funds of the district in the depository as the board directs.

(b) Before the depository receives any funds of the district, it shall execute a bond with a corporate surety company authorized to do business in the State of Texas payable to the district as surety. The bond must be in an amount equal to the funds deposited, and conditioned on the safekeeping and payment of the funds.

[Acts 1971, 62nd Leg., p. 542, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 57.173. Treasurer's Duties

(a) The county treasurer, as treasurer of the district, shall open an account for each district and keep an accurate account of all money belonging to the district, either received or paid out by him.

(b) He shall pay out money only on a voucher signed by two of the directors and countersigned by the county judge, and shall carefully preserve all orders for the payment of money.

(c) The treasurer shall render to the board or the commissioners court as often as they require it a

correct account of all matters pertaining to the financial condition of the district.

[Acts 1971, 62nd Leg., p. 543, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.174. Duties of Tax Assessor and Collector**

The county assessor and collector is charged with the assessment rolls of the district, and he shall collect all taxes levied and assessed against property inside the district, and deliver the taxes collected to the treasurer of the district.

[Acts 1971, 62nd Leg., p. 543, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.175. Tax Assessor and Collector's Bond**

The bond of the county assessor and collector stands as security for the proper performance of his duties as tax collector of the district, unless the board decides that an additional bond payable to the district is required.

[Acts 1971, 62nd Leg., p. 543, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.176. Failure of Tax Collector to Perform Duties**

(a) A county assessor and collector who fails to collect the district's taxes or to give an additional required bond as provided in Sections 57.174-57.175 of this code is guilty of malfeasance in office, and the commissioners court shall suspend him from office, and may bring action to remove him from office as provided by Article V, Section 24, of the Texas Constitution.

(b) If the county tax collector is suspended, the board may appoint a special collector for the district and require him to furnish security.

(c) A person chosen as a special collector for the district has, in the district, the same rights and powers that a county assessor and collector has in his county.

[Acts 1971, 62nd Leg., p. 543, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.177. Financing the District Without Bonds**

(a) If the district wants to carry out its plan of reclamation without issuing bonds, the board may arrange for contributions from landowners or other sources to provide the funds required to complete the improvements.

(b) The electors of the district may vote to create an indebtedness which is not evidenced by bonds.

(c) If the district creates an indebtedness under this section, the indebtedness may not be more than:

(1) the cost of construction of improvements included in the plan of reclamation;

(2) the cost as estimated by the water development board of maintaining the improvements for two years; and

(3) an additional amount equal to 10 percent to meet emergencies, modifications, and changes lawfully made, plus damages awarded against the district.

[Acts 1971, 62nd Leg., p. 543, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 57.178 to 57.200 reserved for expansion]

SUBCHAPTER G. ISSUANCE OF BONDS

**§ 57.201. Power to Issue Bonds**

The district may issue bonds, but it may not issue bonds nor incur any debt unless an election is held in the district and the proposition is approved by a majority vote of the electors of the district who vote in the election.

[Acts 1971, 62nd Leg., p. 544, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.202. Petition**

(a) If a district wants to issue bonds to raise funds for making improvements, a petition shall be presented to the commissioners court which has jurisdiction or to the county judge if the commissioners court is in vacation. The petition shall be signed by the owners of a majority of the acreage included in the district and shall request the issuance of bonds in the amount stated.

(b) The petition shall state the rate of interest to be borne by the bonds and shall request that an election be held in the district to determine whether or not bonds should be issued by the district for the purposes indicated in this section and for the amount stated and whether or not taxes should be levied in the district to pay for the bonds.

(c) The amount of bonds stated in the petition shall not be more than the sum of:

(1) the cost of construction of improvements to be made according to the adopted plan of reclamation approved by the water development board;

(2) the cost of maintenance of the improvements for two years as estimated by the water development board;

(3) an additional 10 percent to meet emergencies, modifications, and charges lawfully made; and

(4) all damages awarded against the district.

[Acts 1971, 62nd Leg., p. 544, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.203. Election Order**

On presentation of a petition for the issuance of bonds, the commissioners court, or the county judge if the commissioners court is not in session, shall order an election in the district to authorize the issuance of bonds. The commissioners court, or the county judge if the commissioners court is not in session, shall set the date for the election in its order and shall enter the election order in its minutes. The election must be held during the period beginning on the 20th day and ending with the 30th day after the date of the order.

[Acts 1971, 62nd Leg., p. 544, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.204. Notice of Election**

(a) When the commissioners court of jurisdiction or county judge orders a bond election, the clerk of

the commissioners court of jurisdiction shall issue and give to the sheriff a notice stating in substance the contents of the election order and the time and place of the election. The sheriff or his deputy shall post a copy of the notice at the courthouse door and at four different places in the district.

(b) If the district is located in more than one county, the notice may be delivered to any adult person, who shall post copies of the notice at the courthouse of each county in which any portion of the district is located, and at four separate places inside the boundaries of those portions of the district situated in each county.

(c) The notice must be posted for at least the 10-day period immediately preceding the date of the election.

(d) The sheriff or person posting the notice shall make return to the clerk of the commissioners court of jurisdiction, and a return by an individual other than the sheriff must be under oath before some person authorized by law to administer oaths.

(e) The return of the sheriff or any other person under oath is conclusive evidence of the facts stated. [Acts 1971, 62nd Leg., p. 544, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.205. Conduct of Election

(a) The district is an election precinct for the purpose of bond and other elections held under this chapter, and there shall be at least one polling place in each county in which a portion of the district is located.

(b) The commissioners court or the county judge, whichever orders the election, shall establish polling places for the election and shall appoint a judge and two clerks for each polling place and shall appoint other judges and clerks if necessary. The appointed judges and clerks shall conduct the election, and if a judge or clerk is absent or refuses to serve, the electors shall choose someone to replace him.

(c) The board shall furnish necessary ballots and other supplies for the election, and the ballots shall be printed to provide for voting for or against the following proposition: "The issuance of bonds and the levy of taxes to pay for the bonds."

[Acts 1971, 62nd Leg., p. 545, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.206. Expenses of Election

(a) The petition for a bond election shall be accompanied by a \$200 deposit, which shall be used to pay the expenses of the election and other expenses that may be properly incurred before the bonds are sold and issued.

(b) Any remaining portion of the deposit shall be returned to the petitioners or their attorney; and when the bonds are issued, the expenses paid from the deposit shall be refunded to the petitioners or their attorney from the proceeds of the bonds.

[Acts 1971, 62nd Leg., p. 545, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.207. Declaring Result of Election

(a) Immediately after an election under this chapter, the officials holding the election shall return the result to the commissioners court of jurisdiction.

(b) The election officials shall return the ballot boxes to the clerk of the commissioners court of jurisdiction, who shall safely keep the boxes and deliver them with the returns of the election to the commissioners court of jurisdiction at its next regular or special session.

(c) The commissioners court of jurisdiction at its first session after the election shall canvass the vote and the returns. If the proposition submitted has been approved by a majority of the electors of the district voting at the election, the commissioners court of jurisdiction shall declare the result in favor of the proposition, but if the proposition is not approved by the electors of the district, the commissioners court of jurisdiction shall declare the result to be against the proposition.

(d) The commissioners court of jurisdiction shall enter an order declaring the election result in its minutes.

[Acts 1971, 62nd Leg., p. 545, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.208. Issuance of Bonds

(a) If the issuance of bonds and the levy of taxes to pay for the bonds are approved by the electors of the district, the commissioners court of jurisdiction, after the election result is declared, shall order the issuance of the bonds in an amount up to the amount approved at the election, unless the board requests a smaller amount.

(b) The bonds shall be known as "Levee Improvement Bonds" and shall state on their face the purpose for which they are issued.

(c) The bonds shall be:

(1) issued in the name of the district;

(2) signed by the county judge of the county of jurisdiction; and

(3) attested by the county clerk with the seal of the commissioners court of jurisdiction affixed to the bonds.

(d) The issuing authority shall fix the denominations of the bonds and make them payable at an expedient time not more than 30 years from the date on the bonds.

[Acts 1971, 62nd Leg., p. 546, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.209. Approval of Bonds by Attorney General

(a) Before the bonds are offered for sale, a certified copy of all proceedings relating to organization of the district and issuance of the bonds and other relevant information shall be sent to the attorney general.

(b) The attorney general shall carefully examine the bonds, with regard to the record and the constitution and laws of this state governing the issuance of bonds, and the attorney general shall officially certify the bonds if he finds that they conform to

the record and the constitution and laws of this state and are valid and binding obligations of the district. [Acts 1971, 62nd Leg., p. 546, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.210. Registering Bonds**

(a) After the attorney general approves and certifies the bonds, the comptroller shall register them in a book kept for that purpose and shall record the certificate of the attorney general.

(b) After the bonds are certified by the attorney general and registered by the comptroller, they are prima facie valid in any action, suit, or proceeding, and in an action brought to enforce collection of the bonds and interest on the bonds, the only defense against the validity of the bonds is forgery or fraud. [Acts 1971, 62nd Leg., p. 546, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.211. Sale of Bonds**

(a) After the bonds are issued, approved, and registered, the commissioners court of jurisdiction may appoint the county judge or another suitable person to sell the bonds on the best terms and for the best price possible.

(b) The board shall approve all bond sales, and no sale is complete until approved by the board.

(c) The county judge or other person selling the bonds is entitled to receive, as full compensation for his services in selling the bonds, one-fourth of one percent of the amount received.

(d) The county judge or the person appointed to sell the bonds shall deduct his commission and promptly pay the proceeds from the bond sales to the proper treasurer or depository, to the credit of the district.

(e) Before making a sale, the county judge or the person appointed to sell the bonds shall execute a good and sufficient bond approved by the commissioners court of jurisdiction for an amount not less than the par value of the bonds to be sold, payable to the district, and conditioned on the faithful discharge of his duty.

[Acts 1971, 62nd Leg., p. 546, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.212. Bond Record**

(a) After the bonds are issued, the board shall deliver a well-bound book to the county treasurer of the county of jurisdiction, who shall keep in the book a record of:

- (1) all bonds which have been issued;
- (2) the number of each bond;
- (3) the amount of each bond;
- (4) the rate of interest on each bond;
- (5) the date of issuance of each bond;
- (6) the date when each bond is due;
- (7) the place where each bond is payable;
- (8) the amount received for each bond; and
- (9) the tax levy to provide a sinking fund to pay principal of and interest on the bonds.

(b) The treasurer shall keep the book open at all times for inspection by any taxpayer or bondholder, and when a person pays for a bond, the treasurer shall enter the payment in the book.

(c) The county treasurer is entitled to receive for his services in keeping a record of the bonds the same fee allowed by law to the county clerk for recording deeds.

[Acts 1971, 62nd Leg., p. 547, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.213. Refunding Bonds**

(a) With the consent of the bondholders, a district may refund outstanding bonds by issuing new coupon bonds in their place.

(b) Interest is shown by coupons attached to the bonds, and the commissioners court of jurisdiction shall determine whether the board will pay the interest on the bonds annually or semiannually.

(c) The board may pay the refunding bonds serially or in any other manner they choose, but, except as provided in Subsection (d) of this section, they shall pay the bonds not later than 40 years from the date the bonds are issued.

(d) A district that taxes on the benefit basis and that is located in a county with a population of over 390,000, according to the last preceding federal census, may refund outstanding bonds or matured interest coupons on bonds issued by the district with new coupon bonds payable not more than 75 years from their date.

(e) The district shall issue the bonds in denominations of \$100 or a multiple of \$100 and, before the bonds are delivered, shall levy a tax sufficient to pay the principal of and interest on the refunding bonds. The refunding of bonds does not affect any taxes already due.

(f) The board shall issue refunding bonds in the manner provided for other district bonds.

(g) The board shall deduct any money on hand in the sinking fund account to ascertain the amount of refunding bonds to be issued and shall apply the money to the payment of the outstanding bonds.

(h) The board may not issue refunding bonds until they are approved by the attorney general and registered by the comptroller, and the comptroller shall not register the refunding bonds until the old bonds being replaced are presented to him for cancellation. After the comptroller registers the new bonds, he shall cancel the old bonds and interest coupons and deliver the new bonds to the proper bondholders. The old bonds may be presented for cancellation in installments, and the comptroller may register and deliver a like amount of the new bonds.

[Acts 1971, 62nd Leg., p. 547, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.214. Issuance of Refunding Bonds Without an Election**

A district which is converted under Article XVI, Section 59, of the Texas Constitution, may issue refunding bonds without the approval of the electors under the provisions of Section 56.210 of this code. [Acts 1971, 62nd Leg., p. 548, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.215. Investment of Sinking Fund**

The board or commissioners court of jurisdiction may invest the district's sinking funds in county, municipal, district, or other bonds in which other sinking funds may by law be invested and also may invest the sinking funds in bonds of the series to which the funds apply if the bonds are offered for redemption before maturity on terms considered advantageous to the district.

[Acts 1971, 62nd Leg., p. 548, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.216. Providing for Additional Funds**

(a) If the improvements in the plan of reclamation adopted for the district are insufficient to reclaim all of the land and other property inside the district, extensive repairs or additions to the improvements are necessary, or additional funds are needed to complete improvements, the board may provide additional funds for the district by following the provisions of this chapter for raising funds for the original plan of reclamation.

(b) If the board creates additional indebtedness or issues additional bonds, the indebtedness or bonds are subject to the provisions of this chapter relating to the issuance of bonds. The new or amended plan of reclamation must be approved by the water development board.

[Acts 1971, 62nd Leg., p. 548, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 57.217 to 57.250 reserved for expansion]

**SUBCHAPTER H. TAX PROVISIONS****§ 57.251. Levy of Taxes on the Ad Valorem Basis**

(a) If a district levies taxes on the ad valorem basis, the commissioners court of each county in which any portion of the district is located, shall levy and have assessed and collected taxes on all taxable property in the district, based on the value of each piece of property for state and county purposes.

(b) The taxes must be sufficient to pay the interest on the bonds as it is due, and to raise a sufficient amount to create a sinking fund to redeem and discharge the bonds at maturity.

(c) The levy for each year throughout the life of the bond issue may be made at the time the bonds are issued and shall be the rate for each year until it is modified.

[Acts 1971, 62nd Leg., p. 548, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.252. Assessment of Property in the District**

The county assessor and collector shall assess all property inside the district and list it for taxation in books or rolls furnished to him by the commissioners court. The property of the district shall be assessed at the same value as it is assessed for state and county purposes.

[Acts 1971, 62nd Leg., p. 548, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.253. Duties of Assessor and Collector**

In assessing taxes for the district, the assessor and collector has the same powers and is governed by the same rules, regulations, and proceedings as provided by law for the assessment and collection of county and state taxes.

[Acts 1971, 62nd Leg., p. 549, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.254. Approval of Tax Books and Rolls**

The assessor and collector shall return the district's books and rolls for correction and approval to the commissioners court at the same time that he returns the books and rolls for state and county taxes. If the commissioners court finds the books and rolls correct, it shall approve them.

[Acts 1971, 62nd Leg., p. 549, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.255. Compensation of Assessor and Collector**

(a) When the tax books and rolls are approved by the commissioners court, the assessor and collector is entitled to receive for his services an amount specified by the commissioners court, but he may not be allowed more than he is allowed by law for the same services rendered for the state and county.

(b) The commissioners court shall order the county clerk to pay the assessor and collector by issuing a warrant against the county treasurer in favor of the assessor and collector payable from the funds of the district.

[Acts 1971, 62nd Leg., p. 549, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.256. Failure of Assessor and Collector to Assess District Property**

If the assessor and collector fails or refuses to comply with the orders of the commissioners court requiring him to assess and list all property in the district for taxation as provided in Section 57.252 of this code, the commissioners court shall suspend him from the further discharge of his duties, and the assessor and collector shall be removed from office in the manner provided by law for the removal of county officers.

[Acts 1971, 62nd Leg., p. 549, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.257. Board of Equalization**

The commissioners court shall be the board of equalization for the district, and all laws governing boards of equalization for county and state taxing purposes govern the board of equalization for the district.

[Acts 1971, 62nd Leg., p. 549, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.258. Assessment and Collection of Taxes for Districts With Land in More Than One County**

(a) A district providing for the levy of taxes on the ad valorem basis which includes land located in more than one county has all the rights, powers, and privileges of districts that include land in one county.

(b) The assessor and collector of each county having land included in the district shall assess the taxes levied by the commissioners court of his county against the land in his county which is included in the district for each year that a tax is levied.

(c) The assessor and collector shall make a separate tax roll covering the district's taxes and shall use it as a guide in collecting the taxes for the district.

(d) The assessor and collector shall collect the taxes for the district in his county for every year that a tax has been levied. The assessor and collector shall keep a separate account covering the land in his county that is included in the district for the purpose of determining how much tax has been collected and how much of the taxes his county pays to the district.

[Acts 1971, 62nd Leg., p. 549, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.259. Assessment of Damages**

(a) In a district which levies taxes on the ad valorem basis, the commissioners of appraisal shall be appointed and shall act in the manner provided in Sections 57.261-57.270 of this code, except that persons appointed under this section may not assess benefits.

(b) Proceedings, notice, and hearings shall be governed by the provisions of this chapter relating to assessment of taxes on the benefit basis.

(c) Provisions of this chapter relating to assessment of damages in districts levying taxes on the benefit basis shall apply to assessment of taxes on the ad valorem basis.

[Acts 1971, 62nd Leg., p. 550, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.260. Levy of Taxes on Benefit Basis**

(a) If a district levies taxes on the benefit basis, the commissioners court of each county in which any portion of that district is located shall levy and have assessed and collected taxes on all taxable property inside the district, based on the net benefits which the commissioners of appraisal find will accrue to each piece of property from the completion of the plan of reclamation or other authorized improvement.

(b) The taxes shall be sufficient to pay the interest on the bonds, as it is due, and to raise an amount to create a sinking fund sufficient to discharge and redeem the bonds at maturity.

(c) The levy for each year throughout the life of the bond issue may be made at the time the bonds are issued and shall be the rate of levy for each year until it is modified.

[Acts 1971, 62nd Leg., p. 550, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.261. Appointment of Commissioners of Appraisal**

After the plan of reclamation is approved and adopted, the commissioners court of the county of jurisdiction in a district levying taxes on the benefit

basis shall appoint three disinterested commissioners, known as "commissioners of appraisal." [Acts 1971, 62nd Leg., p. 550, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.262. Qualifications for Commissioners of Appraisal**

The commissioners of appraisal shall be freeholders, but not owners of land within the district for which they are to act, and shall not be related within the fourth degree of affinity or consanguinity to any of the members of the commissioners court of jurisdiction, the board, or to any landowners in the district.

[Acts 1971, 62nd Leg., p. 550, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.263. Compensation of Commissioners of Appraisal**

(a) The commissioners of appraisal in their report shall show the number of days each has been employed and the actual expenses each has incurred during his service as commissioner.

(b) The district shall pay each commissioner of appraisal \$5 a day for his services and reimburse him for all necessary expenses when his accounts are approved by the board.

[Acts 1971, 62nd Leg., p. 550, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.264. Organization of Commissioners of Appraisal**

(a) The secretary of the board shall notify each of the commissioners of appraisal in writing of his appointment and of the time and place for the first meeting.

(b) The commissioners of appraisal shall meet at the time and place specified, or as soon after that time as practicable, at a time and place agreed on by them.

(c) The commissioners of appraisal shall each take and subscribe an oath to faithfully and impartially discharge their duties as commissioners, and to make a true report of the work done by them.

(d) At the first meeting the commissioners of appraisal shall organize by electing one of their number chairman and one vice chairman. The secretary of the board or in his absence, a person the board appoints, shall be secretary of the commissioners of appraisal during their continuance in office.

(e) The secretary shall furnish the commissioners of appraisal information and assist them in the performance of their duties.

(f) If a commissioner of appraisal resigns, the vacancy shall be filled in the manner provided for filling vacancies on the board.

[Acts 1971, 62nd Leg., p. 551, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.265. Duties of Commissioners of Appraisal**

(a) The commissioners of appraisal shall begin to perform their duties within 30 days after qualifying and organizing.

(b) The commissioners of appraisal may at any time call on the attorney of the district for legal advice and information and, if necessary, may require the engineer or one of his assistants to assist in the proper performance of their duties.

(c) The commissioners of appraisal shall view:

- (1) the land inside the district;
- (2) other land which will be affected by the plan of reclamation if carried out;
- (3) all public roads, railroads, rights-of-way, and other property or improvements located on the land; and
- (4) land inside or outside the district which may be acquired under the provisions of this chapter for any purpose connected with or incident to carrying out the plan of reclamation.

(d) The commissioners of appraisal shall assess the amounts of benefits and all damages that will accrue to any tract of land inside the district or any land outside the district which may be affected by the plan of reclamation, or any public highway, railroad, right-of-way, roadway, or other property.

(e) The commissioners of appraisal shall assess the value of all land inside or outside the district to be acquired for right-of-way or other purposes. [Acts 1971, 62nd Leg., p. 551, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.266. Report of Commissioners of Appraisal

(a) The commissioners of appraisal shall prepare a report of their findings. The report shall include:

- (1) the name of the owner of each piece of property examined and assessed;
- (2) a description which will identify each piece of property; and
- (3) the value of all property to be taken or acquired for rights-of-way or any other purposes connected with carrying out the plan of reclamation as finally approved by the water development board.

(b) At least a majority of the commissioners of appraisal shall sign the report. They shall file the report with the secretary of the board.

(c) The failure of the commissioners of appraisal to return damages to any tract of land inside or outside the district shall be considered a finding that no damage will be done to that tract.

(d) The commissioners of appraisal in their report shall fix a time and place to hear objections to the findings in the report. The date for the hearing shall not be less than 20 days from the filing of the report.

[Acts 1971, 62nd Leg., p. 552, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.267. Notice of Hearing

(a) After the commissioners of appraisal file their report with the secretary of the board, the secretary shall publish notice of the time and place of the hearing on the report.

(b) The notice shall be published in a newspaper published in each county in which any part of the district is located, or in which any land lies that will be in any way affected by the proposed plan of reclamation. The notice shall be published once a week for two consecutive weeks before the date of the hearing.

(c) The notice shall be in substantially the following form:

To the owners and all other persons having any interest in land lying in \_\_\_\_\_ County, take notice, that a copy of the plan of reclamation of the \_\_\_\_\_ Levee Improvement District has been filed with the county clerk of this county and that the commissioners of appraisal have been appointed to assess benefits and damages accruing to land or other property inside or outside the levee district which will be benefited, taken, damaged, or affected in some way by the carrying out of the plan of reclamation. The report of the commissioners of appraisal has been filed in my office at \_\_\_\_\_, and all interested persons may examine the report and make an objection to all or any part of the report. A person who claims damage to his land and to whose land no damages have been assessed in the report must file a claim for damage in my office on or before \_\_\_\_\_, 19\_\_\_. A person who fails to make an objection or to file a claim for damages is deemed to have waived his right to object or claim damages. The commissioners of appraisal will meet on \_\_\_\_\_, 19\_\_\_, to hear and act on objections to their report and claims for damages.

\_\_\_\_\_  
Secretary, Board of Directors

\_\_\_\_\_  
Levee District

(d) The secretary shall mail written notice to each person whose property is listed in the report of the commissioners of appraisal, if the office address is known. This notice shall state in substance:

(1) that the report of the commissioners of appraisal assessing benefits and damages accruing to land and other property because of the plan of reclamation for the district has been filed in the secretary's office;

(2) that all persons interested may examine the report and make objections to it in whole or in part; and

(3) that the commissioners of appraisal will meet on the day and at the place named to hear and act on objections to the report.

(e) The secretary, on the day of the hearing, shall file in his office the original notice, with his affidavit, which shall show the manner of publication and the names of all persons to whom notices have been mailed. The affidavit shall state that the secretary could not with reasonable diligence ascertain the post-office addresses of those affected to whom no notices were mailed.

(f) The secretary shall file copies of the notice and his affidavit with the commissioners of appraisal and with the clerk of the commissioners court of jurisdiction.

[Acts 1971, 62nd Leg., p. 552, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.268. Rights of Parties**

Parties interested in matters before the commissioners of appraisal may appear in person or by attorney, or both, and are entitled to process for witnesses, to be issued by the chairman of the commissioners of appraisal on demand. The commissioners of appraisal have the same power as a court of record to enforce the attendance of witnesses.

[Acts 1971, 62nd Leg., p. 553, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.269. Hearing; Judgment**

(a) An owner of land or other property affected by the report of the commissioners of appraisal or by the plan of reclamation may file an objection to any or all parts of the report of the commissioners of appraisal at or before the hearing on the report.

(b) A person on whose land no damages have been assessed and who believes that his land will be damaged by prosecution of the plan of reclamation may file with the secretary of the board a claim for damages.

(c) The commissioners of appraisal, at the time and place named in the notice, shall hear and decide all objections and claims for damages and may make changes and modifications in the report.

(d) The commissioners of appraisal may adjourn the hearing from day to day.

(e) After modifying the report to conform to the changes decided on at the hearing, the commissioners of appraisal shall make a decree confirming the report as modified.

(f) If necessary the commissioners shall condemn and adjudge damages for land inside or outside the district that is needed for right-of-way or other purposes.

(g) The commissioners shall adjudge and apportion costs incurred on the hearing in an equitable manner.

(h) The findings of the commissioners of appraisal as to benefits is final and conclusive.

(i) The secretary shall record the findings of benefits in the minutes of the board and shall file certified copies of the findings with the county clerk of each county in which any portion of the land inside the district is located, as a permanent record of the county. The filing is notice to all persons of the contents of the decree.

[Acts 1971, 62nd Leg., p. 553, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.270. Appeal of Decree of the Commissioners of Appraisal**

(a) A person or the board may appeal from the decree of the commissioners of appraisal assess-

ing or refusing to assess damages or fixing the value of a right-of-way.

(b) The only questions considered on an appeal are:

(1) whether or not just compensation has been allowed for property taken;

(2) whether or not proper damages have been allowed for property injured; or

(3) whether or not in fact property has been damaged.

(c) The appeal shall be taken to the district court of the county of jurisdiction in the manner, under the conditions, and within the time provided by Sections 57.020-57.025 of this code for appeals from judgments of the commissioners court refusing to create the district.

(d) The district court has jurisdiction of the appeal regardless of the amount claimed.

(e) The secretary in not less than five days after the appeal is filed shall send to the district clerk:

(1) the plan of reclamation or a certified copy of it;

(2) a transcript of that part of the commissioners of appraisal's report affecting the lands concerned in the appeal;

(3) a transcript of the claim for damages; and

(4) a transcript of the action of the commissioners of appraisal on the claim.

(f) Appeals may be consolidated in the district court.

(g) The trial in the district court shall be de novo, and the proceedings shall be in accordance with the laws of this state for damage suits.

(h) The claimant is considered the plaintiff, and the district, the defendant, and no further pleadings are required.

(i) Appeals may be taken from the judgment of the district court as in other civil cases.

(j) No appeal may delay carrying out the plan of reclamation, and if the board pays to the district clerk the amount of damages awarded by the commissioners of appraisal to a claimant who is appealing their decree, and if the board makes bond to pay to the claimant any additional amount that he may be awarded on his appeal, title to the condemned property that is the subject of the appeal vests in the district, and the district is entitled to immediate possession.

(k) No person may claim damages against the district, its board, officers, or agents because of the prosecution of the plan of reclamation if he owns or has an interest in land in a county in which a copy of the plan of reclamation has been filed and in which notice has been published of the hearing before the commissioners of appraisal, and he has failed to file a claim for damages or an objection to the damages assessed by the commissioners of appraisal against his land, or if he has filed a claim or

objection but has failed to appeal from an adverse ruling on his claim or objection.

[Acts 1971, 62nd Leg., p. 554, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.271. Basis of Taxation

(a) After the action of the commissioners of appraisal, as provided in Sections 57.261–57.270 of this code, their final findings, judgment and decree assessing benefits, until changed or modified, shall form the basis of taxation for the district, for all purposes for which taxes may be levied by the district.

(b) Taxes shall be apportioned and levied on each tract of land, railroad, and other real property in the district in proportion to the benefits to the property named in the decree of the commissioners of appraisal.

[Acts 1971, 62nd Leg., p. 555, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.272. Tax Assessor for Districts Levying Taxes on Benefit Basis

(a) The secretary of the board shall serve as tax assessor for a district levying taxes on the benefit basis.

(b) When a tax is levied, the secretary shall, at the expense of the district, prepare a tax roll substantially in the same form as the assessment roll made by county assessor and collector, except the roll shall state net benefits assessed against property.

(c) The secretary shall compute the amount of taxes assessed against each piece of property and enter the amount on the tax roll and shall file with the assessor and collector of each county in which a portion of the district is located a certified copy of the part of the tax roll which relates to property in the district located in that county.

[Acts 1971, 62nd Leg., p. 555, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.273. Readjusting Assessments

(a) After one year from the date of the final judgment and decree of the commissioners of appraisal the owners of a majority of the acreage in the district may file a petition with the commissioners court alleging that the previous assessment of benefits in the judgment and decree is insufficient or inequitable and requesting an increase or readjustment of the assessment of benefits for the purpose of making an adequate or more equitable basis for levying taxes.

(b) If the plan of reclamation is changed or modified, or if extensive repairs or additions to the plan of reclamation are desired, the board shall file a petition with the commissioners court describing the changes, modifications, repairs, or additions.

(c) When a petition is filed, the commissioners court shall set a day for a hearing on the petition.

(d) The commissioners court shall issue notice informing all persons concerned of the time and place of the hearing, and of their rights to appear and contend for or contest a reassessment of benefits.

The notice must be posted as provided in Section 57.015 of this code for posting notice of the hearing for establishing the district.

[Acts 1971, 62nd Leg., p. 555, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.274. Hearing on Petition for Reassessment

(a) At the hearing on readjustment of assessments, the commissioners court shall hear the petition and receive evidence for or against the petition.

(b) The commissioners court shall order a reassessment of benefits if it finds that the aggregate amount of assessed benefits as shown by the previous final judgment and decree is insufficient to carry out the original plan of reclamation or changes, repairs, or additions to the plan or there has been a material change in the relative value of the benefits conferred on the property in the district, or for some reason the assessment of benefits is inadequate or inequitable.

(c) If the commissioners court orders a reassessment, it shall appoint commissioners of appraisal as provided in Section 57.263 of this code, and the new commissioners of appraisal have the same powers, rights, privileges, and duties as provided in Section 57.267 of this code.

[Acts 1971, 62nd Leg., p. 555, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.275. Tax Collection on Reassessment

(a) The judgment and decree of the commissioners of appraisal reassessing benefits in the district are the basis of the assessment of taxes in the district.

(b) The assessment can again be modified or changed but there can be no reassessment of benefits that will in any way render any outstanding bonds or other indebtedness of the district insecure. The sum of benefits as reassessed may never be less than the sum of all outstanding bonds and other indebtedness of the district.

(c) The commissioners court of each county in which the district is located shall levy and have assessed and collected taxes based on the reassessment, at a rate sufficient to provide funds to pay the interest on all outstanding bonds and other indebtedness of the district, to pay the bonds or other indebtedness at maturity, and to provide the necessary sinking funds to pay all bonds or other indebtedness that may be issued.

(d) If the plan of reclamation is modified, or if extensive repairs or additions are made, the provisions of this section apply to districts that levy taxes on the ad valorem basis, but the commissioners of appraisal shall assess only the damages which will accrue to the property inside or outside the district as a result of the changes in the plan.

[Acts 1971, 62nd Leg., p. 556, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.276. Maintenance Tax Election

(a) If the board desires an election in the district on the question of a maintenance tax or other proposition, they shall petition the commissioners court of jurisdiction for an election.

(b) The commissioners court shall order the election, and notice shall be given and the election shall be held according to the provisions of Sections 57.203-57.207 of this code.

(c) The proposition in a maintenance tax election may be for a specific tax rate, or for a specific maximum rate.

[Acts 1971, 62nd Leg., p. 556, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.277. Levy of Maintenance Tax**

(a) If a maintenance tax is approved at an election, the commissioners court of each county in which any portion of the district is located shall levy and have assessed and collected taxes on all taxable property inside the district based on the net benefits to the property that will be accomplished by the plan of reclamation if the district provides for levying taxes on a benefit basis or on the value of each piece of property as made for state and county purposes if the district provides for levying taxes on the ad valorem basis.

(b) The tax rate shall not be more than the specific rate approved at the election.

(c) The district shall use money obtained from the maintenance tax only for maintenance, upkeep, and repair, to make additions to the levees and other improvements in the district, and for other purposes stated in this chapter.

[Acts 1971, 62nd Leg., p. 556, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.278. Repeal of Right to Levy Maintenance Tax**

(a) The district may levy a maintenance tax until the authority to levy a maintenance tax is repealed by another election.

(b) The district may not hold elections on the question of repealing or reducing the maintenance taxes more often than every five years.

[Acts 1971, 62nd Leg., p. 557, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.279. Collection of Delinquent Taxes**

(a) Taxes levied under this chapter are a first and prior lien on all property against which they are assessed and are payable, mature, and become delinquent as provided by law for state and county taxes.

(b) The collection of delinquent taxes and the sale of property for the payment of the taxes is governed by the law relating to the collection of delinquent state and county taxes, and the district assessor and collector shall have the same duties and powers for collecting delinquent taxes as the county tax assessor and collector has for collecting delinquent state and county taxes.

(c) The board also may collect delinquent taxes and may institute and prosecute suits in the name of the district to collect the taxes, and the district may do all other things necessary to collect delinquent taxes.

[Acts 1971, 62nd Leg., p. 557, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.280. Suits to Collect Delinquent Taxes**

(a) The board may collect delinquent taxes by bringing suit in the name of the district for the collection of the taxes and the foreclosure of the lien on the property. The suit shall be brought in the district court of the county in which the land or the major part of the land is located.

(b) The board is not required to publish a delinquent tax list or give other delinquent tax notice before proceeding to bring suit to collect the delinquent taxes.

[Acts 1971, 62nd Leg., p. 557, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.281. Employing Attorneys**

The board may employ an attorney to collect delinquent taxes, and may determine the fees or commissions to be paid to the attorney for his services.

[Acts 1971, 62nd Leg., p. 557, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.282. Notice**

(a) An action to collect delinquent taxes shall be in the nature of a proceeding in rem, and jurisdiction of landowners and other parties interested can be obtained by publication of a general notice of the proceeding.

(b) The notice shall be published once each week for at least four consecutive weeks in a newspaper with general circulation published in the county or counties in which the district is located, and if no paper is published in the county, then the notice shall be published in a newspaper in the nearest county where a paper is published.

(c) A written notice shall be mailed to the last known address of the landowner and shall be substantially in the following form: \_\_\_\_\_ County Levee Improvement District No. \_\_\_\_\_ vs. delinquent land in \_\_\_\_\_ County and the district. In the district court of \_\_\_\_\_ County, Texas, \_\_\_\_\_ Judicial District \_\_\_\_\_ Term, 19\_\_\_\_.

Notice is given to all parties having or claiming an interest in any of the following described land that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, suit was filed in the district court of \_\_\_\_\_ County, Texas, at \_\_\_\_\_, Texas, to enforce the collection of certain levee district taxes on the following described land.

The name of each supposed owner is set opposite his land, together with the amount due on each tract, to wit:

(The list of supposed owners, with a description list of the delinquent land, and the amount due on each tract.)

All persons or corporations having or claiming an interest in the listed lands are notified to appear at the next regular term of the district court of \_\_\_\_\_ County, Texas, to be held at the courthouse in \_\_\_\_\_, on the \_\_\_\_\_ Monday in \_\_\_\_\_, 19\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, then and there to answer a petition filed in the court in

the above numbered and entitled cause. If an answer is not filed, final judgment will be entered directing the sale of the land for the purpose of collecting the delinquent taxes, and payment of interest, penalties, attorney's fees, and other costs allowed by law.

Given under my hand and the seal of the court in the city of \_\_\_\_\_, Texas, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_.

\_\_\_\_\_  
Clerk of the District Court of  
\_\_\_\_\_ County, Texas.

Issued this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_.

\_\_\_\_\_  
Clerk of the District Court of  
\_\_\_\_\_ County, Texas.

(d) The publication of the notice of the suit to collect the taxes and the written notice addressed to the last known address of the landowner shall be sufficient service of process against any owner, vendor, mortgagee, heir, or other person claiming an interest in the land, and the judgment in the case is binding on each tract of land and the owner of every interest in the land.

[Acts 1971, 62nd Leg., p. 557, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.283. Procedure for Suit to Collect Delinquent Taxes

(a) Suits brought to collect taxes shall be conducted according to the practice and procedure of the district court, except as otherwise provided in this chapter.

(b) In a suit to collect taxes it is sufficient to:

- (1) allege generally and briefly the organization of the district and the nonpayment of the taxes;
- (2) give a reasonable description of the land involved and the amount charged to each tract;
- (3) request a foreclosure.

(c) If the ownership of the land is incorrectly alleged in the proceedings, it is immaterial.

(d) A defendant in a suit to collect taxes may not use as a defense an irregularity in the assessment of the land, or a mistake in the name of the owner, the number of acres, or the amount of the taxes, interest, and penalty as alleged in the pleadings or in the notice of the suit; but the correct amount of taxes, interest, and penalty due may be proved and the judgment rendered on the correct amount.

(e) When the notice, petition, and answer have been filed with the clerk of the district court, he shall place the case on the docket, and the case has precedence over all other cases.

(f) The district court may grant a continuance only for good cause shown and may grant a continuance in suits involving part of the land and proceed to hear and decide suits on which no continuance is granted.

(g) The procedure provided for collection of delinquent taxes is cumulative, and does not repeal or supersede any other procedure provided in this chapter for the collection of taxes.

[Acts 1971, 62nd Leg., p. 558, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.284. Judgment; Sale of Land

(a) In a suit to collect delinquent taxes, if the ruling is in favor of the district, the court shall enter judgment against each tract of land for the amount of the delinquent taxes plus penalties, interest, attorney's fees, and costs.

(b) The judgment shall provide for the sale of each tract of land by the sheriff or a constable of the county in which the land is located. The land shall be sold in the manner provided for other judicial sales of land.

(c) The foreclosure decree on the land shall include a writ of possession.

(d) If all the land and other real property that is the subject of the foreclosure decree is not sold on the date advertised, the sales shall continue from day to day until completed.

(e) The sheriff or constable shall by proper deed convey to the purchaser the land sold, and the title of the land becomes vested in the purchaser, good against all others except the former owner, who for two years from the date of the purchaser's deed has the right to redeem the land by paying double the amount of money paid for the land.

[Acts 1971, 62nd Leg., p. 559, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 57.285 to 57.320 reserved for expansion]

### SUBCHAPTER I. DISSOLUTION

#### § 57.321. Dissolution of a District

Subject to the provisions of Sections 50.251-50.256 of this Code, if the commissioners court finds at any time before the sale of a district's bonds or final lending of its credit in another form that the proposed undertaking for any reason is impracticable or apparently cannot be successfully accomplished, the commissioners court may dissolve the district.

[Acts 1971, 62nd Leg., p. 560, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.322. Requirements for Dissolving a District

(a) To dissolve a district, a petition signed by the owners of a majority of the acreage in the district requesting the commissioners court to dissolve the district and stating the reasons for dissolution must be presented.

(b) At the time the petition is filed, a \$50 deposit shall be made to pay for the expenses of a hearing on the petition.

(c) The petition shall be set for a hearing, notice shall be given, the hearing held, and the expense deducted from the deposit in the manner provided in this chapter for creation of the district.

(d) The commissioners court has the same powers over dissolution of a district that it has over creation of a district.

(e) If at the hearing the commissioners court finds that the district should be dissolved, it shall render a judgment reciting its findings and enter an order on its records declaring the district dissolved.

(f) The commissioners court shall appoint the chairman of the board or some other suitable person as trustee to close the affairs of the district without delay, and shall determine the length of the term and the amount of compensation for the trustee.

(g) If the commissioners court finds that the district should not be dissolved, it shall dismiss the petition at the cost of the petitioners and enter its findings on record.

[Acts 1971, 62nd Leg., p. 560, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.323. Return of Taxes on Dissolution**

(a) If a district is dissolved, the commissioners court shall order returned to the taxpayers ratably any unspent taxes that have been levied and collected in the name of the district in anticipation of an issue of bonds.

(b) Before the taxes are returned, the compensation due the assessor and collector and the treasurer and any other claim properly charged against the taxes must be deducted from them.

(c) The treasurer shall receive and file proper receipts for all sums refunded.

[Acts 1971, 62nd Leg., p. 560, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.324. Dissolving a District by Election**

A district may dissolve its corporate existence by election.

[Acts 1971, 62nd Leg., p. 560, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.325. Petition**

To dissolve a district by election, a person shall present a petition, signed by the owners of a majority of the acreage in the district, to the commissioners court at a regular session, requesting the commissioners court to dissolve the district.

[Acts 1971, 62nd Leg., p. 560, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.326. Election Order**

(a) After it receives a petition under Section 57.325 of this code, the commissioners court shall order an election to be held in the district at the earliest possible legal time to determine whether or not the district should be dissolved.

(b) If the proposition to dissolve the district fails to carry at the election, the commissioners court may not order another election for the same purpose within one year after the result of the election has been announced officially.

[Acts 1971, 62nd Leg., p. 561, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.327. Election Procedure, Time, and Place for Holding Election**

The provisions of Sections 57.203-57.207 of this code apply, so far as possible, to a dissolution election.

[Acts 1971, 62nd Leg., p. 561, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.328. Ballot**

The commissioners court shall have the ballots printed to provide for voting for or against the following proposition and no other: "Dissolving the levee improvement district."

[Acts 1971, 62nd Leg., p. 561, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.329. Vote Necessary to Carry Proposition**

More than two-thirds of the persons voting in the election must vote to dissolve the district to carry the proposition.

[Acts 1971, 62nd Leg., p. 561, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.330. Commissioners Court Order Dissolving District**

(a) If the proposition to dissolve the district carries, the commissioners court shall make an order substantially as follows: "(Name of petitioner) and (number of other petitioners) others presented a petition asking for an election to decide whether or not (name of county) County Levee Improvement District (district number) should be dissolved. The commissioners court held the election on (date), and more than two-thirds of the resident property taxpayers voting in the election voted to dissolve the district. As a consequence of the election result, (name of county) County Levee Improvement District (district number) is dissolved."

(b) The commissioners court shall enter the order in its minutes.

[Acts 1971, 62nd Leg., p. 561, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.331. Dissolution Trustees**

The commissioners court shall appoint as trustees, three landowners of the district, and the three appointed landowners assume the duties of trustees at the time they file the bond required under Section 57.332 of this code.

[Acts 1971, 62nd Leg., p. 561, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.332. Trustees' Bond**

(a) When the commissioners court issues the dissolution order under Section 57.330 of this code, the trustees shall execute jointly a good and sufficient bond in an amount sufficient to cover the amount of the outstanding bonds and other debts of the district, payable to and approved by the county judge, conditioned on the trustees faithfully performing their duties as trustees and paying money and delivering other property of the district over which they have control to the persons entitled to the money or other property.

(b) When the bond is executed, it shall be recorded in the minutes of the commissioners court. When

the bond is approved, it supersedes the bond the treasurer executed under Section 57.065 of this code. [Acts 1971, 62nd Leg., p. 561, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.333. Trustees' Compensation

(a) The trustees are entitled to receive for their services as trustees a one-half of one percent commission on all money they receive for the district and a one-half of one percent commission on all money they pay out as trustees. This commission is the entire compensation for all three trustees.

(b) The trustees are not entitled to a commission on money in the treasury when they become the trustees or on money in the treasury when their trusteeship ends.

[Acts 1971, 62nd Leg., p. 562, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.334. Appointment of Trustee to Fill Vacancy

In case of death or resignation of a trustee, the commissioners court shall appoint a successor to fill the vacancy.

[Acts 1971, 62nd Leg., p. 562, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.335. General Duties of Trustees

(a) The trustees have control of the disposition and sale of all district property.

(b) The trustees have control of all the property of the district, including the money in the treasury, and shall keep the district's money and all its books, notes, accounts, and choses in action of every kind.

(c) The trustees may sue to recover property and collect debts of the district, and may employ counsel in suits and in caring for the district's property and managing the district's dissolution.

[Acts 1971, 62nd Leg., p. 562, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.336. Trustees' Expense

(a) The trustees shall make a charge against the trust estate for each reasonable expense incurred by them in conducting the business of the district and in litigating a suit for the district.

(b) The trustees shall charge any unpaid counsel fees or court costs incurred by former district officers against the trust estate.

(c) The trustees shall present the charges against the trust estate to the commissioners court and shall post notice in the manner provided for other claims against the district.

(d) If the commissioners court approves a charge against the trust estate, the charge becomes a valid, preferred claim against the district.

(e) The trustees, acting as treasurer, may retain money in their control to pay for a valid claim which they have against the district.

(f) If the commissioners court rejects a part of an expense which the trustees think is a valid claim, the trustees may appeal the decision as other claimants. [Acts 1971, 62nd Leg., p. 562, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.337. Claims That Were Approved Before District Was Dissolved

The trustees shall pay all unpaid bonds and claims outstanding against the district before the commissioners court issues the dissolution order except those which are protested according to the provisions of Section 57.338 of this code.

[Acts 1971, 62nd Leg., p. 563, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 57.338. Protesting Payment of Claims Approved Before District Was Dissolved

(a) If a person who pays taxes in the district protests the payment of a claim filed under Section 57.337 of this code, the trustees shall refuse to pay the claim.

(b) The protest is sufficient to cause the trustees to disallow the claim if the person making the protest files the protest with the trustees, along with a bond for twice the amount of the claim, signed by sufficient sureties approved by the trustees, payable to the trustees, and conditioned on the protesting taxpayer's<sup>1</sup> paying all costs of suit if the claimant establishes his claim in full.

(c) A person whose claim is disallowed under this section may sue the trustees for the amount he claims.

[Acts 1971, 62nd Leg., p. 563, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> So in enrolled bill.

#### § 57.339. Claims Not Approved Before District Was Dissolved

(a) A person who has a claim or judgment against the district which was not approved by the commissioners before the district was dissolved may collect on the claim only by following the procedure prescribed in this section and Sections 57.340–57.342 of this code.

(b) The person must present the claim, duly verified, to the trustees within six months after the day the commissioners court approves the bond of the trustees.

(c) The trustees shall examine the claim, and if the trustees find that the claim is correct, they shall allow it. If the trustees allow the claim, the person making the claim must file it with the county clerk not less than 20 days before the beginning of the regular session of the commissioners court that follows the date the trustees allowed the claim.

(d) If the trustees find that it would be unjust for them to allow a claim, they shall endorse on the claim their refusal to allow it, and the person making the claim may sue the trustees for the amount he claims in any court of competent jurisdiction in the county.

(e) If the trustees find that it would be unjust for them to allow part of the claim, they shall endorse on the claim the parts of it they allow and the parts they disallow. The person making the claim may either waive his claim to the part disallowed and file the claim with the commissioners court or refuse to waive his claim to the part disallowed, withdraw the

claim from the trustees, and sue the trustees for the amount he claims.

[Acts 1971, 62nd Leg., p. 563, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.340. Claims, Payment Orders, and Appeals**

(a) The commissioners court, in a regular session, shall pass on claims. The commissioners court shall approve each claim it finds to be correct and shall issue an order stating that approval and shall enter the order in its minutes.

(b) When the order of approval is entered in the minutes, the claim becomes a valid claim against the district.

(c) If the commissioners court approves a claim under this section, the person making the claim shall file the claim with the trustees.

(d) If the person making the claim is not satisfied with the terms of the order of approval or if the commissioners court refuses to approve the claim, the person may appeal the decision of the commissioners court.

(e) When a claim is filed under Section 57.339 of this code, the county clerk shall immediately issue notice of the filing to all persons interested in the district. The notice shall be posted in three public places in the district and at the courthouse door not less than 20 days before the next regular session of the commissioners court.

[Acts 1971, 62nd Leg., p. 563, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.341. Claims Judgments**

(a) If a person making a claim sues the trustees for the amount of the claim and wins a judgment against the trustees, the person shall file the judgment with the trustees.

(b) If the suit contests a claim under Section 57.338 of this code, the contestant and his sureties shall be made parties to the suit, and the trustees shall assert all defenses urged against the claim in the protest. If the claimant wins a judgment for the whole amount of his claim, the court shall render a judgment against the contestant and his sureties for all costs incurred in the suit.

[Acts 1971, 62nd Leg., p. 564, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.342. Claims to be Paid**

The trustees shall pay from money left in the district's treasury on dissolution claims filed with them under Sections 57.336, 57.337, and 57.339 of this code, in the order that the claims are filed.

[Acts 1971, 62nd Leg., p. 564, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.343. Disposition of Debts After Election**

(a) If the district is dissolved, the commissioners court shall provide for the settlement of the debts of the district, including the costs and expenses of holding the election.

(b) The commissioners court may levy, assess, and collect a sufficient tax on the property in the district in the manner provided in this chapter, to pay all the valid debts and obligations of the district, except bonds issued and held by a purchaser.

(c) The district shall pay bonds that have been issued and are held by a purchaser according to the terms of the bonds by levy and collection of an annual tax as provided in this chapter unless retirement of the bonds is effected as provided in Section 57.344 of this code.

[Acts 1971, 62nd Leg., p. 564, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.344. Accelerated Retirement of Bonds**

(a) If there are any district bonds outstanding at the time the commissioners court issues the dissolution order, the commissioners court shall immediately begin negotiations with the holders of the bonds to determine whether or not the retirement of the bonds can be accelerated.

(b) If the bonds can be retired at an earlier date than the date stipulated on their face, either as a result of the terms of the bonds or because of an agreement between the commissioners court and the holders of the bonds, then the commissioners court may levy a tax to pay off the bonds as quickly as possible.

(c) The commissioners court shall have the tax assessed and collected annually or at one time.

[Acts 1971, 62nd Leg., p. 564, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.345. Compensation for Tax Assessor and Collector**

(a) The county assessor and collector is entitled to receive the same compensation for assessing and collecting taxes authorized by Sections 57.343 and 57.344 of this code as he receives for assessing and collecting taxes under Subchapter H of this chapter.

(b) The commissioners court shall provide for the assessor and collector's compensation in the order of the commissioners court assessing the taxes.

[Acts 1971, 62nd Leg., p. 565, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 57.346. Final Trustee Report**

(a) After the trustees pay all valid claims established against the district and satisfy the cost and expenses of controlling and managing the district, they shall file a report of the final settlement with the commissioners court.

(b) The trustees shall include in the report:

(1) a full and complete account of all money received and paid during their trusteeship;

(2) an account of the disposition of all property which came under their control as trustees; and

(3) an account of all other matters relating to the management of the affairs of the district.

(c) On the approval of the report, the commissioners court shall direct the trustees to turn over any property or money remaining in their control to the person designated by the commissioners court to receive the money or property.

(d) When the trustees have complied with the direction of the commissioners court, they shall report their compliance to the commissioners court.

After the trustees have reported their compliance, the commissioners court shall discharge the trustees and their sureties and close the trust estate. [Acts 1971, 62nd Leg., p. 565, ch. 58, § 1, eff. Aug. 30, 1971.]

[Chapters 58 and 59 reserved for expansion]

## CHAPTER 60. NAVIGATION DISTRICTS—GENERAL PROVISIONS

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**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 60.001. Definitions**

In this chapter:

- (1) "District" means a navigation district organized under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.
- (2) "Commission" means the navigation and canal commission.

[Acts 1971, 62nd Leg., p. 566, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 60.002 to 60.010 reserved for expansion]

**SUBCHAPTER B. RETIREMENT, DISABILITY, AND DEATH COMPENSATION FUND**

**§ 60.011. Creation of Retirement, Disability, and Death Compensation Fund**

(a) The commission of any district created under this code or by special law may provide for and administer a retirement, disability, and death compensation fund for district officers and employees and may adopt plans to effectuate this purpose.

(b) The plans may include forms of insurance or annuities, or a combination of both, which the commission considers advisable.

(c) After notice to employees and a hearing, the commission may change the plan or any rule or regulation.

[Acts 1971, 62nd Leg., p. 566, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.012. Investment of Funds**

(a) Money in the retirement, disability, and death compensation fund shall be invested as provided in Subsections (b) and (c) of this section, and the commission may change from one method of investment to the other or to any combination of the two.

(b) The money in the retirement, disability, and death compensation fund may be invested in bonds of:

- (1) the United States;
- (2) the State of Texas;
- (3) county, city, or other governmental subdivisions of the State of Texas; or
- (4) any agency of the United States, if payment of principal and interest is guaranteed by the United States.

(c) The money in the retirement, disability, and death compensation fund also may be invested in:

- (1) life insurance policies;
- (2) endowment or annuity contracts; or

(3) interest-bearing certificates of legal reserve life insurance companies authorized to write such contracts in Texas.

(d) If the method of investment authorized under Subsection (b) of this section is followed, the commission shall keep a sufficient amount of money in the fund to meet amounts likely to become due each year.

[Acts 1971, 62nd Leg., p. 566, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.013. Eligibility for Other Pension Funds**

The recipients or beneficiaries of a fund created under Section 60.011 of this code shall not be eligible for any other pension retirement funds or direct aid from the State of Texas unless the fund provided for in Section 60.011 of this code is released to the State of Texas as a condition precedent to receiving the other pension aid.

[Acts 1971, 62nd Leg., p. 567, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.014. Hospitalization and Medical Benefits**

(a) The commission may include hospitalization and medical benefits for officers and employees as part of the compensation paid to the officers and employees.

(b) The commission may provide for the benefits in Subsection (a) of this section by plan, rule, or regulation, and may change any plan, rule, or regulation from time to time.

[Acts 1971, 62nd Leg., p. 567, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 60.015 to 60.030 reserved for expansion]

**SUBCHAPTER C. ADDITIONAL POWERS AND DUTIES OF CERTAIN DISTRICTS**

**§ 60.031. Application of Subchapter**

The provisions of this subchapter shall apply to any district not participating with the United States in a navigation project.

[Acts 1971, 62nd Leg., p. 567, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.032. Authority to Construct Improvements**

The district may construct out of any of its funds, except interest and sinking funds, turning, storage, or yacht basins, harbors, or any facilities which may, in the judgment of the commission, be necessary or useful in the development and utilization of a waterway project for navigation purposes or in aid of navigation purposes. The district may own or lease dredges and other equipment for the construction or maintenance of those projects.

[Acts 1971, 62nd Leg., p. 567, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.033. Use of Equipment**

(a) This subchapter does not authorize a district to borrow or receive money or to levy taxes for the purpose of building tugs, barges, scows, dredges, pile drivers, or other floating equipment for use on the water of the United States other than water coming under the jurisdiction of the district or water neces-

sarily adjunctive to the use of the district, as set forth in Section 60.031 of this code.

(b) Dredges or other equipment, whether owned or leased, shall be confined to use on water under control of the district or a necessary adjunctive part of the district and may not be used in any work or service on any state or federal waterway which is not a necessary adjunctive part of the district.

[Acts 1971, 62nd Leg., p. 567, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.034. Oil, Gas, and Mineral Leases

The commission may lease for oil, gas, and minerals rights-of-way, spoil grounds, spoil basins, or any other land owned by a navigation district if it does not interfere with use of or obstruct any natural or artificial waterway of the district used for navigation purposes.

[Acts 1971, 62nd Leg., p. 567, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.035. Notice of Oil, Gas, and Mineral Lease

(a) Before a lease may be executed by the commission under Section 60.034 of this code, the commission shall have a notice requesting bids on the lease published in a newspaper of general circulation in the district. The notice shall be published at least once a week for two consecutive weeks before the final date for the receipt of bids.

(b) The notice shall include:

- (1) the approximate amount of land offered;
- (2) the general location of the land;
- (3) the time and place for receipt of bids;
- (4) the place where specifications may be obtained;
- (5) information concerning security for the bids; and
- (6) a statement that the commission reserves the right to reject any or all bids.

[Acts 1971, 62nd Leg., p. 568, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.036. Security for Bid on Oil, Gas, or Mineral Leases

Each bid submitted shall be accompanied by a certified check, cashier's check, or bidder's bond with a responsible corporate surety authorized to do business in Texas. The check or bond shall be in an amount equal to the first rental payment and bonus offered for the lease over and above the royalty and shall guarantee that the bidder will perform the terms of his bid if it is accepted by the commission.

[Acts 1971, 62nd Leg., p. 568, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.037. Award and Execution of Oil, Gas, and Mineral Leases

(a) The commission may lease all or any part of land advertised for lease under Section 60.035 of this code.

(b) The lease shall be awarded to the highest and best bidder and shall reserve at least one-eighth royalty of all gas, oil, or minerals in or produced on the land. The lease shall contain other provisions

reasonably necessary to protect the interests of the district and may not be less favorable to the district than customary commercial leases in the locality.

(c) The chairman and secretary of the commission shall execute the lease under an order, entered in the minutes of the commission, which shall include the consideration for the lease.

[Acts 1971, 62nd Leg., p. 568, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.038. Sale or Lease of Land

(a) A district may sell or lease all or any part of land owned by it, whether the land is acquired by gift or purchase, in settlement of any litigation, controversy, or claim in behalf of the district, or in any other manner, except that lands or flats heretofore purchased from the State of Texas under Article 8225, Revised Civil Statutes of Texas, 1925,<sup>1</sup> or granted by the State of Texas in any general or special act, may be sold only to the State of Texas or exchanged for adjacent littoral land as authorized by Section 61.117 of this code.

(b) Land which is sold or leased shall be declared surplus land and shall not be needed for use by the district in connection with the development of a navigation project.

(c) Sale or lease of land shall be made as provided by Sections 60.039–60.042 of this code.

[Acts 1971, 62nd Leg., p. 568, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 556, ch. 237, § 3, eff. June 11, 1973.]

<sup>1</sup> Repealed; see, now, §§ 61.115 to 61.117.

#### § 60.039. Surface Lease for Not More Than Five Years

The commission may lease the surface of land for not more than five years by the entry of an order on the minutes of the commission and the execution of a lease in the manner provided by the original order. The lease may not be extended beyond the five-year period by renewal, extension, or otherwise.

[Acts 1971, 62nd Leg., p. 569, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.040. Publication of Notice for Sales and Leases in Excess of Five Years

Before making a sale or lease of land for more than five years, the commission shall publish a notice in the manner provided in Section 60.035 of this subchapter.

[Acts 1971, 62nd Leg., p. 569, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.041. Security for Bids on Land to be Sold or Leased for More Than Five Years

Each bid submitted on land to be sold or leased for more than five years shall be accompanied by a certified check, cashier's check, or bidder's bond with a responsible corporate surety authorized to do business in Texas. The check or bond shall be in an amount equal to the bid for the land or for the first rental payment under the lease and shall guarantee

that the bidder will perform the terms of his bid if it is accepted by the commission.  
[Acts 1971, 62nd Leg., p. 569, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.042. Award and Execution of Deed or Lease in Excess of Five Years**

(a) After notice is published under Section 60.040 of this code, the commission may sell or lease all or any part of the land to the highest and best bidder for an amount which is not less than the reasonable market value in the locality at the time and place of the sale or lease.

(b) The commission shall enter an order in its minutes confirming the sale or lease. The order shall include the terms of the sale or lease and the consideration and shall provide that the commission will execute a deed or lease as soon as the successful bidder complies with the terms of his bid.  
[Acts 1971, 62nd Leg., p. 569, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.043. Power Over Waterways**

(a) The commission shall have absolute control over channels, or other waterways within the corporate limits of the district and turning basins, yacht basins, and storage basins. The commission may prevent or remove any obstructions of these facilities and fix proper fees, charges, and tolls for their use.

(b) The fees, charges, and tolls charged by the district shall be in addition to charges made, as provided by law, for any facilities used by any ship, boat, vessel, or any other character of craft used for water transportation for commercial purposes. The term commercial purposes shall be limited to any common carrier, contract carrier, or public or private carrier that shall transport or have transported persons, commodities, goods, wares, or merchandise for hire or compensation.  
[Acts 1971, 62nd Leg., p. 569, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.044. Law Governing Commission**

The commission of any district operating under this subchapter shall be governed by the provisions of Sections 63.087-63.088 and 63.090-63.094 of this code.  
[Acts 1971, 62nd Leg., p. 570, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 60.045 to 60.070 reserved for expansion]

**SUBCHAPTER D. REGULATORY POWERS**

**§ 60.071. General Rule-Making Authority**

The commission of a district which owns, operates, and maintains wharves, docks, piers, sheds, warehouses, and other similar terminal facilities which are not located inside the boundaries of any incorporated city, town, or village may pass, amend, and repeal any ordinance, rule, or police regulation which is not contrary to the constitution or laws of this state and which is necessary to protect the property

and to promote the health, safety, and general welfare of persons using the property.  
[Acts 1971, 62nd Leg., p. 570, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.072. Specific Powers of Districts**

To accomplish the purposes stated in Section 60.071 of this code, the commission may exercise the following powers:

(1) control the operation of all types of vehicles using the roads maintained by the district, other than roads dedicated to public use by formal dedication, and prescribe the speed, lighting, and other requirements of these vehicles;

(2) prohibit loitering on docks, wharves, piers, warehouses, sheds, or other properties of the district;

(3) control the operation of all types of vessels using harbors, turning basins, basins, or navigable channels of the district and prescribe the speed, lighting, and other requirements of these vessels;

(4) prohibit smoking and the use of flares, open fires, and inflammable, highly combustible, or explosive substances and materials on docks, wharves, piers, warehouses, sheds, and other properties of the district, or on those parts of the properties and at those times or during those periods as may, in the judgment of the commission, be determined to be dangerous to any of the property or inimical to the safety or general welfare of persons using the property or parts of it;

(5) prevent on any of the property all trespasses, breaches of the peace and good order, assaults and batteries, fighting, quarrels, use of abusive, profane, or insulting language, disorderly conduct, and misdemeanor theft and punish offenders;

(6) suppress and prevent any riot, affray, disturbance, or disorderly assembly on any of the property; and

(7) license and regulate or suppress and prevent hawkers and peddlers utilizing or attempting to utilize the roads and other property of the district.  
[Acts 1971, 62nd Leg., p. 570, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.073. Enforcement**

The commission may provide by ordinance for the enforcement of the provisions of this subchapter and of any ordinance, rule, or regulation made under this subchapter.  
[Acts 1971, 62nd Leg., p. 570, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.074. Style of Ordinances**

The style of an ordinance enacted by the commission shall be: "Be it ordained by the navigation and canal commissioners of the \_\_\_\_\_" (inserting the name of the navigation district).  
[Acts 1971, 62nd Leg., p. 571, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.075. Publication of Ordinance, Rule, or Regulation; Proof of Publication**

(a) Each ordinance, rule, or regulation enacted by the commission under this subchapter which imposes a fine or other penalty shall be published in every issue of a newspaper of general circulation published in the district for the 10-day period immediately following its adoption. If the only newspaper published in the district is published weekly, the publication shall be made in two consecutive issues of the newspaper.

(b) Proof of publication under Subsection (a) of this section shall be made by the printer or publisher of the newspaper by affidavit filed with the secretary of the commission and shall be prima facie evidence of publication and adoption of the ordinance, rule, or regulation in all courts of this state.

(c) In lieu of the publication of the entire ordinance, rule, or regulation, the commission may provide for the publication of a descriptive caption or title, stating in summary the purpose of the ordinance, rule, or regulation and the penalty for violation.

(d) An ordinance, rule, or regulation shall take effect and be in force from and after publication under Subsection (a) of this section unless otherwise provided.

[Acts 1971, 62nd Leg., p. 571, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.076. Conflict With Law**

No ordinance, rule or regulation adopted by a district under this subchapter may conflict with any law, statute, rule, or regulation of this state.

[Acts 1971, 62nd Leg., p. 571, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.077. Authority of Peace Officers**

In prosecutions involving the enforcement of the provisions of this subchapter or the enforcement of any ordinance, rule, or regulation of the district, any sheriff, constable, or other duly constituted peace officer of the State of Texas or any peace officer employed or appointed by the commission may make arrests, serve criminal warrants, subpoenas, or writs, and perform any other service or duty which may be performed by any sheriff, constable, or other duly constituted peace officer of the State of Texas in enforcing other laws of this state.

[Acts 1971, 62nd Leg., p. 571, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.078. Penalties**

A violation of this subchapter or of an ordinance, rule, or regulation adopted by a district under this subchapter is a misdemeanor, and the commission may provide for the punishment of the misdemeanor by a fine of not more than \$200 for each offense or violation.

[Acts 1971, 62nd Leg., p. 571, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.079. Jurisdiction of Violations**

Any justice court in the justice precinct in which an offense under this subchapter is alleged to have

been committed or in any county court at law in the county where an offense is alleged to have been committed, which county court at law has concurrent original jurisdiction with the justice court, shall have original jurisdiction of any misdemeanor or violation under this subchapter and original jurisdiction of any violation of an ordinance, rule, or regulation made under this subchapter.

[Acts 1971, 62nd Leg., p. 571, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 60.080 to 60.100 reserved for expansion]

**SUBCHAPTER E. POWERS OF DISTRICTS FOR IMPROVEMENT OF PORT FACILITIES**

**§ 60.101. Acquisition and Maintenance of Port Facilities**

Any district may acquire land and purchase, construct, enlarge, extend, repair, maintain, operate, or develop:

- (1) wharves and docks;
- (2) warehouses, grain elevators, and bunkering facilities;
- (3) belt railroads;
- (4) floating plants and facilities;
- (5) lightering and towing facilities;
- (6) everything appurtenant to these facilities; and

(7) all other facilities or aids incidental to or useful in the operation or development of the district's ports and waterways or in aid of navigation and commerce in the ports and on the waterways.

[Acts 1971, 62nd Leg., p. 572, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.102. Utility Relocation**

(a) If a district in the exercise of the powers conferred by this subchapter or in the exercise of the power of eminent domain or the police power requires the relocating, raising, lowering, rerouting, or changing in grade, or altering in the construction of any railroad, electric transmission line, telegraph or telephone line, conduit, pole, properties or facilities, or pipeline, the relocating, raising, lowering, rerouting, changing in grade, or altering of construction shall be done at the sole expense of the district.

(b) "Sole expense" means the actual cost of the relocation, raising, lowering, rerouting, change in grade, or alteration of construction in providing comparable replacement without enhancement of the facilities, after deducting the net salvage value derived from the old facility.

[Acts 1971, 62nd Leg., p. 572, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.103. Prescribing Fees and Charges**

The commission shall prescribe fees and charges to be collected for the use of the land, improvements, and facilities of the district and for the use of any land, improvements, or facilities acquired under the provisions of this subchapter. The fees and charges

shall be reasonable, equitable, and sufficient to produce revenue adequate to pay the expenses mentioned in Section 60.105 of this code.

[Acts 1971, 62nd Leg., p. 572, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.104. Power to Borrow Money

(a) The commission, for the purposes stated in Subsection (b) of this section, may borrow money from the United States or from any other source and may evidence the debt by issuing notes, warrants, certificates of indebtedness, negotiable bonds, or other forms of obligation of the district payable solely out of the revenue to be derived from land, improvements, and facilities.

(b) The commission may use the money to acquire land and waterways and all improvements on or to the land and waterways and to acquire, purchase, construct, enlarge, extend, repair, maintain, operate, or develop wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants and facilities, lightering and towing facilities, everything appurtenant to them, and all other facilities or aids incidental to or useful in the operation or development of the district's ports and waterways or in the aid of navigation and commerce in the ports and waterways.

(c) Obligations issued under this subchapter shall not constitute an indebtedness or pledge of credit of the district and may not be paid in whole or in part from any funds raised or to be raised by taxation. Each obligation shall contain a recital to this effect. [Acts 1971, 62nd Leg., p. 573, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.105. Expenses to be Paid From Current Revenues

(a) The commission shall pay from revenue raised under Section 60.103 of this code:

(1) all expenses necessary to the operation and maintenance of the improvements and facilities, including the cost of the acquisition of properties and materials necessary to maintain the improvements and facilities in good condition and operate them efficiently, the wages and salaries paid to the employees of the district, and other expenses necessary to the efficient operation of the improvements and facilities;

(2) the annual or semiannual interest on any obligations issued under this subchapter and payable out of the revenue of the improvements and facilities; and

(3) the amount required to be paid annually into the sinking fund for the payment of any obligations issued under this subchapter and payable out of the revenue of the improvements and facilities.

(b) No expenses other than those authorized by Subsection (a) of this section may be paid from the revenue of the improvements and facilities as long as the principal and interest on any obligations issued under this subchapter remain outstanding and

unpaid. Any revenue received in excess of that required for the purposes stated in Subsection (a) of this section may be used by the commission to pay the cost of improvements and replacements which are not listed and may establish a depreciation fund. [Acts 1971, 62nd Leg., p. 573, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.106. Pledge of Revenue for Payment of Obligations

(a) In proceedings to authorize the issuance of obligations under this subchapter, the district may make the obligations payable from and secured by the pledge of all or part of the revenue derived from the ownership or operation of the land, improvements, facilities, or other properties of the district, exclusive of revenue derived from taxation or assessments, or payable from and secured by the pledge of only revenue which may be derived from the ownership or operation of the land, improvements, facilities, or properties acquired with the proceeds of the sale of the obligations.

(b) The obligations may be issued in more than one series and at any time at which they may be required for carrying out the purposes of the district.

(c) Any pledge of revenue may reserve the right under conditions, specified in the pledge, to issue additional obligations which will be on a parity with, senior to, or subordinate to the obligations then being issued.

[Acts 1971, 62nd Leg., p. 573, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.107. Mortgage as Additional Security

(a) As additional security for the payment of any obligations issued under this subchapter, the commission may execute in favor of the holders of the obligations an indenture, mortgaging and encumbering the improvements, facilities, and properties acquired with the proceeds of the sale of the obligations. The commission may provide in the indenture for a grant to any purchaser, at a foreclosure sale under the indenture, a franchise to operate the improvements, facilities, and properties for a term of not more than 50 years from the date of purchase, subject to all regulatory laws.

(b) The indenture may contain the terms and provisions the commission considers proper and shall be enforceable in the manner provided by the laws of this state for the enforcement of other mortgages and encumbrances.

(c) Under any sale ordered pursuant to the provisions of an indenture, the purchaser and his successors or assigns shall be vested with a permit and franchise to maintain and operate the improvements, facilities, and properties purchased at the sale and shall have the same powers and privileges as could previously have been exercised by the district in the operation of the improvements, facilities, and properties. The purchaser or his successors and assigns may remove all or part of the improvements, facilities, and properties for diversion to other purposes.

(d) Any laws of this state relating to the granting of franchises are not applicable to either the granting of any franchise or authorizing or executing of any mortgage or encumbrance entered into pursuant to the provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 574, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.108. Issuance of Obligations

(a) The commission may provide that obligations issued under this subchapter are payable annually or semiannually and may issue the obligations in any denominations and may have them mature serially or at one time not more than 40 years from their date.

(b) The obligations shall be signed by the chairman and secretary of the commission, and the interest coupons attached to the obligations may be executed with the facsimile signatures of these officers. The obligations shall be valid and sufficient for all purposes even though the officers whose signatures are on the obligations or coupons cease to be officers before delivery to the purchaser.

(c) Any obligations issued under this subchapter shall be in registered or coupon form, and if the obligations are in coupon form, they may be registered with relation to principal only or with relation to both principal and interest.

(d) The commission may sell the obligations in the manner and at the time which it considers expedient and necessary to the interests of the district.

(e) The commission may make principal and interest on the obligations payable at any place or places inside or outside the State of Texas and may make the obligations redeemable before maturity at the premium determined by the commission.

(f) Each issue of obligations authorized under this subchapter shall constitute a separate series which shall be appropriately designated. These obligations constitute negotiable instruments within the meaning of the negotiable instruments law.

[Act 1971, 62nd Leg., p. 574, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.109. Sinking Fund

(a) A resolution or an order authorizing the issuance of obligations under this subchapter shall provide for the creation of a sinking fund which shall include sums fully sufficient to pay principal of and interest on the obligations. Money deposited in the sinking fund shall be taken from revenue pledged for the payment of the obligations and shall be deposited in the fund as the revenue is collected.

(b) The money in the sinking fund shall be applied solely to the payment of interest on the obligations for the payment of which the fund is created and for the retirement of the obligations at or before maturity in the manner provided by this subchapter.

(c) The commission, at the time obligations are authorized under this subchapter, may provide that all money in the sinking fund which is in excess of the amount required for the payment of the principal of and interest on the outstanding obligations,

for a period of time it may determine, shall be spent once each year pursuant to the commission's orders for the purchase of obligations, if any can be purchased at a price the commission finds reasonable, for the account of which the sinking fund has been accumulated.

(d) If the obligations contain an option permitting retirement before maturity, the commission may provide that the excess sums shall be paid out as authorized by Subsection (b) of this section for the purchase of the obligations, but if the commission is unable to purchase sufficient obligations of the issue to absorb all the surplus, it shall call a sufficient amount of the obligations for redemption to absorb insofar as practicable the entire surplus remaining in the sinking fund.

(e) The commission may provide that any excess in the sinking fund which cannot be applied to the purchase or redemption of obligations shall remain in the sinking fund for payment of principal and interest and for subsequent call for purchase or redemption.

[Acts 1971, 62nd Leg., p. 575, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.110. Revenue Set Aside for Sinking Fund

(a) A resolution or an order authorizing the issuance of obligations under this subchapter shall provide that the revenue from which the obligations are to be paid shall, from month to month as it accrues and is received, be placed in a sinking fund and disbursed in the manner provided in Section 60.109 of this code.

(b) In determining the amount of revenue to be set aside, the commission shall provide that the amount to be set aside and paid into the fund in any year shall not be less than a fixed sum which shall be at least sufficient to provide for the payment of the principal of and interest on all obligations which mature and become payable each year and shall include a surplus or margin of 10 percent in excess of that amount.

[Acts 1971, 62nd Leg., p. 575, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.111. Deposit of Proceeds of Obligations; Payment

(a) The proceeds of the sale of any obligations issued under this subchapter may be deposited in a bank or banks and paid out on terms and conditions agreed on by the purchaser at the sale and the commission.

(b) The laws of this state relating to the deposit of district funds in the depository of the district shall not apply to the deposit of the proceeds of a sale governed by Subsection (a) of this section.

(c) Any part of the proceeds of the sale of obligations issued under this subchapter which remains unspent after the project for which the obligations were authorized has been completed may be paid into the sinking fund for the payment of the obligations and may be used only for the payment of principal of the obligations or for the purpose of

purchasing outstanding obligations in the manner provided by this subchapter.  
[Acts 1971, 62nd Leg., p. 576, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.112. Insuring Improvements to Protect Holders of Obligations**

(a) The commission may enter into agreements with purchasers of any obligations issued under this subchapter to insure improvements and facilities, the revenue of which is pledged to the payment of the obligations.

(b) The commission may obtain from insurers of good standing:

- (1) insurance against loss or damage by fire, water, or flood;
- (2) insurance against loss or damage from any hazards customarily insured against by private companies operating similar properties; and
- (3) insurance covering the use and occupancy of the property as is customarily carried by private companies.

(c) The cost of the insurance shall be budgeted as maintenance and operation expense and shall be carried for the benefit of the holders of the obligations.  
[Acts 1971, 62nd Leg., p. 576, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.113. Compelling Performance of Duties**

A holder of obligations issued under this subchapter or coupons originally attached to the obligations may by any legal proceeding enforce and compel performance of all duties required by this subchapter to be performed by the commission. The duties which can be the basis of an action under this section shall include:

- (1) the establishment and collection of reasonable and sufficient fees or charges for the use of improvements and facilities of the district;
- (2) the segregation of the income and revenue from improvements and facilities; and
- (3) the application of income and revenue pursuant to the provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 576, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.114. Obligations Exempt From Taxation**

Any obligations issued under this subchapter shall be exempt from taxation by the State of Texas, any municipal corporation, any county, and/or any other political subdivision or taxing district of the state.  
[Acts 1971, 62nd Leg., p. 577, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.115. Refunding Obligations**

(a) A district issuing obligations under the provisions of this subchapter may authorize issuance of its refunding obligations on terms its commission considers advisable for the purpose of providing for the retirement of outstanding obligations which are either due or to become due.

(b) The refunding obligations either may be exchanged for the same par amounts of outstanding obligations or may be sold and the proceeds of the sale exchanged for the same par amounts of outstanding obligations.

(c) Refunding obligations authorized and issued under Subsection (a) of this section are subject to the provisions of this subchapter relating to the issuance of other obligations and shall be secured in all respects to the same extent and shall be payable from the same revenue as the obligations which they refund.

[Acts 1971, 62nd Leg., p. 577, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.116. Approval and Registration of Bonds**

(a) Bonds issued under this subchapter shall be submitted to the Attorney General of Texas for his approval in the same manner and with the same effect as provided for the approval of tax bonds issued by counties of the state.

(b) Bonds issued under this subchapter shall be registered by the Comptroller of Public Accounts of Texas as required for county tax bonds.

[Acts 1971, 62nd Leg., p. 577, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.117. Bonds as Investments**

Bonds authorized and issued under this subchapter are legal and authorized investments for life insurance companies authorized to do business in Texas.  
[Acts 1971, 62nd Leg., p. 577, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.118. Board of Trustees of Facility**

(a) A district which constructs, purchases, or otherwise acquires or plans to construct, purchase, or otherwise acquire any facility authorized in Section 60.101 of this code to be paid for in whole or in part by the issuance and sale of obligations payable from and secured by a pledge of revenue authorized in this subchapter may vest management and control of the facility during the time the obligations or refunding obligations are secured in whole or in part by the pledge of revenue, in a board of trustees named in the resolution or indenture.

(b) The board of trustees shall consist of not less than five nor more than nine members, and shall be entitled to receive the compensation fixed by the resolution or indenture, which shall not be more than one percent of the gross receipts of the facility in any one year.

(c) The commission shall specify in the resolution or indenture:

- (1) the terms of office of the members of the board of trustees;
- (2) the powers and duties of the board, including the power to fix fees and charges for the use of the facility;
- (3) the manner of exercising the powers and duties;
- (4) the manner of selecting the successors of the board of trustees; and

(5) all matters relating to board members' duties and the organizing of the board.

(d) The board of trustees may adopt bylaws regulating the procedure of the board and fixing the duties of its officers, but the bylaws may not contain any provision in conflict with the covenants and provisions contained in the resolution authorizing the bonds or in the indenture.

(e) In all matters relating to powers, duties, obligations, and procedure of the board of trustees which are not covered in the bylaws and the resolution or indenture, the laws and rules governing the commission shall control, where applicable.

(f) When the board is created by the resolution or indenture, it shall have all of the power and authority for the management and operation of any facility which could be exercised by the commission.

(g) By the terms of the resolution or indenture, the commission may make provision for later supplementation of the resolution or indenture to vest the management and control of the facility in a board of trustees having the powers, rights, and duties conferred or imposed by this section.

[Acts 1971, 62nd Leg., p. 577, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1159, ch. 264, § 1, eff. May 19, 1971.]

#### § 60.119. Covenants for Management and Operation of Improvements

(a) A resolution or order authorizing the issuance of obligations under this subchapter may include covenants with the holders of the obligations relating to:

- (1) the management and operation of the improvements and facilities;
- (2) the collection of fees and charges for the use of the improvements and facilities;
- (3) the disposition of the fees and charges;
- (4) the issuance of future obligations and creation of future liens and encumbrances against the improvements, facilities, and the revenue from them; and
- (5) other pertinent matters, as may be deemed necessary to insure the marketability of the obligations.

(b) The covenants shall not be inconsistent with the provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 578, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.120. Contracts, Leases, and Agreements Authorized

(a) A district acting under the provisions of this subchapter may enter into any contract, lease, or agreement necessary or convenient to carry out any of the powers granted in this subchapter. The contract, lease, or agreement may be entered into with any person and any government or governmental agency including the United States and the State of Texas.

1 West's Tex. Stats. & Codes—100

(b) Any contract, lease, or agreement entered into under Subsection (a) of this section shall be approved by resolution of the commission and shall be executed by the chairman and attested by the secretary of the commission.

[Acts 1971, 62nd Leg., p. 578, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.121. Conversion of District

(a) If the commission of any district organized under Article III, Section 52, of the Texas Constitution, finds it expedient to convert the district into a district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, in order to utilize the provisions of this subchapter, the conversion may be accomplished as provided in Subchapter J of this chapter.

(b) All proceedings and hearings held in connection with a conversion shall be adopted and conducted by the commission of the district instead of by the navigation board of the district.

[Acts 1971, 62nd Leg., p. 578, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.122. Improvements Not Payable From Taxes

(a) No district, in the operation, maintenance, or repair of any improvements or facilities acquired, purchased, or constructed under the provisions of this subchapter, shall incur any indebtedness or assume any liability or obligation payable out of taxes.

(b) Liabilities and obligations arising from these activities are payable solely out of the revenue from the improvements and facilities which may be applicable as authorized in this subchapter.

[Acts 1971, 62nd Leg., p. 579, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.123. Pilot and Pilotage Laws Unaffected

No provision of this subchapter may be construed to amend, repeal, or affect the laws relating to pilots and pilotage or their appointment and remuneration.

[Acts 1971, 62nd Leg., p. 579, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 60.124 to 60.150 reserved for expansion]

### SUBCHAPTER F. CONTRACTS WITH THE UNITED STATES

#### § 60.151. Purpose

It is the purpose and intent of this subchapter to confer on districts jointly or mutually interested in a navigation project which has been approved by the United States, either by Act of Congress or act of the secretary of defense, the fullest possible power of contract with regard to the project of common interest.

[Acts 1971, 62nd Leg., p. 579, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.152. Authority to Enter Into Contract

(a) Two or more districts, all or parts of which are located in one county and which are interested in or may, in the judgment of the commission, be benefited by a navigation project approved by Act of Congress or by the secretary of defense, may enter

into contracts with the United States and with each other to consummate the projects of common interest.

(b) The contract may provide for:

- (1) the assumption of joint or joint and several liability for construction, completion, and consummation of the project;
- (2) the acquisition of property in connection with the project;
- (3) the lending and contribution of funds of the district to the United States or to any other district in support or in aid of the project; and
- (4) the assumption of responsibility for valid obligations, incurred in furtherance of the common project, of the United States or of any district.

[Acts 1971, 62nd Leg., p. 579, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.153. Execution of Contracts**

A contract entered into by a district under this subchapter shall be approved by resolution of the commission, executed by the presiding officer of the commission, and duly attested by the corporate seal of the district.

[Acts 1971, 62nd Leg., p. 580, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 60.154 to 60.170 reserved for expansion]

**SUBCHAPTER G. POWERS OF DISTRICT TO PROVIDE IMPROVEMENTS WITHOUT TAXATION**

**§ 60.171. Authority to Borrow Money and Encumber Property and Franchise**

(a) A district organized under the provisions of the constitution or laws of this state and created for the development of deep water navigation may borrow money and may mortgage and encumber part or all of its properties and facilities, the franchise, revenue, and income from the operation of its properties and facilities and everything pertaining to its properties and facilities to secure the payment of funds to purchase, build, improve, enlarge, extend, or repair any of its wharves, docks, warehouses, levees, bulkheads, canals, waterways, or other aids to navigation.

(b) As additional security, the encumbrance may pledge the net income and revenue from the operation of properties and facilities of the district and may provide for a grant, to a purchaser under sale or foreclosure, of a franchise to operate, subject to all regulatory laws, the encumbered property and facilities for a term of not more than 20 years from the date of purchase.

[Acts 1971, 62nd Leg., p. 580, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.172. Notice of Hearing on Indebtedness**

(a) When, for the purposes authorized by Section 60.171 of this code, a commission proposes to borrow money and mortgage and encumber any part or all

of its properties, facilities, franchises, revenue, and income from the operation of its properties and facilities, the commission shall give notice of intention to authorize and issue the evidence of the indebtedness.

(b) The commission shall fix a time and place at which a public hearing concerning the proposed indebtedness shall be held. The date of the hearing shall be not less than 15 days nor more than 30 days from the date of the resolution of the commission giving the notice.

(c) Notice published by the commission under this section shall:

- (1) include a statement of the amount and purpose of the proposed indebtedness;
- (2) inform all persons of the time and place of hearing; and
- (3) inform all persons of their right to appear at the hearing and contend for or protest the creation of the indebtedness.

(d) The secretary of the commission shall post copies of the notice for 10 days before the day of hearing in three public places in the district and at the door of each county courthouse located in the district.

(e) The notice also shall be published one time not less than five days before the day of the hearing in a newspaper of general circulation in the district. If a newspaper is not published in the district, the notice shall be published in some newspaper published in any county situated in whole or in part within the district.

(f) The duties imposed on the secretary of the commission by this section may be performed by any commission member or the assistant secretary of the commission.

[Acts 1971, 62nd Leg., p. 580, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.173. Hearing on Indebtedness**

(a) At the time and place set for the hearing or on a subsequent date, the commission shall hear and determine all matters concerning the proposed indebtedness, and the hearing may be adjourned from day to day and from time to time as the commission considers necessary.

(b) At the hearing, any person interested may appear before the commission in person or by attorney and contend for or protest the creation of the proposed indebtedness.

(c) The commission may adopt a resolution or order providing for the assumption of the proposed indebtedness and the issuance of the evidence of the indebtedness if at the hearing it is determined by the commission that the proposed improvements are necessary, feasible, practicable, and needed and will benefit the property in the district.

(d) The commission may, in respect to the issuance, sale, and delivery of securities evidencing the indebtedness, adopt all necessary resolutions, orders, certificates, and trust indentures.

[Acts 1971, 62nd Leg., p. 581, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.174. Issuance of Obligations**

(a) The district may issue evidences of indebtedness secured by encumbrance which mature not more than 20 years after the date of issuance.

(b) The encumbrance and evidences of indebtedness shall include the clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

[Acts 1971, 62nd Leg., p. 581, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.175. Execution and Sale of Obligations**

(a) Each note, warrant, or other security evidencing any indebtedness created under the provisions of this subchapter shall be signed by the chairman of the commission, countersigned by the secretary of the commission, and have the seal of the district impressed on it.

(b) Each note, warrant, or other security may be registered as to principal by the trustee named and designated by the commission in the trust indenture executed by the commission to secure payment of the obligation.

(c) The evidences of indebtedness may be sold by the commission on the best terms and for the best price possible.

[Acts 1971, 62nd Leg., p. 581, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.176. Obligations as Charge on Encumbered Property and Facilities**

(a) No obligation issued under Section 60.174 of this code shall be a debt of the district issuing the obligation but shall be solely a charge on the encumbered property and facilities.

(b) Revenue and income from the encumbered property and facilities of the district shall not be considered in determining the power of the district to issue any bonds for any purpose authorized by law.

[Acts 1971, 62nd Leg., p. 581, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.177. Lien on Revenue; Foreclosure of Encumbrance**

(a) If the revenue and income from the properties and facilities of the district are encumbered under the provisions of this subchapter, the expense of operation and maintenance necessary to render efficient service of the properties and facilities shall be a first lien and charge against the revenue and income. The first lien shall be prior to and superior to the lien of the encumbrance.

(b) No encumbrance shall be foreclosed because of default of the district until the default has existed for a period of 90 days and notice of the default has been served on the commission.

[Acts 1971, 62nd Leg., p. 582, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.178. Trustee to Enforce Foreclosure; Franchise Under Foreclosure**

(a) The encumbrance may provide for a trustee to enforce foreclosure.

(b) In the event of foreclosure of an encumbrance created under this subchapter, the encumbrance may provide for the grant of a franchise to the purchaser under foreclosure to operate the properties encumbered for a period not to exceed 20 years from the date of default. The district shall have the option at any five-year period for 20 years after default to repurchase the properties on reasonable terms and at reasonable prices to be set forth in the encumbrance.

(c) The provisions of Sections 61.164–61.168 of this code, relating to the grant of franchises by districts, shall not apply to the grant of any franchises under authority of this section.

[Acts 1971, 62nd Leg., p. 582, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.179. Borrowing for Current Expenses**

The district may borrow funds and issue warrants to pay current expenses. The warrants issued shall be payable not later than the close of any calendar year for which loans are made and may not exceed in total the anticipated revenue of the district.

[Acts 1971, 62nd Leg., p. 582, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.180. Management and Control by Commission**

The management and control of any property and facilities encumbered under the provisions of this subchapter shall, during the time of the encumbrance, be exercised by the commission.

[Acts 1971, 62nd Leg., p. 582, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.181. Proceedings to Borrow Money**

(a) The commission shall supervise all proceedings to be taken and acts to be performed under this subchapter concerning the borrowing of money, the mortgaging and encumbering of properties and facilities, the franchise, revenue, and income from the operation of properties and facilities, and the issuance of evidences of indebtedness.

(b) The commissioners court of any county included in whole or in part inside the boundaries of a district and the navigation board established for a district shall not be required to take any action in connection with this subchapter, approve or ratify any proceedings taken by the commission, or approve or ratify any act performed by the commission.

[Acts 1971, 62nd Leg., p. 582, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 60.182 to 60.200 reserved for expansion]

**SUBCHAPTER H. PROMOTION AND DEVELOPMENT FUND IN CERTAIN DISTRICTS****§ 60.201. Purpose**

Districts in this state which include cities of 100,000 or more inhabitants and which operate ports or waterways and harbor and terminal facilities are in keen competition with other ports, waterways, harbors, and terminals outside the state and with privately owned port and terminal facilities inside the

state. Well-situated and well-equipped ports and waterways in other nearby states and owners of substantial port and terminal facilities located inside and outside the state are advertising, promoting and developing their competing ports, waterways, harbors, and terminals through expenditure of large amounts of money without any audit or restriction on expenditure of the money. This activity or expenditure is thwarting and impeding the use, progress, and development of the ports, waterways, harbors, and terminals of this state. Continuation of this hardship and injustice can best be met and coped with by more liberal use of some relatively small fund set aside from the gross income from operations of the ports of this state to be used in the manner provided in this subchapter.

[Acts 1971, 62nd Leg., p. 583, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.202. Creation of Fund**

A district organized under general or special law and containing a city of 100,000 or more population, according to the last preceding federal census, may set aside out of current income from its operations a promotion and development fund of not more than five percent of its gross income from operations in each calendar year.

[Acts 1971, 62nd Leg., p. 583, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.203. Expenditure of Fund**

Money in the promotion and development fund shall be spent by the commission or as the commission may direct to pay any expenses connected with:

- (1) any activity or matter incidental to the advertising, development, or promotion of the district or its ports, waterways, harbors, or terminals;
- (2) furthering the general welfare of the district and its facilities; or
- (3) the betterment of the district's relations with steamship and rail lines, shippers, consignees of freight, governmental officials, or others interested or sought to be interested in the ports, waterways, harbors, or terminals.

[Acts 1971, 62nd Leg., p. 583, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.204. Management and Control of Promotion and Development Fund**

(a) The money in the promotion and development fund shall be kept separate from all other funds and accounts of the district, and no money collected from assessing or levying taxes may be mingled with the fund.

(b) The promotion and development fund shall be under the exclusive control of the commission, and the commission shall have full responsibility for auditing, approving, and safeguarding the expenditure of money from the fund.

(c) The county auditor shall exercise his usual supervision and control to assure that the commission sets aside no more than five percent of its gross income from operations in each calendar year in the

promotion and development fund. The county auditor shall not audit disbursements from the fund but shall be entitled to a monthly statement showing the:

- (1) date of each disbursement from the fund;
- (2) amount disbursed;
- (3) person or concern to whom disbursed; and
- (4) general purpose of each disbursement.

[Acts 1971, 62nd Leg., p. 583, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.205. Other Expenses Not Affected**

Since this subchapter authorizes disbursements from the promotion and development fund for unusual purposes and occasions not covered by other law, the setting aside of the fund and disbursements from the fund shall not affect payment of other expenses customarily approved, audited, and paid out of the regular funds of the district.

[Acts 1971, 62nd Leg., p. 584, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 60.206 to 60.220 reserved for expansion]

SUBCHAPTER I. REVENUE BONDS

**§ 60.221. Modification of Revenue Bond Resolution**

If a district adopts a resolution for the issuance of revenue bonds, provision may be made in the resolution for its modification after the issuance of the bonds in the manner and with the consent of the holders of a fixed percentage of the bonds if provided in the resolution before the issuance of the bonds.

[Acts 1971, 62nd Leg., p. 584, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 60.222 to 60.240 reserved for expansion]

SUBCHAPTER J. CONVERSION OF DISTRICTS

**§ 60.241. Authority to Convert**

Any district created under the provisions of Article III, Section 52, of the Texas Constitution may be converted into a district operating under Article XVI, Section 59, of the Texas Constitution, in the manner provided in this subchapter.

[Acts 1971, 62nd Leg., p. 584, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.242. Resolution**

(a) The navigation board shall adopt a resolution declaring that in its judgment conversion to a district operating under Article XVI, Section 59, of the Texas Constitution will be in the best interest of the district and will be a benefit to the land and property located in the district.

(b) The resolution shall call a hearing and shall be entered in the minutes of the board.

[Acts 1971, 62nd Leg., p. 584, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 60.243. Notice of Resolution**

(a) Notice of the resolution shall be given by publishing notice once a week for two consecutive

weeks in a newspaper with general circulation in the county in which the district is located. The first publication shall appear not less than 14 full days before the time set for the hearing.

(b) The notice shall:

(1) state the time and place of the hearing;

(2) set out the entire resolution; and

(3) notify interested persons to appear and offer testimony for or against the proposal.

[Acts 1971, 62nd Leg., p. 585, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.244. Findings of Navigation Board

(a) After the hearing, if the navigation board finds that conversion to a district operating under Article XVI, Section 59, of the Texas Constitution, would be in the best interest of the district and would be a benefit to the land and property located in the district, it shall enter an order making these findings and the district shall become a district operating under Article XVI, Section 59, of the Texas Constitution.

(b) If the navigation board finds that conversion to a district operating under Article XVI, Section 59, of the Texas Constitution, would not be in the best interest of the district and would not be a benefit to the land and property located in the district, it shall enter an order making these findings.

(c) The findings of the navigation board are final and are not subject to appeal or review.

[Acts 1971, 62nd Leg., p. 585, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.245. Status of Converted District

A district which is converted under the provisions of this subchapter shall be constituted a district operating under Article XVI, Section 59, of the Texas Constitution and shall be governed by the provisions of Chapter 62 of this code as if it had originally been organized under Article XVI, Section 59, of the Texas Constitution, except the commissioners of a converted district shall be appointed in the manner that initial commissioners are appointed under Sections 62.061 and 62.062 of this code.

[Acts 1971, 62nd Leg., p. 585, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.246. Powers of Converted District

(a) Nothing in this subchapter shall be construed to deprive a converted district of any powers conferred on it by the law under which it was organized.

(b) A converted district shall have the additional powers conferred on districts under Sections 61.151, 61.161–61.168, 61.170, and 61.172–61.175 of this code, and the commissioners of a converted district shall constitute a pilot board under the provisions of Articles 8248–8257, Revised Civil Statutes of Texas, 1925.

(c) If there is a conflict between the powers conferred by Section 60.245 of this code and the powers preserved by Subsection (a) of this section, the powers conferred by Section 60.245 shall control.

[Acts 1971, 62nd Leg., p. 585, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 60.247 to 60.270 reserved for expansion]

### SUBCHAPTER K. DEPOSITORY

#### § 60.271. Selection of Depository

(a) The commission shall select a depository for the district under the law providing for the selection of a county depository.

(b) The commission in selecting the depository shall act in the same capacity and perform the same duties as the county judge and the commissioners court in selecting a county depository.

[Acts 1971, 62nd Leg., p. 586, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.272. Depository Bond

The depository shall have all the powers and duties in the execution of a depository bond and in pledging of collateral in lieu of or in addition to a personal surety or surety company bond as provided by law for a county depository.

[Acts 1971, 62nd Leg., p. 586, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 60.273. Treasurer's Bond

After the depository executes the bond and it is approved by the commission, the county treasurer shall be required to execute only such a bond as required by the commission.

[Acts 1971, 62nd Leg., p. 586, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 60.274 to 60.300 reserved for expansion]

### SUBCHAPTER L. REFUNDING BONDS

#### § 60.301. Authority to Issue Refunding Bonds

The governing body of any district may refund the bonded indebtedness of the district without a vote of the electors of the district in the manner provided by law for counties, cities, and towns and may refund the bonded indebtedness owned by the State Board of Education in the manner provided for independent school districts incorporated for free school purposes only.

[Acts 1971, 62nd Leg., p. 586, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 60.302 to 60.330 reserved for expansion]

### SUBCHAPTER M. TAX BONDS, REVENUE BONDS, AND COMBINATION TAX AND REVENUE BONDS

#### § 60.331. Classes of Bonds Authorized

For the purpose of carrying out any one or more powers of a district, the governing body of any district may issue negotiable bonds of three general classes:

(1) bonds secured by ad valorem taxes;

(2) bonds secured solely by a pledge of all or part of the revenues accruing to the district, including but without limitation those received

from sale of water, rendition of services, tolls, charges, and from all sources other than ad valorem taxes;

(3) bonds secured by a combination pledge of revenues and taxes.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**§ 60.332. Issuance of Bonds**

(a) Any district may issue bonds provided in Subdivision (2), Section 60.331 of this code, by action of its governing body and without the necessity of an election.

(b) Bonds to be issued under Subdivisions (1) and (3), Section 60.331 of this code, can be issued only after authorization at an election held for that purpose throughout the territory comprising the district. The elections shall be conducted substantially in accordance with the procedure prescribed in the Election Code.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**§ 60.333. Form of Bonds**

(a) Bonds of the district shall be authorized by resolution adopted by the governing board and shall be signed by the presiding officer or assistant presiding officer, and attested by the secretary, and the seal of the district shall be impressed on them.

(b) Within the discretion of the district, as evidenced by the resolution, bonds may be issued bearing the facsimile signatures of the officers and the seal of the district may be lithographed or printed thereon.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**§ 60.334. Maturity of Bonds**

Bonds shall mature serially or otherwise within the period and at the times which may be prescribed in the resolution, but not to exceed a maximum of 50 years.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**§ 60.335. Registered and Bearer Bonds**

The bonds may be registered as to principal or as to both principal and interest, and appropriate provisions may be inserted in the resolution authorizing the execution and delivery of bonds for the conversion of registered bonds into bearer bonds and vice versa.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**§ 60.336. Lost and Destroyed Bonds**

Provisions may be made in the bond resolution or trust indenture for the substitution of new bonds for those lost or mutilated.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**§ 60.337. Approval of Converted or Substituted Bonds**

When bonds are approved by the attorney general and registered by the comptroller as prescribed in Section 60.345 of this code, it shall not be necessary to obtain the approval of the attorney general or registration by the comptroller of converted or substituted bonds.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**§ 60.338. Bonds Secured by Revenues**

(a) Bonds secured wholly or in part by a pledge of the revenues of the district may be secured by all or that part of the revenues specified in the resolution authorizing the bonds or in the indenture securing the bonds.

(b) In making any pledge of the revenues, the right under the conditions specified to issue additional bonds which will be on a parity with, senior to, or subordinate to the bonds then being issued, may be expressly reserved.

(c) Within the discretion of the governing body, bonds may be secured further by a lien on all or any part of the physical property of the district.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**§ 60.339. Bonds Payable from Taxes**

Where bonds are issued payable wholly from taxes, it is the duty of the governing body at the time of the bonds authorization to levy a tax sufficient to pay the principal of and interest on the bonds as the interest and principal become due, and to provide the reserve funds if prescribed in the resolution authorizing or the trust indenture securing the bonds.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**§ 60.340. Bonds Payable from Both Taxes and Revenues**

(a) Where the bonds are payable both from taxes and from revenues of the district a tax shall be levied at the time of the authorization of the bonds sufficient to pay the principal and interest and create and maintain the reserve funds.

(b) The rate of tax actually to be collected for any year shall be fixed so as to take into consideration the money which shall have been in the interest and sinking fund from the pledged revenues and which will be available for payment of principal and interest and for the creation of the reserve funds to the extent and in the manner permitted by the resolution authorizing or the trust indenture securing the bonds.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**§ 60.341. Rates, Tolls, and Charges**

(a) Where bonds are payable wholly from revenues, the governing body shall fix and from time to

time revise the rates, tolls, and charges from the sales and services rendered by the district, the revenues from which are pledged, to the end that the rates, tolls, and charges will yield sufficient money:

- (1) to pay designated expenses of the district;
- (2) to pay the principal of and interest on the bonds as the principal and interest mature; and
- (3) to create and maintain funds as prescribed in the resolution authorizing or the trust indenture securing the bonds.

(b) Where the bonds are payable both from taxes and from revenues, the governing body shall fix and from time to time revise the rates, tolls, and charges for sales and services rendered by the district, to the extent pledged, which will be sufficient to assure compliance with the resolution authorizing the bonds or the trust indenture securing them.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

#### § 60.342. Use of Bond Proceeds

(a) From the proceeds of the sale of any issue of bonds the district may set aside an amount for the payment of interest anticipated to accrue for the period specified or during the construction period and for a period after that time as the governing body may determine to be necessary and may provide for a deposit into reserves or the debt service fund to the extent prescribed in the resolution authorizing or the trust indenture securing the bonds.

(b) Proceeds from the sale of the bonds shall be used for the purposes for which the bonds were authorized and may be used for the payment of all expenses necessarily incurred in accomplishing the purposes for which the district is created, including the expense of issuing and selling the bonds.

(c) No expenditure of proceeds shall be made in violation of provisions contained in the resolution authorizing or the trust indenture securing the bonds.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

#### § 60.343. Interim Bonds

Pending the issuance of definitive bonds the governing body may authorize the delivery of negotiable interim bonds or notes eligible for exchange or substitution by use of definitive bonds.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

#### § 60.344. Refunding Bonds

(a) The district is authorized to issue refunding bonds for the purpose of refunding any outstanding bonds and interest on them, authorized by this subchapter or any other indebtedness which the district may lawfully assume.

(b) No election shall be necessary in connection with the authorization and issuance of refunding bonds.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

#### § 60.345. Approval and Incontestability of Bonds

(a) No bonds shall be issued by the district until they shall have been approved by the attorney general.

(b) After the bonds have been approved by the attorney general and registered by the comptroller of public accounts they shall be negotiable and incontestable.

(c) When the bonds of an issue are thus approved and registered, the bonds later delivered by the district in lieu of these bonds, pursuant to Section 60.337 of this code in connection with the exchange of registered for unregistered bonds, or unregistered bonds for registered bonds, or in lieu of lost or mutilated bonds, need not be reapproved by the attorney general or reregistered by the comptroller of public accounts. Nevertheless, the bonds shall likewise be incontestable, and except for the limitations resulting from registration shall be negotiable.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

#### § 60.346. Additional Security

(a) Any bonds, including refunding bonds, authorized by this subchapter, and not payable wholly from ad valorem taxes, may be additionally secured by a trust indenture under which the trustee may be a bank having trust powers which may be situated either inside or outside the State of Texas.

(b) The trust indenture may contain provisions prescribed by the governing body for the security of the bonds and the preservation of its properties, contracts, and rights. It may contain a provision for the amendment or modification of the trust indenture in the manner which it prescribes.

(c) Without limiting the generality of the provisions which may be contained in the indenture, it may provide that the district shall comply with the requirements of designated consulting engineers for the proper maintenance and operation of the district's properties and for the fixing of adequate tolls, charges, and rates, to assure proper maintenance and operation, and to provide proper debt service for the outstanding bonds in the manner prescribed in the resolution authorizing the issuance of the bonds or in the trust indenture securing the bonds.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

#### § 60.347. Investment of Bond Proceeds

(a) The proceeds from the sale of any issue of bonds may, within the discretion of the board, be invested prior to their use for the purposes for which they were issued, in bonds or other direct obligations of, or obligations unconditionally guaranteed by, the United States or in certificates of deposit issued by banks as long as the certificates are secured by such obligations.

(b) The investments may be sold pursuant to the directions of the governing body as and when needed

for their use for the purposes for which the bonds were issued.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**§ 60.348. Bonds as Investments**

(a) All bonds issued pursuant to this subchapter shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking fund of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas.

(b) The bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas and the bonds shall be lawful and sufficient security for the deposits to the extent of their face value, when accompanied by all unmatured coupons appurtenant thereto.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**§ 60.349. Effect of Subchapter**

This subchapter shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized by it, without reference to any other laws, or any restrictions or limitations contained therein, except as specifically provided in this subchapter. When any bonds are being issued under this subchapter, then to the extent of any conflict or inconsistency between any provisions this subchapter shall prevail and control; provided, that any issuer shall have the right to use the provisions of any other laws, not in conflict with the provisions of this subchapter, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this subchapter.

[Acts 1973, 63rd Leg., p. 770, ch. 343, § 1, eff. Aug. 27, 1973.]

**CHAPTER 61. ARTICLE III, SECTION 52, NAVIGATION DISTRICTS**

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## SUBCHAPTER A. GENERAL PROVISIONS

## § 61.001. Definitions

In this chapter:

(1) "District" means a navigation district created under Article III, Section 52, of the Texas Constitution.

(2) "Commission" means the navigation and canal commission of a district.

(3) "Board" means the navigation board.

(4) "Commissioners court" means the commissioners court of the county in which the district is located or the commissioners court of the county of jurisdiction.

(5) "Commissioner" means a member of the navigation and canal commission.

[Acts 1971, 62nd Leg., p. 586, ch. 58, § 1, eff. Aug. 30, 1971.]

[Section 61.002 to 61.020 reserved for expansion]

## SUBCHAPTER B. CREATION OF DISTRICT

## § 61.021. Creation

A navigation district may be created as provided in this chapter to operate under Article III, Section 52 of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 587, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 61.022. Area Included in District

A district may include all or part of a village, town, or municipal corporation, but may not include more than all or parts of two counties.

[Acts 1971, 62nd Leg., p. 587, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 61.023. District May Include Road District

On petition signed by a majority of the property taxpayers who reside in the special road district, a district which includes all or parts of two counties may include any special road district which has voted bonds to construct public roads. If the entire county which includes the road district is included in the district, this section does not apply.

[Acts 1971, 62nd Leg., p. 587, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 61.024. Petition to Create Single-County District

(a) To create a district located wholly in one county, a petition, signed by 25 of the resident property taxpayers, or if there are fewer than 75 resident property taxpayers in the proposed district, then by one-third of them, shall be presented to the commissioners court of the county.

(b) The petition shall include:

(1) a request for the establishment of a navigation district;

(2) a description of the boundaries of the proposed district, accompanied by a map;

(3) a statement of the general nature of the improvements proposed;

(4) an estimate of the probable cost;

(5) a request for the issuance of bonds and the levy of a tax to pay for the bonds; and

(6) the designation of a name for the district which shall include the name of the county.

(c) An affidavit stating the qualifications of the petitioners shall accompany the petition.

[Acts 1971, 62nd Leg., p. 587, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 61.025. Petition to Create District in Two Counties

(a) If the proposed district is located in two counties, the petition shall be presented to the commissioners court of the county which includes the greater part of the district, and this county shall be the county of jurisdiction with relation to all matters concerning the district.

(b) The petition shall be signed by 25 resident property taxpayers in each county in the district or if there are fewer than 75 resident property taxpayers in either of the counties, then by one-third of the resident property taxpayers in that county.

(c) The name of the district shall include the name of the county which has jurisdiction.

[Acts 1971, 62nd Leg., p. 587, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 61.026. Deposit

(a) The petition shall be accompanied by \$500 in cash, which shall be deposited with the clerk of the commissioners court.

(b) The money shall be held by the clerk until after the result of the election for the creation of the district has been declared and entered of record by the commissioners court.

(c) If the result of the election is in favor of the establishment of the district, the deposit shall be returned to the petitioners or their agent or attorney.

(d) If the result of the election is against the establishment of the district, the clerk shall pay out of the \$500, with vouchers signed by the county judge, all costs and expenses connected with the proposed district, including the election. Any balance shall be returned to the petitioners or their agents or attorney.

[Acts 1971, 62nd Leg., p. 588, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 61.027. Hearing

(a) On presentation of the petition, the commissioners court shall order a hearing to be held at a regular or special term of the commissioners court.

(b) The hearing shall be held not less than 30 days nor more than 60 days from the date the petition is presented.

[Acts 1971, 62nd Leg., p. 588, ch. 58, § 1, eff. Aug. 30, 1971.]

## § 61.028. Notice of Hearing

(a) The commissioners court shall order the clerk to give notice of the date and place of the hearing by posting a copy of the petition and the order of the commissioners court at the courthouse door and at

four other public places within the boundaries of the proposed district.

(b) The notices shall be posted not less than 20 days immediately preceding the time set for the hearing.

(c) If the district is composed of more than one county, the notices shall be posted in each county.

(d) The clerk is entitled to receive \$1 for each notice he posts and five cents a mile for each mile traveled to post the notices.

[Acts 1971, 62nd Leg., p. 588, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.029. Hearing by Board**

(a) If the proposed district includes all or part of a city acting under special charter granted by the legislature, the hearing shall be held at the regular meeting place of the commissioners court before a board.

(b) The board shall include the county judge and the members of the commissioners court and the mayor and the aldermen or commissioners of the city or cities.

(c) The board shall pass on the petition with each individual member having one vote.

(d) A majority in number of the persons composing the board shall constitute a quorum, and the action of the quorum shall control.

(e) The hearing shall be held and notice shall be given as provided in Sections 61.027-61.028 of this code.

(f) The clerk shall record the proceedings of the board in the book kept for that purpose, and this record shall be available for public inspection.

[Acts 1971, 62nd Leg., p. 588, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.030. Conduct of Hearing**

(a) The commissioners court or the board has exclusive jurisdiction to hear and determine all contests and objections to the creation of the proposed district, all matters relating to the creation of the proposed district, and all subsequent proceedings of the proposed district after it is organized.

(b) The commissioners court or the board may adjourn the hearing from day to day, and all judgments or decisions rendered by it shall be final unless otherwise provided in this chapter.

(c) Any person who might be affected by creation of the district may appear at the hearing and support or oppose creation of the proposed district and may offer testimony relating to:

- (1) the necessity and feasibility of the proposed district;
- (2) the benefits to accrue from formation of the proposed district;
- (3) the boundaries of the proposed district; or
- (4) any other matter concerning the proposed district.

[Acts 1971, 62nd Leg., p. 589, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.031. Findings**

(a) If it appears at the hearing that the proposed improvements are feasible and practicable and would be a public benefit and utility, the commissioners court or the board shall make these findings and approve the boundaries stated in the petition or make changes in the boundaries.

(b) Changes may not be made in the proposed boundaries until notice is given and a hearing held in the manner provided in Sections 61.027-61.030 of this code.

(c) If the commissioners court or board is unable to make the findings under Subsection (a) of this section, it shall dismiss the petition at the cost of the petitioners. Dismissal of the petition shall not prevent presentation of other petitions at a later date.

(d) The commissioners court or the board shall enter all findings in its records.

[Acts 1971, 62nd Leg., p. 589, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.032. Providing Funds for Proposed Improvements**

(a) If the commissioners court or the board approves the boundaries in the petition or as changed and decides to grant the petition, it shall determine the amount of money necessary for the improvements and all expenses connected with the improvements and whether to issue bonds for the full amount or, in the first instance, for a less amount.

(b) The commissioners court or the board shall specify the amount, term, and rate of interest of bonds to be issued.

[Acts 1971, 62nd Leg., p. 589, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.033. Election Order**

(a) If the commissioners court or the board finds in favor of the establishment of the district and the issuance of bonds and levy of a tax, the commissioners court shall order an election to vote on the proposition.

(b) The election order shall specify the amount of the bonds to be issued, their maturity dates, and the rate of interest.

[Acts 1971, 62nd Leg., p. 589, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.034. Elections**

(a) When an election is held under this chapter, notice shall be posted for 30 days before the election in the manner provided for posting notice. The notice shall include:

- (1) the time and place of the election;
- (2) the proposition;
- (3) the purpose of the election; and
- (4) a copy of the election order.

(b) Unless otherwise provided, a two-thirds vote is necessary to carry a proposition submitted at an election.

(c) The commissioners court shall create and define, by order, the voting precincts in the district and shall name convenient polling places in the

precincts. It shall appoint necessary election officials and shall hold elections at the earliest legal time.

(d) After canvassing the returns of an election, if the commissioners court finds that the proposition has carried, it shall declare the result and enter it in the minutes as provided in this chapter.

[Acts 1971, 62nd Leg., p. 590, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.035. Ballots

The ballots for the election shall be printed to provide for voting for or against the proposition: "The creation of a navigation district and the issuance of bonds and the levy of a tax to pay for the bonds."

[Acts 1971, 62nd Leg., p. 590, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.036. Declaration of Result

If the proposition carries at the election, the commissioners court shall enter the following declaration in its minutes:

"Commissioners Court of \_\_\_\_\_ County, Texas, \_\_\_\_\_ term A.D. \_\_\_\_\_: In the matter of the petition of \_\_\_\_\_ and \_\_\_\_\_ others requesting the establishment of a navigation district and the issuance of bonds and the levy of taxes in the petition described and designated by the name of \_\_\_\_\_ Navigation District. Be it known that at an election called for that purpose in the district, held on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_, a two-thirds majority of the electors voting on the proposition voted in favor of the creation of the navigation district, and the issuance of bonds and the levy of a tax. Now, therefore, it is considered and ordered by the court that the navigation district be and the same is hereby established by the name of \_\_\_\_\_ Navigation District, and that the bonds of the district in the amount of \$\_\_\_\_\_ be issued, and a tax of \_\_\_\_\_ cents on the \$100 valuation or so much thereof as may be necessary to be levied on all property inside the navigation district sufficient in amount to pay the interest on the bonds and provide a sinking fund to redeem them at maturity, and that if the tax becomes insufficient for these purposes, it shall be increased until it is sufficient. The metes and bounds of the district shall be as follows: (Description of metes and bounds.)"

[Acts 1971, 62nd Leg., p. 590, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 61.037 to 61.070 reserved for expansion]

### SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

#### § 61.071. Appointment of Commissioners

After a district is created, the commissioners court or the board, by majority vote, shall biennially appoint three commissioners to the commission.

[Acts 1971, 62nd Leg., p. 591, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.072. Organization: Quorum

The commission shall organize by electing one of their number chairman and one secretary. Two of the commissioners shall constitute a quorum, and a concurrence of two shall be sufficient in all matters relating to the business of the district.

[Acts 1971, 62nd Leg., p. 591, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.073. Qualifications

To be qualified for appointment as a commissioner, a person must be a resident of the district, a freehold property taxpayer, and a qualified elector of the county.

[Acts 1971, 62nd Leg., p. 591, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.074. Term of Office, Removal, and Succession

(a) Each commissioner shall hold office for two years and until his successor has qualified, unless sooner removed by a majority vote of the commissioners court or the board for malfeasance or non-feasance in office.

(b) All vacancies in the office of commissioner shall be filled for the unexpired term in the manner provided for the original appointment to the office.

[Acts 1971, 62nd Leg., p. 591, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.075. Commissioner's Oath

Each commissioner shall subscribe an oath before the county judge of the county of jurisdiction to discharge faithfully the duties of his office without favor or partiality, and to render a true account of his activities to the commissioners court or the board which appointed him. The oath shall be filed by the clerk and preserved as a part of the records of the district.

[Acts 1971, 62nd Leg., p. 591, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.076. Commissioner's Bond

Each commissioner shall execute a good bond for \$1,000, payable to the county judge for the use and benefit of the district and conditioned on the faithful performance of his duties.

[Acts 1971, 62nd Leg., p. 591, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.077. Commissioners' Compensation

The commissioners are entitled to receive for their services compensation fixed by the commissioners court and entered in the record.

[Acts 1971, 62nd Leg., p. 591, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.078. District Treasurer

The county treasurer of the county of jurisdiction shall be treasurer of the district.

[Acts 1971, 62nd Leg., p. 591, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.079. District Treasurer's Bond

(a) Before receiving the proceeds of any district bonds and before receiving any district funds from any source, the district treasurer shall execute a good and sufficient bond payable to the commission for the benefit of the district. The bond shall be in an amount fixed and approved by the commission.

(b) The bond shall be conditioned on the district treasurer's faithfully executing the duties of his office, paying over all money that comes into his hands as the treasurer, and rendering a just account to the commissioners court or the commission when required to do so.

(c) The bond required by this section shall remain in full force and effect as long as any funds belonging to the district are in the possession or under the control of the treasurer.

[Acts 1971, 62nd Leg., p. 592, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.080. District Treasurer's Compensation**

The district treasurer shall be entitled to receive for his services an amount fixed by the commission.

[Acts 1971, 62nd Leg., p. 592, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.081. Duties Imposed Without Compensation**

The duties and powers conferred on county, city and other officers under this chapter are a part of the legal duty of the officers which they shall perform without additional compensation, unless otherwise provided in this chapter.

[Acts 1971, 62nd Leg., p. 592, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.082. Court Actions**

(a) The district, by and through its commission, may sue and be sued in any court in this state in the name of the district.

(b) The courts of this state shall take judicial notice of the establishment of the district.

[Acts 1971, 62nd Leg., p. 592, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 61.083 to 61.110 reserved for expansion]

**SUBCHAPTER D. POWERS AND DUTIES**

**§ 61.111. Purposes of District**

A district may:

(1) improve rivers, bays, creeks, streams, and canals inside or adjacent to the district;

(2) construct and maintain canals and waterways to permit or aid navigation; and

(3) issue bonds to pay for these improvements.

[Acts 1971, 62nd Leg., p. 592, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.112. Employees and Counsel**

(a) The commission may employ assistant engineers and other employees which are necessary and may determine their compensation.

(b) The commission may retain counsel to represent the district in the preparation of contracts or in the conduct of any proceedings in or out of court and to be the legal advisor of the commission on terms and for fees agreed on by the parties.

[Acts 1971, 62nd Leg., p. 592, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.113. Authority to Go on Land**

The commissioners and engineers, together with all necessary teams, help, tools and instruments, may

go on any land located inside the district for the purpose of examining the land and making plans, surveys, maps, and profiles, without subjecting themselves to the laws of trespass.

[Acts 1971, 62nd Leg., p. 593, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.114. Penalty for Prohibiting Entry to Land**

Any person who wilfully prevents or prohibits any officer listed in Section 61.113 of this code from entering land for the purposes stated in that section on conviction shall be punished by a fine of not more than \$25 a day for each day he prevents or prohibits the officer from entering the land.

[Acts 1971, 62nd Leg., p. 593, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.115. Acquisition of Property**

The commission may acquire by gift, grant, purchase, or condemnation any necessary rights-of-way and property for necessary improvements contemplated by the district.

[Acts 1971, 62nd Leg., p. 593, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.116. Lease of State Owned Lands and Flats**

(a) Any district organized under this chapter or any general law under which navigation districts may be created may apply for a lease from the State of Texas of the surface estate of any lands and flats belonging to the state which are covered or partly covered by the water of any of the bays or other arms of the sea; however, any navigation district created after the effective date of this Act may not lease the surface estate of any such lands or flats which are located within 10 miles of the boundary of any navigation district in existence on the effective date of this Act, without first receiving the written approval of the district now in existence. The words "navigation district," "district," or "districts" as used in Sections 61.116, 61.117, and 60.038 of the Texas Water Code shall apply to any incorporated city in this state which owns and operates wharves, docks, and other marine port facilities.

(b) The state, through the School Land Board, may lease these state owned lands or flats to eligible navigation districts only for purposes reasonably related to the promotion of navigation. The term "navigation" as used herein refers to marine commerce and immediately related activities, including but not limited to port development; channel construction and maintenance; commercial and sport fishing; recreational boating; industrial site locations; transportation, shipping, and storage facilities; pollution abatement facilities; and all other activities necessary or appropriate to the promotion of marine commerce; but specifically does not refer to residential development.

(c) In making application for a lease of state owned lands or flats, the district shall include the following information:

- (1) a description of the lands or flats sought to be leased;

(2) a plan showing how it proposes to utilize the land and a timetable indicating approximately when such utilization will take place;

(3) a draft environmental impact statement assessing the effect of the proposed use on the environment, which statement shall generally conform to the requirements of the National Environmental Policy Act,<sup>1</sup> until such time as the legislature shall impose different requirements; however, the School Land Board may waive the requirement of an environmental impact statement if the proposed use requires no dredging, filling, or bulkheading, and if such use will not have a significant impact on the environment. If the School Land Board does waive the submission of an environmental impact statement, it shall include a provision in the lease agreement requiring the district to file an environmental impact statement with the School Land Board before the district makes any use of such lands or flats which requires dredging, filling, or bulkheading, or which would have a significant impact on the environment;

(4) proof satisfactory to the board establishing the public convenience and necessity for acquisition of lands sought to be leased.

(d) Upon receipt of an application and accompanying information, the School Land Board shall submit copies thereof to the Texas Submerged Lands Advisory Committee, the member agencies of the Interagency Natural Resources Council, and all other appropriate state agencies for review and comment. In addition, the board shall submit for review and comment the proposed terms and conditions of the lease. The board shall allow 30 days for such review and comment, and may extend the review period for an additional 30 days upon written request by the executive director of any state agency.

(e) Following the expiration of the period provided for review and comment, or following the expiration of the 30 day extension of such period, if applicable, the School Land Board shall cause a hearing to be held in the county in which the land proposed to be leased is located. Notice of the hearing shall be given by publication for at least three days, not less than two weeks nor more than four weeks prior to the hearing, in the daily paper having the greatest circulation in the county. Members of the board or their designated representatives shall conduct the hearing, at which any party may offer testimony in support of or in opposition to the application, and the board shall consider the record of the hearing in making a decision on the application.

(f) After submission of all evidence, the School Land Board shall authorize the issuance or denial of the proposed lease and shall determine the reasonable cost to the district, term of years, special limitations, if any, and other conditions necessary to best serve the interest of the general public. In establishing the consideration to be paid to the state for

the lease, due weight shall be given to the depth of the water over the submerged land, its proximity to development activities, and its proposed use. Final action shall be taken by the board no more than 60 days following the public hearing.

(g) The funds derived from the lease shall be paid to the General Land Office for transfer to the proper funds of the state.

(h) Districts may sublease lands leased from the state under the provisions of this section to third parties for activities reasonably related to navigation, but such sublease shall be subject to the approval of the School Land Board according to the procedures, requirements, and criteria set forth in Subsections (c) and (d) of Section 61.116 of this code; provided, however, that no approval by the School Land Board shall be required if the sublease is for a purpose contemplated by the district and approved by the board in the district's original lease, and if the district submitted an environmental impact statement with its application to lease state owned lands or flats. It is further provided that no environmental impact statement shall ever be necessary for any sublease which requires no dredging, filling, or bulkheading, and which would not have a substantial impact upon the environment; nor shall a district in obtaining approval for a sublease under any circumstances be required to reveal the name of the tenant to whom the sublease is to be made.

(i) If lands or flats leased from the state under the provisions of this section are utilized by the district or its sublessee for any purpose or use not approved by the School Land Board, the district shall be given notice and an opportunity to change and correct the use. If the use is not changed and corrected within a reasonable time after receipt of such notice, the lease may be terminated by the School Land Board and the lands or flats shall revert to the State of Texas.

[Acts 1971, 62nd Leg., p. 593, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 553, ch. 237, § 1, eff. June 11, 1973.]

<sup>1</sup> 42 U.S.C.A. § 4321 et seq.

#### § 61.117. Limitations on Sales and Use of State Lands and Flats

(a) The State of Texas shall retain its rights in all mines and minerals, including oil and gas, in and under the land, together with the right to enter the land for the purpose of development when it leases land under Section 61.116 of this code.

(b) All leases of land under Section 61.116 are subject to oil, gas, or mineral leases in existence at the time of the lease to the district.

(c) Any land which has been franchised or leased or is being used by any navigation district or by the United States for the purpose of navigation, industry, or other purpose incident to the operation of a port shall not be entered or possessed by the State of Texas or by anyone claiming under the State of Texas for the purpose of exploring for oil, gas, or other minerals except by directional drilling. No easement, lease, or permit may be granted on land

which has been leased to a navigation district which will interfere with the proposed use of the land by the navigation district, and the prior approval of the navigation district shall be obtained for such purpose.

(d) No surface drilling location may be nearer than 660 feet and special permission from the Commissioner of the General Land Office is necessary to make any surface location nearer than 2,160 feet, measured at right angles from the nearest bulkhead line designated by a navigation district or the United States as the bulkhead line or from the nearest dredged bottom edge of any channel, slip, or turning basin which has been dredged, or which has been authorized by the United States as a federal project for future construction, whichever is nearer.

(e) In the event land is leased to a navigation district for construction of a navigation project, the School Land Board may in the lease designate the district to be the agent of the State of Texas with authority to grant to the United States of America such easements for dredging and disposal of dredged material as may be required for federal participation in the project. In designating the district to be the agent of the State of Texas for the purpose of granting spoil easements, the board may include a requirement that the district obtain the approval of the board before granting any such easement. Such approval may be given in the form of accepting a master plan for spoil disposal.

(f) Districts which, prior to the enactment of this provision, have obtained patents to state owned lands or flats under Article 8225, Revised Civil Statutes of Texas, 1925, or under any general or special act, and which still claim title to any such lands or flats, may not hereafter dispose of any such lands or flats except by lease as provided in Section 61.116 of this code; however, in the event a district possesses lands it finds to be in excess of its needs, it may sell such surplus lands or flats back to the State of Texas for the same consideration as originally paid to the state. It is further provided that the limitation on resale of lands or flats acquired from the State of Texas shall not prevent a district from exchanging such lands or flats for land, or rights in land, of an adjacent littoral owner for the purpose of adjusting or straightening the boundary between such lands. All such exchanges made after December 31, 1973, shall be subject to the approval of the School Land Board.

[Acts 1971, 62nd Leg., p. 593, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 555, ch. 237, § 2, eff. June 11, 1973.]

**§ 61.118. Construction Contracts**

(a) Except as provided in this section, the provisions of Chapter 3, Title 128, Revised Civil Statutes of Texas, 1925, governing water control and preservation districts which relate to advertising for, awarding, and performing contracts for the construction of improvements and work authorized by law shall apply to construction contracts made under this subchapter.

(b) The bidder's deposit for a construction contract shall be five percent of the amount bid, and the contractor's bond shall be for not less than 25 percent of the contract price.

(c) The contract shall be signed by at least two of the commissioners, and the partial payments made under the contract shall not be more than 90 percent of the contract price.

(d) In case of public calamity or extreme emergency which makes it necessary to act at once to preserve the property of the district and its residents or in case of unforeseen damage to the property or equipment of the district, the provisions of this section requiring advertisement for bids under Article 7853, Revised Civil Statutes of Texas, 1925, may be waived. In any of these situations, the commission shall record in the minutes of the district that an emergency exists and the facts which gave rise to the emergency.

[Acts 1971, 62nd Leg., p. 594, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.119. Interest in Contract of Navigation District**

If the county judge, a county commissioner, a member of the board or the commission, or the engineer shall directly or indirectly become interested in a contract for work to be done by the district or in any fee paid by the district, which would allow him to receive any money consideration or other thing of value except in payment of services as provided by law, on conviction he shall be confined in jail for not less than six months nor more than one year.

[Acts 1971, 62nd Leg., p. 594, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.120. Laws Governing Certain Functions of District**

Chapter 3, Title 128, Revised Civil Statutes of Texas, 1925, relating to eminent domain, employment and duties of the district engineer, cooperation with the federal government, and the director's annual report shall apply to this chapter.

[Acts 1971, 62nd Leg., p. 594, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 61.121 to 61.150 reserved for expansion]

**SUBCHAPTER E. PORT FACILITIES**

**§ 61.151. Authority to Operate and Develop Port Facilities**

(a) A district created for the development of deep-water navigation which includes a city with a population of more than 100,000, according to the last preceding federal census, may operate and develop ports and waterways inside the district and extending to the Gulf of Mexico.

(b) The district may acquire, purchase, take over, construct, maintain, operate, develop, and regulate wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, lighterage, land, towing facilities, and other facilities or

aids incident to or necessary to the operation or development of ports and waterways.

[Acts 1971, 62nd Leg., p. 595, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.152. Petition

(a) If the board decides to exercise the rights, powers, and authority provided in this subchapter, it shall certify this desire to the commissioners court and shall submit a petition requesting that an election be held.

(b) The commissioners court shall schedule a hearing on the petition not less than 30 nor more than 60 days after the date of the petition. The hearing may be held at any place designated by the commissioners court.

[Acts 1971, 62nd Leg., p. 595, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.153. Hearing: Testimony

Any person who may be affected may appear before the board on the day of the hearing and contest the necessity, advisability, or practicability of the election and may offer testimony in favor of or against the election.

[Acts 1971, 62nd Leg., p. 595, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.154. Election Order

After the hearing, if the board determines that the election should be held, the commissioners court shall order an election to determine whether or not the district should adopt the rights, powers, and authority provided in this subchapter. The order shall include the date on which the election will be held.

[Acts 1971, 62nd Leg., p. 595, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.155. Ballots

The ballots for the election shall be printed to provide for voting for or against the following proposition: "The development of the port by the navigation district."

[Acts 1971, 62nd Leg., p. 595, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.156. Election Expense

The district shall pay the expense of the election.

[Acts 1971, 62nd Leg., p. 595, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.157. Declaration of Results

If the result of the election favors the development of a port by the district, the commissioners court shall declare the result and shall enter in the minutes of the commissioners court the following declaration:

"Commissioners Court \_\_\_\_\_ County, Texas, \_\_\_\_\_ term A.D. \_\_\_\_\_, in the matter of the petition of the navigation board, requesting that the right, power, and authority be granted to the navigation district to develop the port of \_\_\_\_\_ (enter the name of the municipality). Be It Known, that at an election called for that purpose in the district, held on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_, a two-thirds majori-

ty of the electors voting on the proposition voted to develop port facilities.

"Now, Therefore, It is considered and ordered by the commissioners court that the district is authorized to proceed with the development of the port as authorized by law."

[Acts 1971, 62nd Leg., p. 595, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.158. Appointment of Commissioners

(a) If the provisions of this subchapter are adopted by a district, the district shall be managed, governed, and controlled by a commission composed of five commissioners, who shall be subject to the supervision and control of the board.

(b) Two of the commissioners shall be appointed by a majority of the city council of the municipality having a population of 100,000 or more, and two of the commissioners shall be appointed by a majority of the commissioners court.

(c) The chairman of the commission shall be the fifth member and shall be elected by majority vote of the city council and commissioners court meeting in joint session called by the county judge.

[Acts 1971, 62nd Leg., p. 596, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.159. Term of Office: Removal: Succession

(a) Except for the original appointments, each commissioner shall serve for a term of two years and until his successor is qualified.

(b) One of the original appointees of the city council and one of the commissioners court shall serve for one year. The other original appointees shall serve for two years.

(c) Each commissioner shall serve his full term unless removed by the authority which appointed him. He may be removed for malfeasance, nonfeasance in office, inefficiency, or other sufficient cause.

(d) If a vacancy occurs through death, resignation, or other reason, the vacancy shall be filled in the manner provided for making the original appointment.

[Acts 1971, 62nd Leg., p. 596, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.160. Qualifications; Compensation; Authority

(a) Each commissioner shall be a freehold property taxpayer and a qualified elector in the district.

(b) Each commissioner shall execute a bond and shall subscribe the required oath.

(c) Each commissioner is entitled to receive the compensation provided by the board.

(d) A majority of the commissioners shall have the authority to act, and all acts of the commission are subject to the supervision of the board.

[Acts 1971, 62nd Leg., p. 596, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.161. Eminent Domain

(a) The district may exercise the power of eminent domain.

(b) A district created under this chapter may elect to take advantage of the condemnation procedure provided in Subchapter F of Chapter 51 of this code. [Acts 1971, 62nd Leg., p. 596, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.162. Lease and Rental of Facilities**

A district may acquire and take over, by lease or rental agreements, for a period of not less than 25 years, the docks, wharves, buildings, railroads, land, improvements, and other facilities already provided, constructed, or owned by any incorporated municipality situated within the district only with the consent of the lawful authorities of the municipality and on terms mutually agreed on by the district and the municipality.

(1) No agreement for the use, acquisition, or operation of the property or facilities of the municipality by the district shall be for a lease or rental value which is more than the annual net revenue derived or to be derived by the district after payment of the expenses of operation and maintenance of the property and facilities.

(2) The district shall have no supervision or control over the property or facilities owned, controlled, or constructed by the municipality until agreement for the lease and rental of the property by the district has been made.

(3) A district that is leasing land or facilities from a municipality may purchase or acquire the property in the manner provided in this subchapter.

(4) The commission and the officials of the municipality shall be authorized to enter into an agreement stating the land and facilities to be acquired, the amount agreed on as the purchase price, and the terms of the sale.

[Acts 1971, 62nd Leg., p. 597, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.163. Unimproved Land**

(a) A district which acquires, leases, or takes over unimproved land owned or controlled by any incorporated municipality, may pay for the use, rental, or hire of the land a price or rental value to be fixed by the commission.

(b) If the commission fails or is unable to agree on terms and conditions for the use and rental of the unimproved land, then the district, through the power of eminent domain, may condemn the land or parts of the land which it thinks the interest of the district requires.

[Acts 1971, 62nd Leg., p. 597, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.164. Franchises**

(a) The district may grant franchises to persons or corporations on property owned or controlled by the district if the franchises are granted for purposes consistent with the provisions of this subchapter.

(b) No franchise shall be granted for longer than 30 years nor shall a franchise be granted except on the affirmative vote of a majority of the commis-

sioners at three separate meetings of the commission which meetings may not be closer together than one week.

(c) No franchise shall be granted until after the franchise in its final form is published in full at the expense of the applicant, once a week for three consecutive weeks in a daily newspaper of general circulation published inside the district.

(d) The franchise shall require the grantee to file his or their written acceptance within 30 days after the franchise is finally approved.

(e) Nothing in this section shall be construed as preventing the district from granting revocable licenses or permits for the use of limited portions of waterfront or facilities for purposes consistent with this chapter.

[Acts 1971, 62nd Leg., p. 597, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1770, ch. 518, § 15, eff. May 13, 1971.]

**§ 61.165. Franchise Election**

If the commission determines that a proposed franchise should be submitted to a vote of the people, it shall so certify to the commissioners court, and the commissioners court shall order an election on the matter at the earliest legal time.

[Acts 1971, 62nd Leg., p. 598, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.166. Ballots**

(a) The ballot shall explain the nature of the franchise sufficiently to identify it.

(b) The ballots shall be printed to provide for voting for or against the following proposition: "The franchise."

[Acts 1971, 62nd Leg., p. 598, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.167. Election Result**

If at the election a majority of those voting approve the franchise, it shall be granted. If those voting do not approve the franchise, it shall have no force and effect.

[Acts 1971, 62nd Leg., p. 598, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.168. Petition Protesting Franchise**

The franchise may be suspended from taking effect if, before the date when the franchise is granted, a petition signed by qualified voters of the district equal to 10 percent of the total vote cast in the last general election for state officers is presented to the commissioners court protesting the enactment or granting of the franchise. Immediately after the petition is filed, the commissioners court shall order an election on the proposed franchise. The election shall be governed by the provisions of Sections 61.164 and 61.165.

[Acts 1971, 62nd Leg., p. 598, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.169. Contracts**

The provisions governing the award of contracts by districts shall apply in all cases consistent with the provisions of this subchapter except that in case

of emergency contracts may be let by the commission for not more than \$1,000 without advertisement for bids. In case of urgent necessity or present calamity, advertisement for bids may be waived. [Acts 1971, 62nd Leg., p. 598, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.170. Authority to Incur Debt

(a) The district may issue bonds for the purposes stated in Section 61.151 of this code and for the purpose of

- (1) acquiring necessary land, rights-of-way, or dumping grounds;
- (2) extension or improvement of belt railway lines; or
- (3) construction of improvements, wharves, docks, or other facilities or aids to navigation.

(b) The obligations may be secured by liens on the property acquired, constructed, or improved. Available revenue may be pledged as additional security.

(c) The district may borrow funds for current expenses and may evidence the debt by warrants payable not later than the close of any calendar year for which the loans are made. The warrants shall never exceed the anticipated revenue.

[Acts 1971, 62nd Leg., p. 598, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.171. Bonds

(a) On compliance with the provisions of this subchapter the district may issue bonds to pay for the improvements and facilities and to acquire the property authorized in this subchapter.

(b) The district also may issue bonds to purchase wharves, docks, warehouses, bunkering facilities, belt railroads, land to be used for port purposes and development, or other facilities constructed or owned by the municipality.

(c) An election shall be held to approve the issuance of the bonds, and the bonds shall be issued in the manner provided by this chapter for issuing other bonds.

(d) The outstanding bonds and the additional bonds may not amount to more than 10 percent of the assessed value of real property in the district as shown by the last annual assessment made for the county and state.

[Acts 1971, 62nd Leg., p. 599, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.172. Financing Purchases

(a) The commission may have issued in the manner provided in this chapter bonds of the district in an amount that represents the purchase price of the land or facilities less any outstanding bonds previously issued by the municipality.

(b) The bonds shall be issued, registered, and sold in the same manner as other bonds of the district, and the proceeds shall be paid to the municipality.

(c) If the municipality has outstanding bonds, the district shall assume payment of these bonds and interest, and the commissioners court shall levy a tax sufficient to pay the interest due and the princi-

pal due at the maturity of the bonds. The taxes shall be collected as other taxes are now collected, and payment shall be made to the city by the commission on or before the due dates of interest and principal for the sole purpose of paying the interest on and principal of the outstanding bonds.

(d) The municipality shall not be released from any obligation to the owners and holders of any outstanding bonds issued on account of the land or facilities purchased.

(e) The municipality shall not levy, assess, and collect any tax for interest and sinking fund unless the payment from the district shall fail in whole or in part. In the event of such failure, the municipality shall levy and collect the tax necessary to discharge the interest and meet the principal of the outstanding bonds and shall continue to do so until the amounts are paid. Also, the municipality may collect any and all amounts paid on account of the district from the district and in event of the continued failure to make the payments by the district, the municipality may take back the facilities.

[Acts 1971, 62nd Leg., p. 599, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.173. Election on the Purchase of Facilities

(a) No bonds shall be issued or tax levied until the question of purchase of the facilities is submitted to a vote of the people in the district.

(b) In addition to the requirement for submitting bonds to a vote, the notice of election shall include:

- (1) a copy of the agreement;
- (2) the amount of outstanding bonds;
- (3) the amount of bonds sought to be issued by the district; and
- (4) the amount of taxes required to be levied.

(c) The election shall be called and held in the same manner as other elections for bonds, and the ballots shall provide for voting for or against the proposition: "The purchase of municipal facilities and the issuance of bonds and levy of a tax to pay for the bonds."

(d) If the election should carry by a two-thirds vote of the electors voting at the election, then the proposition shall be declared carried and the bonds shall be issued and sold, and the necessary taxes levied in accordance with the provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 599, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.174. Employees; County Auditor, Duties and Compensation

(a) The commission may employ all persons necessary for the construction, maintenance, operation, and development of the business and facilities of the district and may prescribe their duties and fix their compensation.

(b) The county auditor, as auditor for the district having large port facilities, shall make such additional reports and perform such accounting services in addition to those now required by law as may be

reasonably incident to the proper conduct of the business of the district.

(c) Compensation for the county auditor who shall act under this section shall be determined by the judge of the district court or courts having jurisdiction in the county after a hearing with respect to the amount and value of the services performed. The amount shall be paid monthly from funds of the navigation district, and the maximum amount which may be allowed by the district judge for the services shall not be more than the amount now being paid. [Acts 1971, 62nd Leg., p. 600, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.175. Powers**

(a) A district operating under this subchapter shall have all the rights, powers, and authority granted by this chapter and shall have all the authority granted by general or special law to navigation districts.

(b) A district operating under this subchapter shall also have the fullest powers consistent with the state constitution for the regulation of wharfage and of all facilities relating to the port, waterways, and district.

(c) The district may assess and collect charges for the use of all facilities acquired or constructed in accordance with the provisions of this subchapter. [Acts 1971, 62nd Leg., p. 600, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.176. City Police Powers**

Nothing in this subchapter shall repeal or affect the police powers of any municipality inside the district, or any law, ordinance, or regulation authorizing and empowering the municipality to exercise the powers relating to any navigable stream or aids to navigation and facilities in a navigation district, not in conflict with this subchapter.

[Acts 1971, 62nd Leg., p. 600, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 61.177 to 61.210 reserved for expansion]

**SUBCHAPTER F. GENERAL FISCAL PROVISIONS**

**§ 61.211. Maintenance Fund**

(a) After the district is created all expenses necessarily incurred after the petition was filed in connection with the creation, establishment, and maintenance of the district shall be paid out of the construction and maintenance fund of the district.

(b) The fund shall consist of all money received from the sale of bonds and all other amounts received by the district from any source, except tax collections applied to the sinking fund and payment of interest on the navigation bonds.

[Acts 1971, 62nd Leg., p. 601, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.212. District Depository**

(a) Within 30 days after the commissioners are appointed, the commission shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) The depository selected by the commission shall serve as the depository for the district for two years and until its successor is selected and has qualified.

[Acts 1971, 62nd Leg., p. 601, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.213. District Treasurer's Duties**

(a) The district treasurer shall keep an account of all money received by him for the district and paid out on behalf of the district.

(b) The district treasurer shall not pay out any money except on a voucher signed by the chairman of the commission or two of the commissioners or by the commissioners court.

(c) The district treasurer shall preserve in the files all orders for payment of money and shall submit a correct account to the commission or the commissioners court of all matters relating to the financial condition of the district on their request.

[Acts 1971, 62nd Leg., p. 601, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 61.214 to 61.230 reserved for expansion]

**SUBCHAPTER G. BOND AND TAX PROVISIONS**

**§ 61.231. Issuance of Bonds**

When the commission determines the cost of the proposed improvements, the expenses incident to the improvements, and the cost of maintenance of the improvements, it shall certify to the commissioners court the amount of bonds necessary to be issued. The commissioners court, at a regular or special meeting, shall issue an order directing the issuance of bonds for the district in the amount certified which shall not be more than the amount authorized by the election.

[Acts 1971, 62nd Leg., p. 601, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.232. Limitation on Bond Issue**

Outstanding bonds and additional bonds which are authorized may not be more than one-fourth of the assessed value of the real property in the district, as shown by the last annual assessment of real property made for state and county taxation.

[Acts 1971, 62nd Leg., p. 601, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 61.233. Requisites of Bonds**

(a) All bonds issued under the provisions of this subchapter shall be issued in the name of the district, signed by the county judge, and attested by the county clerk under the seal of the commissioners court.

(b) The bonds shall be issued in such denominations and payable at such time or times, not more than 40 years from their date, as the commissioners court considers expedient.

(c) All provisions of Chapter 57 of this code governing the approval, registration, and validity of bonds of levee improvement districts shall apply to bonds issued under this subchapter.

(d) The commissioners court or the board shall require a record to be kept of the bonds by the district treasurer the same as for bonds of levee improvement districts.

[Acts 1971, 62nd Leg., p. 602, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.234. Sale of Bonds

(a) After the bonds are registered, the chairman of the commission shall offer them for sale and shall sell the bonds for the best price possible.

(b) Money received from the sale of the bonds shall be paid immediately to the district treasurer, and he shall deposit it to the credit of the district.

[Acts 1971, 62nd Leg., p. 602, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.235. Chairman's Bond

Before the chairman of the commission may sell the bonds, he shall execute a good bond, payable to the county judge and his successors, in an amount fixed by the commission, conditioned on the faithful discharge of his duties. The bond shall be approved by the county judge.

[Acts 1971, 62nd Leg., p. 602, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.236. Tax Levy

(a) When bonds have been approved, the commissioners court annually shall levy and have assessed and collected improvement taxes sufficient to pay the interest on the bonds and to provide a sinking fund to redeem the bonds at maturity.

(b) The commissioners court shall also at the time of the levy of taxes for county purposes, levy and have assessed and collected for the maintenance, operation, and upkeep of the district and its improvements an annual tax of not more than 10 cents on each \$100 valuation.

(c) The commission shall determine a rate within the 10-cent limit as the necessary amount for the maintenance, operation, and upkeep of the district and its improvements. The rate shall be certified to the commissioners court by the commission.

(d) Taxes shall be levied on all property inside the district.

[Acts 1971, 62nd Leg., p. 602, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.237. Collection of Taxes

On order of the commissioners court, the tax assessor and collector of each county in the district shall assess and collect district taxes and pay the taxes to the district treasurer, in the manner provided in Chapter 3, Title 128, Revised Civil Statutes of Texas, 1925. The provisions of Chapter 3 relating to taxation, except the levy of maintenance taxes, creation and investment of sinking fund, and the liability of the commissioners court for failure to order the assessment shall apply.

[Acts 1971, 62nd Leg., p. 602, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.238. Additional Bond Issue

(a) If the proceeds of the original bonds are insufficient to complete the proposed improvements or

construction, or if the commission decides to undertake further construction or improvements or requires additional funds with which to maintain the existing improvements, it shall certify to the commissioners court the necessity for an additional bond issue, stating:

- (1) the amount required;
- (2) the purpose of the additional bonds;
- (3) the rate of interest on the bonds; and
- (4) the term of the bonds.

(b) The commissioners court, on receipt of this information, shall issue the bonds, unless the amount previously authorized has been exhausted, in which case the commissioners court shall first order an election on the issuance of the bonds to be held inside the district at the earliest possible legal time.

(c) The ballots for the issuance of additional bonds shall be printed to provide for voting for or against the proposition: "The issuance of bonds and the levy of a tax to pay for the bonds."

[Acts 1971, 62nd Leg., p. 603, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 61.239. Sinking Fund Investments

The commissioners court may invest the sinking fund in county, municipal, district, or other bonds approved by the attorney general.

[Acts 1971, 62nd Leg., p. 603, ch. 58, § 1, eff. Aug. 30, 1971.]

### CHAPTER 62. ARTICLE XVI, SECTION 59, NAVIGATION DISTRICTS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 62.001. Definitions

As used in this chapter:

- (1) "District" means a navigation district operating under the provisions of Article XVI, Section 59, of the Texas Constitution.
- (2) "Commission" means the navigation and canal commission.
- (3) "Commissioner" means a navigation and canal commissioner.
- (4) "Board" means the navigation board.
- (5) "County of jurisdiction" means the county in which the district or the greater amount of acreage of the district is located.

[Acts 1971, 62nd Leg., p. 603, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 62.002 to 62.020 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT

§ 62.021. Creation of District

A navigation district may be created in the manner prescribed by this subchapter under Article XVI, Section 59, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 603, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 62.022. Composition

A district may include within its boundaries all or part of villages, towns, cities, road districts, drainage districts, irrigation districts, levee districts, other improvement districts, and municipal corporations of any kind but may not include the territory of more than three counties or parts of three counties.

[Acts 1971, 62nd Leg., p. 604, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.023. Petition**

(a) Any person may present a petition to the commissioners court in the county of jurisdiction, at a regular or special session, requesting the creation of a district.

(b) The petition shall be signed by 25 of the property taxpaying electors who reside inside the boundaries of the proposed district. If there are less than 75 property taxpaying electors who reside inside the boundaries of the proposed district, the petition shall be signed by one-third of them.

(c) The petition shall include:

- (1) a request that the district be created;
- (2) the boundaries of the district accompanied by a map;
- (3) the general nature of the proposed improvements;
- (4) an estimate of the probable cost of the improvements; and
- (5) the name of the district, which shall include the name of the county.

(d) The petition shall be accompanied by an affidavit of the petitioners' qualifications.

[Acts 1971, 62nd Leg., p. 604, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.024. Deposit**

At the time the petition is filed with the commissioners court, the petitioner shall deposit \$500 in cash with the clerk of the commissioners court. The clerk shall keep the deposit until after the result of the election to create the district is declared and entered in the record by the commissioners court.

[Acts 1971, 62nd Leg., p. 604, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.025. Date of Hearing**

(a) On presentation of the petition, the commissioners court of the county of jurisdiction shall set it for a hearing at the regular term of the commissioners court or at a special session called for that purpose. The hearing shall be held not less than 30 nor more than 60 days from the day the petition is presented.

(b) If the hearing is required by Section 62.026 of this code, to be held by the navigation board, the commissioners court shall set the hearing at the regular meeting place of the commissioners court not less than 30 nor more than 60 days from the day the petition is presented without reference to any term of the commissioners court.

[Acts 1971, 62nd Leg., p. 604, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.026. Hearing Before the Board**

If the boundaries of a proposed district include all or part of a city or cities acting under special charter granted by the legislature, the hearing on the petition shall be held before the board.

[Acts 1971, 62nd Leg., p. 604, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.027. Notice of Hearing**

(a) The commissioners court shall order the clerk to post a copy of the petition together with the order of the commissioners court in five public places in the county, one of which shall be the courthouse door and four of which shall be in different places inside the limits of the proposed district. The notice shall be posted not less than 20 days before the time set for the hearing.

(b) If the district is composed of more than one county, a copy of the petition together with the order shall be posted at the courthouse door of each county in which any portion of the proposed district is located, and four copies shall be posted at four other places inside the included territory of each county.

(c) The clerk shall receive \$1 as compensation for posting each notice and five cents a mile for each mile necessarily traveled in posting the notices.

[Acts 1971, 62nd Leg., p. 605, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.028. Hearing on Petition**

(a) The commissioners court or the board has exclusive jurisdiction to hear and determine all contests and objections and other matters relating to creating a district and in all subsequent proceedings.

(b) Any person who has taxable property in the proposed district or who may be affected by the creation of the district may appear at the hearing and contest or support the creation of the district, offer testimony for or against the boundaries, show that the proposed improvements would or would not be of any public utility and would or would not be practicable and feasible, present evidence of the probable cost of the improvements, or present any other matter relating to the district.

(c) The commissioners court or navigation board may adjourn the hearing from day to day, and judgments or decisions rendered by the commissioners court or the board are final except as otherwise provided by this chapter.

[Acts 1971, 62nd Leg., p. 605, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.029. Findings**

(a) If the commissioners court or the board finds that the improvements would be feasible and practicable and would be a public benefit and utility and approves the boundaries as set out in the petition, it shall compute the amount of money necessary for the improvements and all incidental expenses and shall determine whether to issue bonds for the full amount or for a smaller amount in the first instance.

(b) The commissioners court or the board shall specify:

- (1) the amount of bonds to be issued;
- (2) the length of time the bonds will run; and
- (3) the rate of interest.

(c) The findings and specifications together with a map of the district shall be recorded in the minutes of the commissioners court or the board.

(d) If the commissioners court or the board does not approve the proposed boundaries of the district, it shall define the boundaries it considers correct. Before any change is made in the boundaries of the proposed district, notice shall be given and a hearing held as provided in Sections 62.027 and 62.028 of this code.

(e) If the commissioners court or the board finds that the improvements are unnecessary and would not be practicable or feasible and would not be a public benefit or utility, it shall enter these findings in the minutes and shall dismiss the petition at the cost of the petitioners. However, the dismissal of a petition does not prevent or conclude the presentation of a similar petition at a later date.

[Acts 1971, 62nd Leg., p. 605, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.030. Election Order**

(a) If the commissioners court or the board finds in favor of the petitioners for the creation of the district, the commissioners court of the county of jurisdiction shall order an election to be held inside the proposed district at the earliest legal time.

(b) The order of the court shall provide for submitting to the electors residing in the proposed district the question of whether or not the district will be created and whether or not proposed bonds will be issued and a tax levied sufficient to pay the interest and provide a sinking fund sufficient to redeem the bonds at maturity.

(c) The order shall specify:

- (1) the amount of bonds to be issued;
- (2) the length of time the bonds will run; and
- (3) the rate of interest.

[Acts 1971, 62nd Leg., p. 606, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.031. Notice of Election**

(a) The clerk of the commissioners court shall prepare notice of the election and shall post the notice for 30 days before the day set for the election.

(b) The notice shall be posted in the same places specified in Section 62.027 of this code.

(c) The notice shall state:

- (1) the time and place of holding the election;
- (2) the proposition to be voted on; and
- (3) the purpose for which the bonds are to be issued and the amount of the bonds.

(d) The notice shall contain a copy of the order of the court ordering the election.

[Acts 1971, 62nd Leg., p. 606, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.032. Ballot**

The ballot shall be printed to provide for voting for or against the proposition: "The creation of the navigation district and the issuance of bonds and levy of a tax for the payment of the bonds."

[Acts 1971, 62nd Leg., p. 606, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.033. Conduct of Election**

(a) The commissioners court shall issue an order creating and defining the voting precincts in the proposed district and shall name polling places within the precincts. In designating the polling places, the commissioners court shall take into consideration the convenience of the voters in the proposed district.

(b) The commissioners court shall select and appoint the judges and other necessary officers of election.

[Acts 1971, 62nd Leg., p. 606, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.034. Canvass of Returns**

(a) Immediately after the election, the election officers shall make returns of the result and return the ballot boxes to the clerk of the commissioners court of jurisdiction.

(b) The clerk shall deliver the boxes and the returns of the election to the commissioners court of jurisdiction at its next regular or special session.

(c) At that session, the commissioners court shall canvass the returns of the election.

[Acts 1971, 62nd Leg., p. 607, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.035. Declaration of Result**

If a majority of the votes favor creating the district, issuing bonds, and levying a tax, the commissioners court shall declare the result and enter it in the minutes of the commissioners court as follows:

"Commissioners court of \_\_\_\_\_ County, Texas, \_\_\_\_\_ term A.D. \_\_\_\_\_, in the matter of the petition of \_\_\_\_\_ and \_\_\_\_\_ others requesting the creation of a navigation district, issuance of bonds, and levy of a tax in the petition described and designated by the name of \_\_\_\_\_ Navigation District. Be it known that at an election called for that purpose in the district, held on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_, a majority of the electors voting voted in favor of the creation of the navigation district, the issuance of bonds, and the levy of a tax. Now, therefore, it is considered and ordered by the commissioners court that the navigation district, be and the same is hereby established by the name of \_\_\_\_\_ Navigation District, and that bonds of the district in the amount of \$\_\_\_\_\_ be issued, and a tax of \_\_\_\_\_ cents on the \$100 valuation, or so much thereof as may be necessary to be levied upon all property within the navigation district, whether real, personal, mixed, or otherwise, sufficient in amount to pay the interest on the bonds and provide a sinking fund to redeem that at maturity, and that if the tax shall at any time become insufficient for these purposes it shall be increased until it is sufficient. The metes and bounds of the district are as follows: (Give metes and bounds)."

[Acts 1971, 62nd Leg., p. 607, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.036. Expenses**

(a) If the result of the election favors the creation of the district, the clerk shall return the \$500 deposit

required by Section 62.024 of this code to the signers of the original petition, their agents or their attorney.

(b) If the result of the election is against the creation of the district, the clerk shall pay out of the \$500 deposit on vouchers signed by the county judge, all costs and expenses relating to the proposed district up to and including the election. The balance, if any, of the \$500 shall be returned to the signers of the original petition, their agents, or their attorney. [Acts 1971, 62nd Leg., p. 607, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 62.037 to 62.060 reserved for expansion]

#### SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

##### § 62.061. Navigation Board

(a) The navigation board shall include the members of the commissioners court and the mayor and aldermen or commissioners of the included city or cities acting under special charter granted by the legislature. If there is only one city or part of one city acting under special charter granted by the legislature inside the proposed district and if the charter of the city at any time authorizes the city council or city board of commissioners to be greater in number than the members of the commissioners court, the number of aldermen or city commissioners who are entitled to sit and vote as members of the board along with the mayor will be limited to that number which equals the number of members of the commissioners court. The aldermen or city commissioners entitled to act as members of the board shall be determined by the members of the city council or city board of commissioners among themselves.

(b) The county judge, and in his absence the mayor, shall preside at meetings of the board and each member of the board, including the presiding officer, is entitled to a vote.

(c) A majority of the members of the board constitute a quorum, and action of a majority of the quorum shall control.

(d) The county clerk shall enter the proceedings of the board in a book kept for that purpose, and the book shall be available for public inspection. [Acts 1971, 62nd Leg., p. 607, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.062. Appointment of Initial Commissioners

(a) After the creation of the district, the commissioners court or board shall appoint three navigation and canal commissioners who shall compose the navigation and canal commission.

(b) After the initial commissioners on the navigation and canal commission complete their terms, subsequent commissioners shall be elected. [Acts 1971, 62nd Leg., p. 608, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.063. Election of Commissioners

(a) Commissioners shall be elected on the second Saturday in July of each odd-numbered year at an election ordered by the commission.

(b) The secretary of the commission shall give notice of the election by posting at least three copies of the notice at three public places inside the district or by publishing the notice for 20 days before the election in a newspaper with general circulation in the district.

[Acts 1971, 62nd Leg., p. 608, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.0631. Appointment of Commissioners

(a) Instead of electing commissioners as provided in Section 62.063 of this code, the commissioners court or board may appoint three navigation and canal commissioners to serve on the commission.

(b) The commissioners shall hold office for a term of two years and until their successors are appointed and have qualified.

(c) Commissioners may be removed from office by a majority of the commissioners court or the board for malfeasance or nonfeasance in office.

(d) Successors to members of the commission shall be appointed by a majority vote of the commissioners court or the board.

[Acts 1971, 62nd Leg., p. 1771, ch. 518, § 18, eff. May 31, 1971.]

##### § 62.064. Qualifications of Commissioners

Each person who is appointed or elected commissioner shall be a resident of the proposed navigation district and shall be an elector of the county.

[Acts 1971, 62nd Leg., p. 608, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.065. Term of Office

Commissioners shall hold office for staggered terms of six years and until their successors are elected and have qualified.

[Acts 1971, 62nd Leg., p. 608, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.066. Vacancies

(a) A vacancy on the commission shall be filled by the remaining members of the commission.

(b) If two or more vacancies on the commission occur at the same time, a special election may be called on petition signed by 50 electors.

(c) Notice of the election shall be given by publishing or posting notice for at least 20 days before the election.

(d) The petition for the election shall include the names of the judges and clerks of the election, and the judges and clerks shall jointly canvass the returns, declare the result, and issue certificates of election to the successful candidates.

[Acts 1971, 62nd Leg., p. 608, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.067. Removal from Office

(a) A commissioner may be removed from office for malfeasance or nonfeasance in office by unanimous vote of the commissioners court or the board after a hearing held according to law.

(b) Appeal from a judgment of removal may be taken to a district court of the county in which the

commissioner resides. The court shall try the case de novo.

[Acts 1971, 62nd Leg., p. 609, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.068. Oath of Commissioners**

(a) Before each commissioner begins to perform his duties, he shall take and subscribe before the county judge of the county of jurisdiction an oath to discharge faithfully the duties of his office without favor or partiality and to render a true account of his activities to the commissioners court of the county of jurisdiction or the board whenever required to do so.

(b) The oath shall be filed by the clerk of the commissioners court and preserved as part of the records of the district.

[Acts 1971, 62nd Leg., p. 609, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.069. Bond of Commissioners**

Before a commissioner begins to perform his duties, he shall execute a good and sufficient bond for \$1,000, payable to the county judge of the county of jurisdiction for the use and benefit of the district and conditioned on the faithful performance of his duties.

[Acts 1971, 62nd Leg., p. 609, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.070. Compensation of Commissioners**

Each commissioner shall receive for his services the compensation determined by the commissioners court of the county of jurisdiction.

[Acts 1971, 62nd Leg., p. 609, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.071. Organization of Commission**

(a) The commission shall organize by electing one of the members chairman and one secretary.

(b) Two of the commissioners constitute a quorum. A concurrence of two is sufficient in all matters relating to the business of the district.

[Acts 1971, 62nd Leg., p. 609, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.072. Two-County Districts; Appointment of Commission**

(a) In a district composed of land in two or more counties, the commissioners court of the county of jurisdiction by a majority vote shall appoint one commissioner. The commissioners court of the other county included in whole or in part within the district shall appoint by a majority vote a second commissioner. The two commissioners courts shall appoint the third commissioner at a joint meeting of the two commissioners courts called and presided over by the county judge of the county of jurisdiction.

(b) Notice in writing of the joint meeting of commissioners courts shall be given by mail or delivered in person at least two days before the day set for the meeting.

(c) Each of the county judges and county commissioners composing the commissioners courts of both counties shall be entitled to one vote in appointing

the third commissioner. A majority vote of those present at the meeting shall be sufficient to make the appointment.

(d) On the termination of the term of office of each commissioner or in case of vacancy, a successor shall be appointed by the same commissioners court which appointed the commissioner whose place is being filled.

(e) Except for the matters expressly provided for in this section, two-county districts are subject to all other provisions of this subchapter.

[Acts 1971, 62nd Leg., p. 609, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.073. District Treasurer**

The county treasurer of the county of jurisdiction shall be treasurer of the district.

[Acts 1971, 62nd Leg., p. 610, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.074. Treasurer's Bond**

(a) The county treasurer shall execute a good and sufficient bond, payable to the commissioners, in an amount equal to twice the amount of funds he will hold at any time as treasurer of the district. The commissioners shall estimate the sum to be used as a basis for computing the amount of the required bond. The bond shall be conditioned for the faithful performance by the treasurer of his duties for the district and must be approved by the commissioners.

(b) When any bonds are voted by the district, the county treasurer, before receiving the proceeds from the sale of the bonds, shall execute an additional good and sufficient bond, payable to the commissioners, in an amount which is twice the amount of bonds issued. This additional bond shall be conditioned and approved in the same manner as the first but shall not be required after the treasurer has disbursed the proceeds of the bond issue.

[Acts 1971, 62nd Leg., p. 610, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.075. Treasurer's Compensation**

The county treasurer shall be allowed as compensation for his services as treasurer of the district the amount determined by the commissioners. The compensation may not exceed the percentage authorized by law for his services as county treasurer.

[Acts 1971, 62nd Leg., p. 610, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.076. District Engineer**

(a) The commission may employ a competent engineer who shall serve at the will of the commission.

(b) The district engineer shall receive the compensation determined by the commission.

[Acts 1971, 62nd Leg., p. 610, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.077. Assistant Engineers and Employees; Counsel; Salaries and Fees**

(a) The commission may employ assistant engineers and other employees which may be necessary.

(b) The commission may employ counsel to represent the district in the preparation of any contract, to conduct any proceedings in or out of court, and to

be the legal adviser of the commission on such terms as may be agreed upon by the commission.

(c) The amount of compensation for employees and fees of counsel shall be determined by the commission.

[Acts 1971, 62nd Leg., p. 611, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.078. Suits; Judicial Notice

(a) A district established under this chapter may, by and through the commission, sue and be sued in all courts of this state in the name of the district.

(b) All courts of this state shall take judicial notice of the establishment of all districts.

[Acts 1971, 62nd Leg., p. 611, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 62.079 to 62.100 reserved for expansion]

### SUBCHAPTER D. POWERS AND DUTIES

#### § 62.101. Purposes of District

A district may be created under this chapter to provide, in or adjacent to its boundaries, for:

(1) the improvement, preservation, and conservation of inland and coastal water for navigation;

(2) the control and distribution of storm water and floodwater of rivers and streams in aid of navigation; and

(3) any other purposes necessary or incidental to the navigation of inland and coastal water or in aid of these purposes, as stated in Article XVI, Section 59, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 611, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.102. Districts as Governmental Agencies

All districts created under this chapter shall be governmental agencies and bodies politic and corporate with the powers of government and with the authority to exercise the rights, privileges, and functions which are essential to the accomplishment of those purposes.

[Acts 1971, 62nd Leg., p. 611, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.103. Duties of County Officials

The powers and duties conferred by this chapter on the county judge, members of the commissioners court, the mayor and aldermen or commissioners of cities, the county clerk, and other officers are made a part of the legal duty of those officials. Unless otherwise provided in this chapter, these persons shall exercise and perform these powers and duties without additional compensation.

[Acts 1971, 62nd Leg., p. 611, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.104. Duties of District Engineer

It shall be the duty of the district engineer:

(1) to make all necessary surveys, examinations, investigations, maps, plans, and drawings with reference to proposed improvements;

(2) to make estimates of the cost of proposed improvements;

(3) to supervise the work of improvement; and

(4) to perform all duties which may be required of him by the commission.

[Acts 1971, 62nd Leg., p. 612, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.105. Right-of-Way

The commission may by gift, grant, purchase, or condemnation acquire the necessary right-of-way and property of any kind for all necessary improvements contemplated by this chapter.

[Acts 1971, 62nd Leg., p. 612, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.106. Condemnation Proceedings

(a) The district may exercise the power of eminent domain to condemn and acquire the right-of-way over and through any and all public and private land necessary:

(1) for the improvement of any river, bay, creek, or stream;

(2) for the construction and maintenance of any canal or waterway; and

(3) for any and all purposes authorized by this chapter.

(b) Condemnation proceedings instituted under Subsection (a) of this section shall be instituted under the direction of the commission and in the name of the district. The assessment of damages shall be in conformity with the laws of the State of Texas for condemnation and acquisition of rights-of-way by railroads.

(c) No appeal from the finding and assessment of damages by the commissioners shall have the effect of causing a suspension of work by the commission in prosecuting the work of improvement in all of its details.

(d) No right-of-way may be condemned through any part of an incorporated city or town without the consent of the lawful authorities of that city or town.

(e) A district created under this chapter may elect to take advantage of the condemnation procedure provided in Subchapter F of Chapter 51 of this code.

[Acts 1971, 62nd Leg., p. 612, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.107. Acquisition of Land

(a) Any district created under this chapter may acquire by gift, purchase, or condemnation and may own land adjacent or accessible to the navigable water and ports developed by it which may be necessary or required for any and all purposes incident to or necessary for the development and operation of the navigable water or ports within the district, or may be necessary or required for or in aid of the development of industries on the land.

(b) The district may lease any part of the acquired land to any individual or corporation and may charge for the lease reasonable tolls, rents, fees, or other charges. The district may use the proceeds both for the maintenance and operation of the busi-

ness of the district and for the purpose of making the district self-supporting and financially solvent and returning the construction costs of the improvements within a reasonable period.

(c) The acquisition of land for the purposes included in this section and the operation and industrial development of ports and waterways are a public purpose and a matter of public necessity.  
[Acts 1971, 62nd Leg., p. 612, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.108. Entry on Property**

The commissioners and the engineers of a district together with all necessary teams, help, tools, and instruments may go on any land inside the district to examine the land and to make plans, surveys, maps, and profiles without subjecting themselves to the action of trespass.  
[Acts 1971, 62nd Leg., p. 613, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.109. Bids**

(a) Any person, corporation, or firm which desires to bid on the construction of any work advertised under Section 62.110 of this code shall, on application to the commission, be furnished the survey, plans, and estimates for the work.

(b) All bids or offers for the work shall be in writing, sealed, and delivered to the chairman of the commission together with a certified check for at least five percent of the total amount of the bid.

(c) If a bid is accepted but the bidder refuses to enter into a proper contract, the deposit required by Subsection (b) of this section shall be forfeited to the district.

(d) Any and all bids may be rejected at the discretion of the commission.

(e) A district may take advantage of the bid procedure in Sections 63.168-63.170 of this code by passing a simple resolution and entering it in its minutes.  
[Acts 1971, 62nd Leg., p. 613, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.110. Notice of Bids**

Notice that a contract is to be awarded shall be given by publishing notice once a week for four consecutive weeks in one or more newspapers with general circulation in the state and by posting notice for at least 30 days in five public places in the county of jurisdiction, one of which shall be the courthouse door and at least two of which shall be inside the district.  
[Acts 1971, 62nd Leg., p. 613, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.111. Award of Contract**

(a) All contracts for improvements, except those carried out and performed by the government of the United States, shall be awarded by the commission to the lowest and best responsible bidder.

(b) Nothing in this section shall prevent the making of more than one improvement. Where more than one improvement is to be made, a contract may

be awarded separately for each improvement or one contract may be awarded for all the improvements.  
[Acts 1971, 62nd Leg., p. 613, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.112. Interest in Contracts**

No county judge or county commissioner of any county in a district, board member, or district engineer may be directly or indirectly interested for himself or as agent for another in a contract for the construction of work to be performed by the district.  
[Acts 1971, 62nd Leg., p. 614, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.113. Form of Contracts**

All contracts made by the commission shall be in writing and signed by the contractors and at least two of the commissioners. A copy of the contract shall be filed with the county clerk.  
[Acts 1971, 62nd Leg., p. 614, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.114. Bond of Contractor**

(a) The party, firm, or corporation to whom a contract is awarded under Section 62.111 of this code shall execute a bond, payable to the commission, for twice the amount of the contract price, conditioned on faithful performance of the obligations, agreements, and covenants of the contract and that in default of the performance he will pay to the district all damages sustained by reason of the default.

(b) The bond shall be approved by the commission.  
[Acts 1971, 62nd Leg., p. 614, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.115. Supervision of Work; Report**

(a) Unless done under the supervision of the United States, all work contracted for by the commission shall be done under the supervision of the district engineer.

(b) After work is completed according to a contract awarded by the commission, the district engineer shall make a detailed report of the work to the commission. The report shall show whether or not the contract has been fully complied with and if not, in which particular the contractor has failed to comply.  
[Acts 1971, 62nd Leg., p. 614, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.116. Inspection of Work; Payment**

(a) The commission shall inspect the progress of work being done under a contract, and on completion of the contract, the commission shall draw a warrant on the county treasurer payable to the contractor or his assignee for the amount of the contract price. The warrant shall be paid out of the construction and maintenance fund of the district.

(b) If the commission considers it advisable, it may contract for work to be paid for in partial payments as the work progresses. The partial payments may not exceed in the aggregate eighty percent of the total amount to be paid under the contract. The amount of work completed at the time of the partial payment shall be shown by a certificate of the district engineer.

(c) Nothing in this section shall affect the provisions of this chapter providing for the construction of any improvements by the United States.

[Acts 1971, 62nd Leg., p. 614, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1770, ch. 518, § 16, eff. May 31, 1971.]

#### § 62.117. Annual Report

(a) The commission shall make an annual report of its official acts and file it with the clerk of the commissioners court on or before January 1 of each year.

(b) The report shall include in detail:

(1) the kind, character, and amount of work done in the district;

(2) the cost of the work;

(3) the amount paid out on order and for what purpose paid; and

(4) other data necessary to show the condition of improvements made under the provisions of this chapter.

[Acts 1971, 62nd Leg., p. 614, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.118. Cooperation with United States

(a) If a river, creek, stream, bay, canal, or waterway to be improved is navigable or the proposed improvement is of a nature which requires the permission or consent of the United States, the commission may obtain the required permission or consent of the United States.

(b) Instead of or in addition to employing an engineer as provided in Section 62.076 of this code the commission may:

(1) adopt any survey of a river, creek, canal, stream, bay, or waterway previously made by the United States;

(2) arrange for surveys, examinations, and investigations of the proposed improvement; and

(3) arrange for supervision of the work of improvement by the United States.

(c) The commission may cooperate and act with the United States in any and all matters relating to the construction and maintenance of canals and the improvement and navigation of navigable rivers, bays, creeks, streams, canals, and waterways.

(d) The authority to cooperate shall extend to surveys, work, or expenditures of money made or to be made either by the commission or by the United States.

(e) The United States may aid in all such matters, and the commission shall have authority to consent to the United States entering on and taking management and control of the work where necessary or permissible under the laws, regulations, and orders of the United States.

[Acts 1971, 62nd Leg., p. 615, ch. 58, § 1, eff. Aug. 15, 1971.]

#### § 62.119. Preference Lien; Waiver; Enforcement

(a) If a district leases, rents, furnishes, or supplies water to any person, association of persons, water

improvement district, or corporation for the purpose of irrigation, the district shall have, without regard to contract, a preference lien superior to every other lien on the crop or crops raised on the land which is irrigated.

(b) If any district obtains a water supply under contract with the United States, the board of directors of the district may, by resolution entered in the minutes and with consent of the secretary of the interior, waive the preference lien, in whole or in part.

(c) For the enforcement of the lien provided in Subsection (a) of this section, all districts are entitled to all the rights and remedies prescribed by Title 84, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> for the enforcement of the lien between landlord and tenant.

(d) The authority granted by this section shall be cumulative of, and in addition to, the authority granted by other laws.

[Acts 1971, 62nd Leg., p. 615, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Civil Statutes, art. 5222 et seq.

#### § 62.120. Contract for and Lease of Water System

(a) A district may enter into operating contracts and leases with cities and other governmental subdivisions for the operation of the portions of the district's water system which are designated by the board.

(b) To the extent that the proceeds of revenue bonds were used to acquire the portion leased, the annual payments paid by the lessee to the district shall be in a sum which is sufficient to permit the district to pay the proportionate part of the principal, interest, reserves, and other requirements provided by the bond proceedings on any revenue bonds which were issued to acquire the leased properties.

(c) Bonds issued to acquire, improve, enlarge, or extend leased properties may mature serially or otherwise not more than 50 years from their date of issue.

[Acts 1971, 62nd Leg., p. 1625, ch. 452, § 2, eff. May 26, 1971.]

[Sections 62.121 to 62.150 reserved for expansion]

### SUBCHAPTER E. GENERAL FISCAL PROVISIONS

#### § 62.151. Construction and Maintenance Fund

(a) The construction and maintenance fund shall include money received from the sale of bonds and all other sources except tax collections placed in the sinking fund to pay the principal of and the interest on bonds.

(b) After the original petition is filed, all expenses necessarily incurred in connection with the creation, establishment, and maintenance of the district shall be paid from the construction and maintenance fund.

[Acts 1971, 62nd Leg., p. 616, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.152. Warrants**

The commission may draw warrants:

- (1) to pay for legal services;
- (2) to pay the salary of the engineer, his assistant, and any other employees; and
- (3) to pay all expenses incident to operation of the district.

[Acts 1971, 62nd Leg., p. 616, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.153. Duties of District Treasurer**

The district treasurer shall:

- (1) open an account for all funds received by him for the district and all district funds which he pays out;
- (2) pay out money on vouchers signed by the chairman of the commission, any two members of the commission, or the commissioners court;
- (3) carefully preserve all orders for the payment of money; and
- (4) render a correct account to the commissioners court of all matters relating to the financial condition of the district as often as required by the commissioners court.

[Acts 1971, 62nd Leg., p. 616, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.154. Applicability of Sections 62.155-62.159**

Sections 62.155-62.159 of this code apply to all revenue, income, money, funds, or increments except revenue derived from taxation which may result from the ownership and operation of the district's improvements and facilities. However, these sections do not apply to any of the following counties:

- (1) Matagorda;
- (2) Ford Bend;
- (3) Brazoria;
- (4) Chambers;
- (5) Galveston; and
- (6) Harris.

[Acts 1971, 62nd Leg., p. 616, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.155. Deposit in Banking Corporation**

(a) Instead of depositing the revenue of the district in the manner provided by law for districts, the commission may deposit the revenue in a banking corporation in the manner provided in Section 62.156 of this code.

(b) On selection of a banking corporation by the commission under Subsection (a) of this section, revenue of the district held by anyone other than the selected banking corporation, on order of the commission, shall be deposited in the selected banking corporation to the credit of the district.

[Acts 1971, 62nd Leg., p. 616, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.156. Selection of Depository**

(a) The commission shall select a banking corporation which will secure the deposit of the revenue pursuant to the statutes relating to county depositories insofar as applicable. "Commissioners court"

and "county judge" as used in the statutes relating to county depositories shall mean the commission and the commission chairman respectively.

(b) The commission may select the banking corporation to serve as the depository for a period of not more than two years from the day of selection, and at least 60 days before the end of the period, the commission shall determine whether to continue to deposit district revenue as provided in this section or to deposit the revenue as provided in the general laws relating to navigation districts.

(c) If the commission decides to deposit district revenue under the general laws relating to navigation districts, it, at any time in the future, may elect to select a depository in the manner provided in this section.

[Acts 1971, 62nd Leg., p. 617, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.157. Payment of District Revenue**

Revenue of the district which is deposited with the banking corporation may be paid out according to the terms and conditions agreed to by the district and the banking corporation.

[Acts 1971, 62nd Leg., p. 617, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.158. Audit of Revenue**

(a) The commission of a district which deposits its revenue with a banking corporation shall, not later than March 1 of each year, have an audit made of the revenue of the district on deposit with the banking corporation for all or part of the preceding calendar year.

(b) The audit shall be made by the county auditor of the county of jurisdiction or by an independent certified accountant or firm of independent certified public accountants employed by the commission.

(c) The cost of the audit shall be paid by the commission out of available revenues.

(d) The audit shall be retained at the main office of the commission of the district and shall be available for public inspection at all reasonable times.

[Acts 1971, 62nd Leg., p. 617, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.159. Conflicts With Prior Bonds or Other Laws**

If Sections 62.154-62.158 of this code conflict with the provisions of any bonds issued by a district and secured in whole or in part by a pledge of revenue, with the proceedings authorizing the bonds, or with any special act relating to one specific district, the bonds, proceedings, and special act shall control over these sections.

[Acts 1971, 62nd Leg., p. 617, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.160. Maintenance Tax**

The commissioners courts of the respective counties inside each district may levy and have assessed and collected for the maintenance, operation, and upkeep of the district and the improvements constructed by the district an annual tax not to exceed

10 cents on the \$100 valuation on all property inside the district.

[Acts 1971, 62nd Leg., p. 617, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 62.161 to 62.190 reserved for expansion]

#### SUBCHAPTER F. BOND PROVISIONS

##### § 62.191. Issuance of Navigation Bonds

(a) After the commission determines the cost of proposed improvements, incidental expenses, and maintenance costs, it shall certify to the commissioners court of the county of jurisdiction the amount of bonds necessary to be issued.

(b) The commissioners court, at a regular or special meeting, shall issue an order directing the issuance of navigation bonds for the district in the amount so certified. The amount of bonds may not be more than the amount authorized by the election. [Acts 1971, 62nd Leg., p. 618, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.192. Issuance of Additional Bonds

(a) If the proceeds of bonds issued by a district are insufficient to complete the proposed improvement or construction, if the commissioners decide to begin other and further construction or improvements, or if additional funds are required to maintain the improvements made, the commission shall certify to the commissioners court the necessity for an additional bond issue.

(b) Unless the amount previously authorized has been exhausted, the commissioners court shall issue the bonds.

(c) The certification to the court shall state:

- (1) the amount of bonds required;
- (2) the purpose of the bonds;
- (3) the rate of interest; and
- (4) the length of time for which the bonds are to run.

[Acts 1971, 62nd Leg., p. 618, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.193. Bond Election

(a) If the authorized amount of bonds is exhausted, the commissioners court shall order an election on the issuance of additional bonds to be held in the district at the earliest legal time.

(b) The ballots shall be printed to provide for voting for or against the proposition: "The issuance of bonds and the levy of a tax to pay for the bonds."

(c) Notice shall be given, the election conducted, and the returns canvassed in the manner provided for the original bond election in Subchapter B of this chapter.

[Acts 1971, 62nd Leg., p. 618, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.194. Order for Bonds and Tax

If on the canvass of the vote it is determined that a majority of the votes cast at the election were in favor of the issuance of bonds and levy of tax, the

commissioners court shall issue an order directing the issuance of the bonds and the levy of a tax.

[Acts 1971, 62nd Leg., p. 618, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.195. Form of Bonds

(a) Bonds issued under the provisions of this chapter shall be issued in the name of the district, signed by the county judge of the county of jurisdiction, and attested by the county clerk of the county of jurisdiction with the seal of the commissioners court of the county of jurisdiction affixed to them.

(b) The bonds shall be issued in the denominations and payable at the time or times, not more than 40 years from their date, which may be considered most expedient by the commissioners court.

[Acts 1971, 62nd Leg., p. 619, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.196. Duties of Attorney General

(a) Before the bonds are offered for sale, the district shall send to the attorney general:

- (1) a copy of the bonds to be issued;
- (2) a certified copy of the order of the commissioners court levying the tax;
- (3) a copy of the order of the commissioners court levying the tax to pay interest and provide a sinking fund;
- (4) a statement of the total bonded indebtedness of the district, including the series of bonds proposed and the assessed value of property for the purpose of taxation, as shown by the last official assessment by the county; and
- (5) other information which the attorney general may require.

(b) The attorney general shall carefully examine the bonds in connection with the facts, the constitution, and the laws on the execution of the bonds.

(c) If as the result of the examination the attorney general finds that the bonds were issued in conformity with the constitution and laws and that they are valid and binding obligations on the district, he shall officially certify the bonds.

[Acts 1971, 62nd Leg., p. 619, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.197. Registration of Bonds

After the bonds have been examined by the attorney general and his certificate issued, they shall be registered by the comptroller in a book to be kept for that purpose, and the certificate of the attorney general shall be preserved in the record for use in the event of litigation.

[Acts 1971, 62nd Leg., p. 619, ch. 58, § 1, eff. Aug. 30, 1971.]

##### § 62.198. Validity of Bonds

(a) After the bonds have been approved by the attorney general and registered by the comptroller, they shall be held in every action, suit, or proceeding in which their validity is or may be brought in question prima facie valid and binding obligations.

(b) In every action brought to enforce collection of bonds or interest on them, the certificate of the

attorney general, or a duly certified copy of it, shall be admitted and received as prima facie evidence of the validity of the bonds and the coupons attached.

(c) The only defense that can be offered against the validity of the bonds or coupons is forgery or fraud.

[Acts 1971, 62nd Leg., p. 619, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.199. Record of Bonds**

(a) After bonds have been issued under the provisions of this chapter, the board shall procure and deliver to the treasurer of the county of jurisdiction a well-bound book in which a record shall be kept of all the bonds.

(b) A record shall be kept in the book of:

- (1) the bond numbers and amount of the bonds;
- (2) the rate of interest;
- (3) the date of issuance and the date when the bonds are due and where payable;
- (4) the proceeds from the bonds;
- (5) the tax levy to pay interest on and to provide a sinking fund for bond payment; and
- (6) any payment of a bond.

(c) The book shall at all times be open to the inspection of interested parties, either taxpayers, bondholders, or otherwise, in the district.

(d) The county treasurer shall receive for his services in recording these matters the same fees which are allowed by law to the county clerk for similar records.

[Acts 1971, 62nd Leg., p. 620, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.200. Sale of Bonds**

(a) After the bonds have been registered, the chairman of the commission shall offer the bonds for sale and shall sell the bonds on the best terms and for the best price possible. None of the bonds shall be sold for less than face par value and accrued interest.

(b) After money is received from the sale of bonds, it shall be paid to the county treasurer and he shall place it to the credit of the district.

[Acts 1971, 62nd Leg., p. 620, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.201. Chairman's Bond**

Before the chairman of the commission may sell any bonds, he shall execute a good and sufficient bond, payable to the county judge or his successors in office. The bond shall be approved by the commissioners court and shall be for an amount not less than the amount of the bonds issued, and shall be conditioned on the faithful discharge of his duties.

[Acts 1971, 62nd Leg., p. 620, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.202. Taxes; Sinking Fund Investment**

(a) After district bonds have been voted, the commissioners court shall levy and have assessed and collected on all property in the district taxes sufficient in amount to pay the interest on the bonds and

to annually deposit an amount in the sinking fund sufficient to discharge and redeem the bonds at their maturity.

(b) If advisable, the sinking fund shall from time to time be invested by the commissioners court in county, municipal, district, or other bonds which may be approved by the attorney general.

[Acts 1971, 62nd Leg., p. 620, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.203. Issuance of Refunding Bonds; Formalities**

(a) A district which has outstanding bonds may, by order of the commissioners court of the county of jurisdiction and without submitting the proposition to an election, authorize and issue its refunding bonds for the purpose of retiring all or any part of its outstanding bonds.

(b) The refunding bonds may mature serially or otherwise in not more than 40 years from their date.

(c) The refunding bonds shall be executed in the name of the district by the county judge and county clerk under the seal of the commissioners court and shall in other respects have the details and be issued in the manner provided by the commissioners court in the order authorizing the bonds.

[Acts 1971, 62nd Leg., p. 620, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.204. Refunding Bonds Sold at Par**

The refunding bonds shall be sold by the commission at not less than their par value, delivered to the holders of not less than a like par amount of the bonds of the district authorized to be refunded in exchange for the prior bond obligations, or sold in part and exchanged in part.

[Acts 1971, 62nd Leg., p. 621, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.205. Approval of Refunding Bonds by Attorney General**

The refunding bonds shall be submitted to the attorney general for approval and shall be registered by the comptroller in the same manner and with the same effect as is now provided by law for the approval and registration of municipal bonds.

[Acts 1971, 62nd Leg., p. 621, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.206. Tax Levy for Refunding Bonds**

(a) If a district issues refunding bonds, the district shall annually levy taxes on all taxable property in the district sufficient to pay interest on the bonds as it becomes due and to pay the principal of the bonds at maturity.

(b) In making the annual levies, the district may take into consideration estimated delinquencies based on tax collection experience over the preceding years and levy the taxes in an amount, after deduction of estimated delinquencies, sufficient to pay principal and interest requirements and the cost of tax collection.

(c) In its discretion and so far as consistent with the rights of the holders of the bonds refunded, a district may pledge to the payment of the refunding

bonds the proceeds of taxes levied for payment of the bonds refunded and delinquent at the time of the authorization of the refunding bonds, cash or securities in the sinking fund maintained for payment of the bonds refunded, or both.

[Acts 1971, 62nd Leg., p. 621, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.207. Authority of Sections 62.203–62.206

Sections 62.203–62.206 of this code shall, without reference to other laws, constitute full authority for the issuance of refunding bonds. No proceedings, publications, elections, or referendums other than those required in Sections 62.203–62.206 shall be necessary to the authorization and issuance of refunding bonds.

[Acts 1971, 62nd Leg., p. 621, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.208. Revenue Bonds

(a) A district may issue revenue bonds on the terms and under the provisions of Chapter 111, Acts of the 43rd Legislature, 1st Called Session, 1933, or Chapter 38, Acts of the 47th Legislature, Regular Session, 1941<sup>1</sup>:

(1) to purchase, construct, improve, enlarge, extend, and repair dams, reservoirs, water rights, water wells, canals, pipelines, pumps, pump stations, land, easements, rights-of-way, and other property and facilities necessary to provide a water supply for the irrigation of land and for industrial, commercial, domestic, municipal, and other beneficial uses;

(2) to accomplish any of the purposes designated in the previously mentioned two acts; and

(3) for general improvement purposes without designating the improvement.

(b) If the bonds are issued for the purposes stated in Subsection (a)(1) of this section, the district may own and operate the facilities and sell and deliver water to any person. The properties and facilities, the uses for the water supply, and the purchasers of the water may be inside or outside the boundaries of the district but may not be inside the boundaries of any other previously created navigation district or flood control district.

(c) If the bonds are issued for general improvement purposes, the proceeds may be spent for any purpose designated in this section.

(d) As each installment of an authorized issue of bonds is prepared for delivery, the commission shall specify the particular purposes for which the proceeds of that installment will be spent.

(e) A district may enter into operating contracts and leases with responsible persons or corporations for the operation of those portions of the district's water distribution system which the commission may designate. In that case, the annual rentals to be paid to the district by the lessee shall be a sum sufficient to permit the district to meet its obligations for the payment of that proportionate part of any revenue bonds, including principal, interest, reserves, and other requirements provided in the bond

proceedings, which were issued to acquire the leased properties.

[Acts 1971, 62nd Leg., p. 621, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Civil Statutes, arts. 8247a and 8247d, respectively (repealed. See, now, § 60.101 et seq. and § 60.171 et seq.).

[Sections 62.209 to 62.250 reserved for expansion]

### SUBCHAPTER G. TAX PROVISIONS

#### § 62.251. Law Governing Assessment and Equalization of Taxes

Except as provided in this chapter, in all matters relating to the assessment of property for taxation in the district and the collection of taxes, the assessor and collector and the board of equalization of the county in which the district is located shall act and be governed by the laws of Texas for assessing and equalizing property and collecting taxes for state and county purposes.

[Acts 1971, 62nd Leg., p. 622, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.252. Compensation of Assessor and Collector

The assessor and collector is entitled to receive for his services under this chapter the compensation the commission considers proper. However, the assessor and collector shall be allowed no more compensation for the collection of taxes for the district than is allowed for the collection of other taxes.

[Acts 1971, 62nd Leg., p. 622, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.253. Assessor and Collector's Bond

(a) The bond of the assessor and collector shall stand as security for the proper performance of his duties as the assessor and collector of the district.

(b) If necessary in the judgment of the commission, an additional bond, payable to the district, may be required.

(c) If the assessor and collector fails or refuses to give additional bond or security after being requested to do so by the commission and within the time prescribed by law for such purposes, he shall be suspended from office by the commissioners court of his county and immediately removed from office in the manner prescribed by law.

[Acts 1971, 62nd Leg., p. 623, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.254. Assessment of Property for Taxes

(a) The board shall provide all necessary books for the use of the assessor and collector and the clerk of the commissioners court of the county of jurisdiction.

(b) The assessor and collector of each county in the district, when ordered to do so by the commissioners court of the county of jurisdiction, shall assess all property within the district which is located in his county and list the property for taxation in the books or rolls furnished him for that purpose. He shall return the books or rolls at the same time he returns the other books or rolls of the state and county taxes for correction and approval to the commissioners court of his county.

(c) If the commissioners court of the county of jurisdiction finds the books or rolls correct, they shall approve them.

[Acts 1971, 62nd Leg., p. 623, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.255. Failure to Assess Taxes**

If the assessor and collector fails or refuses to comply with the orders of the commissioners court requiring him to assess and list for taxation all the property in the district, he shall be suspended from the further discharge of his duties by the commissioners court of his county and shall be removed from office in the manner provided by law for the removal of county officers.

[Acts 1971, 62nd Leg., p. 623, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.256. Collection of Taxes**

The assessor and collector of each county in a district is charged with the assessment roll of the part of the district in his county and shall collect all taxes levied and assessed against the property in the part of the district which is located in the county. He shall promptly pay the collections to the treasurer of the county of jurisdiction.

[Acts 1971, 62nd Leg., p. 623, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.257. Taxes as Lien; Penalties**

(a) All taxes authorized to be levied by this chapter shall be a lien upon the property upon which the taxes are assessed. The taxes shall mature and be paid at the time provided by the laws of this state for the payment of state and county taxes.

(b) All penalties provided by the laws of this state for the nonpayment of state and county taxes shall apply to all taxes authorized to be levied by this section.

[Acts 1971, 62nd Leg., p. 623, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.258. Tax Suits**

A suit may be brought for the collection of the taxes and the enforcement of the tax liens created by this subchapter.

[Acts 1971, 62nd Leg., p. 624, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.259. List of Delinquent Property**

(a) The assessor and collector shall make a certified list of all delinquent property on which tax has not been paid and shall return the list to the commissioners court.

(b) The commissioners court shall collect the tax by the sale of the delinquent property in the same manner, both by suit and otherwise, as provided for the sale of property for the collection of state and county taxes.

(c) At the sale of any property for delinquent tax, the commission may purchase the property for the benefit of the district.

[Acts 1971, 62nd Leg., p. 624, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 62.260 to 62.290 reserved for expansion]

SUBCHAPTER H. ANNEXATION

**§ 62.291. Annexation Authority**

A district created under this chapter or converted from a district created under Article III, Section 52, of the Texas Constitution, into a conservation and reclamation district under Article XVI, Section 59, of the Texas Constitution, may extend its boundaries and annex adjacent territory.

[Acts 1971, 62nd Leg., p. 624, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.292. Petition**

Before territory is annexed to the district, a petition signed by 50 or a majority of the electors residing in the adjacent territory proposed to be annexed shall be presented to the commission, requesting an election in the adjacent territory to determine whether or not the territory will be annexed and whether or not it will assume its pro rata part of the outstanding bonded debt of the district.

[Acts 1971, 62nd Leg., p. 624, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.293. Scheduling Petition for Hearing; Notice**

(a) After a petition is presented under Section 62.292 of this code, the commission shall set the petition for a hearing to be held within 10 days from the date of presentation of the petition.

(b) Notice of the hearing shall be posted at three public places in the territory proposed to be annexed for at least five days before the hearing on the petition. The notice shall include the time and place of the hearing and the boundaries of the territory proposed to be annexed.

[Acts 1971, 62nd Leg., p. 624, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.294. Hearing**

The commission shall hold the hearing on the subject of annexation of adjacent territory by the district, and any person who has taxable property in the territory proposed to be annexed may appear in person or by counsel and offer testimony or argument for or against the inclusion of all or any part of the land proposed to be annexed.

[Acts 1971, 62nd Leg., p. 624, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.295. Election Order**

If after the hearing the commission finds that inclusion of the territory proposed to be annexed would be a direct benefit to all the land in that territory, the commission shall order an election to be held in the territory proposed to be annexed.

[Acts 1971, 62nd Leg., p. 625, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.296. Notice of Election**

(a) The election shall be held not less than 20 nor more than 30 days from the day of the election order and after notice is given.

(b) Notice of the election shall be published once a week for 20 days immediately preceding the election

in some newspaper published in the territory proposed to be annexed. If no newspaper is published in the territory, notice shall be posted in three public places inside the territory for at least 20 days immediately preceding the election.

(c) The notice:

- (1) shall give the time and place or places for holding the election;
- (2) shall give the boundaries of the territory proposed to be annexed; and
- (3) may contain the substance of the order of the commission ordering the election.

(d) The secretary of the commission shall have the notice published or posted.

[Acts 1971, 62nd Leg., p. 625, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.297. Ballots

The ballots for the election shall be printed to allow for voting for or against: "Annexation to the navigation district."; and "Assumption of a pro rata part of the bonded debt of the navigation district."

[Acts 1971, 62nd Leg., p. 625, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.298. Election Officials

The commission shall appoint one judge and two clerks for each election box or place to hold the election. The judge and clerks shall be electors in the territory proposed to be annexed and shall reside near the place for holding the election.

[Acts 1971, 62nd Leg., p. 625, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.299. Canvass of Vote; Entry of Order

(a) The election judges shall certify the election returns to the commission, and the commission shall canvass the returns.

(b) If a majority of the electors voting at the election favor annexation and assumption of the pro rata part of the bonded debt of the district, the commission shall enter an order in its minutes annexing the territory, and from and after the entry of the order, the annexed territory shall be a part of the district with all the rights, benefits, and burdens of property originally situated in the district.

(c) If a majority of the electors voting at the election favor annexation and the proposition to assume the bonded debt fails to carry, the commission shall enter an order in its minutes annexing the territory to the district, and from and after the entry of the order, the annexed territory shall be a part of the district with the exception of the assumption of the outstanding bonded indebtedness. The annexed territory shall be subject to a tax for maintenance and operation and shall be liable for all other bonded indebtedness and other indebtedness thereafter legally imposed by the district.

(d) After an order of annexation has been entered in the minutes of the commission, a certified copy of the order shall be prepared by the secretary of the commission and shall include the boundaries of the territory annexed. The secretary shall record the order or have it be recorded in the real estate

records of the county or counties in which the territory is located.

[Acts 1971, 62nd Leg., p. 625, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.300. Authority to Annex Other Districts

Except as otherwise provided by this subchapter, a district created under Article XVI, Section 59, of the Texas Constitution may be annexed and become a part of another adjacent district created under the general law in the same manner as provided in Sections 62.292-62.299 of this code.

[Acts 1971, 62nd Leg., p. 626, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.301. Duties of Commission of Annexed District

If a district proposes to annex an adjacent district, the commission of the district proposed to be annexed shall:

- (1) conduct the hearing;
- (2) order the election;
- (3) canvass the returns of the election; and
- (4) perform the other duties and procedures provided in Sections 62.292-62.299 of this code.

[Acts 1971, 62nd Leg., p. 626, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.302. Certification of Election Results

If the election in a district proposed to be annexed results in a majority of the votes of the electors voting at the election favoring annexation, the commission of the district proposed to be annexed shall certify the election result together with the metes and bounds of the district to the commission of the annexing district.

[Acts 1971, 62nd Leg., p. 626, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.303. Hearing by Annexing District; Notice

(a) When the election result is certified to the commission of the annexing district, the commission of the annexing district shall conduct a hearing to determine whether or not it will be a benefit to the annexing district to annex the territory.

(b) The hearing shall be conducted after the commission has given five days' notice in some newspaper published in the annexing district.

(c) If it is found at the hearing that the annexation of the adjacent district would be a benefit to the territory of the annexing district, the commission shall enter an order in its minutes annexing the district and from and after the entry of the order, the adjacent district shall be a part of the annexing district with all rights and privileges of territory originally situated in the district.

[Acts 1971, 62nd Leg., p. 626, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 62.304. Assumption of Bonded Debt

(a) Unless a majority of the electors of each of the districts approves it, the annexing district and the district to be annexed may not assume the outstanding bonded debt of the other.

(b) Annexation shall in no way affect the outstanding debt or any other valid obligation of either the annexing district or the district to be annexed. [Acts 1971, 62nd Leg., p. 627, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.305. Levy of Taxes on Annexed District**

The commission of the annexing district shall annually levy and collect sufficient taxes in the district to be annexed to discharge all valid outstanding obligations of the district to be annexed. [Acts 1971, 62nd Leg., p. 627, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.306. Dissolution of Annexed District**

From and after the entry of the order annexing the district, the annexed district shall be dissolved. All powers previously vested in the annexed district and the commission of the annexed district shall be vested, respectively, in the annexing district and the commission of the annexing district. [Acts 1971, 62nd Leg., p. 627, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.307. Annexation of Whole of Adjacent County**

If the territory included inside the boundaries of the annexing district consists of all of a single county and the territory to be annexed consists of all of an adjacent county, the adjacent territory may be annexed in the manner provided in Sections 62.291-62.306 of this code, except the commissioners court of the county to be annexed shall:

- (1) conduct the hearing;
- (2) order the election;
- (3) canvass the returns of the election; and
- (4) perform all other duties provided by this subchapter for the commission of the annexing district.

[Acts 1971, 62nd Leg., p. 627, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.308. Hearing**

The commissioners court of the county to be annexed shall conduct the hearing at some place inside the county to be annexed. [Acts 1971, 62nd Leg., p. 627, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.309. Order of Election; Ballots**

The commissioners court of the county to be annexed may order an election, as requested in the petition for hearing, on either or both propositions included in the ballot form in Section 62.297 of this code. [Acts 1971, 62nd Leg., p. 627, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.310. Certification of Election Result**

If the proposition or propositions carries by a majority of the vote of the electors voting at the election, the commissioners court of the county to be annexed shall certify the election result to the commission of the annexing district. [Acts 1971, 62nd Leg., p. 627, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.311. Hearing by Annexing District**

After the certification of the election result, and after five days' notice in some newspaper published inside the annexing district, the annexing district shall conduct a public hearing to determine whether or not it would be a benefit to the annexing district to annex the adjacent county. [Acts 1971, 62nd Leg., p. 628, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.312. Order of Annexation**

If at the hearing it appears that annexation of the adjacent county would be a benefit to the annexing district, the commission shall enter an order in the minutes annexing the county. From and after the entry of the order, the county shall be a part of the annexing district with all rights and privileges of territory originally situated in the district and with the right of representation on the commission. [Acts 1971, 62nd Leg., p. 628, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.313. Obligations not Affected; Pro Rata Assumption**

(a) Except as provided in Subsection (b) of this section, annexation shall in no way affect the bonded debt or any other valid outstanding obligation of the annexing district.

(b) If the voters at the annexation election in the county annexed vote to assume a pro rata part of the bonded debt of the annexing district, pro rata assumption shall be binding. If that proposition is not approved by a majority of those electors voting in the election, the persons and property within the county annexed shall never be bound to the payment of any debt of the annexing district outstanding at the time of annexation. [Acts 1971, 62nd Leg., p. 628, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 62.314. Additional Commission Members**

(a) From and after the entry of the order of annexation, the commission shall be constituted as provided in this section.

(b) The commissioners court of the annexed county shall appoint two commissioners, both of whom shall be electors who reside in the district. The two commission members shall be additional members of the commission of the district and shall have the same duties and receive the same compensation as incumbent commission members.

(c) The additional commission members shall hold office for a term equal to and expiring with the terms of the incumbent commission members or, if the members of the commission are serving staggered terms, expiring with the term of the commission member whose term first expires.

(d) At the expiration of the terms of the additional commission members, the terms of all commission members shall be automatically terminated. [Acts 1971, 62nd Leg., p. 628, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 62.315. Change of Membership of Navigation Board

(a) After the annexation, the board shall be composed of the county judges and commissioners courts of the county of the annexing district and of the annexed county.

(b) Each individual member of the board shall be entitled to a vote and a majority in number of the individuals composing the board shall constitute a quorum. The action of a majority of the quorum shall control.

[Acts 1971, 62nd Leg., p. 628, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 62.316. Permanent Commission Organization Following Annexation

(a) After the expiration and termination of the terms of commission members as provided for in Section 62.314 of this code, the commission shall be organized as provided by this section.

(b) The commission shall be managed, governed, and controlled by five commission members.

(c) The commissioners courts of the county of the annexing district and of the annexed county shall each, by majority vote, appoint two commission members for a term of two years.

(d) At the expiration of the term of office of each commission member, the commissioners court which appointed that member shall, by majority vote, appoint a successor for a term of two years.

(e) The fifth commission member shall be chairman and shall serve for a term of two years. He shall be selected by a majority vote of the board of the district and appointed by the board.

(f) If any vacancy occurs through the death, resignation, or otherwise of any commission member, it shall be filled as in the first instance by appointment for the unexpired term.

[Acts 1971, 62nd Leg., p. 629, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 62.317. Provisions Governing Commission

(a) Each commissioner appointed under Section 62.314 or 62.316 of this code shall be an elector of the district and shall serve his full term and until his successor is elected and has qualified unless sooner removed by the authority which appointed him for malfeasance or nonfeasance in office.

(b) Each commissioner shall execute a bond, take the oath, and have the powers and duties prescribed by the law applicable to the annexing district at the time of the annexation.

(c) Each commissioner is entitled to receive the compensation determined by the board.

(d) The commission, by majority vote, may execute all contracts and take all actions relating to governing the district.

[Acts 1971, 62nd Leg., p. 629, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 62.318. Law Governing District

(a) The only changes made in the organization and operation of an annexing district which annexes

an adjacent county are those contained in this subchapter.

(b) Each district annexing an adjacent county shall continue after the annexation to be governed by and subject to all of the laws applicable to the annexing district at the time of annexation.

[Acts 1971, 62nd Leg., p. 629, ch. 58, § 1, eff. Aug. 30, 1971.]

## CHAPTER 63. SELF-LIQUIDATING NAVIGATION DISTRICTS

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**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 63.001. Definitions**

As used in this chapter:

- (1) "District" means a self-liquidating navigation district.
- (2) "Board" means the navigation board.
- (3) "Commission" means the board of navigation and canal commissioners.
- (4) "Commissioner" means a member of the commission.

[Acts 1971, 62nd Leg., p. 630, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 63.002 to 63.020 reserved for expansion]

**SUBCHAPTER B. CREATION OF DISTRICT;  
 CONVERSION OF DISTRICT**

**§ 63.021. Self-Liquidating Districts**

(a) All navigation districts organized under the provisions of Article XVI, Section 59, of the Texas Constitution, and the provisions of Chapter 62 of this code, or organized under any local and special law enacted under the provisions of Article XVI, Section 59, of the Texas Constitution, which have voted bonds but have not issued or disposed of the bonds, and all districts organized under the provisions of this chapter are self-liquidating in character and may be made self-supporting and return the construction cost of the district within a reasonable period by tolls, rents, fees, assessments, or other charges other than taxation.

(b) The district shall be considered as coming originally within the scope of this chapter, and the proceedings in Sections 63.039-63.044 of this code are not required as a prerequisite to the exercise of the rights, powers, privileges, and benefits of this chapter.

[Acts 1971, 62nd Leg., p. 630, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.022. Creation**

A district of the character provided in Section 63.021 of this code may be created as provided in this chapter to operate under the provisions of Article XVI, Section 59, of the Texas Constitution.

[Acts 1971, 62nd Leg., p. 630, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.023. Area Included in District**

A district may include all or part of a village, town, city, road district, drainage district, irrigation district, levee district, other improvement district, conservation and reclamation district, or municipal corporation, but may not include more than all or parts of two counties.

[Acts 1971, 62nd Leg., p. 630, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.024. Petition to Create Single-County District**

(a) To create a district located wholly in one county, a petition signed by 25 of the electors, or if there are fewer than 75 electors in the proposed district, by one-third of them, shall be presented at any regular or special session of the commissioners court of the county in which the land to be included in the district is located.

(b) The petition shall include:

- (1) a request for the establishment of a district;
- (2) a description of the boundaries of the proposed district, accompanied by a map;
- (3) a statement of the general nature of the improvements proposed;
- (4) an estimate of the probable cost; and
- (5) the designation of a name for the district which shall include the name of the county.

(c) A deposit of \$500 and an affidavit stating the qualifications of the petitioners shall accompany the petition.

[Acts 1971, 62nd Leg., p. 631, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.025. Petition to Create District in Two Counties**

(a) If the proposed district is located in two counties, a petition of the nature provided in Section 63.024 shall be presented to the commissioners court of the county which includes the greater part of the district, and this county shall be the county of jurisdiction with relation to all matters concerning the district.

(b) The petition shall be signed by 25 residents in the territory of each county to be included in the proposed district or if there are fewer than 75 residents in the territory of either of the counties, then by one-third of the residents and shall be accompanied by a deposit of \$500.

(c) The name of the district shall include the name of the county which has jurisdiction.

[Acts 1971, 62nd Leg., p. 631, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.026. Navigation Board**

(a) The navigation board shall include the county judge and the members of the commissioners court and the mayor and the aldermen or commissioners of the city or cities.

(b) A majority in number of the persons composing the board shall constitute a quorum, and the action of a majority of the quorum shall control.

(c) The board shall pass on the petition to create the district and the election to approve creation of the district with each individual member having one vote.

(d) The duties and powers of the county judge and members of the commissioners court, the mayor and aldermen or commissioners of cities, and the county clerk and other officers are a part of the legal duties of the officials which they shall perform without additional compensation, unless otherwise provided in this chapter.

[Acts 1971, 62nd Leg., p. 631, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.027. Hearing**

At the same session the petition is presented, the commissioners court shall order a hearing to be held at a regular or special session of the commissioners court, not less than 60 days from the date the petition is presented.

[Acts 1971, 62nd Leg., p. 632, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.028. Notice of Hearing**

(a) The commissioners court shall order the clerk to give notice of the date and place of the hearing by posting a copy of the petition and the order of the commissioners court at the courthouse door and at four other public places inside the boundaries of the proposed district.

(b) If the district is composed of more than one county, the notices provided in Subsection (a) of this section shall be posted in each county.

(c) The notices shall be posted not less than 20 days immediately preceding the day set for the hearing.

(d) The clerk is entitled to receive \$1 for each notice he posts and five cents a mile for each mile necessarily traveled to post the notices.

[Acts 1971, 62nd Leg., p. 632, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.029. Hearing by Navigation Board**

(a) If the proposed district includes all or part of a city acting under special charter granted by the legislature, the hearing shall be held before the board at the regular meeting place of the commissioners court.

(b) The commissioners court shall order a hearing before the board not less than 30 nor more than 60 days from the day the petition is presented without reference to any term of the court, and notice of the hearing shall be given as provided in Section 63.028.

(c) The county clerk shall record the proceedings of the board in the book kept for that purpose, and this record shall be available for public inspection. [Acts 1971, 62nd Leg., p. 632, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.030. Conduct of Hearing**

(a) The commissioners court or the board has exclusive jurisdiction to hear and determine all contests and objections to the creation of the proposed district and all matters relating to the creation of the proposed district.

(b) The commissioners court or the board may adjourn the hearing from day to day, and all judgments or decisions shall be final unless otherwise provided in this chapter.

(c) Any person who has taxable property in the proposed district or who might be affected by creation of the district may appear at the hearing and support or oppose creation of the proposed district and may offer testimony relating to:

- (1) the necessity and feasibility of the proposed district;
- (2) the benefits to accrue from formation of the proposed district;
- (3) the boundaries of the proposed district; or
- (4) any other matter concerning the proposed district.

[Acts 1971, 62nd Leg., p. 632, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.031. Findings**

(a) If it appears at the hearing that the proposed improvements are feasible and practicable and would be a public benefit and utility, the commissioners court or the board shall make these findings and approve the boundaries stated in the petition, or if it does not approve the boundaries in the petition, the court or board shall define the boundaries of the district which are approved.

(b) Changes may not be made in the proposed boundaries until notice is given and a hearing held in the manner provided in this subchapter.

(c) If the commissioners court or board finds that the proposed improvement is not feasible or practicable, or that it would not be a public benefit or public utility and that the establishment of the district is unnecessary, the court or board shall make these findings and dismiss the petition at the cost of petitioners. Dismissal of the petition shall not prevent presentation of another petition at a later date.

(d) The commissioners court or the board shall enter all findings in its records or minutes, together with a map of the district if the boundaries in the petition are changed.

[Acts 1971, 62nd Leg., p. 632, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.032. Providing Funds for Proposed Improvements**

(a) If the commissioners court or the board approves the boundaries in the petition or as changed and decides to grant the petition, it shall determine

the amount of money necessary for the improvements and all expenses connected with the improvements and whether to issue bonds for the full amount or, in the first instance, for a less amount.

(b) The commissioners court or the board shall specify the amount of bonds to be issued, the maximum term for which the bonds will run, and the rate of interest.

[Acts 1971, 62nd Leg., p. 633, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.033. Election Order**

(a) If the commissioners court or the board finds in favor of the creation of the district, the commissioners court of the county of jurisdiction shall order an election and submit to the electors residing in the district the proposition of whether or not the district shall be created and whether or not the bonds shall be issued and a tax levied sufficient to pay the interest and provide a sinking fund to redeem the bonds at maturity.

(b) The election order shall specify the amount of the bonds to be issued, the term for which the bonds will run, and the rate of interest.

[Acts 1971, 62nd Leg., p. 633, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.034. Notice of Election**

(a) The clerk of the court of jurisdiction shall give notice of the election by posting notices at the courthouse door of the county in which the district is located and at four other public places in the proposed district.

(b) If the district is composed of more than one county, the notices shall be posted in each county.

(c) The notices shall be posted for 30 days immediately preceding the time set for the election.

(d) The notices shall include:

- (1) the time and place of the election;
- (2) the proposition to be voted on;
- (3) the purpose for which the bonds are to be issued;
- (4) the amount of the bonds; and
- (5) a copy of the election order.

[Acts 1971, 62nd Leg., p. 633, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.035. Ballots**

The ballots for the election shall be printed to provide for voting for or against: "The navigation district and the issuance of bonds and the levy of a tax to pay for the bonds."

[Acts 1971, 62nd Leg., p. 634, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.036. Conduct of Election**

The commissioners court shall create and define, by order, the voting precincts in the district and shall name convenient polling places in the precincts. It shall appoint the judges and other necessary election officials and shall hold the election at the earliest legal time.

[Acts 1971, 62nd Leg., p. 634, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 63.037. Returns of Election

(a) Immediately after the election, the officers holding the election shall make returns of the result to the commissioners court of jurisdiction and return the ballot boxes to the clerk of the court.

(b) The clerk shall keep the ballot boxes safely and deliver them, together with the returns of the election, to the commissioners court at its next regular or special session.

[Acts 1971, 62nd Leg., p. 634, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 63.038. Declaration of Result

The court shall canvass the vote and return at the session when it receives the ballot boxes and returns of the election. If it finds that a majority of those voting at the election voted in favor of the proposition, the court shall declare the result of the election to be in favor of the district, issuance of the bonds, and the levy of the tax, and shall enter the following declaration in its minutes:

"Commissioners Court of \_\_\_\_\_ County, Texas, \_\_\_\_\_ term A.D. \_\_\_\_\_, in the matter of the petition of \_\_\_\_\_ and \_\_\_\_\_ and others praying for the establishment of a navigation district, and issuance of bonds and levy of taxes in said petition described and designated by the name of \_\_\_\_\_ Navigation District. Be it known that at an election called for the purpose in said district, held on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_ a majority of the electors voting thereon voted in favor of the creation of said navigation district, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the court that said navigation district be, and the same is hereby established by the name of \_\_\_\_\_ Navigation District, and that bonds of said district in the amount of \_\_\_\_\_ dollars be issued, and a tax of \_\_\_\_\_ cents on the \$100, valuation, or so much thereof as may be necessary to be levied upon all property within said navigation district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund to redeem that at maturity, and that if said tax shall at any time become insufficient for such purpose same shall be increased until same is sufficient. The metes and bounds of said district being as follows: (Giving metes and bounds)."

[Acts 1971, 62nd Leg., p. 634, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 63.039. Conversion of District

Any navigation district organized under the provisions of Article XVI, Section 59, of the Texas Constitution, or Article III, Section 52, of the Texas Constitution, and not originally within the scope of this chapter, may be converted into a self-liquidating district operating under this chapter in the manner provided in Sections 63.040-63.044 of this code.

[Acts 1971, 62nd Leg., p. 635, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 63.040. Resolution to Convert

(a) The commission, by resolution entered in the minutes, shall declare that in its judgment it is for the best interest of the district and will benefit the land and property in the district to operate under the provisions of this chapter, permitting the district to become self-liquidating and to return the construction cost within a reasonable period by means of tolls, rents, fees, assessments, or other charges other than taxation.

(b) The commission shall designate in the resolution the sections of this chapter under which the district wishes to operate.

[Acts 1971, 62nd Leg., p. 635, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 63.041. Notice

(a) Notice of the adoption of a resolution under Section 63.040 of this code shall be given by publishing the resolution in a newspaper with general circulation in the county or counties in which the district is located.

(b) The notice shall be published once a week for two consecutive weeks with the first publication not less than 14 full days before the day set for a hearing.

(c) The notice shall:

- (1) state the time and place of the hearing;
- (2) set out the resolution in full; and
- (3) notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution.

[Acts 1971, 62nd Leg., p. 635, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 63.042. Hearing

The hearing may be adjourned from day to day until all interested persons have had an opportunity to appear and present testimony.

[Acts 1971, 62nd Leg., p. 635, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 63.043. Findings

(a) If at the hearing the commission finds that conversion of the district into a district operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, it shall enter an order making this finding.

(b) If the commission finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, it shall enter an order against conversion of the district into one operating under this chapter.

(c) The adverse findings of the commission shall be final and not subject to appeal or review.

[Acts 1971, 62nd Leg., p. 635, ch. 58, § 1, eff. Aug. 30, 1971.]

### § 63.044. Effect of Conversion

If the finding of the commission is favorable to the resolution, the commission shall have the same right, power, and authority to act under the provi-

sions of this chapter adopted by the resolution as if the district had originally come within the scope of this chapter.

[Acts 1971, 62nd Leg., p. 636, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 63.045 to 63.080 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 63.081. Appointment of Commissioners

After a district is created, the commissioner's court shall appoint three navigation and canal commissioners, whose duties are provided in this chapter.

[Acts 1971, 62nd Leg., p. 636, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 63.082. Qualifications

To be qualified for appointment as a commissioner, a person must be a resident of the district, a freehold property taxpayer, and a qualified elector of the county.

[Acts 1971, 62nd Leg., p. 636, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 63.083. Vacancies

All vacancies in the office of appointed commissioner occurring through death, resignation, or otherwise shall be filled by the remaining commissioners or, if only one commissioner remains, by the remaining commissioner and the district judge residing in the county in which a majority of the acreage of the district is located.

[Acts 1971, 62nd Leg., p. 636, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 63.084. Oath

In addition to the constitutional oath provided for county commissioners, before beginning to perform his duties each appointed commissioner shall take and subscribe before the county judge of the county of jurisdiction an oath to discharge faithfully the duties of his office without favor or partiality.

[Acts 1971, 62nd Leg., p. 636, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 63.085. Bond

Before beginning to perform his duties, each appointed commissioner shall execute a good and sufficient bond for \$1,000, payable to the county judge of the county of jurisdiction for the use and benefit of the district, conditioned on the faithful performance of his duties.

[Acts 1971, 62nd Leg., p. 636, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 63.086. Term of Office

Each commissioner shall hold office for two years and until his successor has qualified after appointment or election.

[Acts 1971, 62nd Leg., p. 636, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 63.087. Optional Term of Office

(a) The commission may provide by resolution for six-year staggered terms of office for commissioners with the term of one commissioner expiring every two years.

(b) At the first election of commissioners after a resolution is adopted under this section, three commissioners shall be elected. After the commissioners have taken the oath of office and executed bonds, they shall draw lots to determine who will serve for a two-year term, who will serve for a four-year term, and who will serve for a six-year term.

(c) Successors to the commissioners elected under the provisions of Subsection (b) of this section shall serve for full six-year terms.

[Acts 1971, 62nd Leg., p. 636, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 63.088. Commission Organization and Quorum

The commission shall organize by electing one of their members chairman and one secretary. Two of the commissioners shall constitute a quorum and a concurrence of two shall be sufficient in all matters relating to the business of the district.

[Acts 1971, 62nd Leg., p. 637, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 63.089. Election of Commissioners

An election shall be held in the district on the first Tuesday after the first Monday in November of each even numbered year to elect the three commissioners. However, the commissioners may, by adopting an order duly entered on the minutes, determine to hold the election on the first Tuesday after the first Monday in October of each even numbered year to elect the commissioners authorized by law.

[Acts 1971, 62nd Leg., p. 637, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1984, ch. 612, art. 1, § 9, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1129, ch. 427, § 1, eff. June 14, 1973.]

§ 63.090. Placing Names of Candidates on Ballot

A candidate for commissioner must apply to the secretary at least 20 days before the day of the election to have his name printed on the ballot. Also, a candidate's name may be placed on the ballot by petition of 20 or more qualified electors of the district.

[Acts 1971, 62nd Leg., p. 637, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 63.091. Polling Place

The commission shall designate the polling place or places in the election order. If more than one polling place is required, the board shall divide the district into election precincts, which may be changed from time to time.

[Acts 1971, 62nd Leg., p. 637, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 63.092. Election Officers

The commission shall appoint the election officers, consisting of one presiding judge, an assistant judge, and two clerks, when the election is ordered. Additional clerks may be appointed by the presiding judge when necessary.

[Acts 1971, 62nd Leg., p. 637, ch. 58, § 1, eff. Aug. 30, 1971.]

§ 63.093. Notice of Election

(a) The notice of the election shall be signed by the president and secretary of the commission and shall contain a copy of the election order.

(b) The notice shall be published once a week for three consecutive weeks in a newspaper published in the district or, if a newspaper is not published in the district, in a newspaper located nearest to the boundaries of the district. The first publication shall be made not less than 21 days nor more than 35 days before the day of the election.

[Acts 1971, 62nd Leg., p. 637, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.094. Conduct of Election

(a) The election officers shall make and deliver the returns in triplicate. One copy shall be retained by the presiding judge, one shall be delivered to the chairman of the commission, and one shall be delivered to the secretary.

(b) The ballot boxes and other election records and supplies shall be delivered to the secretary at the office of the district. All boxes containing voted or mutilated ballots shall be preserved for six months, subject to the order of any court in which an election contest is filed. The ballot boxes shall be destroyed after six months unless a contrary order is entered by a court of competent jurisdiction.

(c) The commission shall meet and canvass the returns of the election not less than five full days nor more than seven days after the election. If the returns cannot be canvassed within seven days, they shall be canvassed as soon as possible after seven days.

[Acts 1971, 62nd Leg., p. 638, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.095. Vacancies on Commission

(a) A vacancy in the office of elected commissioner shall be filled by appointment by the commission itself for the unexpired term.

(b) If two vacancies occur at the same time, the remaining commissioner shall call a special election to fill the vacancies.

(c) If the remaining commissioner fails to call a special election within 15 days after the vacancies occur, or if the third place is vacant also, the judge of the district court of the judicial district in which the district is located may order the election on the petition of any voter or creditor of the district. The district judge shall fix the date of the election, order the publication of notice of the election by the county clerk, and name the officers to hold the election. The returns of an election held by order of the district judge shall be made and filed in the office of the clerk of the district court, and the clerk shall declare the result of the election.

[Acts 1971, 62nd Leg., p. 638, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.096. Commissioner's Oath

Each commissioner shall subscribe an oath of office containing the applicable conditions provided by law for members of the commissioners court.

[Acts 1971, 62nd Leg., p. 638, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.097. Commissioner's Bond

(a) Each commissioner shall execute a good and sufficient bond for \$1,000, payable to the district, conditioned on the faithful performance of his duties.

(b) The commissioner's bond shall be approved by the commission and by the district judge of the district court which has jurisdiction over the territory of the district.

[Acts 1971, 62nd Leg., p. 638, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1129, ch. 427, § 2, eff. June 14, 1973.]

#### § 63.098. Commissioner's Compensation

(a) Each commissioner shall receive a fee of not more than \$20 a day for each day of service necessary to the discharge of his duties, unless otherwise provided.

(b) The commission may provide by an order entered in its minutes that compensation shall not be paid for the commissioners' services for a period of two years from the date of the order.

[Acts 1971, 62nd Leg., p. 638, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1984, ch. 612, art. 1, § 10, eff. Sept. 1, 1971.]

#### § 63.099. District Manager

(a) The commission may employ a general manager and give him full authority in the management and operation of the affairs of the district, subject only to the supervision of the commission.

(b) The commission shall fix the term of office and compensation of the manager.

[Acts 1971, 62nd Leg., p. 639, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.100. District Assessor and Collector

The commission shall appoint one person to the office of assessor and collector for the district. The assessor and collector shall be a qualified elector and a resident of the district.

[Acts 1971, 62nd Leg., p. 639, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.101. Deputy Assessor and Collector

The commission may appoint one or more deputies to assist the assessor and collector for a period of not more than one year.

[Acts 1971, 62nd Leg., p. 639, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.102. Assessor and Collector's Bond

(a) The assessor and collector shall execute a good and sufficient bond with at least two sureties, or a surety company having a permit to do business in the state, conditioned on the faithful performance of his duties and on payment to the depository all funds or other things of value coming into his hands as assessor and collector.

(b) The commission shall approve the bond and shall fix the sum, which shall not be less than twice the average daily balance of the district in its depository for the preceding year nor more than the estimated amount of revenue of the district for any one year.

(c) The commission may require additional bonds or a bond in a larger amount or additional security any time it considers it advisable.

[Acts 1971, 62nd Leg., p. 639, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.103. Deputy's Bond**

The assistant or assistants to the assessor and collector appointed by the commission may or may not be required to furnish bond with conditions similar to those required of the assessor and collector.

[Acts 1971, 62nd Leg., p. 639, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.104. Compensation of Assessor and Collector and Deputy**

The commission shall fix the compensation to be paid to the tax assessor and collector or any deputy.

[Acts 1971, 62nd Leg., p. 639, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.105. Engineer**

The commission may employ a competent engineer whose term of office and compensation shall be determined by the commission.

[Acts 1971, 62nd Leg., p. 639, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.106. Legal Counsel**

The commission may employ an attorney to represent the district in preparation of any contract, to conduct any proceeding in or out of court, to be the legal advisor of the commission, and to perform any other function considered necessary. The attorney shall be retained on the terms and for the fees which the commission determines and on which the parties agree.

[Acts 1971, 62nd Leg., p. 640, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.107. District Employees**

(a) The commission may employ assistant engineers and other persons as it considers necessary for the construction, maintenance, operation, and development of the district, its business and facilities, and shall determine their term of office and duties, and fix their compensation.

(b) All employees may be removed by the commission.

[Acts 1971, 62nd Leg., p. 640, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.108. Bonds of Officers and Employees**

(a) Each officer and employee charged with the handling of funds or property of the district shall furnish a good and sufficient bond for a sum sufficient to safeguard the district as determined by the commission. The bond shall be payable to the district and conditioned on the faithful performance of his duties and his accounting of all funds and property of the district coming into his hands.

(b) The bonds of other officers of the district shall be approved by the commission and shall be filed for record in the office of the district. The bonds shall be recorded in a book kept for that purpose in the office of the district, and the book shall be open to

the inspection of the public during the office hours of the district.

[Acts 1971, 62nd Leg., p. 640, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.109. Payment of Compensation and Expenses**

The commission may draw warrants to pay for legal services, for the salaries of the engineer, his assistant, or any other employees, and for all expenses incident and relating to the district.

[Acts 1971, 62nd Leg., p. 640, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.110. District Office**

A regular office shall be maintained for the conduct of the business of the district at a place in the district designated by the commission.

[Acts 1971, 62nd Leg., p. 640, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.111. District Records**

The commission shall keep a true account of its meetings and proceedings and shall preserve its minutes, contracts, notices, accounts, receipts, and records in a fireproof vault or safe.

[Acts 1971, 62nd Leg., p. 640, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.112. Court Actions**

(a) A district established under this chapter may sue and be sued, by and through its commission, in any court in this state in the name of the district.

(b) The courts of this state shall take judicial notice of the establishment of the district.

[Acts 1971, 62nd Leg., p. 640, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 63.113 to 63.150 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES

**§ 63.151. Authority of District**

All districts created under this chapter are essential to the accomplishment of the provisions of Article XVI, Section 59, of the Texas Constitution, and are governmental agencies and bodies politic and corporate, with the powers of government and authority to exercise the rights, privileges, and functions conferred in this chapter and by the Texas Constitution.

[Acts 1971, 62nd Leg., p. 641, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.152. Purposes of District**

The district may make improvements for:

(1) the navigation of inland and coastal water;

(2) the preservation and conservation of inland and coastal water for navigation;

(3) the control and distribution of storm water and floodwater of rivers and streams in aid of navigation; or

(4) any purpose stated in Article XVI, Section 59, of the Texas Constitution, necessary or incidental to the navigation of inland and coastal water.

[Acts 1971, 62nd Leg., p. 641, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.153. General Authority of District**

A district may:

(1) exercise all the rights, powers, and authority granted by this chapter and by the general and special laws relating to navigation districts;

(2) exercise all powers relating to regulation of wharfage and facilities connected with waterways and ports inside the district to the fullest extent consistent with the Texas Constitution;

(3) acquire, purchase, own, construct, enlarge, extend, repair, maintain, operate, develop, and regulate land, waterways, improvements, facilities, or aids incident to or necessary in the proper operation and development of ports and waterways in the district, including wharves, docks, warehouses, commercial and industrial buildings, grain elevators, bunkering facilities, belt railroads, floating plants and facilities, lightering facilities, towing facilities, and all appurtenances;

(4) hire, rent, convey, lease, and otherwise make available to any person the improvements of the district;

(5) assess and collect charges for use of all facilities acquired or constructed in accordance with this chapter and apply the amounts collected for maintenance and operation of the business of the district, to make the district self-supporting and financially solvent, and to retire the construction cost of the improvements within a reasonable period;

(6) enter into valid and binding contracts to apply revenues, over and above the maintenance and operation costs, which are derived from sources other than taxation, to pay principal and interest on bonds;

(7) enter into contracts with the United States for loans and grants on terms and conditions necessary to comply with regulations and requirements of the United States under federal law; and

(8) issue bonds, notes, warrants, certificates of indebtedness, and other forms of obligation payable from revenues derived from improvements and pledge these revenues to the payment of the district's debts in the manner provided in Subchapter E of Chapter 60 of this code.

[Acts 1971, 62nd Leg., p. 641, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.154. Authority to Go on Land**

The commission and the district engineer, together with all necessary teams, help, tools, instruments, implements, and machinery, may go on any land inside the district to examine the land and make plans, surveys, maps, and profiles without subjecting themselves to action for trespass.

[Acts 1971, 62nd Leg., p. 642, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.155. Acquisition of Property and Right-of-Way**

The commission may acquire by gift, purchase, or condemnation proceedings the necessary right-of-way and property of any kind necessary for improvements contemplated by this chapter.

[Acts 1971, 62nd Leg., p. 642, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.156. Eminent Domain**

(a) The district may exercise the power of eminent domain to condemn and acquire the right-of-way over and through any public or private land necessary to improve any river, bay, creek, or arm of the Gulf of Mexico for the construction and maintenance of any canal or waterway and for any other purpose authorized by this chapter.

(b) The condemnation proceedings shall be instituted under the direction of the commission and in the name of the district, and the damages shall be assessed in conformity with the laws for condemning and acquiring rights-of-way by railroads.

(c) No appeal from the finding and assessment of damages shall have the effect of suspending work by the commission in prosecuting the work of improvement in detail.

(d) No right-of-way can be condemned through any part of an incorporated city or town without the consent of the lawful authorities of the city or town.

[Acts 1971, 62nd Leg., p. 642, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.157. Authority over Improvements**

A district may acquire, purchase, take over, construct, maintain, operate, develop, and regulate wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, literage,<sup>1</sup> lands, towing facilities, and all other facilities or aids incident to or necessary to the operation or development of ports or waterways inside the district extending to the Gulf of Mexico.

[Acts 1971, 62nd Leg., p. 642, ch. 58, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> So in enrolled bill.

**§ 63.158. Obtaining Consent of United States**

If a river, creek, bay, stream, canal, or waterway which is to be improved is navigable or if the improvements are of a type which require the permission or consent of the United States, the commission may obtain the permission or consent of the United States.

[Acts 1971, 62nd Leg., p. 642, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.159. Cooperation with the United States**

(a) The commission may cooperate and act with the United States in surveys, work, and expenditure of money in any matters relating to construction and maintenance of the canals and the improvement and navigation of navigable rivers, bays, creeks, streams, canals, and waterways.

(b) To the extent that the United States aids in these matters, the commission may agree and consent to the United States entering and taking man-

agement and control of the work insofar as necessary or permissible under the laws and regulations of the United States.

[Acts 1971, 62nd Leg., p. 643, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.160. Duties of Engineer**

The engineer shall:

- (1) make necessary surveys, examinations, investigations, maps, plans, and drawings relating to proposed improvements;
- (2) estimate the cost of improvements;
- (3) supervise the work of improvements; and
- (4) perform any duties which might be required by the commission.

[Acts 1971, 62nd Leg., p. 643, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.161. United States Performing Duties of Engineer**

Instead of or in addition to employing an engineer, the commission may adopt any survey of a river, creek, canal, stream, bay, or waterway previously made by the United States and may arrange for surveys, examinations, and investigations of proposed improvements and for supervision of the work of improvement by the United States.

[Acts 1971, 62nd Leg., p. 643, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.162. District Order for Improvements**

If the commission considers it in the best interest for the district to exercise the powers granted by Section 63.153 of this code or if the commission finds that additional improvements to those originally planned or constructed are necessary for navigation of or in aid of navigation of any river, creek, stream, bay, canal, or waterway, the commission shall make this finding in an order entered in the minutes and shall direct the engineer to make an estimate showing the character and cost of the improvements.

[Acts 1971, 62nd Leg., p. 643, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.163. Notice of Hearing**

(a) After the commission's order is entered in the minutes, the commission shall publish notice once a week for three consecutive weeks in a newspaper published in the district. If no newspaper is published in the district, the notice shall be published in the newspaper published nearest to the district.

(b) The notice shall include a copy of the commission's order and shall designate a time and place for a hearing.

[Acts 1971, 62nd Leg., p. 643, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.164. Hearing on Improvements**

(a) The commission shall hear evidence at the hearing, and any district taxpayer or interested person may present evidence.

(b) The commission may adjourn the hearing from day to day for a reasonable time so that all taxpayers and interested persons may be heard.

[Acts 1971, 62nd Leg., p. 644, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.165. Findings**

(a) After the hearing is completed, the commission shall enter its order making findings as to whether or not the improvements and construction of the facilities is feasible and practicable and whether or not benefits will result to the public.

(b) If the findings are against the proposed improvements, no further action will be taken, but if the commission finds that the improvements are feasible and practicable and would be a public benefit, the district may issue bonds to pay for the necessary improvements and facilities.

[Acts 1971, 62nd Leg., p. 644, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.166. Bond Election**

(a) An election shall be held to approve the issuance of the bonds.

(b) The ballots shall be printed to provide for voting for or against the proposition: "The issuance of bonds and the levy of a tax to pay for the bonds."

(c) The returns of the election shall be canvassed as provided in this chapter.

(d) If the canvass indicates that a majority of the electors voted in favor of the proposition, the commission shall issue an order directing the issuance of the bonds and the levy of a tax.

[Acts 1971, 62nd Leg., p. 644, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.167. Form of Bonds**

(a) The bonds shall be issued in the manner that other bonds are issued under this chapter, and the amount of the bonds may not be more than the cost of the improvements estimated by the engineer.

(b) The bonds shall be issued in the name of the district and shall be signed by the president of the commission and attested by the secretary with the seal of the district attached.

(c) The bonds shall be issued in the denominations and payable at the times, not more than 40 years, considered most expedient by the board. Interest shall be payable annually or semiannually.

[Acts 1971, 62nd Leg., p. 644, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.168. Bids for Contract**

(a) Before the commission enters into a contract requiring the expenditure of \$2,000 or more, it shall submit the proposed contract for competitive bids.

(b) The commission may reject any and all bids, and if the contract is for a public improvement, the successful bidder shall be required to give the statutory bonds required by Article 5160, Revised Civil Statutes of Texas, 1925.

(c) The contract shall be awarded to the lowest and best bidder.

[Acts 1971, 62nd Leg., p. 644, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.169. Notice of Bids**

(a) Notice of the time and place the contract will be awarded shall be published in one or more newspapers with general circulation in the state, one of

which shall be a newspaper published in the county in which the district is located if a newspaper is published in the county.

(b) The notice shall be published once a week for two consecutive weeks before the time set for awarding the contract, with the first publication being made at least 14 days before the day for awarding the contract.

[Acts 1971, 62nd Leg., p. 645, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.170. Application of Certain Sections

The provisions of Sections 63.168-63.169 of this code do not apply to:

(1) improvements carried out and performed by the United States;

(2) calamities or emergencies which make it necessary to act at once to preserve the property of the district;

(3) unforeseen damage to district property, machinery, or equipment or necessary emergency repairs to them; or

(4) contracts for personal or professional services or work done by the district and paid for by the day as the work progresses.

[Acts 1971, 62nd Leg., p. 645, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.171. Procedure for Bids

(a) Any person desiring to bid on the construction of any work advertised shall, on application to the commission, be furnished at actual cost the survey, plans, and estimates for the work.

(b) Bids for the work shall be in writing, sealed, and delivered to the chairman of the commission, together with a certified check for at least five percent of the total amount of the bid. A bid bond in the amount of at least five percent of the total amount of the bid executed by a corporate surety duly authorized to do business in this state and payable to the district may be substituted in lieu of the certified check.

(c) If the bidder's bid is accepted but he refuses to enter into a proper contract and give the performance and payment bond required by Article 5160, Revised Civil Statutes of Texas, 1925, the certified check or bid bond shall be forfeited to the district.

(d) The commission may reject any and all bids.  
[Acts 1971, 62nd Leg., p. 645, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1448, ch. 404, § 1, eff. May 26, 1971.]

#### § 63.172. Formal Requirements of Contract

(a) A contract entered into by the district shall be in writing and signed by the contractors and the commissioners or any two of the commissioners.

(b) A copy of the contract shall be filed with the county clerk for reference.

[Acts 1971, 62nd Leg., p. 645, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.173. Contractor's Bond

The contractor shall execute an adequate bond payable to the commission in the amount of the contract price, conditioned that he will faithfully perform the obligations, agreements, and covenants of the contract and that if he defaults he will pay the district all damages sustained by reason of the default. The bond shall be approved by the commission.

[Acts 1971, 62nd Leg., p. 645, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.174. Interest in Contract

The members of the board and the engineer may not be directly or indirectly interested for themselves or as agents in a contract for the construction of a work to be performed by the district.

[Acts 1971, 62nd Leg., p. 645, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.175. Supervision by Engineer

(a) Unless done under the supervision of the United States, all work contracted for by the commission shall be done under the supervision of the district engineer.

(b) After the work is completed according to the contract, the engineer shall make a detailed report of the work to the commission showing whether or not the contract was fully complied with according to its terms and, if not, in what particulars it has not been complied with.

[Acts 1971, 62nd Leg., p. 646, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.176. Payment for Work

(a) The commission shall inspect the work being done during its progress, and on completion of the contract, the commission shall draw a warrant on the district depository in favor of the contractor or his assignee for the amount of the contract price. The warrant shall be paid from the construction and maintenance fund.

(b) If the commission considers it advisable, it may contract to pay for the work in partial payments as the work progresses, but the partial payments may not be more in the aggregate than 90 percent of the contract price of the total amount of work done under the contract. The amount of the work shall be shown by a certificate of the engineer.

(c) The provisions of this section do not apply to improvements carried out or performed by the United States.

[Acts 1971, 62nd Leg., p. 646, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1448, ch. 404, § 2, eff. May 26, 1971.]

#### § 63.177. Commission Report

(a) The commission shall make an annual report of its activities and file it with the county clerk on or before January 1 of each year.

(b) The report shall show in detail:

(1) the kind, character, and amount of work done in the district;

(2) the cost of the work; and

(3) the amount paid on order, the purpose for which paid, and other data necessary to show the condition of improvements made under the provisions of this chapter.

[Acts 1971, 62nd Leg., p. 646, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.178. Franchises**

(a) A district may grant franchises on property owned or controlled by the district to any person for purposes consistent with this chapter and may charge fees for the franchises.

(b) A franchise may be granted for a period of not more than 30 years.

(c) Before the franchise is granted, the commission must approve the franchise by a majority vote at three separate meetings held at least one week apart and must publish the franchise in full, at the expense of the applicant, once a week for three consecutive weeks in a newspaper published in the district.

(d) The franchise shall require the grantee to file his written acceptance within 30 days from the day the franchise is finally approved.

(e) Fees charged for a franchise may be used to pay interest on bonds or other securities issued by the district for construction of its improvements and to retire these bonds or other securities at maturity.

(f) This section shall not be construed to prevent a district from granting revocable licenses or permits for the use of limited portions of waterfront or facilities for purposes consistent with this chapter. [Acts 1971, 62nd Leg., p. 646, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.179. Adjacent Land**

(a) The district may own land adjacent or accessible to the navigable water developed by the district and may lease the land to any person and charge reasonable tolls, fees, or other charges.

(b) Proceeds from the tolls, fees, or other charges may be used for maintenance and operation of the business of the district, to make the district self-supporting and financially solvent, and to return the construction cost of the improvements within a reasonable period.

(c) The land may be located in whole or in part inside or outside the boundaries of any incorporated city, town, or village in this state, but land which is not included inside the boundaries of a city, town, or village at the time it is acquired by the district may not be annexed or included inside the boundaries of the city, town, or village without the written consent of the district evidenced by a resolution adopted by the commission.

[Acts 1971, 62nd Leg., p. 647, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.180. Issuance of Writs**

A writ of mandamus shall issue from a court of competent jurisdiction to compel the commission to apply revenue in accordance with the terms of a contract with the United States, and an injunction may be issued to restrain the commission from vio-

lating the provisions of a contract with the United States.

[Acts 1971, 62nd Leg., p. 647, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.181. Peace Officers**

The district may appoint three peace officers to protect life and property in the district and the property of the district. The officers shall have the same rights, powers, and authority as policemen of a city or town.

[Acts 1971, 62nd Leg., p. 647, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.182. Effect on Police Powers**

The provisions of this chapter shall not affect or repeal the police powers of any municipality inside the district or any law, ordinance, or regulation which authorizes the municipality to exercise police power over any navigable stream, aid to navigation, or facility for navigation in the district.

[Acts 1971, 62nd Leg., p. 647, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.183. Other Laws Governing District**

The commission has the same rights, powers, and duties provided for commissioners in Articles 8248-8257, Revised Civil Statutes of Texas, 1925.

[Acts 1971, 62nd Leg., p. 647, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 63.184 to 63.220 reserved for expansion]

**SUBCHAPTER E. GENERAL FISCAL PROVISIONS**

**§ 63.221. Construction and Maintenance Fund**

(a) The construction and maintenance fund shall include money received from the sale of bonds and other sources except the tax and other collections deposited in the sinking fund and used to pay interest on the bonds.

(b) All expenses incurred in connection with the creation, establishment, and maintenance of the district after the original petition to create the district is filed shall be paid from the construction and maintenance fund.

[Acts 1971, 62nd Leg., p. 648, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.222. District Depository**

The district depository shall be designated at the time, in the manner, and under the same regulations and laws as county depositories, and the district's funds shall be deposited in the depository.

[Acts 1971, 62nd Leg., p. 648, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.223. Warrants**

District funds shall be handled under orders of the commission on warrants drawn for designated purposes, and no warrant may be paid unless it is signed by at least two members of the commission.

[Acts 1971, 62nd Leg., p. 648, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.224. Accounts and Records; Audit**

(a) A complete book of all accounts and records shall be kept by the district.

(b) In January of each year or as soon after that time as practicable, the county auditor or, in the discretion of the commission, an independent certified public accountant or firm of independent certified public accountants shall be employed to make a complete audit of the books and records and make a report of the findings.

(c) The audit report shall be made in triplicate, and one copy shall be filed with the district office, one with the district depository, and one with the county auditor's office.

[Acts 1971, 62nd Leg., p. 648, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.225. Deposit

(a) When the petition to create the district is filed, it shall be accompanied by a \$500 deposit, which shall be held by the county clerk until the result of the election to create the district is declared and entered in the minutes of the commissioners court.

(b) If the result of the election favors the creation of the district, the county clerk shall return the \$500 deposit to the signers of the petition or their agent or attorney.

(c) If the result of the election is against the creation of the district, the county clerk shall pay the costs and expenses of the proposed district up to and including the election from the \$500 deposit on vouchers signed by the county judge and shall return the balance of the deposit, if any, to the signers of the petition or their agent or attorney.

[Acts 1971, 62nd Leg., p. 648, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.226. Debt

(a) The district may retire the original cost of construction of its improvements or pay for the cost of construction by borrowing money and pledging and mortgaging land, wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, lighterage, towing facilities, and other facilities or aids incident or necessary to the operation or development of ports or waterways.

(b) The district may issue its debentures or other evidences of debt secured by a mortgage for the length of time and a rate of interest of not more than eight percent a year. In addition, the district may secure the debentures, notes or other evidences of debt with bonds of the district.

[Acts 1971, 62nd Leg., p. 649, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.227. Retiring Debt

Debentures, notes, or other evidences of debt may be retired by rents, tolls, fees, or charges other than taxes. The debt also may be retired by assessments against taxable property in the district which is equitably distributed on the basis of benefits derived by the property from district improvements.

[Acts 1971, 62nd Leg., p. 649, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.228. Borrowing Money

(a) A district may borrow for any legal purpose from the United States or from any banking institution or other source not more than \$250,000 to meet temporary needs, and may issue notes or other short term obligations other than bonds which will mature in not more than 10 years from their date and may pledge any securities owned by them or their surplus revenues.

(b) A district, in the acquisition of land necessary for the development of its ports and waterways both industrial and otherwise, may execute purchase money notes securing same with liens on the land being acquired or with a pledge of surplus revenue, or with both. The notes may bear interest at the rate determined by the commission.

[Acts 1971, 62nd Leg., p. 1448, ch. 404, § 3, eff. May 26, 1971.]

[Sections 63.229 to 63.250 reserved for expansion]

### SUBCHAPTER F. BOND PROVISIONS

#### § 63.251. Levy of Tax

After bonds have been voted, the commission shall levy a tax on all taxable property in the district sufficient to pay principal of and interest on the bonds and shall annually levy and have assessed and collected on the taxable property of the district an amount sufficient to pay for the expense of assessing and collecting the taxes.

[Acts 1971, 62nd Leg., p. 649, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.252. Form of Bonds

(a) Bonds issued under the provisions of this chapter shall be issued in the name of the district and shall be signed by the chairman of the commission and attested by the secretary, with the district's seal affixed to each bond.

(b) The bonds shall be issued in the denominations and payable annually or semiannually at the time or times, not more than 40 years from their date, that the commission considers most expedient.

[Acts 1971, 62nd Leg., p. 649, ch. 58, § 1, eff. Aug. 30, 1971.]

#### § 63.253. Approval of Bonds by Attorney General

(a) Before bonds are offered for sale, the district shall present to the attorney general a certified copy of all the minutes of commission proceedings relating to the issuance of the bonds, including:

(1) a copy of the notices of hearing and election, together with a certified return of each notice;

(2) a certified copy of the commission's order levying a tax to pay principal of and interest on the bonds;

(3) a statement of the total bonded indebtedness of the district, including the series of bonds and the assessed value of property for the purpose of taxation as shown by the last official assessment of the district; and

(4) any other information which the attorney general requires.

(b) The attorney general shall carefully examine the bonds in connection with the constitution, laws relating to the execution of the bonds, and the facts.

(c) If the attorney general finds that the bonds were issued in conformity with the constitution and laws and that they are valid and binding obligations of the district, he shall certify the bonds.

[Acts 1971, 62nd Leg., p. 649, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.254. Registration of Bonds**

After the bonds are examined and certified by the attorney general, they shall be registered by the comptroller in a book kept for that purpose, and the certificate of the attorney general shall be preserved in the record to be used in the event of litigation.

[Acts 1971, 62nd Leg., p. 650, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.255. Validity of Bonds**

(a) After the bonds are certified by the attorney general and registered by the comptroller, they shall be held prima facie valid and binding obligations in every action, suit, or proceeding in which their validity is brought into question.

(b) In any action brought to enforce collection of the bonds or interest on the bonds, the certificate of the attorney general or a certified copy of the certificate shall be received as prima facie evidence of the validity of the bonds and their coupons, and the only defense that can be offered against the validity of the bonds or coupons is forgery or fraud.

[Acts 1971, 62nd Leg., p. 650, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.256. Sale of Bonds**

(a) After the bonds are registered, the chairman of the commission shall offer them for sale and shall sell the bonds on the best terms and for the best price possible.

(b) As the bonds are sold, the money received for them shall be paid to the district depository to the credit of the district.

[Acts 1971, 62nd Leg., p. 650, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.257. Bond Record**

(a) After bonds are issued, the board shall procure and deliver to the secretary of the district a well-bound book for recording the bonds.

(b) The record kept in the book shall include:

- (1) the bonds and their numbers;
- (2) the amount of the bonds;
- (3) the interest rate;
- (4) the date of issuance;
- (5) the date the bonds become due;
- (6) the place where the bonds are payable;
- (7) the amount received for each bond; and
- (8) the tax levy to pay interest and provide a sinking fund.

(c) The bond record shall be available for public inspection by all interested parties in the district.

(d) On payment of a bond, an entry of the payment shall be made in the bond record.

[Acts 1971, 62nd Leg., p. 650, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 63.258 to 63.280 reserved for expansion]

**SUBCHAPTER G. TAX PROVISIONS**

**§ 63.281. Bond Tax**

(a) After bonds have been voted, the commission shall levy and have assessed and collected improvement taxes on all taxable property inside the district.

(b) The tax shall be in an amount which is sufficient to pay the principal of and interest on the bonds.

[Acts 1971, 62nd Leg., p. 651, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.282. Maintenance and Operation Tax**

(a) With the approval of the electors of the district, the commission may levy and have assessed and collected for the maintenance, operation, and upkeep of the district and its improvements an annual tax of not more than 20 cents on the \$100 valuation on all taxable property in the district.

(b) The proposition to approve the tax provided in Subsection (a) of this section may be voted on at the election to create the district or may be voted on at a separate election to be held in the manner provided for elections held under Subchapter B of this chapter.

(c) The ballots for the election shall be printed to provide for voting for or against the proposition: "The levy of a tax of not more than 20 cents on the \$100 valuation for maintenance, operation, and upkeep of the district and its improvements."

[Acts 1971, 62nd Leg., p. 651, ch. 58, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1770, ch. 518, § 14, eff. May 31, 1971.]

**§ 63.283. Funds From Sources Other Than Taxes**

The district may pay interest on and principal of the bonds and pay the costs of maintenance, operation, and upkeep with revenue from tolls, rents, fees, or charges other than taxation or with assessments made on the property in the district on the basis of benefit derived.

[Acts 1971, 62nd Leg., p. 651, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.284. Laws Governing Taxes**

Except as provided in this chapter, the laws relating to levy, assessment, and collection of state and county taxes shall apply to levy, assessment, and collection of district taxes and to all officers involved in the levy, assessment, and collection of district taxes.

[Acts 1971, 62nd Leg., p. 651, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.285. Assessor and Collector Governed by State and County Tax Law**

The assessor and collector shall assess and collect taxes on all taxable property in the district, and the property shall be governed by the law relating to state and county taxes.

[Acts 1971, 62nd Leg., p. 651, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.286. Rendition of Property**

(a) The assessor and collector shall compile a record of all taxpayers and all taxable property in the district, and the post-office address of the owners of the property.

(b) On or before April 1 of each year, the assessor and collector shall furnish each taxpayer and owner of property in the district a blank form on which to render his property for taxation. The form may be delivered personally or may be delivered by mail addressed to the owner at his last known address.

(c) On or before April 30 of each year, the owner of property subject to taxation shall file in the office of the assessor and collector a complete statement made under oath of the property owned by him and the true value of the property. The oath of the taxpayer shall be the same oath required for rendition of property for state and county taxes.

(d) The rendition statement may be filed by an authorized agent of the property owner if the agent states in the rendition statement that he is acting as an agent.

[Acts 1971, 62nd Leg., p. 651, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.287. Property Which is Not Rendered for Taxes**

(a) Any property which is not rendered for taxes by the owner or his authorized agent shall be placed on the tax rolls of the district as unrendered in the name of "Unknown Owner."

(b) The assessor and collector shall estimate the value of the unrendered property and place the estimated valuation on the tax rolls.

[Acts 1971, 62nd Leg., p. 652, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.288. Board of Equalization**

(a) Not later than the first regular meeting each year, the commission shall appoint three persons who are electors of the district to be commissioners on the board of equalization and shall designate the time for the meeting of the board of equalization.

(b) The board of equalization shall meet at the time fixed by the commission to receive the assessment lists or books of the district for examination, correction and equalization, appraisal, and approval.

(c) The secretary of the commission shall act as secretary for the board of equalization and shall keep a permanent record of the proceedings of the board of equalization.

[Acts 1971, 62nd Leg., p. 652, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.289. Oath of Members of Board of Equalization**

(a) Before beginning to perform the duties of the board of equalization, each member shall take the following oath: "I \_\_\_\_\_ do solemnly swear (or affirm) that I will, to the best of my ability, make a full and complete examination, correction, equalization, and appraisal of all property contained in the district as shown by the assessment lists or books of the assessor and collector and add all property not included of which I have knowledge."

(b) The oath shall be entered in the minutes by the secretary.

[Acts 1971, 62nd Leg., p. 652, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.290. Meetings of Board of Equalization**

The board of equalization shall convene not later than the first Monday in June of each year and shall complete its work by September 1 or as soon after that time as possible.

[Acts 1971, 62nd Leg., p. 652, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.291. Lien**

(a) The district shall have a lien on all property against which taxes are levied and assessed and may enforce the lien in the same manner as liens securing state and county taxes.

(b) Limitation does not run against the district to bar the collection of delinquent taxes or other public charges of the district.

[Acts 1971, 62nd Leg., p. 653, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.292. Duty of the Assessor and Collector**

The assessor and collector shall be charged with the assessment rolls of the district and is required to collect all taxes levied and assessed against property in the district and shall pay the proceeds to the district depository.

[Acts 1971, 62nd Leg., p. 653, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.293. Delinquent Taxes**

During September of each year, the assessor and collector shall make a certified list of all delinquent property on which taxes are owed and have not been paid and shall return this list to the commission, which shall have the taxes collected by sale of the delinquent property in the manner provided by law for sale of property for collection of state and county taxes.

[Acts 1971, 62nd Leg., p. 653, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.294. Attorney to Collect Delinquent Taxes**

(a) On or before October 1 of each year, the commission shall employ an attorney to collect delinquent taxes or public charges and to file suits to collect delinquent taxes, if necessary.

(b) The attorney is entitled to a fee of 10 percent of the amount of the delinquent taxes or other delinquent charges collected by him or through his efforts or paid to the district after suit is filed. The

fees shall be charged as costs of court, and if a judgment is entered, the district shall have judgment for the attorney's fees together with the tax or public charge and other costs.

[Acts 1971, 62nd Leg., p. 653, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.295. Suit to Collect Delinquent Taxes**

Suits to collect delinquent taxes shall be filed and tried as other civil cases, and except as provided in this chapter, the laws governing tax suits for the recovery of state and county taxes shall apply.

[Acts 1971, 62nd Leg., p. 653, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.296. District Purchase of Delinquent Property**

At the sale of property for delinquent taxes, the commission may purchase the property for the benefit of the district.

[Acts 1971, 62nd Leg., p. 653, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.297. Authority of County Officers**

Nothing in this chapter shall be construed to give any county officer authority over the levy, assessment, and collection of district taxes. These duties shall remain wholly in the control of the district officers.

[Acts 1971, 62nd Leg., p. 653, ch. 58, § 1, eff. Aug. 30, 1971.]

[Sections 63.298 to 63.320 reserved for expansion]

SUBCHAPTER H. ASSESSMENTS

**§ 63.321. Assessments to Retire Debt**

Assessments which are equitably distributed against property in the district may be used to pay the cost of making improvements and to pay principal of and interest on bonds, notes, debentures, or other evidences of debt issued by the district for improvements.

[Acts 1971, 62nd Leg., p. 654, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.322. Order to Retire Debt by Assessments**

If the commission decides to retire bonds and other evidences of debt by equitably distributed assessments against the property in the district, it shall enter an order with its findings in the minutes of its proceedings.

[Acts 1971, 62nd Leg., p. 654, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.323. Notice of the Order and Hearing**

(a) The commission shall publish notice once a week for three consecutive weeks in a newspaper in the district or, if no newspaper is published in the district, in the newspaper published nearest to the district.

(b) The notice shall include a copy of the order and shall set a date for a hearing at which all property owners and persons interested in the district and the improvements may appear and contest the assessments and offer evidence for or against the assessments before the commission.

[Acts 1971, 62nd Leg., p. 654, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.324. Hearing Procedure**

(a) All protests, contests, and objections at the hearing shall be presented in writing.

(b) The commission shall summon witnesses when requested to do so and take testimony with reference to the protests, contests, and objections.

(c) The hearing may be adjourned from day to day until all proponents or contestants of the assessments have had full opportunity to present evidence.

[Acts 1971, 62nd Leg., p. 654, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.325. Findings**

The commission shall enter its findings after the hearing, and if it finds against the proposition of assessments, no further action shall be taken in the matter.

[Acts 1971, 62nd Leg., p. 654, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.326. Tax Roll**

(a) If the commission finds in favor of levying assessments, it shall direct the assessor and collector of the district to prepare a roll of all the taxable property in the district in the same manner as assessment for ad valorem taxes.

(b) The assessor and collector shall make an assessment in the proportion of cost to be borne by each item of property on the tax rolls, basing the proportion of cost on benefits to be derived from the improvements by the property and the owner of the property.

[Acts 1971, 62nd Leg., p. 654, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.327. Board of Equalization**

The completed tax roll shall be submitted to the board of equalization, which shall sit and act in all respects as when sitting as a board of equalization for the equalization of the bond taxes.

[Acts 1971, 62nd Leg., p. 655, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.328. Notice of Hearing by Board of Equalization**

Notice of the hearing by the board of equalization shall be published once a week for three consecutive weeks in a newspaper published in the district or, if no newspaper is published in the district, in the newspaper published nearest to the district.

[Acts 1971, 62nd Leg., p. 655, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.329. Hearing by Board of Equalization**

The owners of property shall have the same opportunity to present evidence as in hearings before the board of equalization for equalizing bond taxes. All interested persons shall have an opportunity to appear and present evidence as to the benefits or lack of benefits to property in which they are interested.

[Acts 1971, 62nd Leg., p. 655, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.330. Findings of Board of Equalization**

After all hearings are completed, the board of equalization shall report its findings to the commission for acceptance or disapproval.

[Acts 1971, 62nd Leg., p. 655, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.331. Disapproval of Findings**

If the commission refuses to approve the tax rolls, it shall hold hearings on all items not approved in the manner provided for the board of equalization. [Acts 1971, 62nd Leg., p. 655, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.332. Effect of Approval of Findings**

The approval of the findings of the board of equalization and the tax rolls as finally fixed shall be conclusive except in cases of fraud or the failure to equitably distribute the assessments. [Acts 1971, 62nd Leg., p. 655, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.333. Personal Obligation; Lien**

An assessment is a personal obligation of the property owner against whom the assessment is made, and the district has a lien against the assessed taxable property. [Acts 1971, 62nd Leg., p. 655, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.334. Assessment Fund**

(a) The assessments shall be paid to the assessor and collector and shall be kept by him in a separate fund known as the "Assessment Fund."

(b) Payments out of the fund shall be made to retire the bonds, notes, debentures, or other evidences of debt of the district on vouchers drawn by the commission each year on the maturity of the indebtedness.

(c) The vouchers shall be signed by at least two members of the commission.

[Acts 1971, 62nd Leg., p. 655, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.335. Errors in Assessments**

(a) An error, mistake, or formality in the assessment or in any step or proceeding prerequisite to the assessment shall not invalidate the assessment, but the commission may correct the error at all times.

(b) An error or mistake in describing any parcel or item of property or the name of any owner of property shall not invalidate the assessment, but it shall have full force and effect against the premises and the real and true owner.

[Acts 1971, 62nd Leg., p. 656, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.336. Reassessment**

(a) If, in the opinion of the commission, an error, mistake, or invalidity exists in any proceeding with reference to the improvements or assessments, it shall correct the error, mistake, or invalidity and reassess the property and the owners of the property.

(b) The reassessment shall be made after the same notice and hearing as provided for the making of an original assessment. The commission in making the reassessment shall take into consideration any enhancement or depreciation in the value of the property assessed and shall make the reassessment on a basis of equalization and the equitable distribution

of benefits to the property with respect to all other property in the district.

(c) A reassessment shall not be made later than three years from the date of the original assessment except in the case of fraud or undisclosed ownership of property.

[Acts 1971, 62nd Leg., p. 656, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.337. Suit to Set Aside or Correct Assessment**

(a) A property owner with an assessment or reassessment against him or his property may bring suit within 20 days after the assessment or reassessment in any court with jurisdiction to set aside or correct the assessment or reassessment or any proceeding with reference to the assessment or reassessment due to any error or invalidity.

(b) The cost of a suit to set aside or correct an assessment or reassessment shall be paid by the loser of the litigation.

(c) After the 20-day period following the assessment or reassessment, the owner or his heirs, assigns, or successors do not have a right of action or a defense of invalidity of the assessment or reassessment in any action in which the assessment or reassessment is in question, except in case of fraud.

[Acts 1971, 62nd Leg., p. 656, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.338. Delinquent Assessments**

(a) Not later than August 1 of each year, the assessor and collector shall prepare a delinquent roll showing all delinquencies in the payment of the assessments.

(b) The assessor and collector shall post the delinquent roll in the district office for at least 20 days.

[Acts 1971, 62nd Leg., p. 656, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.339. Suit for Collection**

(a) After the delinquent roll has been posted in the district office for 20 days, the attorney for the district may file suit for collection in any court with jurisdiction.

(b) An attorney's or collection fee of 10 percent on the amount of principal and interest due at the time of filing the suit shall accrue against the property owner and shall be charged as costs of court. The attorney's or collection fee is collectible against the property owner and the property from the date of the filing of the suit.

(c) The suit shall be filed and prosecuted as tax suits for the collection of state and county taxes, except that the attorney for the district shall file and prosecute the suit instead of the county attorney or other public official.

(d) It is not necessary in the suit to specifically plead and prove the orders, notices, rules, and regulations of the commission relating to the assessment or reassessment. It is sufficient for the petition or other pleading to allege that the proceedings with

reference to the making of the improvements and the assessments or reassessments were held in compliance with the law and that all prerequisites to the fixing of the assessment lien on the assessed property and the personal liability of the owner were performed.

[Acts 1971, 62nd Leg., p. 656, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.340. Sale of Property to Satisfy Judgment**

The district may purchase any property at a sale to satisfy a judgment in favor of the district on a

delinquent assessment or reassessment, if the district is the best bidder.

[Acts 1971, 62nd Leg., p. 657, ch. 58, § 1, eff. Aug. 30, 1971.]

**§ 63.341. Rules and Regulations**

The commission may adopt any necessary rules, regulations, and orders, which are not inconsistent with the provisions of this chapter, for the purpose of carrying out the provisions of the chapter relating to assessments, reassessments, and the collection of assessments.

[Acts 1971, 62nd Leg., p. 657, ch. 58, § 1, eff. Aug. 30, 1971.]

# DISPOSITION TABLE

Showing where provisions of former articles of the Civil Statutes and Penal Code of 1925 are covered in the Texas Water Code.

## CIVIL STATUTES

Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
5421h-1	—	7466f § 5	—
5421h-2	—	§ 6	—
6029b § 1	24.001	7466g § 1	45.001
§ 2	24.002	§ 2	45.002
§ 3(a)	24.011		45.003
§ 3(b)	24.013		45.005
§ 3(c)	24.015	§ 3	45.007
§ 3(d)	24.016	§ 4	45.006
	24.017	§ 5	45.004
§ 4(a)	24.012	7466h § 1	43.001
§ 4(b)	24.014		43.002
§ 4(c)	24.031	§ 2	43.003
	24.032		43.004
	24.033		43.005
§ 4(d)	24.018		43.006
§ 5(a)	24.019	§ 3	—
§ 5(b)	24.020	§ 4	—
§ 5(c)	24.021	7466i § 1	44.001
§ 6	24.041		44.002
§ 7	24.043		44.010
§ 8	24.044	§ 2	44.003
§ 9	24.045		44.004
§ 10	24.042		44.005
§ 11	24.046		44.006
7466	1.003		44.007
7466a	—		44.008
7466b	—	§ 3	44.009
7466c	—	§ 4	—
7466d	—	§ 5	—
7466e	—	7467 subsec. (a)	5.021
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7634	55.035	7659	55.583
	55.036	7660	55.584
	55.037	7661	55.585
	55.038	7662	55.586
	55.045	7663	55.588
7635	55.036	7664	55.589
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7636	55.048	7666	55.591
7637	55.048	7667	55.592
7638	55.039		55.593
7639	55.109		55.594
7640	55.112	7668	55.587
7641	55.102	7669	55.596
7642	55.116		55.597
	55.117	7670	55.598
7643	55.118		55.600
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	55.120	7671	55.602
7644	55.110	7672	55.582
7645	55.049	7673	55.595
7646	55.716	7674	55.599
7647	55.717	7675	55.603
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7648	55.719	7676	55.620
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7649	55.725	7678	55.608
	55.726	7679	55.609
	55.727	7680	55.610
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7650	55.729		55.614
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7690	55.492	7738	55.168
	55.502	7739	55.169
7691	55.494		55.170
	55.495	7740	55.171
7692	—		55.172
7693	55.496	7741	55.173
	55.497		55.174
7694	55.498	7742	55.175
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7695	55.501	7744	55.176
7696	55.500	7745	55.167
7697	55.530	7746	55.166
7698	55.531	7747	55.201
7699	55.532	7748	55.176
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7702	55.052	7750	55.195
7703	55.504	7751	55.351
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7704	55.505		55.354
7705	55.506		55.356
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	55.508		55.359
7706	55.509		55.360
7707	55.510		55.361
7708	55.511		55.362
7709	55.512		55.363
7710	55.514		55.364
7711	55.421		55.368
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7712	55.516	7753	55.355
7713	55.518		55.365
7714	55.422		55.366
7715	—	7754	55.165
7716	—	7755	55.357
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7721	55.113		55.423
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7723	55.302		55.429
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7777	55.370
7778	55.750
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subsec. B(2)	52.101		51.025
subsec. B(3)	52.114	7880-19	51.021
	52.115		52.025
	52.116	7880-19a	51.038
subsec. B(4)	52.117		51.039
	52.118	7880-20	51.026
subsec. B(5)	52.112	7880-21	51.027
	52.113		51.028
subsec. B(6)	52.104		51.029
	52.105		51.030
subsec. B(7)	52.107		51.031
subsec. B(8)	52.108	7880-22	51.032
	52.109	7880-23	51.033
	52.110		51.077
	52.111	7880-24	51.034
subsec. B(9)	52.102	7880-25	51.074
	52.103	7880-25a	51.101
subsec. B(10)	52.120	7880-26	—
subsec. B(11)	52.119	7880-27	51.221
subsec. C	52.023	7880-28	51.222
	52.024	7880-29	51.223
subsec. D	52.002		51.224
subsec. D(1)	52.003	7880-30	—
subsec. D(2)	52.106	7880-31	51.124
subsec. D(3)	52.118		51.404
subsec. D(4)	52.118		51.405
subsec. D(5)	52.004		51.406

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Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
7880-32	51.405	7880-55	51.561
	51.406		51.562
	51.407	7880-56	51.563
	51.435	7880-57	51.564
7880-32a	51.371		51.565
	51.372		51.566
	51.373	7880-58	51.563
	51.374		51.567
	51.375	7880-59	51.569
7880-33	51.597		51.570
	51.598	7880-60	51.568
	51.599	7880-61	51.571
	51.600		51.572
	51.601		51.575
7880-34	51.416	7880-62	51.573
	51.417	7880-63	51.576
	51.418	7880-64	51.577
7880-35	51.355	7880-65	51.578
7880-36	51.071		51.579
	51.072	7880-66	51.574
	51.084		51.580
	51.091		51.581
	51.098		51.582
	51.126		51.583
7880-37	51.073	7880-67	51.584
7880-37a	51.076	7880-68	51.585
7880-38	51.082	7880-69	51.586
7880-39	51.078	7880-70	51.587
	51.079	7880-71	51.588
7880-40	51.093	7880-72	51.589
7880-41	51.081		51.590
7880-42	51.081	7880-73	51.591
	51.095		51.592
7880-43	51.080		51.593
7880-44	51.094	7880-74	51.594
	51.096	7880-74a	51.595
7880-45	51.359		51.596
7880-46	51.083	7880-75	51.714
	51.092		51.715
7880-47	51.093		51.716
7880-48	51.122		51.717
	51.125	7880-75a	51.730
7880-49	51.136	7880-75b	51.718
7880-50	51.172		51.719
7880-51	51.098		51.720
	51.099		51.721
7880-52	51.091		51.722
	51.138		51.723
7880-53	51.156		51.724
	51.157	7880-75d	51.725
	51.158		51.726
	51.159		51.727
	51.160		51.728
	51.161		51.729
	51.162	7880-76	51.691
	51.163		51.692
	51.164		51.693
	51.165		51.694
7880-54	51.085		51.695
	51.086		51.696
	51.087		51.697
	51.088		51.698
	51.089		51.699
	51.090		

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Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
7880-76	51.700	7880-79	51.408
	51.701		51.409
7880-77	51.186		51.411
7880-77a	51.501		51.413
	51.502		51.419
	51.503	7880-80	51.412
	51.504	7880-81	51.413
	51.505	7880-82	51.412
	51.506	7880-83	51.411
	51.507		51.412
	51.508	7880-84	—
	51.509	7880-84a	51.443
7880-77b	51.781		51.444
	51.782		51.445
	51.783		51.446
	51.784		51.447
	51.785		51.448
	51.786		51.449
	51.787	7880-85	51.439
	51.788		51.440
	51.789	7880-86	51.420
	51.790	7880-87	51.415
	51.791	7880-88	51.441
	51.792	7880-89	51.442
7880-77b1 § 1	51.793	7880-90	51.433
§ 2	51.794	7880-90a	51.450
	51.795		51.451
	51.796		51.452
	51.797		51.453
§ 3	51.798		51.454
§ 4	51.799	7880-90b	51.455
§ 5	51.800	7880-91	51.434
§ 6	51.801		51.437
	51.802	7880-92	51.438
§ 7	51.803	7880-93	51.403
	51.804	7880-94	51.436
	51.805	7880-95	51.423
§ 8	51.806		51.429
	51.807	7880-96	51.423
	51.808		51.425
	51.809		51.426
	51.810	7880-97	51.424
§ 9	51.811		51.425
§ 10	51.812		51.427
	51.813	7880-98	51.428
	51.814	7880-99	51.430
§ 11	51.815	7880-100	51.431
	51.816	7880-101	51.432
	51.817	7880-102	51.351
	51.818	7880-103	51.352
§ 12	51.819	7880-104	51.353
	51.820	7880-105	51.354
§ 13	51.821		51.436
	51.822	7880-106	51.317
§ 14	51.823		51.318
	51.824		51.319
§ 15	51.825	7880-107	51.360
	51.826		51.361
§ 16	51.827		51.362
§ 17	51.828	7880-108	51.321
§ 19	—	7880-109	51.301
7880-78	51.408		51.302
	51.410		51.303
	51.411		

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7880-109	51.304	7880-126 subsec. (c)	51.240
	51.305		51.244
	51.307	subsec. (d)	51.241
	51.309		51.245(a)
	51.310		51.245(b)
	51.311	subsec. (e)	51.246
	51.312	subsec. (f)	51.248
	51.313	subsec. (g)	51.247
	51.314	subsec. (h)	51.245(c)
	51.320	subsec. (i)	51.251
7880-110	51.306	subsec. (j)	51.233
	51.315		51.242
	51.316		51.249
7880-111	51.308		51.250
7880-111(a)	51.173		51.252
	51.174		51.253
	51.175		51.254
	51.176		51.255
	51.177		51.256(a)
7880-111(b)	51.178	subsec. (k)	51.243
	51.179		51.256(b)
	51.180		51.257
	51.181		51.258
7880-111(c)	51.182		51.259
7880-112	—	subsec. (l)	51.260
7880-113	51.356		51.261
	51.357		51.262
7880-114	51.358		51.263
7880-115	51.035		51.264
	51.036		51.265
	51.037		51.266
7880-116	—		51.267
7880-117	51.139		51.268
7880-118	51.140		51.269
	51.141		51.270
7880-119	51.142		51.271
	51.143		51.272
	51.145(b)		51.273
7880-120	51.145(a)		51.274
	51.146		51.275
	51.147		51.276
7880-121	51.144		51.277(a)
7880-122	51.134		51.277(b)
7880-123	51.133		51.277(c)
7880-123a	51.133		51.278
7880-124	51.125		51.279
7880-125	51.122	subsec. (m)	51.232
	51.123	subsec. (n)	57.099(d)
	51.137		61.161(b)
	51.159		62.106(e)
	51.191	7880-126a	51.268
	51.192	7880-126b	51.276
	51.193		51.277(a)
	51.194		51.277(c)
	51.231		51.277(d)
7880-125a	—		51.277(e)
7880-126 subsec. (a)	51.233		51.277(f)
subsec. (b)	51.234	7880-127	51.149
	51.235	7880-128	51.150
subsec. (c)	51.236		51.151
	51.237		51.152
	51.238		51.153
	51.239		51.154
			51.155

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Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
7880-129	51.732	7880-138	51.187
	51.733		51.188
	51.734		51.189
7880-129	51.735	7880-139	51.421
	51.736		51.422
7880-130	51.510	7880-140	—
	51.511	7880-141	51.166
	51.512		51.167
	51.513		51.168
	51.514		51.169
	51.515		51.170
	51.516		51.171
	51.517	7880-142	51.190
	51.518	7880-143	51.040
	51.519		51.041
	51.520		51.042
	51.521		51.043
	51.522	7880-143a	51.044
	51.523	7880-144	—
	51.524	7880-145	51.075
	51.525	7880-147	51.731
	51.526	7880-147a	—
	51.527	7880-147b	51.097
	51.528	7880-147c	—
	51.529	7880-147c1	51.829
	51.530		51.836
7880-131	51.631	7880-147c2	51.831
	51.632	7880-147c3	51.830
	51.633	7880-147c4	51.832
	51.634	7880-147c5	51.832
7880-132	51.635		51.835
	51.636	7880-147c6	51.833
	51.637	7880-147c6a	51.834
	51.638	7880-147p	51.376
	51.639		51.377
	51.640	7880-147q	51.376
	51.641	7880-147r	51.378
	51.642		51.379
	51.643		51.380
	51.644		51.381
	51.645		51.382
	51.646		51.384
	51.647	7880-147s	51.383
	51.648	7880-147t	—
7880-133	51.649	7881	53.012
	51.650		53.061
	51.651		53.101
	51.652		53.102
	51.653	7882	53.013
	51.654		53.014
	51.655	7883	53.015
	51.656	7884	53.016
7880-134	51.657		53.017
7880-135	51.052	7885	53.018
	51.532		53.019
	51.533	7886	53.019
	51.534	7887	53.020
	51.535		53.021
	51.536	7888	53.022
	51.537	7889	53.023
	51.538	7890	53.024
7880-136	51.100	7891	—
7880-137	51.099	7892	53.025
	51.185		53.028

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Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
7893	53.026	7930-2 § 2	53.239
7894	53.027		53.240
7895	53.071		53.241
	53.072		53.242
	53.073		53.243
	53.074		53.244
	53.075	§ 3	53.245
7896	53.067	7930-3 § 1	53.246
	53.068	§ 2	53.247
	53.069		53.248
7897	53.086		53.249
7898	53.085		53.250
7899	53.144		53.251
7899a	6.075	§ 3	53.252
7900	53.063	§ 4	53.253
7901	53.064		53.254
7902	53.070	§ 5	53.255
7903	53.065	§ 6	53.256
7904	53.065	§ 7	—
7905	53.066	§ 8	53.257
7906	53.143	§ 9	53.258
7907	53.148	§ 10	53.259
7908	53.149		53.260
7909	53.105		53.261
7910	53.107		53.262
7911	53.106		53.263
7912	53.076		53.264
	53.077		53.265
	53.115		53.266
7913	53.084	§ 11	53.267
7914	53.120		53.268
7915	53.088		53.269
7916	53.087	§ 12	53.270
7917	53.103	§ 13	53.273
	53.104	§ 14	53.272
	53.126	7930-4 § 1	53.271
7918	53.114	§ 2	53.121
7919	53.117	§ 3	—
7920	53.116	§ 4	53.151
7921	53.118	§ 5	—
	53.119		53.122
7922	53.141	§ 6	53.124
	53.142	§ 7	53.182
	53.171	§ 8	51.045
7923	53.108	§ 9	53.147
7924	53.109	§ 10	—
7925	53.150	7930-5 § 1	53.116
7926	53.110		53.029
7927	53.111	§ 2	53.030
7928	53.112		53.031
7929	53.113		53.032
7930	53.125		53.033
7930-2 § 1	53.231		53.034
§ 1(a)	53.232		53.035
	53.233(b)	§ 3	53.038
§ 1(b)	53.233(a)		53.041
	53.234	§ 4	53.037
	53.235		53.039
	53.236		53.036
§ 1(c)	53.237		53.040
§ 1(d)	53.238	§ 5	53.042
		§ 6	53.043
			—

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Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
7931	53.172	7979	57.019
7932	53.173		57.020
7933	53.174		57.021
7934	53.145		57.022
7935	53.175		57.023
7936	53.176		57.024
7937	53.177		57.025
7938	53.178	7980	57.092
7939	53.179		57.121
7940	53.181		57.171
7941	53.180		57.201
7941a	53.184	7981	57.098
7941c	53.182		57.099
	53.183	7982	57.096
	53.185	7983	57.095
7942	53.189	7984	57.100
	53.190		57.101
	53.191	7985	57.097
7943	53.191	7986	57.120
7944	53.192	7987	57.051
7945	53.194		57.053
7946	53.195		57.056
7947	53.193	7987-1	57.057
7948	53.078		57.058
	53.079		57.059
	53.082		57.060
	53.083		57.061
7949	53.080		57.062
7950	53.081		57.063
7951	53.196	7988	57.054
7952	53.188		57.055
7953	53.186	7989	57.052
7954	53.187		57.067
7955	53.197	7990	57.151
7956	53.198		57.154
7957	53.146		57.155
7958	53.199		57.156
7959	53.200	7991	57.261
7959a	53.089		57.262
7960	—	7992	57.264
7962	11.451	7993	57.263
7963	11.452		57.265
7964	11.453		57.266
7965	11.454	7994	57.267
7966	11.454	7995	57.269
7967	11.455		57.270
7968	11.455	7996	57.268
7969	11.456		57.271
7970	11.457	7997	57.259
7971	—	7998	57.252
7972	57.011		57.253
	57.091		57.254
7973	57.152		57.255
	57.153		57.256
7974	57.012		57.257
	57.014		57.258
	57.015	7999	57.177
7975	57.015	8000	57.202
7976	57.013	8001	57.203
7977	57.016		57.205
7978	57.017	8002	57.206
	57.018	8003	57.204

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Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
8004	57.205	8029f	57.344
8005	57.207	8029g	57.331
8006	57.276		57.332
8007	57.208		57.335
8007a	—	8029h	57.335
8008	57.212	8029i	57.339
8009	57.209		57.340
	57.210	8029j	57.337
8010	57.210		57.340
8011	57.211	8029k	57.339
8012	57.215		57.341
	57.251	8029l	57.340
	57.260	8029m	57.338
8013	57.276		57.341
	57.277	8029n	57.336
	57.278	8029o	57.333
8014	57.272		57.345
8015	57.174	8029p	57.346
	57.175	8029q	57.334
	57.176	8030	57.216
8016	57.279	8031	57.273
8017	57.280	8032	57.274
	57.281	8033	57.275
	57.282	8034	57.094
	57.283	8035	57.103
	57.284	8036	57.119
8018	57.213	8037	57.026
8018a	57.213	8038	—
8019	57.064	8039	—
	57.065	8040	—
	57.066	8041	—
8020	57.173	8042	—
8021	57.172	8097	56.011
8022	57.068		56.013
8023	57.104		56.201
	57.105	8098	56.014
	57.106	8099	56.015
	57.108	8100	56.016
	57.109		56.017
	57.110	8101	56.018
	57.111	8102	56.082
	57.112	8103	56.019
	57.113	8104	56.020
8024	57.115	8105	56.021
	57.116	8106	56.022
	57.117	8107	56.022
	57.118	8108	56.023
8025	57.114	8109	56.024
8026	57.069	8110	56.025
	57.070		56.026
8027	57.093	8111	56.027
8029	57.321		56.029
	57.322	8112	56.028
	57.323	8113	56.029
8029a	57.324	8114	—
	57.326	8115	56.030
8029b	57.325		56.031(a)
	57.326	8116	56.031(b)
8029c	57.328	8117	56.012
	57.329	8118	56.061
8029d	57.330		56.062
8029e	57.343		56.063
		8119	56.064

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8120	56.067	8164	56.125
8121	56.065	8165	56.134
8122	56.066	8166	56.131
8123	56.068	8167	56.141
8124	56.078	8168	56.141
	56.079	8169	56.141
8125	56.115	8170	56.142
8126	56.116	8171	56.142
8127	56.202	8172	56.112
8128	56.123	8173	56.080
8129	56.124		56.031
8130	56.203	8174	56.033(a)
8131	56.204	8175	56.033(b)
8132	56.205	8176	56.032(b)
8133	56.206	8176a § 1	—
8134	56.207	§ 2	—
8135	56.208	§ 3	56.211
8136	56.241	§ 4	56.212
8136a	56.210	§ 5	56.069
8137	56.127	8176c	56.143
8138	56.242	8177	56.291
8139	56.209		56.295
8140	56.076	8178	56.292
	56.243	8179	56.293
8141	56.245	8180	56.294
8142	56.244	8181	56.295
8143	56.073	8182	56.296
	56.074	8183	56.297
	56.075		56.299
8144	56.246	8184	56.300
8145	56.077		56.301
8146	56.181		56.303
8147	56.070	8185	56.303
	56.071	8186	56.305
8148	56.072	8187	56.306
8149	56.184		56.309
8150	56.182	8188	56.308
	56.183	8189	56.307
8151	56.119	8190	56.310
8152	56.118	8191	56.304
8153	56.140	8192	56.298
8154	56.111		56.302
8155	56.117	8193	56.311
	56.129	8194	55.021
8156	56.129		56.011
8157	56.132	8195	56.032(a)
8158	56.130	8196	56.032(c)
8159	56.133	8197	56.032(d)
8160	56.120	8197b	56.210
8161	56.121	8197c § 1	56.247
8161a § 1	56.1221	§ 2	56.248
§ 2	56.136	§ 3	56.249
§ 3	56.137	§ 4	56.250
§ 4	56.138		56.251
§ 5	56.139	8197e	—
§ 6	56.122	8197f § 1	50.151
	56.136	§ 2	50.152
	56.137		50.153
	56.138		50.154
8161c	56.126		50.155
8162	56.125		50.156
8163	56.125		50.157

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Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
8198	61.022	8238	61.161
	61.111		61.162
8199	61.023		61.172
8200	61.024		61.173
	61.025	8239	61.163
8201	61.026	8240	61.164
8202	61.027	8241	61.165
	61.028	8242	61.166
8203	61.029		61.167
8204	61.030	8243	61.168
8205	61.031	8244	60.271
	61.032		60.272
8206	61.033		60.273
8207	61.035	8244a § 1	62.154
8208	61.036	§ 2	62.154
8209	61.071		62.155
	61.073	§ 3	62.156
	61.074		62.157
	61.077	§ 4	62.158
8210	61.075	§ 5	62.159
8211	61.076	§ 6	—
8212	61.072	§ 7	—
8213	61.231	8245	61.174
8214	61.238	8246	61.169
8215	61.232	8247	61.176
8216	61.233	8247a § 1	60.101
8217	61.234	§ 1a	60.102
8217a	60.221	§ 2	60.103
8218	61.235		60.105
8219	61.211	§ 3	60.104(a)
8220	61.078		60.104(b)
	61.213	§ 4	60.104(c)
8221	61.079		60.108
	61.080	§ 5	60.106
	61.212	§ 6	60.109
8222	61.236	§ 7	60.119
8223	61.239	§ 7a	60.118
8224	61.118	§ 8	60.110
	61.120	§ 9	60.113
	61.237	§ 10	60.107
8225	61.115	§ 11	60.111
	61.116	§ 12	60.112
	61.117	§ 13	60.120
8226	—	§ 14	60.114
8227	61.112	§ 15	60.115
8227a	60.011	§ 16	60.121
	60.012	§ 17	—
	60.013	§ 18	60.122
	60.014	§ 18a	60.104(a)
8228	61.082	§ 18b	60.116
8229	61.151	§ 18c	60.117
8230	61.152	§ 19	60.123
8231	61.153	8247b § 1(a)	60.031
8232	61.154		60.032
8233	61.155	§ 1(a-1)	60.033
	61.156	§ 1(b)	60.034
	61.157		60.035
8234	61.158		60.036
8235	61.159		60.037
	61.160	§ 1(c)	60.038
8236	61.171		60.039
8237	61.175		60.040
			60.041
			60.042

## DISPOSITION TABLE

Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
8247b § 1(d)	60.043	8263a § 3a	62.313
§ 1(e)	60.044		62.314
8247b-1 § 1	60.071		62.315
	60.072		62.316
§ 2	60.073		62.317
	60.078		62.318
§ 3	60.079	§ 4	62.021
§ 4	60.077		62.022
§ 5	60.074		62.101
§ 6	60.075		62.102
§ 7	60.076	§ 5	62.062
8247d § 1	60.171		62.063
§ 2	60.176		62.065
§ 3	60.174		62.066
§ 4	60.177		62.067
§ 5	60.178		62.070
§ 6	60.179	§ 6	60.301
§ 7	60.180	8263d § 1	60.152
§ 8	60.172	§ 2	60.153
§ 9	60.173	§ 3	60.151
§ 10	60.175	8263e § 1	63.021
§ 11	60.178	§ 2	63.022
§ 12	60.175		63.023
§ 13	60.181		63.151
8247e § 1	60.201		63.152
§ 2	60.202	§ 3	63.024
	60.203		63.025
§ 3	60.204		63.027
§ 4	60.205		63.028
8258	—	§ 4	63.026(a)
8259	61.034(a)		63.026(b)
8260	61.034(b)		63.026(c)
	61.034(c)		63.029
8261	—	§ 7	63.026(d)
8262	61.034(d)	§ 8	63.030
8263	61.081	§ 9	63.031
8263a § 1	60.241		63.032
	60.242	§ 10	63.033
	60.243		63.035
	60.244		63.036
	60.245	§ 11	63.034
§ 2	60.246	§ 12	63.035
§ 3	62.291		63.036
	62.292	§ 13	63.037
	62.293		63.038
	62.294	§ 14	63.081
	62.295		63.082
	62.296		63.083
	62.297		63.086
	62.298	§ 15	63.084
	62.299	§ 16	63.085
	62.300	§ 17	63.088
	62.301	§ 18	63.086
	62.302		63.089
	62.303	§ 18a	63.087
	62.304	§ 19	63.091
	62.305		63.092
	62.306	§ 20	63.093
§ 3a	62.307	§ 21	63.094
	62.308	§ 22	63.095
	62.309	§ 23	63.096
	62.310		63.097
	62.311		63.108
	62.312	§ 24	63.108

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Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
8263e § 25	63.098	8263e § 54	63.331
§ 26	63.110		63.332
	63.111	§ 55	63.333
§ 27	63.099	§ 56	63.334
	63.107	§ 57	63.338
§ 28	63.100		63.339
	63.101	§ 58	63.335
	63.102		63.336
	63.103	§ 59	63.341
	63.104	§ 60	63.339
§ 29	63.285	§ 61	63.337
§ 30	63.286	§ 62	63.340
	63.287	§ 63	63.156
	63.288	§ 64	63.155
§ 31	63.289	§ 65	63.154
	63.290	§ 66	63.168
§ 32	63.284		63.169
	63.291		63.170
	63.297	§ 67	63.171
§ 33	63.285	§ 68	63.172
	63.292	§ 69	63.173
§ 34	63.293	§ 70	63.175
	63.294	§ 71	63.176
	63.296	§ 72	63.177
§ 35	63.106	§ 73	63.106
	63.294		63.107
	63.295		63.109
§ 36	63.105	§ 74	63.174
	63.158	§ 75	63.112
	63.159	§ 76	63.157
	63.160	§ 77	63.153
§ 37	63.251		63.180
§ 38	63.252	§ 78	63.179
§ 39	63.223	§ 79	63.178
§ 40	63.222	§ 80	63.107
§ 41	63.153	§ 81	63.181
§ 42	63.162		63.182
§ 43	63.163	§ 82	63.183
	63.164	§ 83	—
	63.165	§ 84	63.224
	63.166	§ 85	63.224
§ 44	63.166	§ 86	63.226
§ 45	63.166	§ 87	63.227
	63.167	§ 88	—
§ 46	63.253	§ 89	63.090
§ 47	63.254	§ 90	63.151
	63.255	§ 93	63.039
§ 48	63.257		63.040
§ 49	63.256		63.041
§ 50	63.221		63.042
	63.225		63.043
§ 51	63.281		63.044
	63.282	8263g § 1	62.203
	63.283	§ 2	62.204
§ 53	63.323	§ 3	62.205
	63.324	§ 4	62.206
§ 54	63.325	§ 5	62.207
	63.326	8263h § 1	62.022
	63.327	§ 2	62.023
	63.328		62.025
	63.329		62.027
	63.330		

## DISPOSITION TABLE

Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
8263h § 3	62.026	8263h § 43	62.117
	62.061	§ 44	62.077
§ 4	62.025		62.152
	62.027	§ 45	62.112
§ 5	62.061	§ 46	62.078
§ 6	62.103	§ 47	62.072
§ 7	62.028	§ 48	62.208
§ 8	62.029	§ 49	—
§ 9	62.030	§ 50	62.107
	62.032	§ 51	62.119
§ 10	62.031	§ 52	62.119
§ 11	62.033	8280-1	50.021
§ 12	62.034	8280-5	—
	62.035	8280-7 § 1	50.101
§ 13	—		50.102
§ 14	62.068	§ 2	50.103
§ 15	62.069	§ 3	50.104
§ 16	62.071	§ 4	50.105
§ 17	62.076	§ 5	50.106
	62.104	8280-8	50.201
	62.118	8280-9 § 1	—
§ 18	62.191	§ 2	11.001(1)
	62.192	§ 3(a)	11.011
	62.193		11.012
§ 19	62.194		11.013
§ 20	62.195		11.014
§ 21	62.196		11.015
§ 22	62.197		11.016(b)
	62.198		11.016(c)
§ 23	62.199		11.017
§ 24	62.200	§ 3(b)	11.101
§ 25	62.201		11.102
§ 26	62.024		11.103
	62.036		11.104
	62.151		11.105
§ 27	62.160		11.106
	62.202		11.107
§ 28	62.202	§ 3(c)	11.018
§ 29	62.251	§ 3(d)	—
	62.252	§ 4(a)	11.141
	62.254	§ 4(b)	—
	62.255	§ 4(c)	11.142
	62.257		11.144
§ 30	62.251		11.145
	62.252		11.146
	62.253		11.147
	62.256		11.148
	62.258		11.152
§ 31	62.259		11.153
§ 32	62.073		11.154
	62.153		11.155
§ 33	62.074	§ 4(d)	11.156
	62.075		11.158
§ 34	62.106	§ 4(e)	11.160
§ 35	62.105	§ 4(f)	11.164
§ 36	62.108	§ 5	11.159
§ 37	62.110	§ 6	11.161
	62.111		11.162
§ 38	62.109		11.163
§ 39	62.113	§ 7	11.149
§ 40	62.114		11.151
§ 41	62.115	§ 8	11.143
§ 42	62.116		11.150

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Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
8280-9 § 9	11.201	8280-9 § 15	11.406
§ 9(a)	11.203		11.407
	11.207		11.408 Rep.
§ 9(b)	11.202		11.409
§ 9(c)	11.204		11.410
§ 9(d)	11.205		11.411
§ 10-A	11.202		11.414
§ 10-B	11.207		11.415
	11.208	§ 16	11.412(c)
§ 10-B(a)	11.209		11.413
	11.210	§ 17	11.412(a)
§ 10-B(b)	11.211		11.412(b)
§ 10-B(c)	11.212	§ 18	11.416
§ 10-C	11.157		11.417
	11.218		11.418
§ 10-D	11.213		11.419
	11.214		11.420
	11.215	§ 19	11.025
	11.216	§ 20	—
	11.217	§ 21	11.016(a)
§ 11	11.401		11.019
	11.403		11.020
§ 12(a)	11.202		11.021
	11.301		11.022
	11.303		11.023
§ 12(b)	11.301		11.061
	11.302	§ 21(a)	11.062
	11.306	§ 21(b)	11.069
§ 12(c)	11.303	§ 21(c)	11.062
	11.305	§ 21(d)	11.067
§ 12(d)	11.307	§ 21(e)	11.072
	11.308	§ 21(f)	11.063
	11.309	§ 21(g)	11.064
§ 12(e)	11.351	§ 21(h)	11.063
	11.352		11.071
	11.353	§ 21(i)	11.063
	11.354	§ 21(j)	11.070
	11.355	§ 21(k)	11.021
§ 12(f)	11.356	§ 21(l)	—
	11.358	§ 21(m)	11.458
§ 12(g)	11.357	§ 22	11.022
§ 12(h)	11.359	§ 23	11.026
§ 12(i)	11.360	§ 24(a)	11.251
§ 12(j)	11.361	§ 24(b)	11.252
§ 12(k)	11.206	§ 24(c)	11.252
	11.304	8280-9b subsec. (a)	11.501
	11.362	subsec. (b)	11.502
	11.363	subsec. (c)	11.503
	11.364	8280-11	50.051
	11.365	8280-12 § 1	14.001
§ 12(l)	11.366	§ 2	14.002
§ 12(m)	11.310	§ 3, subd. 1	14.015
§ 12(n)	11.311	subd. 2	14.011
§ 12(o)	11.206		14.013
	11.367	subd. 3	14.014
	11.368	subd. 4	14.016
§ 12(p)	11.024	subd. 5	14.017
§ 12(q)	11.025	subd. 6	14.019(a)
§ 13	11.402(a)	subd. 7	14.018
§ 14	11.402(b)	subd. 8	14.019(b)
	11.404	subd. 9	14.019(c)
	11.405	§ 4	14.020
		§ 5	14.023
			14.093

## DISPOSITION TABLE

Civ.St. Article	Water Code Section	Civ.St. Article	Water Code Section
8280-12 § 6 subd. 1	14.021	8280-12 § 11	14.070
subd. 2	14.022	§ 12	14.065
§ 7	14.041	§ 13	14.066
§ 8	14.042		14.067
§ 9 subd. 1	14.043	§ 14	14.068
subd. 2	14.012	§ 15	14.062
	14.044	§ 16	14.071
	14.045	§ 17 subd. 1	14.091
	14.046		14.092
§ 10	14.012	subd. 2	14.069
	14.061	§ 18	14.101
§ 11	14.063		14.102
	14.064	§ 19	14.111

## PENAL CODE (1925)

P.C. Article	Water Code Section	P.C. Article	Water Code Section
374	61.119	848a § 1	23.002
375	57.107	§ 2	23.003
376	56.135	§ 3	—
377	—	§ 4	23.002
378	53.123	§ 5	23.004
783	5.096	§ 6	23.002
838	—		23.004
839	—	849	—
840	—	850	57.095
841	—	851	61.113
842	—		61.114
843	—	852	56.113
844	—		56.114
845	5.201	1356	56.128
846	—	1357	—
847	5.205(c)	1360	—
848	5.203	1361	—
		1362	5.090
		1363	57.102

TABLE IV  
**NUMERICAL TABLE OF SPECIAL LAWS  
 PERTAINING TO WATER**

*The tabulation below lists the special laws pertaining to water arranged numerically in Vernon's Texas Civil Statutes classification order or, where not so classified, in order of legislative enactment by subject matter.*

Civ.St.Art.	Laws Citation	Subject Matter
		Abandoned beds and channels, relinquishment of state title
7467a	1925, ch. 155	-----Counties of 40,000 or more
7467b	1949, ch. 372	-----Counties over 350,000
7621d—2	1969, ch. 409	-----Gulf Coast Waste Disposal Authority
	1971, ch. 202	
	1973, ch. 258	
	1973, ch. 466	
7621e	1965, ch. 264	-----Water Well Drillers Act
	1969, ch. 376	
	1971, ch. 387	
	1971, ch. 388	
	1973, ch. 266, § 22	
	1973, ch. 296	
7621f	1965, ch. 655	-----Sale or disposal of salt water for pollution control
		Improvement districts
7622a	1927, ch. 247	-----Districts organized for cooperation under Federal Reclamation Laws including lands within existing district
7641—a, b	1939, Spec.L., p. 1103, §§ 1, 2	-----Districts under contract with Dept. of Interior, division of district, election of directors, boundaries
	1941, ch. 536	
	1961, ch. 429	
7652b	1955, ch. 79	-----Employment of manager, tax assessor and collector, etc.
7684—b	1939, Spec.L., p. 1103, § 3	-----Penalty for delinquent tax payment
		Improvement districts obtaining water supply from United States
7700b	1934, 2nd C.S., ch. 50	-----Validating refunding bonds
7700c	1945, ch. 350	-----Refunding bonds for retirement of amortization bonds
7775c	1930, 5th C.S., ch. 57	-----Improvement districts, exclusion of land, counties of 1034 to 1036 square miles
		Improvement districts under contract with United States
7794a	1925, ch. 123, § 1	-----Acquisition, sale, lease, etc., of electric plants
7794b	1925, ch. 123, § 2	-----Cooperation with districts of other states
7807b	1933, ch. 25	-----Improvement districts, funding, districts not over 12,000 acres
7807c	1933, ch. 93	-----Refunding bonds
7807c—1	1935, ch. 336	-----Validating proceedings
		Improvement districts organized for cooperation under Federal Reclamation Laws

## TABLE OF SPECIAL LAWS

Civ.St.Art.	Laws Citation	Subject Matter
7807d	1933, ch. 76 1933, 1st C.S., ch. 19, § 1	—Organization, powers, etc.
7807dd	1933, 1st C.S., ch. 19, §§ 2 to 7	—Validation, borrowing money from federal government
7807f	1933, ch. 121	Water supply districts Improvement districts, validation acts
7807g	1934, 3rd C.S., ch. 59	—Conversion into control and improvement district
7807h	1935, 2nd C.S., ch. 477	—Bonds
7807i	1937, ch. 294	Improvement districts, tax authority, districts of 10,000 to 15,000 acres
7807j	1937, ch. 432	Improvement districts, validation acts, counties of 48,500 to 48,600
7807k	1937, 1st C.S., ch. 15	Improvement districts organized for cooperation under Federal Reclamation Laws, validation, organization and bonds Improvement districts, validation acts
7807l	1939, Spec.L., p. 1043	—Counties of 250,000 to 300,000
7807u	1949, ch. 332	—Composition of indebtedness plan
7808 to 7880	1918, 4th C.S., ch. 43 1971, ch. 899	Water Control and Preservation Districts
7880—20a, § 2	1955, ch. 260, § 2	Lower Nueces River Water Supply District, validation Control and improvement districts
7880—20a	1955, ch. 260	—Boundaries coterminous with city, selection of directors, validation of proceedings
7880—20b	1969, ch. 832	—Directors, appointment or election Cities in counties of 900,000 to 1,000,000
7880—38a	1939, Spec.L., p. 1105 1955, ch. 48 1965, ch. 318	—Directors, appointment or election in district containing over 80,000 acres within 2 or more counties
7880—75c	1949, ch. 285	—Validation acts, addition of land
7880—76c	1941, ch. 119 1951, ch. 114 1951, ch. 381 1961, ch. 494	—Exclusion of land, urban property and unirrigated lands over 30,000 acres
7880—90c	1947, ch. 382, § 2	—Validation acts, bonds
7880—146	1925, ch. 25, § 146	—Directors' appointment or election in district containing under 12,000 acres —Validation acts
7880—147a(1)	1939, Spec.L., p. 1038	—Counties of 250,000 to 310,000
7880—147c7	1939, Spec.L., p. 1041	—District containing not over 3,500 acres
7880—147c8	1951, ch. 127	—Bonds
7880—147c9	1955, ch. 469	—Counties over 800,000
7880—147c10	1957, ch. 310, § 2	—Bonds
7880—147c10	1957, ch. 310, § 2	—Organization, proceedings, etc.
7880—147c11	1965, ch. 434	—Exclusion and annexation of land
7880—147u	1934, 2nd C.S., ch. 4 1936, 3rd C.S., ch. 501	—Borrowing from federal agencies, taxes and bonds authorized Flood control
7880—147v	1934, 4th C.S., ch. 29	—Cooperation of counties on Mexico border with U. S.

Civ.St.Art.	Laws Citation	Subject Matter
7880—147v(1)	1937, ch. 202	—Lower Rio Grande Flood Control Project, easements Control and improvement districts —Validation acts
7880—147w	1935, 1st C.S., ch. 372	— —Bonds
7880—147w(1)	1939, Spec.L., p. 1039	— —Counties of 3,750 to 3,800
7880—147w	1935, 1st C.S., ch. 372	— —Organization, proceedings, etc.
7880—147x	1932, 4th C.S., ch. 3, § 1	—Refunding bonds, cities of 40,000 to 100,000
7880—147y	1932, 4th C.S., ch. 3, § 2	to 100,000
7880—147z	1934, 3rd C.S., ch. 12	—Counties of 5,000 to 13,000
	1947, ch. 77	
7880—148	1925, ch. 35, §§ 1 to 6	Cameron and Willacy Counties, overflows
to		
7880—153		
7880a	1939, p. 705	Exclusion of land, control and preservation districts Fresh water supply districts —Validation acts
7887a	1927, 1st C.S., ch. 58, § 3	— —Formation of district
7893a	1951, ch. 427	— —Numerical re-designation
7930—1	1935, 2nd C.S., ch. 475	—Exclusion of land, counties of 3,000 to 20,000
7941b	1951, ch. 81	—Validation acts; bonds and organization Drainage districts —Commissioners
8119a	1967, ch. 584	— —Election, counties of 75,000 to 90,000
8120a	1949, ch. 254	— —Compensation, counties of 90,000 to 150,000
8152a	1951, ch. 286	—Acquisition and sale of land; validation
—	1963, ch. 236	—Contracts with U. S.: Districts in Hidalgo, Willacy and Cameron Counties converted into conservation and reclamation districts —Commissioners
8161b	1947, ch. 437	— —Powers, compensation, etc., counties of 150,000 to 350,000
	1961, ch. 482	
8161d	1949, ch. 201	— —Powers, compensation, etc., counties of 108,000 to 109,000
	1971, ch. 590	—Annexation of territory
8176b	1955, ch. 315	— —Conversion into conservation and reclamation district wholly in one county
8176b—1	1957, ch. 345	— —District not converted into conservation and reclamation district wholly in one county
8176b—2	1959, ch. 403	— —District not converted into conservation and reclamation district wholly in one county over 175,000
8176d	1959, ch. 402	—Consolidation of contiguous districts wholly in one county over 175,000
8193—1	1945, ch. 143	—Abolition of districts in counties having flood control or conservation and reclamation district
8194 note	1971, ch. 66	City of Cities Municipal Utility District, validation Donna Irrigation District, Hidalgo County No. 1
8194 note	1930, 4th C.S., Spec.L., ch. 26	—Creation
	1959, ch. 108	

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Civ.St.Art.	Laws Citation	Subject Matter
8194 note	1961, ch. 133	—Enlargement of boundaries
8194 note	1961, ch. 247	—Reduction of boundaries
8194 note	1971, ch. 92	Harris County Utility District, validation
8194 note	1931, Spec.L., ch. 190	Lower Rio Grande Water Conservation District
8194 note	1961, ch. 520	Nueces County Drainage and Conservation District No. 2, validation
8194 note	1965, ch. 558	Prairie View Municipal Utility District, validation
8194 note	1969, ch. 385	Ridgemont Municipal Utility District, validation
8194 note	1969, ch. 218	San Patricio County conservation and reclamation districts, annexation
8194 note	1965, ch. 193	Upper Guadalupe River Authority, validation
8197a	1929, ch. 139	Conservation or reclamation districts, validation of creation, bonds, etc.
8197d	1932, 3rd C.S., ch. 19	
8197d—1	1971, ch. 750	
8197e—1	1943, ch. 366	
8198 note	1953, ch. 195 1957, ch. 291 1965, ch. 524	Calhoun County Navigation District
8198 note	1963, ch. 45	Guadalupe-Blanco River Authority, purchase of water supply facilities from West Side Calhoun County Navigation District
8198 note	1965, ch. 23 1967, ch. 21	Middle Sabine River Navigation District
8198 note	1953, ch. 370 1957, ch. 80 1961, 1st C.S., ch. 13 1969, ch. 785, § 3 1973, ch. 381	Orange County Navigation and Port District
8198 note	1949, ch. 147 1957, ch. 20 1961, ch. 5 1961, 1st C.S., ch. 12 1963, ch. 317 1969, ch. 785, § 3	Port of Beaumont Navigation District of Jefferson County
—	1951, ch. 262	—Title to Neches River Bed
—	1950, 1st C.S., ch. 5	—Validation
8198 note	1963, ch. 197 1967, ch. 25	Port of Port Arthur Navigation District of Jefferson County
8198 note	1931, Spec.L., ch. 161	Trinity River Canal and Conservancy District Navigation districts
8235a	1945, ch. 90 1947, ch. 242 1955, ch. 211 1957, ch. 71	—District containing city of 375,000 or more
8247c	1941, ch. 6	—Lease of land to U.S. by district containing city of 100,000 or more
8247f	1955, ch. 176	—Exchange or sale of land by district containing city of 375,000 or more
8248 to 8257	1920, 4th C.S., p. 3 1923, p. 42	—Pilots

Civ.St.Art.	Laws Citation	Subject Matter
8263b	1931, ch. 365	—Validation acts converted districts
	1931, Spec.L., ch. 238	
8263c	1931, Spec.L., ch. 89	—District containing city of 27,000 to 28,000
	1933, 1st C.S., ch. 78	—Validation acts
8263f	1933, 1st C.S., ch. 81	—Districts created by commissioners court
8263f—1	1951, ch. 11	—Districts engaged in operation of ports and port facilities
8263i	1947, ch. 163	—Districts bordering Mexico, use of public lands and waters, conveyances to U. S.
	1953, ch. 139	—District containing city of 300,000 or more
8263j	1949, ch. 216	—Retirement, death and disability fund
8263k	1949, ch. 217	—Eminent domain powers
8264	1846, p. 79	Pilots
to	1861, p. 19	
8280	1951, ch. 148	
	1953, ch. 48	
	1955, ch. 224	
	1959, ch. 21	
	1961, 1st C.S., ch. 14	
	1963, ch. 459	
	1963, ch. 462	
	1965, ch. 552	
	1967, ch. 4	
	1969, ch. 728	
	1969, ch. 785	
		Control and improvement districts, exclusion of land
8280—2	1949, ch. 37	—City of 13,305 to 14,310
8280—3	1949, ch. 336	—Urban property
8280—3.2	1971, ch. 86	
8280—3.5	1959, ch. 62	—Urban property, 1,800 to 2,500 acres
8280—4	1949, ch. 505	—Districts with 81,000 to 82,100 acres
8280—6	1953, ch. 390	—City of 20,000 or more
		Water development bonds
8280—9a	1965, ch. 221	—Authorization
8280—9a.1	1971, ch. 1011	—Further authorization
8280—10	1961, ch. 193	District wholly within incorporated city: taxes, bonds, abolition, validation
	1961, 1st C.S., ch. 3	
	1963, ch. 176	
8280—13	1969, ch. 782	Flood Control and Insurance Act
8280—14	1971, ch. 984	Development of resources for recreational purposes

**Districts Created and/or Validated Pursuant to Const. Art. 16, § 59**

8280—101	1929, 2nd C.S., ch. 13	Brazos River Authority
	1931, 1st C.S., ch. 5	
	1935, ch. 19	
	1935, 1st C.S., ch. 368	
	1953, ch. 194, §§ 1, 2, 4	
	1973, ch. 240	
8280—102	1931, Spec.L., ch. 124	Liberty County Conservation and Reclamation District No. 3
8280—103	1933, 1st C.S., ch. 63	Lower Neches Valley Authority
	1934, 4th C.S., ch. 17	
	1941, ch. 570	
	1949, ch. 567	

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Districts Created and/or Validated Pursuant to Const. Art. 16, § 59—Continued

Civ.St.Art.	Laws Citation	Subject Matter
8280—104	1933, 1st C.S., ch. 68	Valley Conservation and Reclamation District
8280—105	1933, 1st C.S., ch. 75	Guadalupe River Authority
8280—106	1933, 1st C.S., ch. 75 1935, 1st C.S., ch. 410 1969, ch. 432	Guadalupe-Blanco River Authority Creation, powers, etc.
8280—107	1934, 4th C.S., ch. 7 1935, 1st C.S., ch. 405 1937, ch. 350 1939, Spec.L., p. 1048 1941, ch. 398 1949, ch. 61 1951, ch. 90 1955, ch. 165 1959, ch. 327 1962, 3rd C.S., ch. 11 1965, ch. 124 1967, ch. 655 1967, ch. 678 1971, ch. 174 1971, ch. 298 1971, ch. 820 1973, ch. 268, § 1 1973, ch. 271	Lower Colorado River Authority
8280—108	1935, ch. 97 1939, Spec.L., p. 1080 1945, ch. 287	Neches River Conservation District
8280—109	1935, ch. 126 1936, 3rd C.S., ch. 505 1939, Spec.L., p. 1060 1941, ch. 174 1943, ch. 170 1947, ch. 119 1973, ch. 268, § 2	Upper Colorado River Authority
8280—110	1935, ch. 319	Lower Rio Grande Flood Control District
8280—111	1935, ch. 338 1937, ch. 341 1939, Spec.L., p. 1045 1941, ch. 69	Central Colorado River Authority
8280—112	1935, ch. 361	Gulf Water Supply District
8280—113	1935, ch. 414	Leon River Flood Control District
8280—114	1935, ch. 420	Pease River Flood Control District
8280—115	1935, 1st C.S., ch. 427 1937, 2nd C.S., ch. 20 1939, Spec.L., p. 1074 1943, ch. 390 1945, ch. 305 1971, ch. 695	Nueces River Authority
8280—116	1935, 2nd C.S., ch. 445	Sulphur River Conservation and Reclamation District
8280—117	1937, ch. 57	Comal County Water Recreational District No. 1
8280—118	1937, ch. 256 1949, ch. 349	Panhandle Water Conservation Authority
8280—119	1937, ch. 276 1939, Spec.L., p. 1083 1953, ch. 60 1957, ch. 504 1959, ch. 37 1961, ch. 233 1969, ch. 836	San Antonio River Authority

Districts Created and/or Validated Pursuant to Const. Art. 16, § 59—Continued

Civ.St.Art.	Laws Citation	Subject Matter
		Harris County Flood Control District
8280—120 note	1947, ch. 406	—Eminent domain proceedings
8280—120 note	1949, ch. 196	—Retirement, disability and death fund
	1957, ch. 258	
8280—120	1937, ch. 360	—Creation, powers, etc.
	1967, ch. 631	
8280—120 note	1947, ch. 407	—Bonds
8280—120a	1963, ch. 118	—Building setback lines along waterway
8280—120b	1965, ch. 394	—Flood hazard areas
8280—121	1937, ch. 426	San Jacinto River Authority
	1939, Spec.L., p. 1097	
	1941, ch. 480	
	1941, ch. 613	
	1943, ch. 371	
	1951, ch. 366	
	1951, ch. 367	
	1967, ch. 547	
8280—122	1937, ch. 454	Upper Red River Flood Control and Irrigation District
	1965, ch. 557	
8280—123	1939, Spec.L., p. 1053	Lower Concho River Water and Soil Conservation Authority
8280—124	1939, Spec.L., p. 1062	Upper Guadalupe River Authority
	1957, ch. 83	Creation, powers, etc.
	1965, ch. 632	
	1971, ch. 430	
8280—125	1939, Spec.L., p. 1074	Webb County Conservation and Reclamation District
8280—126	1945, ch. 306	Bexar County Metropolitan Water District
	1953, ch. 66	
	1957, ch. 40	
8280—127	1945, ch. 355	Dallas County Flood Control District
	1951, ch. 50	Creation, powers, etc.
8280—127 note	1969, ch. 787	Dallas County Flood Control District
		Creation, powers, etc., validation of acts
8280—129	1941, ch. 361, art. IV	Colorado County Flood Control District
	1947, ch. 184	
8280—130	1941, ch. 361, art. III	Fayette County Flood Control District
	1947, ch. 185	
8280—131	1941, ch. 361, art. II	Lavaca-Navidad River Authority
	1947, ch. 186	
	1953, ch. 383	
	1955, ch. 313	
	1959, 3rd C.S., ch. 22	
	1963, ch. 14	
	1969, ch. 417	
8280—132	1947, ch. 456	Dallas County Park Cities Water Control and Improvement District No. 2
8280—133	1949, ch. 110	Sabine River Authority
	1955, ch. 93	
	1955, ch. 101	
	1973, ch. 238	
8280—134	1949, ch. 159	Lower Nueces River Water Supply District, creation, powers, etc.
8280—135	1949, ch. 282	Trinity Bay Conservation District
	1950, 1st C.S., ch. 45	
	1957, ch. 144	
	1969, ch. 362	

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Districts Created and/or Validated Pursuant to Const. Art. 16, § 59—Continued

Civ.St.Art.	Laws Citation	Subject Matter
8280—136	1949, ch. 303	Fort Bend County Drainage District
8280—137	1949, ch. 340 1961, 1st C.S., ch. 4	Colorado River Municipal Water District
8280—138	1949, ch. 398 1963, ch. 452	Duval County Conservation and Reclamation District
8280—139	1949, ch. 465 1953, ch. 384 1955, ch. 231	Eastland County Water Supply District
8280—141	1951, ch. 62 1969, ch. 122	North Texas Municipal Water District
8280—142	1951, ch. 115	Fisher County Water Authority
8280—143	1951, ch. 261	Valley Acres Water District
8280—144	1951, ch. 309 1953, ch. 403	Lower Rio Grande Authority
8280—145	1951, ch. 373 1954, 1st C.S., ch. 24 1971, ch. 737	San Patricio Municipal Water District
8280—146	1951, ch. 418 1963, ch. 186	Brookshire Municipal Water District Northeast Texas Municipal Water District
8280—147	1953, ch. 78 1959, ch. 375 1959, 2nd C.S., ch. 28	—Creation, powers, etc.
8280—147a	1961, 1st C.S., ch. 16	—Directors, bonds, validation
8280—148	1953, ch. 123 1955, ch. 332	Dallas County Water Supply and Control District
8280—149	1953, ch. 124	West Trinity Water, Sewer and Improvement District
8280—150	1953, ch. 185	North Waco Water Supply District
8280—151	1953, ch. 186	Wilbarger County Water Supply District
8280—152	1953, ch. 198	Medina County Water Control and Improvement District No. 2
8280—153	1953, ch. 240	Refugio County Water Control and Improvement District No. 1
8280—154	1953, ch. 243 1955, ch. 196 1957, ch. 204 1961, ch. 67 1969, ch. 63	Canadian River Municipal Water Authority
8280—155	1953, ch. 268 1965, ch. 76	Wise County Water Supply District
8280—156	1953, ch. 399	Harris County Sanitation Authority
8280—157	1953, ch. 412 1955, ch. 193 1957, 2nd C.S., ch. 31 1959, 2nd C.S., ch. 9 1959, 3rd C.S., ch. 3	Upper Neches River Municipal Water Authority
8280—158	1954, 1st C.S., ch. 12	North Montague County Water Supply District
8280—159	1954, 1st C.S., ch. 13	Grayson County Water Improvement District No. 1
8280—160	1954, 1st C.S., ch. 35 1957, ch. 73 1961, ch. 174 1965, ch. 555 1973, ch. 172	Green Belt Municipal and Industrial Water Authority
8280—161	1955, ch. 60 1959, ch. 261	Jackson County Water Control and Improvement District

Districts Created and/or Validated Pursuant to Const. Art. 16, § 59—Continued

Civ.St.Art.	Laws Citation	Subject Matter
8280—162	1955, ch. 66 1955, ch. 349 1957, 1st C.S., ch. 13 1959, ch. 14 1961, ch. 32 1961, ch. 194 1963, ch. 100	West Central Texas Municipal Water District
8280—163	1955, ch. 123 1965, ch. 15 1969, ch. 593	Benbrook Sewer and Water Authority
8280—164	1955, ch. 141	Haskell County Water Supply District
8280—165	1955, ch. 212	Sulphur River Municipal Water District
8280—166	1955, ch. 245	Jefferson County Water Control and Improvement District
8280—167	1955, ch. 250 1957, ch. 219	Yorks Creek Improvement District
8280—168	1955, ch. 279	Travis County Improvement District No. 1
8280—169	1955, ch. 282	San Augustine Water Authority
8280—170	1955, ch. 283	Colorado County Water Control and Improvement District No. 1
8280—171	1955, ch. 285	Shelby County Water Supply District
8280—172	1955, ch. 286 1957, ch. 143	Boling Municipal Water District
8280—173	1955, ch. 308 1959, ch. 326 1961, ch. 119	Northeast Tarrant County Water Authority
8280—174	1955, ch. 359 1959, ch. 153	Newton County Water Supply District
8280—175	1955, ch. 373	Atascosa and Frio Counties Improvement District No. 1
8280—176	1955, ch. 376 1962, 3rd C.S., ch. 77	Runnels County Water Authority
8280—177	1955, ch. 400 1961, 1st C.S., ch. 49 1965, ch. 187	City of McAllen Water and Sewer Authority
8280—178	1955, ch. 401	Travis-Williamson County Water Control and Improvement District No. 1
8280—179	1955, ch. 498	Ground Water Conservation District No. 2, North of Canadian River, validation
8280—180	1955, ch. 504	South Main Street Municipal Water District
8280—181	1955, ch. 505	Reagan County Water Supply District Bell County Water Control and Improvement District
8280—182	1955, ch. 506	—No. 3
8280—183	1955, ch. 507	—No. 4
8280—184	1955, ch. 508	Upper Jasper County Water Authority
8280—185	1955, ch. 509	Tyler County Water Control and Improvement District No. 1
8280—186	1955, ch. 510	Two Mile Creek Conservation and Reclamation District of Calhoun County
8280—187	1955, ch. 511 1961, ch. 253	Fort Bend County Water Supply District

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## Districts Created and/or Validated Pursuant to Const. Art. 16, § 59—Continued

Civ.St.Art.	Laws Citation	Subject Matter
8280—188	1955, ch. 518 1957, ch. 256 1957, 1st C.S., ch. 22 1959, 2nd C.S., ch. 29 1965, ch. 173 1967, ch. 273 1969, ch. 155 1969, ch. 156 1969, ch. 193 1969, ch. 198 1969, ch. 364	Trinity River Authority of Texas
8280—189	1955, ch. 523	Bell County Water Control and Improvement District No. 1
8280—190	1955, ch. 527	Harris County Improvement District No. 1 Ground Water Conservation District No. 3, South of Canadian River
8280—191	1957, ch. 19	—Creation validation, powers, etc.
—	1973, ch. 291	—Name change Tri-County Municipal Water District
8280—192	1957, ch. 56	—Creation, powers, etc.
8280—192 note	1957, 2nd C.S., ch. 11	Validation
8280—193	1957, ch. 86 1969, ch. 77 1971, ch. 849	North Central Texas Municipal Water Authority
8280—194	1957, ch. 126 1973, ch. 133	Plum Creek Conservation District
8280—195	1957, ch. 131	Lee County West Yequa Water Control and Improvement District No. 2
8280—196	1957, ch. 142 1961, ch. 157	Athens Municipal Water Authority
8280—197	1957, ch. 145	Jefferson County Fresh Water Supply District No. 2
8280—198	1957, ch. 221 1961, 1st C.S., ch. 34	White River Municipal Water District Creation, powers, etc.
8280—198a	1961, 1st C.S., ch. 35	White River Municipal Water District, directors, bonds
8280—200	1957, ch. 273 1961, ch. 297 1967, ch. 639	Elm Creek Watershed Authority
8280—201	1957, ch. 278	Metropolitan Sanitary Sewer District of South Jefferson County
8280—202	1957, ch. 279 1965, ch. 530	Pond Creek Watershed Authority
8280—203	1957, ch. 317	Jefferson Water and Sewer District
8280—204	1957, ch. 318	North Tarrant County Municipal Water District
8280—205	1957, ch. 351	Harris County Eastex Oaks Water and Sewer District
8280—206	1957, ch. 368 1959, ch. 258 1961, ch. 258	Bistone Municipal Water Supply District Tarrant County Water Control and Improvement District
8280—207	1957, ch. 268 1965, ch. 601	—Creation, powers, etc.
8280—207a	1961, ch. 352	—Retirement, disability and death fund
8280—207b	1961, ch. 414	—Sewage treatment facilities, bonds
8280—208	1957, ch. 377	Lakeside Water District of Tarrant County

Districts Created and/or Validated Pursuant to Const. Art. 16, § 59—Continued

Civ.St.Art.	Laws Citation	Subject Matter
		Wilbarger Creek Water Control and Improvement District No. 1 of Bastrap and Travis Counties
8280—209	1957, ch. 466	—Creation, powers, etc.
8280—209 note	1957, 2nd C.S., ch. 9	—Maintenance tax
8280—210	1957, 1st C.S., ch. 16	Collin County Water Control and Improvement District No. 2
8280—211	1957, 1st C.S., ch. 18 1961, ch. 300	Bell County Water Control and Improvement District No. 6
8280—212	1957, 1st C.S., ch. 25 1961, ch. 134 1967, ch. 646	Ecleto Creek Watershed District
8280—213	1957, 1st C.S., ch. 26 1961, ch. 64 1971, ch. 208	Hondo Creek Watershed Improvement District
8280—214	1957, 1st C.S., ch. 29	Donahoe Creek Watershed Authority
8280—215	1957, 1st C.S., ch. 30 1965, ch. 627	Darr's Creek Watershed Authority
8280—216	1959, ch. 25	Wichita County Water Control and Improvement District No. 6
8280—217	1959, ch. 33 1959, ch. 177	Choctaw Watershed Water Improvement District
8280—218	1941, ch. 361, art. I 1947, ch. 183 1959, ch. 95 1967, ch. 591	Lavaca County Flood Control District No. 3
8280—219	1959, ch. 99	Edwards Underground Water District
8280—220	1959, ch. 154	Attoyac Bayou Watershed Authority
8280—221	1959, ch. 175 1963, ch. 489	Hays County Wimberley Water Supply District
8280—222	1959, ch. 183	Aquilla-Hackberry Creek Conservation District
		Bexar County Water Control and Improvement District
8280—223	1959, ch. 198	—Oak Hills
8280—224	1959, ch. 199	—Lackland
8280—225	1959, ch. 200	—Northwest
8280—226	1959, ch. 220	Del Mar Conservation District
8280—227	1959, ch. 262 1959, 3rd C.S., ch. 12	Bell County Improvement District
8280—228	1959, ch. 279 1961, ch. 504 1967, ch. 570 1969, ch. 715 1969, ch. 856	Red River Authority of Texas
8280—229	1959, ch. 281	Turkey Creek Conservation District
8280—230	1959, ch. 328	Grayson County Water and Sewer Authority
8280—231	1959, ch. 333	City of Bonham Water Authority
8280—232	1959, ch. 338	Riesel Municipal Utility District
8280—233	1959, ch. 341	Real-Edwards Conservation and Reclamation District
8280—234	1959, ch. 372	Clear Creek Watershed Authority
8280—235	1959, ch. 452	Pineland Municipal Water Supply District
8280—236	1959, ch. 454	Mill Creek Water Control and Improvement District
8280—237	1959, ch. 467	Galveston County Drainage District No. 4

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Civ.St.Art.	Laws Citation	Subject Matter
8280—238	1959, ch. 469 1961, ch. 70 1965, ch. 247	Valley Creek Water Control District
8280—239	1959, ch. 497	Iron's Bayou Watershed Conserva- tion District
8280—240	1959, ch. 503	Beason-Cedar Creek Watershed Au- thority
8280—241	1959, 1st C.S., ch. 17	Coke County Kickapoo Water Con- trol and Improvement District No. 1
8280—242	1959, 2nd C.S., ch. 23 1967, ch. 197	Williamson County Water Supply District [repealed]
8280—243	1959, 2nd C.S., ch. 26 1961, 1st C.S., ch. 59 1963, ch. 9	Palo Duro River Authority [repeal- ed]
8280—244	1959, 3rd C.S., ch. 24 1971, ch. 127	Mayfair Park Municipal Utility Dis- trict
8280—245	1961, ch. 114	Bowie County Water Supply District
8280—246	1961, ch. 171	El Lago Municipal Utility District
8280—247	1961, ch. 173	Glenwood Bayou Municipal Utility District
8280—248	1961, ch. 179 1963, ch. 215	Logan Slough Creek Improvement District
8280—249	1961, ch. 203 1967, ch. 220	Brookshire-Katy Drainage District
8280—250	1961, ch. 210	El Paso County Water Control and Improvement District—West- way
8280—251	1961, ch. 244 1963, ch. 331	Rotan Municipal Water Authority
8280—252	1961, ch. 252	Farmers Creek Watershed Authority
8280—254	1961, ch. 324 1965, ch. 399	Rio Grande Palms Water District
8280—255	1961, ch. 363	Brown County Water Control and Improvement District—Holiday Hills
8280—256	1961, ch. 364	Escondido Watershed District
8280—257	1961, ch. 405 1965, ch. 542	Upper Leon River Municipal Water District
8280—258	1961, ch. 416 1969, ch. 837 1971, ch. 450	Palo Pinto County Municipal Water District No. 1
8280—259	1961, ch. 438 1967, ch. 585	Lomax Municipal District [repealed]
		Castelman Creek Watershed Associ- ation
8280—260	1961, ch. 441	—Creation, powers, etc.
8280—260	1965, ch. 635	—Validation
8280—261	1961, ch. 483	Angleton Municipal Utility District
8280—262	1961, ch. 518 1973, ch. 439	Kerr County (Center Point) Water Control and Improvement Dis- trict
8280—263	1961, ch. 533	Hull Fresh Water Supply District
8280—264	1961, 1st C.S., ch. 2	Zapata County Water Control and Improvement District—San Yg- nacio
8280—265	1961, ch. 252 1961, 1st C.S., ch. 23 1963, ch. 90	Kimble County River Authority
8280—266	1961, 1st C.S., ch. 32 1969, ch. 718 1971, ch. 314	El Paso County Water Authority

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Civ.St.Art.	Laws Citation	Subject Matter
8280—267	1961, 1st C.S., ch. 33	Chantilly Oaks Municipal Utility District
8280—268	1961, ch. 50	Bayshore Municipal Utility District
8280—269	1961, 1st C.S., ch. 52	Liberty County Drainage District No. 5
8280—270	1962, 3rd C.S., ch. 12	Alice Water Authority
8280—271	1962, 3rd C.S., ch. 20 1967, ch. 645	Memorial Villages Water Authority
8280—272	1962, 3rd C.S., ch. 29 1967, ch. 33	McLennan County Water Control and Improvement District—Bosqueville Hills [repealed]
8280—273	1962, 3rd C.S., ch. 38	Pettus Municipal Utility District Brazoria County Water Control and Improvement District
8280—274	1962, 3rd C.S., ch. 46 1963, ch. 79	—Lake Alaska [repealed]
8280—275	1962, 3rd C.S., ch. 52 1963, ch. 20	—Brushy Meadows [repealed]
8280—276	1962, 3rd C.S., ch. 65	Dayton Drainage District
8280—277	1962, 3rd C.S., ch. 70	Henderson County Municipal Water Authority
8280—278	1963, ch. 4	Port Mansfield Public Utility District
8280—279	1963, ch. 13	Lakeside Water Supply District
8280—280	1963, ch. 101 1973, ch. 164	Clear Lake City Water Authority
8280—281	1963, ch. 140 1965, ch. 623 1969, ch. 396	Dalby Springs Conservation District
8280—282	1963, ch. 234	City of Hillsboro Water and Sewer Authority
8280—283	1963, ch. 239	Sagemont Municipal Utility District of Harris County
8280—284	1963, ch. 241 1969, ch. 631	Galveston West Bay Municipal Utility District of Galveston County
8280—285	1963, ch. 243	Friendswood Drainage District of Galveston County
8280—286	1963, ch. 244	Bacliff Municipal Utility District of Galveston County
8280—287	1963, ch. 245 1971, ch. 186	Bayview Municipal Utility District of Galveston County Harris County Water Control and Improvement District, Fonden Road
8280—288	1963, ch. 246	—Creation, powers, etc.
8280—288a	1967, ch. 611	—Land addition
8280—289	1963, ch. 256	Butterfield Water Control and Improvement District
8280—290	1963, ch. 286	McMullen County Water Control and Improvement District No. 2
8280—291	1963, ch. 304	River Plantation Municipal Utility District of Montgomery County
8280—292	1963, ch. 307	Orange County Drainage District of Orange County
8280—293	1963, ch. 312 1965, ch. 599 1969, ch. 136	Lake Dallas Municipal Utility Authority
8280—294	1963, ch. 321	Pearland Municipal Utility District of Brazoria County
8280—295	1963, ch. 322	Oak Manor Municipal Utility District of Brazoria County
8280—296	1963, ch. 337 1971, ch. 582	Aransas County Conservation and Reclamation District

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8280—297	1965, ch. 197 1967, ch. 647	Evergreen Underground Water Conservation District
8280—298	1965, ch. 277	Mackenzie Municipal Water Authority
8280—299	1965, ch. 319	Deep East Texas Interbasin Navigation District
8280—300	1965, ch. 331	South China Improvement District
8280—301	1965, ch. 335	Cardinal Meadows Improvement District
8280—302	1965, ch. 336	North Nome Improvement District
8280—303	1965, ch. 514	Three Rivers Water District
8280—304	1965, ch. 515 1967, ch. 89	Turkey Creek Improvement District
8280—305	1965, ch. 517 1971, ch. 326	Plateau Underground Water Conservation and Supply District
8280—306	1965, ch. 518	Treeline Improvement District
8280—307	1965, ch. 519 1967, ch. 590	Gulf Freeway Municipal Utility District
8280—308	1965, ch. 520	San Leon Municipal Utility District
8280—309	1965, ch. 521 1967, ch. 77 1969, ch. 578	Timberlake Improvement District
8280—310	1965, ch. 522	Pineview Water Supply District
8280—311	1965, ch. 528 1969, ch. 264	Clear Creek Basin Authority
8280—312	1965, ch. 531	Blue Water Municipal Utility District
8280—313	1965, ch. 532	Treasure Island Municipal Utility District
8280—314	1965, ch. 533 1967, ch. 586	Folletts Island Water Supply District
8280—315	1965, ch. 554 1973, ch. 565	Crosby Municipal Utility District —Creation, powers, etc. —Validation
8280—316a	1965, ch. 556 1967, ch. 624	Comanche Hills Utility District
8280—317	1965, ch. 559 1967, ch. 588	Harbor Improvement District of Galveston County Pirate's Cove Municipal Utility District
8280—318	1965, ch. 560	—Creation, powers, etc.
8280—318a	1969, ch. 722	—Land addition
8280—319	1965, ch. 561	Village of San Luis Municipal Utility District
8280—320	1965, ch. 584	Lazy River Improvement District
8280—321	1965, ch. 587	Rayburn Improvement District
8280—322	1965, ch. 598	Commodore Cove Improvement District
8280—323	1965, ch. 600	Lakeside Beach Improvement District
8280—324	1965, ch. 604 1967, ch. 171 1969, ch. 268	Clear Woods Improvement District
8280—325	1965, ch. 605 1967, ch. 101 1969, ch. 579	Inverness Forest Improvement District
8280—326	1965, ch. 606 1967, ch. 139 1969, ch. 223	Sequoia Improvement District
8280—327	1965, ch. 613	Flamingo Isles Municipal Utility District
8280—328	1965, ch. 614	South Concho River Flood Control District

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Civ.St.Art.	Laws Citation	Subject Matter
8280—329	1965, ch. 617	Acres Homes Improvement District
8280—330	1965, ch. 618	Wilcrest Improvement District
	1967, ch. 99	
	1969, ch. 224	
8280—331	1965, ch. 619	Briarwick Improvement District
	1967, ch. 141	
	1969, ch. 265	
8280—332	1965, ch. 620	Bender Road Improvement District
	1967, ch. 114	
	1969, ch. 580	
8280—333	1965, ch. 621	West Road Improvement District
	1967, ch. 140	
	1969, ch. 267	
8280—334	1965, ch. 622	Bordersville Improvement District
	1967, ch. 102	
	1969, ch. 266	
8280—335	1965, ch. 628	Lipan Creek Flood Control District
8280—336	1965, ch. 629	Mason County River Authority
8280—337	1965, ch. 645	Newton County Navigation District
8280—338	1965, ch. 648	Braeburn West Utility District
	1967, ch. 652	
	1969, ch. 592	
8280—339	1965, ch. 712	Galveston County Water Authority
	1969, ch. 399	
8280—340	1965, ch. 715	Cypress Valley Navigation District Franklin County Water District
8280—341	1965, ch. 719	—Creation, powers, etc.
	1971, ch. 354	
8280—341 note	1967, ch. 308	—Validation
8280—342	1967, ch. 568	Spenwick Place Municipal Utility District
8280—343	1967, ch. 569	Bayou Vista Municipal Utility District
8280—344	1967, ch. 572	Highland Municipal Utility District
8280—345	1967, ch. 578	East Port Bolivar Municipal Utility District
8280—346	1967, ch. 579	Sunmeadow Municipal Utility District
8280—347	1967, ch. 580	Jack County Water Control and Improvement District No. 1
8280—348	1967, ch. 581	Dolphin Beach Municipal Utility District
8280—349	1967, ch. 582	League Land Municipal Utility District
8280—350	1967, ch. 583	West End Municipal Utility District
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